

Professor(s): Randy I. Bellows

Thurs. 8:10 – 10:10 pm EST | **Final Exam:** N/A

Reading(s): All readings can be accessed through Lexis or Westlaw or other online resources. The materials I post on Blackboard, or use in class, are for the exclusive use of students registered in this course. These materials may not be shared with others or posted or circulated.

Prerequisite(s): Criminal Procedure: Investigation (Law 206)

Course Designation: This course is designated a Writing Course (“W”) and an Experiential Course (“E”), and can fulfill either one (but not both) of these upper-class requirements.

Communication(s): rbellow@gmu.edu

Office Hours: I am available to speak with students by appointment. The best way to schedule an appointment is by emailing me. Appointments can take place either by telephone or in person on campus. The best way to communicate with me is by email, which I check multiple times during the day.

Schedule Announcement(s):

Thursdays from 8:10 P.M. to 10:10 P.M. First Class: Thursday, January 16, 2024

No Class: Thursday, March 13, 2024

Last Class: Thursday, April 17, 2024

COURSE DESCRIPTION

This course closely examines significant, complex, and emerging constitutional issues in the investigation, prosecution, and defense of criminal cases. The course is broken into several categories: the impact of new technologies and novel investigative techniques on Fourth, Fifth and Sixth Amendment case law; due process, speedy trial and the Covid-19 pandemic; criminal discovery and *Brady* issues in the age of terabytes; the opioid crisis and its effect on charging and sentencing decisions; some of the most difficult and challenging ethical issues confronting prosecutors and public defenders; litigation of Fourth, Fifth and Sixth Amendment suppression motions; and recent developments in Supreme Court criminal procedure jurisprudence. The course will be taught through a combination of lectures, assigned readings, and class discussions.

COURSE OBJECTIVES

- Students will build on their knowledge and understanding of criminal law and procedure by focusing in-depth on several significant and leading-edge constitutional issues.
- Students will gain an appreciation of the complex set of ethical issues unique to the prosecution and defense of criminal cases.
- Students will develop greater expertise and familiarity with the litigation of Fourth, Fifth and Sixth Amendment suppression motions.
- Students will be better prepared to assume front-line prosecution or criminal defense responsibilities after graduation.
- Students will acquire a realistic understanding of the challenges, difficulties, and satisfactions of a career as a prosecutor or public defender.

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GRADING & PARTICIPATION

Grades

Grades are based on two writing assignments. The first assignment is to draft a suppression motion on behalf of a defendant. The motion must be 8-10 pages in length and is worth 25% of your final course grade. The second assignment is a final paper concerning a criminal procedure issue of your choice. The paper must be 20-25 pages and is worth 75% of your final course grade. In addition, in accordance with AR 4-4.2, final course grades can be raised or lowered by a single increment based on class participation (e.g., from B to B+ or from A- to B+.)

Class Attendance

“Regular and punctual attendance and class preparation are required to earn academic credit.” (AR 4-1) “If a student is absent for any reason for more than 20 percent of the sessions of a course, the student is not eligible for credit in that course. A student who is not present for at least 75 percent of a session of the course is absent from that session.” (AR 4-1.1) Since there are 13 class sessions, a student who misses more than three classes for any reason is not eligible to receive course credit.

I use a sign-in sheet to monitor class attendance. To receive credit for a class, students must place their initials next to their name on the sign-in sheet.

I expect students to attend all classes. However, I recognize that there are situations – such as a medical or family emergency, illness, or religious holiday – that prevents a student from attending a class. Should circumstances occur where a student anticipates the possibility of missing a substantial number of class sessions (e.g., a serious illness), the student should immediately contact the Assistant Dean, Student Academic Affairs.

Class Participation

This is a course intended for students with a particular interest in Fourth, Fifth and Sixth Amendment constitutional law. I expect that many of the students who take this course are considering careers as prosecutors, public defenders, or both. One of the primary goals of this course is to help better prepare students to brief and argue suppression motions and oppositions, since these tasks are a core responsibility of criminal defense lawyers and prosecutors. With that objective in mind, a course requirement is the preparation of a defense suppression motion. In addition, class discussion will be used to help students familiarize themselves with strategies and methodologies for orally arguing their position. Class discussion will also play an essential role in helping students understand and appreciate the difficult and complex criminal justice issues which we will be covering in class. While volunteering is encouraged and expected, I also “cold call” on students.

Deadlines

In addition to my expectation that students will have read the assigned material prior to class, there are three principal deadlines in this class:

March 3, 2025: Deadline for submission of the Defendant’s *Motion to Suppress Tangible Evidence and Statements*. The pleading is due by 11:59 P.M. Every 24-hour period after the due date will reduce a student’s grade on the assignment by one letter grade (e.g., from an A to a B, or from an A- to a B-.)

March 7, 2025: Submission of a one-page summary of proposed topic(s) to cover in the Final Paper.

April 25, 2025: Deadline for Final Paper. The Final Paper is due by 11:59 P.M. In accordance with AR 4-5.1(b)(iii): “Late submission of a final paper will result in a full grade reduction (e.g., A to B, B- to C-) for each 24-hour period that the paper is submitted beyond the deadline. The first 24-hour period begins at the submission deadline. A paper submitted at any point during the first 24-hour period will receive a full grade reduction; a paper submitted at any point during the second 24-hour period will receive a second full grade reduction; and so on until the paper is submitted or the grade is reduced to a failing (“F”) grade.”

Delaying the Deadline for the Final Paper

In accordance with AR 4-5.1(b)(i), unless the deadline for the final paper falls during a period when the university is closed, “instructors may not grant deadline extensions for final papers; all authority in this matter is delegated to the Associate Dean for Administration and Student Affairs. Excuses and requests for a deadline extension must be presented, with appropriate documentation, to the Associate Dean for Administration and Student Affairs. Except in emergencies, deadline extensions must be sought in advance of the scheduled deadline.” The circumstances permitting a deadline extension for the final paper are set forth at AR 4-5.1(c).

COURSE WRITING REQUIREMENTS

Defendant’s Motion to Suppress Tangible Evidence and Statements

At the beginning of the course, I will post a hypothetical presenting various potential suppression issues. Students are responsible for drafting and submitting a pleading entitled Defendant’s *Motion to Suppress Tangible Evidence and Statements*.

In order to assist you in drafting your motion, I will provide students links to numerous suppression motions filed in various jurisdictions.

Requirements:

- The pleading should be 8-10 pages in length, not including a cover page.
- The pleading must use 12-point Times New Roman or similar typeface and one-inch margins on all sides.
- Text should be double-spaced, and footnotes should be single-spaced. Footnotes must also be in 12-point type.
- The pleadings must be submitted to me by email by the deadline and should be in the form of a PDF.
- Grading will be based on several factors, including: (1) following the assignment instructions; (2) identification of relevant factual and legal issues; (3) thoroughness of legal research; (4) proper citation of legal authorities; (5) clarity of the legal argument; and (6) the overall quality of the pleading. Late submission of the pleading will result in a grade reduction, as described above.

Final Paper:

The Final Paper is a legal research paper on a criminal procedure topic selected by the student. I must pre-approve the chosen topic. Students must email me no later than **March 3, 2025**, with a one-page summary of their proposed topic(s) for the Final Paper.

In order to assist you in selecting a topic, I will post numerous links to cases, law review articles, and other

source materials that relate to the subject matters we will be discussing in each class.

This additional material is not “required” reading. Rather, it is a selection of additional readings that I have chosen to serve as a resource for students wishing to delve deeper into course topics and to assist students in selecting a subject matter for the Final Paper.

Requirements:

- The paper should be at least 20 pages and no more than 25 pages (not including the cover page and bibliography).
- The paper must use 12-point Times New Roman or similar typeface and one-inch margins on all sides.
- Text should be double-spaced, and footnotes should be single-spaced. Footnotes must also be in 12-point type.
- The paper must be submitted to me by email by the deadline and should be in the form of a PDF.
- The grade will be based on the quality, depth, and thoroughness of the legal research, analysis, and writing, as well as the originality and complexity of your chosen topic.
- Late submission of the Final Paper will require a reduction in grade, in accordance with AR 4-5.1(b)(iii), as described above.

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COURSE SCHEDULE & ASSIGNMENTS

CLASS 1 (January 16, 2025):

- REVIEW OF SYLLABUS
- OVERVIEW OF COURSE
- NEW TECHNOLOGIES AND INVESTIGATIVE TECHNIQUES – A STRESS TEST FOR THE 4TH AMENDMENT?

Readings:

- [Carpenter v. United States, 138 S. Ct. 2206 \(2018\)](#)
- [In re Search of Info. Stored at the Premises Controlled by Google, No. KM-2022-79, 2022 Va. Cir. LEXIS 12 \(Cir. Ct. Feb. 24, 2022\)](#)
- [Long Lake Twp. v. Maxon, 336 Mich. App. 521, 970 N.W.2d 893 \(2021\)](#)

CLASS 2 (January 23, 2025):

BODILY AUTONOMY AND THE FOURTH AND FIFTH AMENDMENTS

Readings:

- [Seo v. State, 148 N.E.3d 952 \(Ind. 2020\)](#)
- [United States v. Wright, 431 F. Supp. 3d 1175 \(D. Nev. 2020\)](#)
- [In re Search of a Residence in Oakland, 354 F. Supp. 3d 1010 \(N.D. Cal. 2019\)](#)

CLASS 3 (January 30, 2025):

- WHY JURIES MATTER
 - RAMOS V. LOUISIANA: THE LONG ROAD TO UNANIMITY
 - BATSON, FLOWERS AND PENA-RODRIGUEZ AND THE
 - SIXTH AMENDMENT GUARANTEE OF “AN IMPARTIAL JURY”
- DRAFTING MOTIONS TO SUPPRESS AND OPPOSITIONS.

Readings:

- [Pena-Rodriguez v. Colorado, 580 U.S. 206, 137 S. Ct. 855 \(2017\)](#)
- [Flowers v. Mississippi, 139 S. Ct. 2228 \(2019\)](#)
- [Ramos v. Louisiana, 140 S. Ct. 1390 \(2020\)](#)

CLASS 4 (February 6, 2025):

PREVENTIVE DETENTION, CASH BAIL, AND THE IMPORTANCE OF PRE-TRIAL FREEDOM

Readings:

- [United States v. Salerno, 481 U.S. 739, 107 S. Ct. 2095 \(1987\)](#)
- [Walker v. City of Calhoun, 901 F.3d 1245 \(11th Cir. 2018\)](#)
- [Burroughs v. State, Nos. 144, 2022, 130, 2022, 2023 Del. LEXIS 288 \(Aug. 30, 2023\)](#)

CLASS 5 (February 13, 2025):

THE EXCLUSIONARY RULE AND THE FOURTH AMENDMENT: HAVE THE

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EXCEPTIONS SWALLOWED THE RULE?

Readings:

- [United States v. Leon, 468 U.S. 897, 104 S. Ct. 3405 \(1984\)](#)
- [Nix v. Williams, 467 U.S. 431, 104 S. Ct. 2501 \(1984\)](#)
- [Murray v. United States, 487 U.S. 533, 108 S. Ct. 2529 \(1988\)](#)

CLASS 6 (February 20, 2025):

CRIMINAL DISCOVERY AND BRADY ISSUES IN THE AGE OF TERABYTES

Readings:

- Federal Rules of Criminal Procedure Rule 16: [USCS Fed Rules Crim Proc R 16](#).
- Federal Rules of Criminal Procedure Rule 26.2: [USCS Fed Rules Crim Proc R 26.2](#).
- United States Department of Justice's *Justice Manual*, Section 9.5000: <https://www.justice.gov/jm/jm-9-5000-issues-related-trials-and-other-court-proceedings#9-5.001>.

CLASS 7 (February 27, 2025):

A PROSECUTOR'S MOST CHALLENGING ETHICAL OBLIGATIONS

Readings:

- American Bar Association's Criminal Justice Standards – Prosecution Function: https://www.americanbar.org/groups/criminal_justice/standards/ProsecutionFunctionFourthEdition/
- Virginia State Bar Rules of Professional Conduct, Rule 3.8 ("Additional Responsibilities of Prosecutors"): <https://vsb.org/Site/Site/about/rules-regulations/rpc-part6-sec2.aspx>

CLASS 8 (March 6, 2025):

A CRIMINAL DEFENSE ATTORNEY'S MOST CHALLENGING ETHICAL OBLIGATIONS

Readings:

- Lisa G. Lerman et al., The Buried Bodies Case: Alive and Well After Thirty Years, 2007 PROF. LAW. 19 (2007): <https://scholarship.law.edu/cgi/viewcontent.cgi?article=1240&context=scholar>
- McCoy v. Louisiana, 138 S. Ct. 1500 (2018)
- Nix v. Whiteside, 475 U.S. 157, 106 S. Ct. 988 (1986)

March 3, 2025: Deadline for Submission of *Defense Motion to Suppress*.

March 7, 2025: Deadline for Submission of summary of proposed Final Paper topic.

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CLASS 9 (March 20, 2025):

DUE PROCESS, SPEEDY TRIAL, AND THE COVID-19 PANDEMIC

Readings:

- [State v. Brimmer, 983 N.W.2d 247 \(Iowa 2022\)](#)
- [United States v. Rodriguez-Mendez, No. 22-1422, 2023 U.S. App. LEXIS 11558 \(3d Cir. May 11, 2023\)](#)
- [State v. Tate, 985 N.W.2d 291 \(Minn. 2023\)](#)

CLASS 10 (March 27, 2025):

CONFESSION SUPPRESSION AND THE FUTURE OF MIRANDA

Readings:

- [Dickerson v. United States, 530 U.S. 428, 120 S. Ct. 2326 \(2000\)](#)
- [Vega v. Tekoh, 142 S. Ct. 2095 \(2022\)](#)

CLASS 11 (April 3, 2025):

GIDEON, STRICKLAND, AND THE STATE OF CRIMINAL DEFENSE

Readings:

- [Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 \(1984\)](#)
- [Kuren v. Luzerne Cty., 637 Pa. 33, 146 A.3d 715 \(2016\)](#)
- [ARTICLE: Too Much Heart and Not Enough Heat: The Short Life and Fractured Ego of the Empathic, Heroic Public Defender, 37 U.C. Davis L. Rev. 1203](#)

CLASS 12 (April 10, 2025):

CHARGING AND SENTENCING DECISIONS IN THE SHADOW OF FENTANYL

Readings:

- [United States v. Watson, No. 22-3278, 2023 U.S. App. LEXIS 14405 \(6th Cir. June 8, 2023\)](#)
- [United States v. Ihediwa, 66 F.4th 1079 \(7th Cir. 2023\)](#)
- [United States v. Jeffries, No. 21-4197, 2023 U.S. App. LEXIS 9629 \(6th Cir. Apr. 21, 2023\)](#)

CLASS 13 (April 17, 2025):

RECENT CRIMINAL PROCEDURE CASE LAW

Readings:

- [Lee v. United States, 582 U.S. 357, 137 S. Ct. 1958 \(2017\)](#)
- [Jones v. Mississippi, 141 S. Ct. 1307 \(2021\)](#)
- [Smith v. Arizona, 602 U.S. 779 \(2024\)](#)

April 24, 2025: Deadline for Submission of Final Paper

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Thurs. 8:10 – 10:10 pm EST | **Final Exam:** N/A

ACADEMIC STANDARDS & COURSE POLICIES

Recording Class Sessions:

Recording of class sessions by any means is prohibited. See AR 4-2.2: “Unless expressly permitted in writing by an instructor, no portion of a class session or an examination may be preserved by means of a recording device (such as an audio recording device or a camera).”

Academic Integrity:

“Each student at Antonin Scalia Law School (“Scalia Law”) is expected to behave honorably and with the highest personal integrity toward other law students, toward the law school and university, and toward other members of the legal profession.” (Preamble to the Honor Code.) The Honor Code prohibits a student from lying, cheating, or stealing, to include plagiarism and the use of any prohibited resource in an exam, coursework, or course paper. The full Honor Code can be accessed here: https://www.law.gmu.edu/academics/academic_standards.

Use of Generative Artificial Intelligence (GAI) in Academic Work:

Use of Generative Artificial Intelligence in the drafting or writing of papers or any other course work or assignments in this class is prohibited. According to AR 4-3: “Generative artificial intelligence (GAI) is a type of artificial intelligence that uses algorithms to generate new content, such as text or images, based on the data it has been trained on. For purposes of this regulation, GAI is not intended to encompass legal research databases and word processing applications that, while incorporating AI- based elements or enhancements, do not generate novel text.” Use of GAI in a course that prohibits the use of GAI, such as this course, constitutes an academic integrity violation.

Accommodations for Students with Disabilities

Disability Services at George Mason University is committed to upholding the letter and spirit of the laws that ensure equal treatment of people with disabilities. Disability Services implements and coordinates reasonable accommodations and disability-related services that afford equal access to university programs and activities. For further information and to register for services, please refer to <https://ds.gmu.edu/law-school/>, or call (703) 993-2474.

Use of Technology:

Students may use computers, tablets, etc., in the classroom, but only for the purpose of taking notes or accessing course material. Please ensure that cell phones do not ring in class.

Name and Pronoun Use:

Students are encouraged to share their name and gender pronouns with me and indicate how best to address them in class and via email. Further information can be obtained at GMU’s Chosen Name and Pronoun Policy, <https://universitypolicy.gmu.edu/policies/chosen-name-pronouns-policy/>.

University Email:

Students must use their Mason email account to receive university or law school information, including communications related to this class.

Covid Protocols:

Please refer to GMU’s *Safe Return to Campus* web site for information regarding GMU’s safety protocols. The site can be accessed at: <https://shs.gmu.edu/services/covidservices/isolationguidance/>.

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Notice of Mandatory Reporting of Sexual Assault, Sexual Harassment, Interpersonal Violence, and Stalking:

As a faculty member, I am designated as a “Non-Confidential Employee,” and must report all disclosures of sexual assault, sexual harassment, interpersonal violence, and stalking to Mason’s Title IX Coordinator per University Policy 1202. If a student wishes to speak with someone confidentially, please contact one of Mason’s confidential resources, such as Student Support and Advocacy Center (SSAC) at 703-380-1434 or Counseling and Psychological Services (CAPS) at 703-993-2380. Students may also seek assistance or support measures from Mason’s Title IX Coordinator by calling 703-993-8730, or emailing titleix@gmu.edu.

University Resources:

- Counseling and Psychological Services: <https://caps.gmu.edu/> Student Health Services: <https://shs.gmu.edu/>
- Mason Square Campus Clinic: After-Hours Nurse Advice – 703-991-2831 Mason Square Campus Clinic Location: Van Metre Hall, Room B102.
- Student Support and Advocacy Center: <https://ssac.gmu.edu/>
- Police: Emergency - Dial 911; 703-993-8070, Van Metre Hall, Room 110. Police escort services: 703-993-8370.
- Sexual Assault Services: 703-993-8186, Van Metre Hall, Room 222D. Mason Square information: <https://masonsquare.gmu.edu>