

## CRIMINAL PROCEDURE

Professor Rory K. Little -- UC Hastings -- Fall 2015

Mondays and Wednesdays, 9:40-10:40 am -- Room A

Preparation and Attendance: This is a graduate level course. The reading is ambitious, and attendance is mandatory unless excused. Preparation will be essential to follow class discussion. And following the class discussion will be essential if earning a top grade is one of your goals.

Much of your learning about the investigation and prosecution of criminal cases will happen in this class. Again, attendance is mandatory -- please attend even if you are "not prepared." On the exam, you will be responsible for everything that happens in class, as well as handouts distributed in class (as well as otherwise), and all assigned readings, which will likely include changes announced in class. I will use a seating chart as well as an "on call" list to enlist your class participation. Unexcused absences are cause for lowering your grade as well as referral to the Academic Dean. Email me in advance if you can't make class.

The reading assignments for this four-credit class are lengthy and complex. Moreover, we will at times move quickly, so we may not cover all assigned readings -- but you may still be tested on them. Thus part of your preparation for class should be to identify areas in the reading that you find confusing or that generate questions rather than clarity for you. You should then ask me your questions in class if possible -- even if (especially if) I don't address that area in class. Asking me questions "off topic" is fine (*e.g.*, if we're discussing the Fourth Amendment, you can and should still ask me questions that you have about the Fifth Amendment, or about any other topic). If you have a question, then I am certain that a dozen other students silently have the same question. Questions are never "dumb" -- they simply indicate that I need to do more or better teaching.

Grading and Exam: The exam will not be take-home. It will be open book and notes (your own only), and will last three hours or less. The exam is likely to be comprised of short-answer and essay questions (issue-spotting or policy). The exam format is likely to look a lot like my past Crim Pro exams.

Also required (~5-10% of your grade) is a 60-minute "criminal Court visit" and a 3-to-5 page "Court Visit Report" discussing it. I grade these reports anonymously, so you must put **only your Fall 2015 exam number** on it. Your report must be turned in in our last class on Tuesday, November 24. I will give you separate instructions for this assignment. Failure to turn in a Court Visit Report on time is grounds for automatic failure of the class.

Finally, I reserve the option to give a half-grade "bump up" for class participation, based on quality, not quantity. Unexcused absences can lead to a lowered grade, particularly if you are absent when on call.

Office and "Law Café" Hours: My office is Room 338 in the 200 building. **I respond most efficiently to email** at [little@uchastings.edu](mailto:little@uchastings.edu). Repeat emails are fine -- I often forget emails, so if you don't hear back from me pretty quickly, email me again. You are also welcome to drop by my office anytime. But if you'd like to ensure of my complete and individual attention, use email to schedule an office appointment in advance, and suggest specific days and times that you are available to meet.

I will also usually go to the Law Café in the hour right after our classes. I like to hold informal "office hours" there. These can be one-on-one or group discussions. We can talk about criminal procedure or any other topic you like (I do a lot of career advising). Feel free to join me if you see me there -- I always welcome your company if I am sitting in the Law Café. On the other hand, I won't assume I can sit down with you unless you ask me.

# (CONSTITUTIONAL) CRIMINAL PROCEDURE – Fall 2015

Professor Rory K. Little – UC Hastings College of the Law

## Class Schedule and REQUIRED READING

**Text:** Joshua Dressler & George C. Thomas III, *Criminal Procedure: Principles, Policies and Perspectives* (5<sup>th</sup> edition) **and the** 2015 Supplement. Supplement pages that corresponding to assigned textbook pages are automatically assigned. (The Supplement also contains relevant federal **statutes** and the Federal **Rules** of Criminal Procedure.) There will also be handouts in class. Changes to reading assignments are likely, and will sometimes be announced only in class (another reason that attendance is mandatory).

<u>Dates</u>	<u>Investigative Stage</u>	<u>Textbook Pages</u>
Aug. 24, 26	Course requirements. Constitutional provisions. <b>“Stop &amp; Frisk” doctrine:</b> <i>Terry v. Ohio</i> ; <i>Whren</i> ; <i>Atwater</i> ; <i>Rodriguez</i> .	1-4; 349-366; 244-246 n.5; 260-268; handout.
Aug. 31, Sept. 2	Goals and chronology of the Criminal Process. <b>Winship.</b> Doctrine of <b>“Incorporation.”</b>	Handouts. 9-63
Sept. 9 (7 <sup>th</sup> is a holiday)	Roles of Lawyers in the Criminal Process: Prosecutors and Defense Counsel	774-775 & n. 5 ( <i>Wade</i> dissent) 822-840; 942-957
Sept. 14, 16	<b>Fifth Amendment, “confessions” and interrogations</b> Constitutional voluntariness <i>Miranda</i> and its critique	529-559 560-632
Sept. 21, 23	-- Definition of custody and “interrogation” ( <i>Brewer vs. Innis</i> ) -- Invocation; versus “waiver”	632-640; 699-711; 641-650 651-691
Sept. 28, 30	<b>Sixth Amendment --</b> Textual Right to Counsel ( <i>Massiah</i> ) <i>Coleman</i> (prelim. hearings); and waiver Eyewitness IDs and Counsel	692-699 840-846; 711-747 764-789
Oct. 5, 7	<b>Extensions</b> of the Right to Counsel -- government-paid; ( <i>Gideon</i> ); effective ( <i>Strickland</i> ); and self-representation ( <i>Faretta</i> )	957-1025; 1054-1073
Oct. 12, 14	<b>Fourth Amendment:</b> the Text and its Mysteries -- The “a-textual” exclusionary remedy -- Motions to suppress and <i>Simmons</i> immunity	64-67 67-72; 469- 470; 72-85; 467-528 879-882
Oct. 19, 21	-- “Search” & “Reasonable Expectations of Privacy” -- “Seizure” ( <i>Mendenhall</i> and <i>Hodari D.</i> ) -- “Standing” (and <i>Rakas</i> , a confused wrong turn)	86-150 375-378; 391-396 445-467
Oct. 26, 28	-- Fourth Amendment “Requirements”	151-152; 161-209
Nov. 2, 4, 9	-- Fourth Amendment “Exceptions” ... inventories of seized property ... plain view (and senses); “consent” ... “Special Needs” (non-criminal purpose)	209-275, 292-299 n.3 on 280-281 299-343 421-444
Nov. 9, 11, 16	<i>Terry</i> (reprise) and “Reasonable suspicion” doctrine.	344-391, 396-421

Topics for the **Prosecution Stage:**

(in chronological order. Quick hits, one hour or less per topic)

Nov. 18, 23, 24	Grand Jury: <i>Williams</i>	853-
	Bail / Pretrial Detention: <i>Salerno</i>	805-
	“ <i>Brady</i> ” Discovery: <i>Agurs</i> ; <i>Smith v. Cain</i>	892-905
	Speedy Trial: <i>Barker v. Wingo</i>	929-
	Plea Bargaining ( <i>Bordenkircher</i> )	1073-
	<i>Apprendi</i> and the Sentencing “Revolution.”	1295-
	Double Jeopardy: <i>Blockburger</i> ; <i>Downum</i>	1345-, 1374-
	Habeas Corpus: <i>Teague</i>	1418-

Nov. 24: **Court Visit Reports due in class. Anonymous!** (use your Fall 2015 exam number).

**Voluntary Review Session:** Tuesday, December 15, 4:30pm.

**Final Exam:** Thursday, December 17, 8:30am (**tentative**). Open book, open notes, in-class, 3 hours or less.