

**CRIMINAL PROCEDURE**  
**SPRING 2025 -- PROF. SETH STOUGHTON**

**COURSE DESCRIPTION**

This course explores the constitutional rules that govern the range of actions taken by government officials (primarily police officers). We will critically examine the way that courts apply the Fourth and Fifth Amendment rules that regulate invasive actions—such as frisks, searches, detentions, arrests, interrogations, and uses of force—through the use of balancing tests that weigh the social benefits of crime prevention and criminal apprehension against the costs of individual liberty and privacy.

**Goals & Objectives**

By the end of this course, you will:

- Be conversant with the theoretical arguments for and against delimiting government authority, especially as it is related to the investigation of crime, in different contexts;
- Be able to discuss in substantial depth the constitutional rules that regulate actions taken by government officials interacting with the public, particularly those that implicate invasive authority related to criminal investigations; and
- Be familiar with the remedial frameworks that exist to prevent and correct violations of the Fourth and Fifth Amendment.

**COURSE INFORMATION**

**Professor:** Seth Stoughton  
**Office:** Room 325  
**Telephone:** (o) 803-777-3055  
(c) 434-262-2484  
**Email:** SWStough@law.sc.edu

**Class Meetings**

We meet in room 397 from 9:10am-10:35am on Mondays and Fridays.

**Casebook & Other Assignments**

- Allen *et al.*, CRIMINAL PROCEDURE: INVESTIGATION AND RIGHT TO COUNSEL (4<sup>th</sup> Ed. 2020), ISBN 9781543804379; and
- Supplemental reading materials, which will be made available via the course TWEN site

**Office Hours.** I do not have set office hours; feel free to drop by any time! I'm not always in the office, but I usually get here around 8:45am on Mondays and Fridays and mid-morning on Tuesdays and Thursdays. I am also available via email and by phone if you have questions or concerns or if you wish to schedule a specific appointment. Please use your best judgment about calling or texting after hours (and remember to tell me who you are if you text me!).

## 1) General Information

### 1.0 – Course Website

The syllabus and all supplemental materials will be hosted on TWEN.

### 1.1 – Professionalism & Classroom Expectations

**Attendance & Preparation.** Law school is a professional school, and you are expected to comport yourselves accordingly. That means, *inter alia*, attending in person every class that your health and personal circumstances allow (see Contagious Illnesses, below) and being fully prepared in every class you attend. Please note that, to promote the free discussion of potentially controversial ideas, I do not have class recorded.

Missing class or being un- or under-prepared without a professionally appropriate justification and appropriate notice can negatively impact your grade (see Grade Penalties, below).

Law school policy prohibits you from missing more than 10% of regularly scheduled classes. Regardless of the reasons for the absences, students with more absences must apply to the Dean of Academic Affairs for a waiver. Students who miss more than thirty percent of our class meetings must apply to the full faculty of the law school for a waiver.

**Contagious Illnesses.** If you are experiencing or have recently experienced symptoms of any contagious illness (including, but not limited to, any variant of COVID-19), please do not attend class. Current or recent symptoms are a professionally appropriate justification to miss class. Please take your health—as well as the health of your classmates and law school faculty and staff—seriously throughout law school. You can make an appointment online at Student Health Services through [MyHealthSpace](#).

**Advance/Prompt Notice.** I expect you to attend and be fully prepared for each class, but sometimes life gets in the way. If you are unable to be fully prepared for class, let me know as soon as possible *before* class (once class starts, I will assume everyone in the room is fully prepared). If you are unable to attend class in person, let me know as soon as circumstances allow (either in advance or promptly after the fact in the event of an emergency).

**No Laptops.** For pedagogical reasons, I generally prohibit laptops, tablets, and similar devices. The relevant research generally finds that notetaking on electronic devices tends to diminish

attention and learning while significantly increasing distractions for both students using the device and students sitting nearby.\* Additionally, students who take handwritten notes retain, on average, more material and better understand the material compared to students who take notes on laptops.† I understand that there can be individual variation, however, and if the general prohibition presents any obstacle to your learning, please either communicate with me or contact the appropriate university office (see Disability Accommodations, below).

**Stand During Cold Calls.** Please stand up when cold called and remain standing for the duration of the cold call. If this presents any challenges or issues, please either communicate with me or contact the appropriate university office (see Disability Accommodations, below).

## **1.2 – Disability Accommodations**

The University of South Carolina provides high-quality services to students with medically documented disabilities, and I encourage you to take advantage of them. Any student with a documented disability should make arrangements for appropriate accommodations by bringing appropriate documentation to the Student Disability Resource Center in LeConte College Room 112A. Questions may be directed to the Center at (803) 777-6142, or [sadrc@mailbox.sc.edu](mailto:sadrc@mailbox.sc.edu).

## **2) Grading**

### **2.0 – Grading**

This course will follow the School of Law’s standard letter grade system.

### **2.1 – Grading Criteria**

Your grade in this course is based primarily on your performance on the final exam, but Professionalism and Classroom Expectations may affect your grade (see Grading Penalties, below).

### **2.2 – Grading Penalties**

Being un- or under-prepared in class can negatively impact your grade by up to one letter grade (e.g., from an A to a B).

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\* Richard W. Patterson & Robert M. Patterson Computers and Productivity: Evidence from Laptop Use in the College Classroom, 57 ECON. EDUC. REV. 66 (2017); Faria Sana et al., Laptop Multitasking Hinders Classroom Learning for Both Users and Nearby Peers, 62 COMP. & EDUC. 24 (2013); Erping Zhu, et al., Use of Laptops in the Classroom: Research and Best Practices, 30 U. MICH. CENTER FOR RESEARCH ON LEARNING AND TEACHING 1 (2012); Carrie B. Fried, In-Class Laptop Use and its Effects on Student Learning, 50 COMPUTERS & ED. 906 (2008); Helene Hembrooke and Geri Gay, The Laptop and the Lecture: The Effects of Multitasking in Learning Environments, 15 J. COMPUTING IN HIGHER ED. 46 (2003).

† Pam A. Mueller & Daniel M. Oppenheimer, The Pen is Mightier Than the Keyboard: Advantages of Longhand Over Laptop Note Taking, 25 PSYCH. SCI. 1159 (2014).

Missing class without a professionally appropriate justification or without appropriate notice can negatively impact your grade by up to two letter grades (e.g., from a B to a D).

Violations of the Honor Code or classroom rules can negatively impact your grade, including by reducing it to an F.

I retain the right to determine whether any given justification is professionally appropriate.

### **2.3 – Exam**

The exam is comprehensive; it may test you on material from the entire semester. The exam will likely consist of multiple-choice questions, although it is possible that it will include essays, short answers, or some combination of those three or other types of questions.

I will provide additional information about the exam over the course of the semester.

### **2.4 - Observation Exercise**

At any point in the semester **after class 14**, you must complete an observation exercise by going on a ride-along for at least four (4) hours with a police officer. You are responsible for making all necessary arrangements to go on a ride-along. After the ride-along, you must turn in a summary of your observations, which we will discuss in class. Students who are unable to go on a ride-along should contact me as soon as possible to discuss alternatives.

**SYLLABUS\***

TOPICS	CLASS	ASSIGNMENT	KEY CASES
<b>SECTION I: THE FOURTH AMENDMENT FRAMEWORK</b>			
A. Introduction			
1. Text & History	1	pp. 315-18	<i>Mapp</i>
2. The Exclusionary Remedy		pp. 318-30	
3. Other Remedies		<i>Skim pp. 330-40</i>	
B. Defining “Searches”			
1. Infringements on REoP			
i. Expectations of Privacy	2	pp. 340-52, 366-72	<i>Katz; White</i>
ii. Developing REoP	3	pp. 736-46, Supp. 1	<i>Carter, Byrd</i>
iii. Third-Party Exposure	4	pp. 352-58, 372-79, and Supp. 2	<i>Riley, Greenwood; Cabelles</i>
	5	pp. 392-421	<i>Carpenter</i>
2. Trespassory Physical Contact with Persons, Papers, Houses, or Effects	6	pp. 380-92, 359-66	<i>Jones; Jardines</i>
C. Defining “Seizures”	7	pp. 421-34	<i>Drayton; Hodari D.</i>
D. Fourth Amendment Protections as Personal Rights	8	pp. 737-53 (thru n. 2)	<i>Carter; Wong Sun</i>
E. Justifying Searches & Seizures			
1. The Warrant “Requirement”	9	<i>Skim pp. 434-49 pp. 449-67, 571-78</i>	<i>Gates; JL</i>
2. Fourth Amendment Standards of Proof			
i. “Probable Cause”			
ii. “Reasonable Suspicion”			
3. Mistakes of Law	10	Supp. 3	<i>Heien</i>
4. Defining “Consent”	11	pp. 526-44	<i>Bustamonte; Randolph</i>

\* The assignments set out in this syllabus are not set in stone; we may make adjustments over the course of the semester depending on where our combined interests take us. At various points in the semester, I may assign additional readings that provide different perspectives or raise new questions about the topics we cover in class. I will provide as much notice as possible before making any changes.

<b>SECTION II: SPECIFIC FOURTH AMENDMENT DOCTRINES</b>			
A. Stops & Frisks	12	pp. 550-71, 578-85	<i>Terry; Wardlow</i>
B. Traffic Stops	13	<i>Skim pp. 585-91</i> pp. 592-599, 665-77	<i>Whren; Edmond</i>
C. Arrests	14	pp. 517-24 (thru. n.3) <u>and</u> 600-13	<i>Atwater</i>
D. Vehicle Searches	15	pp. 497-517	<i>Acevedo; Houghton</i>
E. Searches Incident to Arrest	16	pp. 627-65	<i>Chimel; Gant; Riley</i>
F. Searches of a Home	17	pp. 524-26 (nn.4-5)	<i>Payton; Steagold</i>
G. Exigent Circumstances		pp. 468-80	<i>Mincey; King</i>
H. Plain View		pp. 491-97	<i>Hicks</i>
<b>SECTION III: EXCLUSION AS A REMEDY FOR FOURTH AMENDMENT VIOLATIONS</b>			
A. The Deterrence Rationale	18	pp. 716-35	<i>Leon; Herring; Davis</i>
B. Fruit of the Poisonous Tree Analysis	19	pp. 753-54 (n.3) <u>and</u>	<i>Murray</i>
1. "But For" Causation		pp. 761-67	<i>Strieff</i>
2. Proximate Causation		pp. 754-61	<i>Havens</i>
3. The Impeachment Exception		pp. 768-72	
<b>SECTION II: THE FIFTH AMENDMENT</b>			
A. Voluntariness	20	pp. 883-97	<i>Watts; Massiah; Escobedo</i>
B. <i>Miranda</i> Warnings	21	pp. 897-913	<i>Miranda</i>
1. Custody	22	pp. 914-23	<i>Murphy; J.D.B.</i>
2. Interrogation		pp. 923-35	<i>Innis; Perkins</i>
3. Warnings	23	pp. 935-37	<i>Powell</i>
4. Invocations		pp. 937-51 <u>and</u> 861-66 (thru n.6)	<i>Mosley; Edwards; Salinas</i>
5. Waivers		pp. 951-61, 965-82	<i>Moran, Thompkins</i>
C. Remedies for <i>Miranda</i> Violations	25	pp. 982-1002	<i>Dickerson; Seibert; Patane</i>
<b>FINAL EXAM REVIEW</b>			
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