

University of Maryland

THE LAW OF CRIMINAL INVESTIGATION

CCJS 234

Spring 2019

Thursday, 6:00 - 8:45pm (College Park)

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Teaching Assistant

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Syllabus¹

The course book (Ferdico's Criminal Procedure, 12th ed.) provides an excellent resource for the course materials, and is likely a welcome addition to your professional book collection, even beyond this course. If you are not already familiar with it, you should also read the U.S. Constitution. I will cover many of the significant topics in class, so I am not opposed to you using the last edition, but you will be responsible for new aspects of the law.

CLASS 1: Introduction and course overview; examination and grading policy. Constitutional overview, particularly the Fourth, Fifth and Sixth Amendments. Chapter 1, pp. 2-33.

CLASSES 2-4: Structure of the court system and the criminal justice process. Chapter 2, pp. 34-87; Chapter 15, pp. 610-644.

CLASS 5: Basic criminal justice concepts, including the exclusionary rule and fruit of the poisonous tree doctrine, probable cause, privacy and "standing." Text at 90-147. Stop and frisk. Chapter 3, pp. 90-125. The law of stop and frisk, Chapter 8, pp. 307-365.

CLASS 6: The law of stop and frisk, Chapter 8, pp. 307-365; Arrests: procedures and issues. Chapter 7, pp. 238-276.

CLASSES 7-8: The search warrant: how to write it, what to know, when it's required and what is necessary, including probable cause, particularity and proper execution. Chapters 4, 5 and 6, pp. 126-237. This section also will cover types of searches and search warrants, including computer searches, border searches, wiretaps and terrorism-related issues, not included in textbook.

¹ This syllabus is copyrighted by the professor and any unauthorized use of the syllabus or materials therein as composed for this course, including distribution of class notes, without the express consent of the professor is prohibited and may be punishable by law.

CLASS 8: Review (Search Warrant Assignment Due)(MAJOR SCHEDULED GRADING EVENT)

CLASS 9: Mid-term Exam (MAJOR SCHEDULED GRADING EVENT)

CLASS 10: Exceptions to the warrant requirement: Warrantless Searches. Search incident to lawful arrest. Chapter 7, pp. 276-305; Plain view. Chapter 10, pp. 408-445.

CLASS 11: Warrantless Searches continued: consent searches. Chapter 9, pp. 366-407; vehicle searches. Chapter 11, pp. 446-481.

CLASS 11-12: Warrantless Searches continued: Open Fields doctrine and Abandoned Property. Chapter 12, pp. 483-513. **(Court Report due at end of class 12)(MAJOR SCHEDULED GRADING EVENT)**

CLASSES 13-14: Admissions/Confessions and the **Miranda** doctrine. Chapter 13, pp. 514-569. **(Second Assignment due at end of class 13)(MAJOR SCHEDULED GRADING EVENT)**

CLASS 14: Pre-trial identification issues. Chapter 14, pp. 570-609. Review for final exam

Final Exam as scheduled by the University. (MAJOR SCHEDULED GRADING EVENT)

The class grading policy will be based on two exams, three homework assignments, and class participation. The exams are each worth 50 points; the homework assignments are each worth 20 points, except for the court report, which is worth 10 points. **Class participation and preparation are worth 20 points. You will be responsible for reporting any of your class participation to the TA based on the honor system.** A total of 170 points are therefore possible in this course. Attendance is expected and participation is optional, but your grades can benefit from both. There is a natural curve to your grades, which I will explain in class and you will be apprised of interim scores during the semester so you can track how you are doing. **PLEASE NOTE THAT BECAUSE OF THE SIGNIFICANT ARRAY OF ASSIGNMENTS AND TESTS, THERE IS NO EXTRA CREDIT FOR THIS COURSE.**

ALL ASSIGNMENTS ARE DUE ON DATE ESTABLISHED AND MUST BE HANDED IN IN HARD COPY. YOU AND ONLY YOU ARE RESPONSIBLE FOR HANDING IN ASSIGNMENTS AT OR BEFORE THE ESTABLISHED DEADLINE. PLEASE BE ADVISED THAT THE GRADING SYSTEM INVOLVES A CURVE AND IS BASED ON TOTAL POINTS ACHIEVED DURING THE SEMESTER. NO EXTRA CREDIT ASSIGNMENTS WILL BE OFFERED. YOU ARE ENCOURAGED TO MEET WITH THE TA OR ME BEFORE YOUR GRADE BECOMES AN ISSUE. NO CHANGES TO GRADES WILL BE MADE AFTER EXAMS.

EXAM DATES ARE SUBJECT TO CHANGE RESULTING FROM SCHEDULING ISSUES. YOU ARE RESPONSIBLE FOR KEEPING ABREAST OF THOSE CHANGES AND FOR BEING PRESENT WHEN EXAMS ARE GIVEN. THAT INCLUDES FINAL EXAMS; THE UNIVERSITY SETS THE FINAL EXAM SCHEDULE AND YOU ARE EXPECTED TO TAKE THE EXAM AT THE SCHEDULED TIME. PLEASE DO NOT MAKE TRAVEL ARRANGEMENTS OR OTHER PLANS THAT INTERFERE WITH THE ASSIGNED EXAM DATE AND TIME.

Homework Assignments

No. 1: You are a federal agent. Prepare an application/affidavit for a search warrant. Remember to satisfy all of the requirements for the issuance of a search warrant. You are free to create the crime and all information needed to complete the application/affidavit. ***Be sure to include the Warrant, Application, Affidavit and Schedules in the package.***

No. 2: *Hypothetical Fact Pattern:* Police Officer Jerry has developed probable cause to arrest Elaine Bennis for conspiracy to commit theft from a jewelry store. He also has probable cause to search her home for the stolen item, namely a valuable pendant inscribed “to Elaine, with love. G.” Jerry secured a search warrant solely for the stolen item but elected not to secure an arrest warrant. He and Officer Kramer went to the house Bennis was residing at, and upon properly knocking and announcing their presence, let themselves in when no one responded. Inside, Jerry and Kramer saw two individuals: one was a female seated on the living room sofa listening to music through a set of Bose headphones. The officers approached the female, explained their presence, and immediately arrested Bennis when she identified herself. Jerry then searched Bennis and found the pendant inside her pants pocket, along with one roll of undeveloped film subsequently developed the next day at the police station and found to contain certain terrorist training camp locations overseas. Law enforcement officers eventually would like to use the developed film to obtain another set of search warrants, this time for both persons’ residences.

Kramer subsequently searched the living room area and found an unregistered gun in a closed drawer of a coffee table next to the sofa, a small vial of cocaine sitting out on the sofa cushion (the vial had been supplied by Elaine’s friend Newman), a photograph of the Washington Monument with an “x” through it, and a series of pornographic pictures of a young boy known to the officers to be the son of prominent local doctor named Putty, under the sofa cushions. Kramer also saw a computer on a small desk near the coffee table; it was not plugged in. Kramer plugged the computer cord in, turned on the computer and discovered it was not password protected, whereupon he briefly looked through some of the files until he discovered two in particular: one that read “Georgeporn.rude.jpg.” and one that read “Training camp sites for future jihad.” The first file contained hundreds of thumbnail kiddie porn pictures. The second file was empty.

As it turns out, the other person at the house was a friend of Elaine’s. His name was George, and he was a good enough friend such that he had planned to stay several nights. At the

time of this confrontation, George had been at the house one day and one night, although George did not volunteer this information to the police. He was standing next to the couch when Elaine was arrested. After the officers found the gun, cocaine and pornography, they also arrested George. Kramer, a well-intentioned but rookie officer, immediately after the arrest asked George whether he possessed any contraband, including weapons. George at first refused to answer but then told Officer Kramer about 30 seconds later that there were drugs upstairs in his room. When Kramer started up the stairs, George also told him that Elaine drew the “x” through the picture of the Washington Monument.

Kramer subsequently searched upstairs rooms in the house. He found George’s shaving kit in a drawer of an upstairs dresser in the first bedroom he searched, and opened it up. Inside the kit were 40 grams of crack cocaine.

You are to answer the following questions by **thoroughly analyzing the applicable law. Remember that these questions are questions of legal admissibility against each individual. You should consider the factual connections between the evidence and the individuals, as well as the legal basis for whether an item may be admissible. Keep in mind that admissibility is a principle that involves more than whether or not the items are factually connected to the person.**

(a) Can the government offer evidence of the pendant recovered from Elaine in a trial against Elaine? Against George? Why or why not? (b) Can the government offer evidence of the gun, Washington Monument photo and pornography, including the computer kiddie porn, in a trial against Elaine? Against George? Why or why not? In answering your question, please use what you know about the concept of relevance; (c) Can the government offer evidence of the empty file containing the name “Training camp sites for future jihad?” If so, who is the likely defendant against whom it would be admissible and why is it, or is it not, admissible? (d) Can the government offer evidence of the undeveloped roll of film and the pictures made from the undeveloped roll of film in a trial against Elaine? Against George? Why or why not? (e) Can the government offer evidence of the cocaine found in Elaine’s residence in a trial against Elaine? Against George? Why or why not? (f) Are George’s statements after arrest admissible against George? Against Elaine? Why or why not? (g) Can the government offer evidence of the crack found in George’s shaving kit in a trial against George? Against Elaine? Why or why not?

You should answer the question and then discuss the applicable principles you have learned that justify your answer, explaining how they apply and relate to the proper or improper seizure of the items, and why they make the evidence admissible or non-admissible at trial against each of Elaine and George. Admissibility/Non-admissibility at trial is a different issue from seizure during the search; admissibility depends on a number of factors, including the legitimacy of the seizure. Please analyze the legitimacy of the seizures of evidence in this case. That means you are focusing on the legality of what the police did during the investigation, and not on the trial tactics of the prosecutor.

Explain your answers in no more than 3 pages. You are not to assume any facts not obviously implied, but you may take a position based on the natural inferences drawn from the facts in the hypothetical, particularly as they may relate to the discovery of evidence of criminal conduct.

No. 3: Court Observation Project:

Requirements: Attend a criminal proceeding, either a trial or some motions hearing; if it is a jury trial, you need not attend the entire trial, but stay for at least one witness (both direct and cross).

Report: 1-2 pages in length, **but not longer. DUE DATE:** see syllabus

NOTE: At the end of **ALL** your written homework assignments, I want you to inscribe the following pledge **IN INK:** *“I pledge on my honor that I have not given or received any unauthorized assistance on this assignment/paper/examination.”*

Additional Note for Court Report: There is a federal district court in Greenbelt, Maryland, which sits generally between 9:30am-1pm and 2pm-5:00pm. Motions generally are heard on Mondays and other court proceedings, including trial, are Tues-Fri. You can check the court website at www.mdd.uscourts.gov for the calendar of proceedings to see whether criminal proceedings are scheduled for your intended day (including proceedings I am involved in).

You may also attend state court proceedings. If you decide to attend Prince George’s County proceedings, call the State’s Attorney at 301-952-3500 to find out what cases are scheduled and when. The best times for that court are typically 10:30am-12:30pm and 1:30pm-3:30pm.

If you decide to attend Montgomery County court proceedings, call the Assignments office at 240-777-9000 to find out what cases are scheduled and when. The best times for that court are typically 8:30am-12:30pm and 1:30pm-3:30pm.

You may attend any state court except traffic or juvenile court. I do not usually accept court appearances you made for other classes, unless they are compelling.

MAKEUP POLICY

I have a very strict policy regarding makeup exams or assignments. These will only be given in cases of excused absences and official documentation is required. Excused absences are: illness with a doctor's note, death in the immediate family, required school activities, and required court appearance. **I will not accept a Health Center honor statement to verify an illness.** If you go to the Health Center and a doctor will not write you a note, you will need to get a copy of your medical record from them to verify your illness. By law, you are entitled to

get a copy of this and it is your responsibility to do so. I must be notified in person or by e-mail **PRIOR** to missing an **exam or assignment** for me to consider giving you a makeup or accepting a late submission. **If you know in advance that you will be absent for an exam or an assignment due date with an approved absence, you will be expected to take the exam or turn in the assignment prior to the exam/assignment due date.**

ILLNESS AND DISABILITY SUPPORT

Please be advised that the University has recently changed the illness policy and you are able to submit for a single illness an attested absence note you can write yourself. According to the new policy, the University will accept as an excused absence a self-signed note from a student who has missed a single lecture, recitation or laboratory, attesting to the date of the illness. The note must also contain an acknowledgment by the student that the information is true and correct and that providing false information is prohibited under Code of Student Conduct. The student is also obligated to make a reasonable attempt to inform the instructor of his/her illness in advance. I will of course abide by such policy, as it affects a SINGLE absence.

A student who experiences a prolonged absence or an illness preventing attendance at a major Schedule Grading Event (*see* Syllabus for designated Scheduled Grading Events) is required to provide written documentation of the illness from the Health Center or an outside health care provider, verifying the dates of the treatment and the time period during which the student was unable to meet academic responsibilities. Consecutive absences of more than one day and non-consecutive medically-necessitated absences from more than a single lecture are considered prolonged absences,

I will also make every effort to accommodate students who are registered with the Disability Support Services (DSS) Office and who provide me with a University of Maryland DSS Accommodation form. This form must be presented to me no later than February 27, 2014. I am not able to accommodate students who are not registered with DSS or who do not provide me with documentation that has not been reviewed by DSS after February 27, 2014. DSS students who are requesting to take their exams at the DSS Center need to provide me with a testing form for each exam that must be turned in to me no later than 1 week prior to each exam. The student is expected to take the exam at the same time as the rest of the class.

You should contact me by email prior to class time if you will be missing class due to any reason, but especially illness/injury. Any documentation for missing a class should be submitted to the instructor before, but no later than the first day of class upon the student's return.

COURSE POLICIES

Course-related policies set by the University may be found at the following link:
<http://www.ugst.umd.edu/courserelatedpolicies.html>.

ACADEMIC INTEGRITY

Academic dishonesty of any form will absolutely NOT be tolerated. Academic dishonesty encompasses the traditional behavior such as cheating on exams and assignments, giving false statements, etc., but also includes activities such as possessing and/or reviewing previous semester's exams and computer assignments. Additionally, students will be asked to write the University approved Honor Pledge on each exam and HW assignment. The University of Maryland, College Park has a nationally Recognized Code of Academic Integrity, administered by the Student Honor Council. This Code sets standards for academic integrity at Maryland for all undergraduate and graduate students. As a student you are responsible for upholding these standards for this course. It is very important for you to be aware of the consequences of cheating, fabrication, facilitation, and plagiarism. For more information on the Code of Academic Integrity or the Student Honor Council, please visit <http://www.studenthonorcouncil.umd.edu/whatis.html>

CLASSROOM CODE OF CONDUCT

The success of this class is dependent not only on my abilities and talents as an instructor to communicate new and complicated ideas, but also on our ability as a class to work together to create an environment conducive to learning. As a Department and University, we expect the faculty and students to be prepared for class and to be actively engaged in the classroom activities. Unfortunately, disruptive behaviors in the classroom cheat other students out of opportunities to learn. The University of Maryland's Code of Academic Integrity defines classroom disruption as "behavior a reasonable person would view as substantially or repeatedly interfering with the conduct of a class." Examples would include coming late to class, repeatedly leaving and entering the classroom without authorization, making loud or distracting noises, and persisting in speaking without being recognized. As the instructor of this class, I also find the following distracting: reading outside material, sleeping, side conversations, text messaging and using laptops for non-academic functions (IM, e-mail, surfing, etc.). I also request that you turn cell phones/pagers on vibrate or silent during class.

Students are expected to treat each other with respect. Disruptive behavior of any kind will not be tolerated. Students who are unable to show civility with one another, the teaching assistants, or me will be subject to referral to the Office of Student Conduct or to Campus Police. You are expected to adhere to the Code of Student Conduct.

COPYRIGHT

The lectures I deliver in this class and the course materials I create and distribute, other than copies of case decisions, are protected by federal copyright law as my original works. My lectures are recorded or delivered from written lectures in order to ensure copyright protection. You are permitted to take notes of my lectures and to use course materials for your use in this course. You may not record, reproduce, or distribute my lectures/notes for any commercial

purpose without my written consent. Persons who sell or distribute copies or modified copies of my course materials, possess commercial copies of my notes (i.e. Terpnotes), or assist another person or entity in selling or distributing those materials may be considered in violation of the University Code of Student Conduct, Part 9(k).

USE OF LAPTOPS

In this class, students may bring their lap top to class to take notes only. If a student is found to be using a lap top for any other reason than taking notes, then, that student will lose the privilege of bringing their computer to class. All technological devices, except a lap top computer are prohibited in this class including MP3 devices, smart phones, phones, calculators, gaming devices, etc. If these devices are seen and/or used during the class, the student will be asked to leave the class immediately. If these devices are seen and/or used during an exam, the exam will be collected from the student and the student will no longer be allowed to continue taking the exam. The exam score will be noted as 0.

COURSE EVALUATIONS

I take your evaluation of my course very seriously. Each year I revise my syllabus, course assignments and exam questions based on the feedback I receive on the course evaluation. I am not only interested in the scores that you give this class but I am also very interested in the specific comments you have about this course. I want to encourage each student in this class to evaluate not only my class but all of your classes.

EXAM SCHEDULE

While I have set out the class in which the midterm is scheduled, please be aware that I intend to cover each topic prior to the midterm thoroughly enough to prepare you and therefore the date may change. I will of course keep you informed and you will have several weeks' notice of the exact date before the midterm exam is given. As for the final exam, the University sets the date and time and you are responsible for being there at the scheduled date and time. I will not give make-ups without a significant excuse and proof of such excuse. That means in part that I do not typically give an early exam because you have scheduled your summer trip (home or elsewhere) before the exam date. You should consider scheduling any trips only AFTER the test dates come out.

OFFICE HOURS

I do not have office hours, and any necessary consults will have to take place at my office at the U.S. courthouse at a mutually convenient time agreed upon in advance. My assigned TA can meet with you on campus at a mutually convenient time for most matters.

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