

# CRIMINAL PROCEDURE

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Tuesday/Thursday 6:00pm - 7:20pm

## Purpose and Course Description

The purpose of this course is to cover those criminal procedure topics which reflect the Federal Supreme Court's current position on constitutional questions raised by operation of our federal and state criminal justice systems. Where relevant we will also review Massachusetts Supreme Judicial Court opinions that distinguish the law of the Commonwealth from the Federal law.

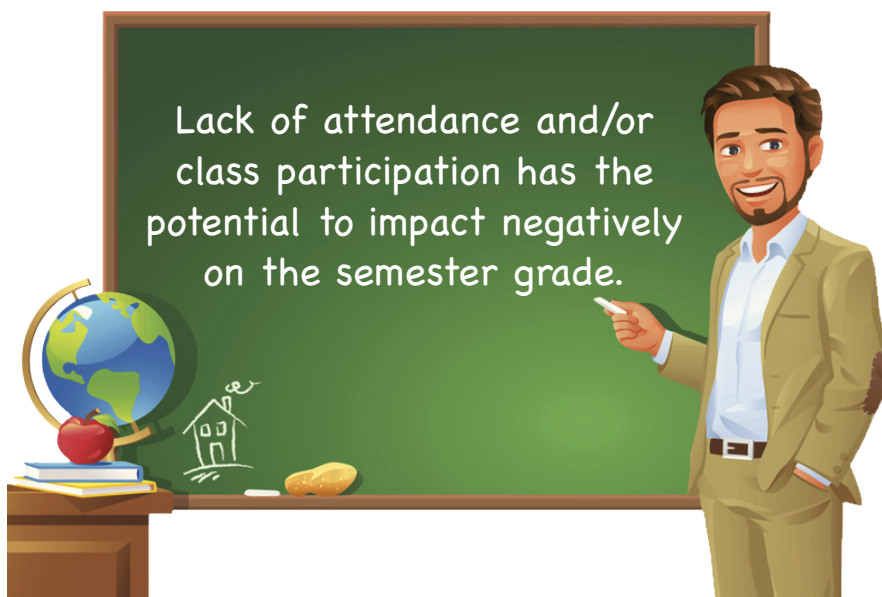
The intent of the course is to create competency in those areas tested by the bar examination as well as to lay a proper foundation to become skilled practitioners.

## Grading

The midterm and final examinations will combine to **90%** of your final grade in this class. In addition, there will be weekly assignments of a minimum of **ten (10)** MBE-type questions and/or Short Directed Essay Questions which will serve as quizzes and will combine to be **10%** of semester grade.

I reserve the right at any time during the semester to modify and/or change the course grading.

**Note:** The semester percentages are subject to change at my discretion at any point during the semester.



[www.lawschool.westlaw.com](http://www.lawschool.westlaw.com)



## *Criminal Procedure and the Constitution*

West Publishing, 2023 Edition  
Israel, Kamisar, LaFave, King,  
Primus, Kerr.

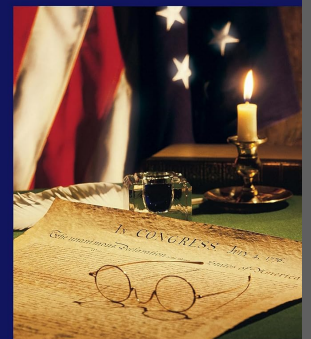
## Criminal Procedure and the Constitution

Leading Supreme

Court Cases and

Introductory Text

(2023 Edition)



Israel ■ Kamisar ■ LaFave ■ King ■ Primus ■ Kerr WEST ACADEMIC PUBLISHING

978.580.4242

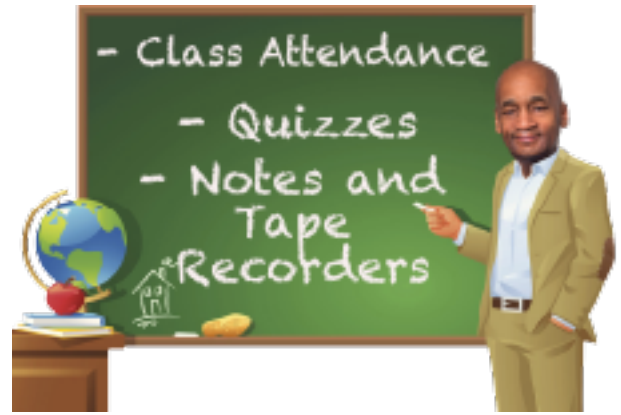
This is my personal cell phone use this number for calling or texting. Please use this for class related or business purposes only.

## Course Requirements and Class Participation

### Class Attendance

Students must be prepared for every class to be called on to brief cases or for discussion of questions. You are, therefore, expected to be in class and to participate. Students who have more than three unexcused absences during the semester may have their semester grade lowered by as much as one-third of a grade.

Attendance is taken at the beginning of class. You will be marked absent if you are not present when attendance is taken.



### Quizzes

I will not permit any make-ups for missed weekly in-class and/or on-line TWEN quizzes.

### Notes And Tape Recorders In Class

I test what I teach, and I follow the syllabus. If you do all assigned readings and attend class, you will be prepared for the exams. It is necessary that each of you develop an effective method of recording and retaining the materials as it is taught and discussed. Classes are interactive, and it is not always advisable to take copious notes. Research strongly indicates that students who attempt to use word processors to “transcribe” class discussions perform less well on exams than do those students who actively participate in those discussions. Use of tape/digital recorders are allowed in this class and may be preferable for you. The purpose of class is to learn the law through discussion and participation to develop analytical skills. This cannot be achieved if you are intent on being a scribe.



## Classroom Decorum

All students are expected at all times to conduct themselves in a civil manner as follows:

**Timeliness.** Arrive on time. Late arrivals are disruptive. Frequent late arrivals will be excluded from the classroom.

**Cell Phones and Messaging.** There will be *no cell phone use in class*, with the exception of extraordinary circumstances. All cell phones must be turned off before the class begins.

If there is a family emergency requiring you to be reachable, approach me before class and inform me of the situation. In such an event you may keep your cell phone on if it has a “vibrate” only option.

In the event that your cell phone or other device disturbs the class you will be told to leave the classroom immediately and will be marked as absent for the class.

**Laptop Computers.** While many colleges and professional school are banning laptop computers form classroom, I believe that they can be a useful classroom tool. Arrive early enough to start your laptop prior to class such that start up noises will not be disruptive to other students.

If I determine that you are using the computer for other than legitimate classroom purposes you will be immediately told to leave and will be marked absent for the class.

**Talking in Class.** This is an interactive class, and it is normal for there to be a bit of a “buzz” while we are discussing a case, a principle or a hypothetical. You are expected to listen while others are talking and to respond when called upon. Civility is expected at all times by all students.

**Eating/Drinking in Class.** Eating in class is strongly disfavored. I understand that stressed-for-time students are often unable to take meals at normal hours, and therefore snacks and drinks will be tolerated as long as they are not disruptive. I will not tolerate full meals, full “submarine” sandwiches, or anything of the like. I also will not tolerate undue noise such as stubborn plastic wrappers. I will ban all foods and drinks in class if, in my opinion, they are becoming a distraction.

**Civility Above All Else.** Each of you will be treated at all times with courtesy and respect, and will treat others with equal civility at all times. In our class discussion, we will argue issues but never personalities.



**NOTE:** I am assigning Chapter One and Two as an out-of-class assignment that students should read on their own prior to the start of the first class:

Chapter One	A Criminal Justice Process Overview	
	Section 1	The Lawmaking Structure
	Section 2	The Administrative Structure
	Section 3	The Steps in the Process
Chapter Two	The Nature and Scope of Due Process; The 14 th Amendment and the applicability of the Bill of Rights to the states.	
	Section 1	“Fundamental Rights” and “Incorporation”
	Section 2	The Shift to “Selective Incorporation”
	Section 3	“Free Standing” Due Process



There is also a **Zoom** video recording and corresponding PowerPoint presentation from my Spring 2021 Criminal Procedure class on **Fundamental Rights – Ordered Liberty - Incorporation Theories** which you need to fully watch prior to the start of Class 1. You can find the Zoom video and the PowerPoint in the Course Dropbox.

**Tuesday, January 16, 2024** Introduction to the course, course expectations.  
CLASS 1

**Thursday, January 18, 2024** CLASS 2

Chapter 19	Retrials (Double Jeopardy) Introductory Material (very important)	
	Section 1	The “Same Offense” Limitation
		Ashe v. Swenson                      United States v Dixon

**Tuesday, January 23, 2024** CLASS 3

Chapter 19	Section 1	Continue - The “Same Offense” Limitation	
		Gamble v. United States	Hudson v. United States
	Section 2	Aborted Proceedings	
		Arizona v. Washington	Oregon v. Kennedy

**Thursday, January 25, 2024** CLASS 4

	Section 3	Reprosecutions - Post Acquittal/Convictions	
		United States v. Scott	Burks v. United States

Chapter 3 Arrest, Search and Seizure

	Read	The Exclusionary Rule	
	Section 1	Wolf v Colorado	Mapp v. Ohio





Prior to Class 4,  
I will publish on **TWEN** a Case Calendar Schedule for all the assigned cases in **Chapter Three**.

### Chapter Three - Arrest, Search and Seizure

Section 1	The Exclusionary Rule
Section 2	Protected Areas and Interests.
Section 3	Probable Cause
Section 4	Search Warrants
Section 5	Arrest and Search of Persons
Section 6	Seizure and Search of Premises
Section 7	Seizure and Search of Vehicles and Effects.
Section 8	Stop and Frisk
Section 9	Consent Searches

What was the significance of Mapp v Ohio?

The U.S. Supreme Court ruled in a 5-3 vote in favor of Mapp. The high court said evidence seized unlawfully, without a search warrant, could not be used in criminal prosecutions in state courts.

### Chapter Four - The Scope of the Exclusionary Rule

Section 1	Introduction
Section 2	Proximate Cause: Attenuation Doctrine
Section 3	Cause in Fact: Independent Source
Section 4	Cause in Fact: Inevitable Discovery

### Chapter Five -The Right to Counsel

Section 1	The Right to Appointed Counsel
Section 2	The “Beginnings” of the Right to Counsel
Section 3	The Griffin-Douglas “Equality” Principle



### Chapter Five -The Right to Counsel

Section 1	The “Voluntariness” Test
Section 2	Massiah and Escobedo
Section 3	Miranda
Section 4	Applying and Explaining Miranda
Section 5	The Court Reaffirms Miranda
Section 6	When is Miranda Violated?
Section 7	Massiah Revisited

TBA

MID-TERM EXAM

## Chapter Seven - Pre-Trial Identification Procedures

Section 1	Wade and Gilbert: Reliability Concerns
Section 2	The Court Retreats: Kirby and Ash
Section 3	Due Process Limitations

## Chapter Eight - Investigation by Subpoena

Section 1	Introduction
Section 2	Fourth Amendment Limitations
Section 3	The Privilege Against Self-Incrimination

## Chapter Nine - Pretrial Release

## Chapter Ten - The Decision Whether to Prosecute

Section 1	The Decision to Prosecute
Section 2	Selection of the Charge

## Chapter Eleven - Screening the Prosecutor's Charging Decision

## Chapter Twelve - Speedy Trial and Other Speedy Dispositions

## Chapter Thirteen - The Duty to Disclose

## Chapter Fourteen - Guilty Pleas

Section 1	Plea Bargaining
Section 2	Requisites of a Valid Plea
Section 3	Cause in Fact: Independent Source

## Chapter Fifteen - Trial by Jury; Judicial Impartiality

Section 1	Right to Jury Trial
Section 2	Jury Selection
Section 3	Right to Impartial Judge

## Chapter Sixteen - Fair Trial/Free Press

## Chapter Seventeen - The Role of Counsel

## Chapter Eighteen - The Trial

Section 1	Presence of the Defendant
Section 2	Confrontation and Compulsory Process
Section 3	The Right to Remain Silent – or Testify
Section 4	Due Process Requirements

May 6, 2024 Last Day of Spring Classes

Final Exam - Date to Be Determined

