Criminal Procedure: Investigations

LCR 906 | 3 Credits | Fall 2026

Professor Mailyn Fidler

Contact Information

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Course Schedule

Tuesday/Thursday 1:00-2:30pm

Course Description

This course examines the relationship between the people and the police, primarily by examining the constitutional doctrines of the Fourth and Fifth Amendments that regulate law enforcement behavior. Topics will include custodial interrogation, search and seizure, stop and frisk, electronic surveillance, probable cause, warrants and their exceptions, and exclusionary remedies. In addition to doctrinal examination, the course will also explore some of the challenging policy questions associated with contemporary policing, as it exists and is carried out in Americas cities.

Course Organization

At a general level, the organization of this course is quite simple: we will extensively study the Fourth Amendment, followed by a substantial portion of Fifth Amendment doctrine and a very small portion of Sixth Amendment doctrine. We will also learn important procedural and evidentiary rules that attend violations of these constitutional rights (standing, the exclusionary rule, and fruit of the poisonous tree doctrine).

The Fourth Amendment unit is our largest, so a roadmap may be helpful. We will first cover foundational doctrines of the Fourth Amendment, the reasonable expectation of privacy test and the property-related tests. We will close this unit by using issues of new technology to tease out the benefits and drawbacks of each

doctrinal approach. We also complete a unit on the key "threshold" concepts in the Fourth Amendment: probable cause and warrant requirements.

With these basics in place, we then proceed to cover exceptions to the foundation we have just put in place: search incident to arrest, the law of car searches, administrative searches, and consent searches. Finally, we cover specific laws that apply to searches and seizures of persons: the laws of arrest, stop and frisk, and excessive force.

Texts

Kamisar's Basic Criminal Procedure: Investigation, 16th Edition.

Because devices are not allowed in the classroom, I recommend the print edition. However, you may choose to use the electronic version and come prepared for class with notes.

All other readings will be posted on Canvas.

Grading

Students will be graded according to standard UNHFP policies. Your grade will be based on:

- Final Exam
    - The final exam will be a three-hour, in-person examination. You will be allowed printed materials you have created or substantively contributed to creating.
- Participation
    - Grades may be adjusted up or down one level based on participation.

IN-CLASS POLICIES

Technology Policy

Electronic devices are not allowed in class to facilitate a focused environment. Please keep devices out of sight. If you need to respond to urgent messages or calls, please step out of the classroom.

We will institute a class note taking roster where sets of typed notes will be uploaded anonymously to the Canvas site. On days you are on notetaking duty, you may choose to use your laptop. Regardless, the final set of notes should be typed.

Other exceptions allowed for disability accommodations.

Recording Policy

As a general rule, I will not record this class, nor is individual recording permitted of this class, with exception of the review session. This policy covers live-transcription of classes.

I understand that this makes making up missed classes more difficult. But overall, this policy has worked out for the better of the class. Multiple sets of class notes will be available as a shared record of the legal material covered to help those who are absent, and I am always available to meet to go over missed material.

Students with disability accommodations that include text or audiovisual recording are excepted from this policy, although they may not share those recordings with others.

Attendance

This course follows the ABA's rules on attendance. That mean you may miss up to 20 percent of the course without consequence (5 classes). **I do not advise missing that many classes**. I typically see performance in a class start to decline after between 2 and 3 absences.

Because I follow this policy, I **do not differentiate between excused and unexcused absences.**

Below, I describe some exceptions to this policy. If they do not cover a circumstance you find yourself in, please email me and we'll figure something out.

Cold Calls & Other Participation

I view cold calls as an essential part of our collective exploration of this topic and part of our collective responsibility to each other as a class. Every student is eligible to be called during any class except for circumstances detailed below. I typically get through about 20-30 cold calls per class. This means these cold calls are not extended colloquies, but it does allow for high engagement in the conversation. My expectations for cold calls are not that you answer perfectly, but that you respond and work with me in a back-and-forth on the question. If you cannot deliver an answer that demonstrates you have read the material, please say "pass" to respect everyone's time.

In addition, each student will be responsible for taking notes at least one class session during the semester. On that day, you will be excused from cold calls. These notes will be uploaded (no names) to the Canvas portal and will be available for everyone's reference. If you plan to be absent on that day, please contact me and we will adjust the schedule.

Sensitive topics

This course involves sensitive material. If you are uncomfortable being called on during any topic, please let me know by noon the day of class that you would not like to be cold called (you need not let me know why you feel uncomfortable) and I will take you off the call list for that day. This comes with no penalty. Note that in cases of abuse of this privilege I may revoke this option in individual cases or for the class. Typically, students have been very good about this and use has been both helpful to students and minimal.

If a day is sensitive enough you feel it would be better for you to either not attend class or arrange for remote participation, please reach out to me, and we will address on a case-to-case basis.

Different Opinions Needed

We will often debate big questions, and it is crucial to our growth as lawyers to hear a range of opinions. I hope you will participate. And I hope you will disagree with me. A ground rule in this class is that we will **not** assume what someone says is their personal viewpoint. You are allowed to explore arguments without being held to it outside the classroom. Indeed, you will often see me switching sides of an issue to facilitate this kind of discussion. That said, please speak with professionalism and respect.

Plagiarism, AI, & Conduct

I take plagiarism seriously. This course is subject to our school's conduct code, available at https://catalog.unh.edu/law/juris-doctor-academic-rules-regulations/conduct-code/.

Please note that plagiarism involves using anyone else's work as your own without attribution. This applies to other current or former students' work, any information taken directly from the Internet, ChatGPT and the like, and materials written by your instructor.

This course is designed not to use artificial intelligence. I expect your contributions to be your own, whether in class or on the final.

Disability Accommodations

According to the Americans with Disabilities Act (as amended, 2008), each student with a disability has the right to request services from UNH to accommodate their disability. If you are a student with a documented disability or believe you may have a disability that requires accommodations, please contact Student Accessibility Services (SAS).

Accommodation letters are created by SAS with the student. Please follow-up with your instructor as soon as possible to ensure timely implementation of the identified accommodations in the letter. Faculty have an obligation to respond once they receive official notice of accommodations from SAS but are under no obligation to provide retroactive accommodations.
For more information, contact SAS: 227 Smith Hall, www.unh.edu/sas, 603.862.2607, 711 (Relay NH) or sas.office@unh.edu.

ABA Learning Outcomes

- Understand the foundations of, components of, and contemporary debates about the 4th, 5th, and 6th Amendments to the U.S. Constitution.
- Apply this law to fact patterns, taking a given defense or prosecution perspective, and analyzing weaknesses in your adopted position.
- Build awareness of the role of criminal procedure in American life and develop a critical perspective on the future of this doctrine.

COURSE SCHEDULE

UNIT I — SEARCH

This is our foundational doctrinal unit and also one of the more complex units of the course. The Fourth Amendment prohibits unreasonable searches and seizures. This unit starts by investigating what a "search" is, because if something is not a search, the Fourth Amendment doesn't apply. We will delve into the primary test – the reasonable expectation of privacy test – and the competing property-based test. We will also look at how technology is challenging Fourth Amendment doctrine.

Class 1 – Aug. 25 – Introduction to Criminal Procedure

a. Scan 4th, 5th, 6th, and 14th Amendments (Canvas)
b. Kamisar p. 2-14 (through §3 n.2) (Steps in the Criminal Justice Process)
c. Pick at least two excerpts from the "Introductory Packet" (Canvas)
    a. Either Stuntz, Ristroph, or Carbado/Gardner
    b. Either Oliver or Reichel
d. *Katz,* Kamisar p. 213-221 (top)

    This is the foundational case of this unit. Please read and critically assess accordingly.

Class 2 – Aug. 27 – Reasonable Expectation of Privacy, Part I

a. We will continue our *Katz* discussion if needed.
b. Kamisar p. 19-24 (top) (Incorporation Doctrine)
c. *Dunn*, Kamisar p. 221-27 (through n.6)
d. *California v. Ciraolo*, p. 237-240

    Optional readings: Butler, The White Fourth Amendment (Canvas), Sklansky, Stonewall and Searches (Canvas); ANNA LVOVSKY, VICE PATROL: COPS, COURTS, AND THE STRUGGLE OVER URBAN GAY LIFE BEFORE STONEWALL (BOOK)

Class 3 – Sep. 1 – Reasonable Expectation of Privacy, Part II

a. *Kyllo*, Kamisar p. 240-46 (through n.3)
b. *Greenwood*, Kamisar p. 228-33 (through n. 3)
c. *Caballes*, Kamisar 246-47

d. DNA, Kamisar 247-248

Class 4 – Sep. 8 – Property-Based Approaches to the Fourth Amendment

a. *Caballes*, Kamisar 246-47
b. DNA, Kamisar 247-248
c. *Jones*, Kamisar 271-76

Class 5 – Sept. 10 – New Fourth Amendment Horizons

a. *Jardines*, Kamisar 276-80
b. Tokson & Pollack, *Decentering Property*, U. CHI. L. REV. (2025) (excerpts to be posted to Canvas)

    Reading tip: this reading provides a jumping-off place for critiquing and comparing privacy and property approaches to the Fourth Amendment.

a. *Carpenter*, Kamisar 257-270 (top)
    a. Please pay special attention to the notes regarding pole camera surveillance and long-term aerial surveillance.

Optional reading: Discovery of Stingrays longform piece (Canvas)

Class 6 – Sept 15 – New Fourth Amendment Horizons

Chatrie (pdf on canvas)

UNIT II – "PROCEDURE" OF CRIMINAL PROCEDURE (PART I)

This unit focuses on the key steps that law enforcement and the prosecution must undertake to comply with the Fourth Amendment, and what options are available to defendants when they do not. The Fourth Amendment requires that "no warrants shall issue, except upon probable cause." In this unit, we tackle both probable cause and what procedural requirements exist around issuing warrants.

Class 7 – Sept 17 – Probable Cause

a. *Illinois v. Gates*, top of 296- top of 306
b. *Maryland v. Pringle*, 306- top of 309
c. Choose (at least) **one** of the following probable cause affidavits:
    a. Kohberger murder probable cause affidavit (Canvas)
    b. Mangione federal probable cause complaint/affidavit (Canvas)
    Note: Reading tip: read for what kind of information is marshalled for probable cause, as well as for stylistic moves.

Class 8 – Sept. 22 – Warrants

a. Warrants intro, Kamisar 309-312 (top)
    i. *Note: we will cover dissipation of probable cause in class*
b. *US v. Banks*, Kamisar 312-319 (skip note 5)
c. *Horton v. California*, Kamisar 319-323
d. *Payton v. New York*, 323-327

Class 9 – Sep. 24 – Remedies: Exclusionary Rule & Alternatives

a. *Entick v. Carrington*, Kamisar 201-206
    i. Skip notes 3 through 5
b. *Mapp v. Ohio*, Kamisar 206-213 (pay particular attention to n.4-6)
c. *US v. Leon*, Kamisar 493-500 (through end of n.2)
d. *Davis v. US*, Kamisar 505-508 n.1
e. Re, Exclusionary Rule Excerpts (critical perspective) (Canvas)

UNIT III – FOURTH AMENDMENT EXCEPTIONS

Baseline Fourth Amendment doctrine is riddled with exceptions. We will start learning those exceptions in this unit. In particular, the law has a very unique "law of cars," which we will spend two days on. We will consider how broad these exceptions are and should be, and the collateral consequences of these exceptions, especially with respect to race and policing.

Class 10 – Sept. 29 – Search Incident to Arrest (SITA)

a. *Chimel*, Kamisar p. 333-338 (SITA on private premises)
b. *Chadwick*, Kamisar p. 338-343 (SITA of closed container)

Class 11 – Oct. 1 – Exigent Circumstances (and application of SITA & EC)

c. *Warden v. Hayden*, Kamisar p. 327-331 (Exigent circumstances)
d. *Kentucky v. King*, Kamisar p. 331-333 (Exigent circumstances)

Class 12 – Oct. 6 – Law of Cars Part I

a. *Whren v. United States*, Kamisar p. 343 (bottom)- 352 (top)
    i. *Skip notes 1 & 12*
b. *California v. Carney*, Kamisar p. 352 (top)- 356 (top)
c. *California v. Acevedo*, Kamisar p. 356 (top) – 359

Optional readings: David Harris, *Driving While Black*, 84 Minn. L. Rev. 265 (1999) (Canvas); Emma Pierson, *A large-scale analysis of racial disparities in police stops across the United States* (Edit: this paper is now referenced in the notes, but leaving the full cite here if you want to look it up).

Class 13 – Oct. 8 – Law of Cars Part II (SITA for Cars)

a. *Robinson,* Kamisar p. 379-387 (skip n. 3)
    i. Pay particular attention to the note on *Riley v. California*
b. *Arizona v. Gant,* Kamisar p. 360-366
c. Refresh your memory on *Caballes*, Kamisar p. 246-247

Optional readings: Seo, *The New Public* (excerpts) (Canvas); Woods, *Traffic without Police* (Canvas); Seo, Policing the Open Road (book).

Class 14 – Oct. 13 – Consent Searches

a. *Schneckloth v. Bustamonte*, Kamisar p. 437-444
b. *Fernandez v. California*, Kamisar, p. 445-453
    i. Pay particular attention to *IL v. Rodriguez* note
c. Bar-Gill and Freidman, *Taking Warrants Seriously* (excerpt); Sommers, *Psychology of Consent* (Canvas)

UNIT IV – FOURTH AMENDMENT APPLIED TO PERSONS

We have one remaining Fourth Amendment topic to cover – seizure of persons, which comes in many varieties, the most prominent one being arrests. This unit covers the basic legal requirements for arrests, as well as one of the most controversial areas of criminal procedure, stop and frisk. Stop and frisk lives somewhere between search and seizure of persons. This practice involves interactions between police and individuals with something less than probable cause. This area of law is deeply controversial in significant part for its racially disparate enforcement.

NOTE: Many of these readings/concepts are troubling & challenging. Heads up.

Class 15 – Oct. 15 – Arrests & Seizure of Persons

a. *Harmon, Why Arrest, Part I (Canvas)*
   Reading tip: scan this article for broader perspective on what legal and social consequences follow from an arrest.
b. *Watson*, Kamisar p. 366 (bottom) – 371
c. *Atwater v. City of Lago Vista*, p. 372-379 (top)
d. *Bostick*, Kamisar bottom of 280-284 plus n.2, n.4, n. 7-9, n. 10 (Seizure)
e. *Torres*, Kamisar 290-95 (Seizure)

Class 16 – Oct. 20 – Stop & Frisk

a. *Terry v. Ohio, Kamisar p. 387 (bottom) – 396 (skip n.4)*
b. *Illinois v. Wardlow, p. 396-400 (though n.2) (Stop)*
c. *Kansas v. Glover, p. 403-405 (through n.1) (Stop)*
d. *Scope of Terry Stops, p. 408-411 (through n. 5)*

e. *Cause to Frisk, p. 412-413 (Frisk)*
f. *Minnesota v. Dickerson, p. 414-417 (top) (Frisk)*

Optional reading: Butler, *Stop and Frisk & Torture Lite* excerpt (Canvas)

UNIT V -- "PROCEDURE" OF CRIMINAL PROCEDURE (PART II)

In this unit, we return to the exclusionary rule. As with everything in crim pro, there are exceptions to that rule! We will study these exceptions. We will also look at who has legal standing to bring a legal claim. The bar really likes all of these topics. We cover these rules largely through Fourth Amendment cases, but we will start to cover how these rules apply to the Fifth and Sixth Amendments.

Class 17 – Oct. 22 – Standing

a. *Rakas v. Illinois*, Kamisar p. 454-466 (skip n. 5 and n.11)
b. *Minnesota v. Carter*, Kamisar p. 466-69

Class 18 – Nov. 3 – Fruit of the Poisonous Tree (FOPT) Day I

a. FOPT intro & *Wong Sun v. US*, Kamisar p. 469-72
b. Attenuation material, Kamisar p. 472-80

Class 19 – Nov. 5 – FOPT Day II

a. Cause in fact material, Kamisar p. 480-83
b. Inevitable discovery material, Kamisar p. 483-87 (through n.5)

UNIT VI – Fifth Amendment Rights

This unit focuses on the Fifth Amendment, which governs interrogations and confessions. When and how may the government ask you questions? What rights may the person being questioned assert? We will probe the many judicially-created nuances of the definitions of custody, interrogation, etc.

Class 20 – Nov. 10 – Introduction & Triggers

NOTE: This is one of the heaviest reading days; plan accordingly.

a. Historical background, p. 537-38, 540-41, last two paragraphs of 543, 555
   Note: this section contains description of historical police tactics and racial violence that we would today consider torture. Heads up given the nature of the material.
b. *Miranda v. Arizona*, Kamisar p. 557-74
   a. *Pay special attention to Vega v. Tekoh in note 664*
c. Miranda triggering conditions, Kamisar p. 574-76

Note: I will post a "quick" guide to Miranda warnings on Canvas, which often serves as a useful companion to the case itself.

Class 21 – Nov. 12 – Custody & Interrogation

a. *JDB v. North Carolina*, Kamisar p. 576-579 (custody) (skip notes)
b. *Howes v. Fields*, Kamisar p. 579-583 (custody)
c. *Rhode Island v. Innis*, Kamisar p. 584-593 (interrogation)
   i. *Skip n. 7 & 9, 12-14*
d. *Pennsylvania v. Muniz*, Kamisar p. 593-595 (interrogation)

Class 22 – Nov. 17 – Sufficiency, Exceptions & Waiver

a. Public safety doctrine, Kamisar p. 595-600 (exceptions)
   a. Skip notes 6 & 7
b. *Duckworth v. Egan*, Kamisar p. 601-604 (sufficiency)
c. Notes on p. 604-606 (waiver)
d. Notes on 615-617 (implied waiver)
e. *Berghuis v. Thomas*, p. 617-621 (implied waiver)

Class 23 – Nov. 19 – Remaining Miranda Problems

a. Invoking right to counsel, Kamisar p. 622-627
b. Invoking right to silence, Kamisar 635-641
c. Scope of right to silence, Kamisar 641-643
d. Voluntariness test and, Kamisar p. 692-700
e. FOPT, Kamisar 719-722 (skip notes), 724-726 (majority), plus notes on 729

Note: For future public defenders and prosecutors: the following cases will be important for you, but we don't cover them in class: Chavez v. Martinez and Colorado v. Connelly.

Class 24 – Dec. 1 – Fifth Amendment Right to Counsel & Mini Sixth Amendment Unit

a. Scope of right to counsel, Kamisar p. 627-635 (skip n.4 after Davis)
b. *Moran v. Burbine*, Kamisar p. 607-612 (through n.5) (waiver)
c. False confessions material, Kamisar p. 710-716
d. Pre-trial identification, 738-741, note 1 on 745-46, and n. 5 on p. 747-749
e. *Commonwealth v. Nga Truong* case interrogation footage (Canvas)
   Note: this footage involves the death of a child and an interrogation/confession from a juvenile that the court ruled was coerced. If you have concerns about watching something involving these issues, please reach out and we will make alternative arrangements.

Class 25 – Dec. 3 – Review Session
(please note: if we need, to we will bump the review session to after-hours and use this last day to complete the course material.)

FINAL AS SCHEDULED