

**Advanced Criminal Procedure – LAW 207 (Section 001)**  
**Spring 2024**  
**Randy I. Bellows, Adjunct Faculty**  
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**Course Dates/Times/Location:**

Thursdays from 8:10 P.M. to 10:10 P.M.  
First Class: Thursday, January 18, 2024  
Last Class: Thursday, April 18, 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. Each student will also be responsible for preparing and submitting three papers: (1) Defendant's *Motion to Suppress Tangible Evidence and Statements*; (2) Prosecution's *Opposition to Defendant's Suppression Motion*; and (3) A final course paper on an approved criminal procedure topic.

**Learning 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.

**Prerequisite:**

The only course prerequisite is Criminal Procedure: Investigation (LAW 206).

### **Course Materials:**

All readings can be accessed through Lexis or Westlaw or other online resources.

### **Grades:**

There are three components to the final course grade:

- Defendant's *Motion to Suppress Tangible Evidence and Statements*: **20%**
- Prosecution's *Opposition to Defendant's Motion to Suppress*: **20%**
- Final Paper: **60%**

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. It is the student's responsibility to inform me in advance if the student will be absent from 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 and a prosecution opposition (further described below). 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:

**February 16, 2024: Deadline for submission of Defendant's *Motion to Suppress Tangible Evidence and Statements*.** This submission constitutes 20% of a student's final course grade. 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 1, 2024: Deadline for submission of Prosecution's *Opposition to Defendant's Motion to Suppress*.** This submission constitutes 20% of a student's final course grade. 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-.)

**April 25, 2024: 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 Prosecution's Opposition to Defendant's Motion to Suppress

Students are responsible for drafting and submitting two pleadings: (1) Defendant's *Motion to Suppress Tangible Evidence and Statements*; and (2) Prosecution's *Opposition to Defendant's Motion to Suppress Statements*. Each pleading will be based on a hypothetical that will present both Fourth and Fifth Amendment issues. At the beginning of the course, I will post the hypothetical upon which the pleadings are to be based, along with additional instructions.

Each pleading should be 8-10 pages in length, not including a cover page, and 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 **February 26, 2024**, with their proposed topic and a one paragraph description of what they expect to cover. Further information regarding the paper will be provided in class.

The paper should be no fewer than 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. The Final Paper must be sent by email to me by the date and time specified in the Syllabus. Late submission of the Final Paper will require a reduction in grade, in accordance with AR 4-5.1(b)(iii), as described above.

### 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://sls.gmu.edu/honor/>.

### **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.

### **Appointments:**

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.

### **Class Materials:**

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.

### **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: [www.gmu.edu/safe-return-campus](http://www.gmu.edu/safe-return-campus).

### **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](mailto: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>

## Course Outline

### CLASS 1 (January 18, 2024):

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

#### Readings:

- [Katz v. United States, 389 U.S. 347, 88 S. Ct. 507 \(1967\)](#)
- [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 \(2021\)](#)
- [United States v. Toombs, No. 1:22-cr-306-CLM-GMB, 2023 U.S. Dist. LEXIS 77123 \(N.D. Ala. May 3, 2023\)](#)
- [People v. Seymour, 2023 CO 53 \(October 16, 2023\)](#)

### CLASS 2 (January 25, 2024):

#### **BODILY AUTONOMY AND THE FOURTH AND FIFTH AMENDMENTS**

#### Readings:

- [Maryland v. King, 569 U.S. 435, 133 S. Ct. 1958 \(2013\)](#)
- [State v. Hartman, No. 56801-2-II, 2023 Wash. App. LEXIS 1614 \(Ct. App. Aug. 22, 2023\)](#)
- [United States v. Barrera, 415 F. Supp. 3d 832 \(N.D. Ill. 2019\)](#)
- [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 \(N.D. Cal. 2019\)](#)
- [People v. Sneed, 2023 IL 127968](#)

### CLASS 3 (February 1, 2024):

- 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:

- [Duncan v. Louisiana, 391 U.S. 145, 88 S. Ct. 1444 \(1968\)](#)
- [Batson v. Kentucky, 476 U.S. 79, 106 S. Ct. 1712 \(1986\)](#)
- [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 \(2020\)](#)
- [Khorrami v. Arizona, 143 S. Ct. 22 \(2022\)](#) (Gorsuch, J. dissenting)

**CLASS 4 (February 8, 2024):**

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

**Readings:**

- [Stack v. Boyle, 342 U.S. 1, 72 S. Ct. 1 \(1951\)](#)
- [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 15, 2024):**

**THE EXCLUSIONARY RULE AND THE FOURTH AMENDMENT: HAVE THE EXCEPTIONS SWALLOWED THE RULE?**

**Readings:**

- [Mapp v. Ohio, 367 U.S. 643, 81 S. Ct. 1684 \(1961\)](#)
- **Attenuation:** [Brown v. Illinois, 422 U.S. 590, 95 S. Ct. 2254 \(1975\)](#)
- **Good Faith:** [United States v. Leon, 468 U.S. 897, 104 S. Ct. 3405 \(1984\)](#)
- **Inevitable Discovery:** [Nix v. Williams, 467 U.S. 431, 104 S. Ct. 2501 \(1984\)](#)
- **Independent Source:** [Murray v. United States, 487 U.S. 533, 108 S. Ct. 2529 \(1988\)](#)

**Due February 16, 2024: *Defendant's Motion to Suppress Tangible Evidence and Statements***

**CLASS 6 (February 22, 2024):**

**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 ("Issues Related to Discovery, Trials, and Other Proceedings): <https://www.justice.gov/jm/jm-9-5000-issues-related-trials-and-other-court-proceedings#9-5.001>.

**CLASS 7 (February 29, 2024):**

**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/](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>

**Due March 1, 2024: *Prosecution's Opposition to Defendant's Motion to Suppress***



**NO CLASS ON MARCH 7, 2024 (SPRING BREAK)**

**CLASS 8 (March 14, 2024):**

**A CRIMINAL DEFENSE ATTORNEY'S MOST CHALLENGING ETHICAL OBLIGATIONS**

**Readings:**

- American Bar Association's Criminal Justice Standards – Defense Function: [https://www.americanbar.org/groups/criminal\\_justice/standards/DefenseFunctionFourthEdition/](https://www.americanbar.org/groups/criminal_justice/standards/DefenseFunctionFourthEdition/)
- [McClure v. Thompson, 323 F.3d 1233 \(9th Cir. 2003\)](#)
- [State v. Fritz, 212 Wis. 2d 284, 569 N.W.2d 48 \(Ct. App. 1997\)](#)
- [United States v. Alexander, 287 F.3d 811 \(9th Cir. 2002\)](#)
- [United States v. Midgett, 342 F.3d 321 \(4th Cir. 2003\)](#)
- [Nix v. Whiteside, 475 U.S. 157, 106 S. Ct. 988 \(1986\)](#)
- [North Carolina State Bar v. David B. Smith \(February 11, 2003\): https://www.ncbar.gov/orders/volume%205/06050395.pdf](#)

**CLASS 9 (March 21, 2024):**

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

**Readings:**

- [Vazquez Diaz v. Commonwealth, 487 Mass. 336, 167 N.E.3d 822 \(2021\)](#)
- [United States v. Hernandez, No. 4:21-cr-00043-DN-JCB, 2021 U.S. Dist. LEXIS 83590 \(D. Utah Apr. 29, 2021\)](#)
- [State v. Vega-Larregui, 246 N.J. 94, 248 A.3d 1224 \(2021\)](#)
- [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 28, 2024):**

**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 4, 2024):**

**GIDEON, STRICKLAND, AND THE STATE OF CRIMINAL DEFENSE**

**Readings:**

- [Gideon v. Wainwright, 372 U.S. 335, 83 S. Ct. 792 \(1963\)](#)
- [Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 \(1984\)](#)
- [Kuren v. Luzerne Cty., 637 Pa. 33, 146 A.3d 715 \(2016\)](#)
- American Bar Association's *Ten Principles of a Public Defense Delivery System* (August 2023):  
[https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls-sclaid-603-public-def-principles-2023.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls-sclaid-603-public-def-principles-2023.pdf)

**CLASS 12 (April 11, 2024):**

**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 \(6th Cir. Apr. 21, 2023\)](#)
- [United States v. Brown, No. 21-1663, 2023 U.S. App. LEXIS 3316 \(6th Cir. Feb. 9, 2023\)](#)
- [State v. Allen, 2022-Ohio-3493 \(Ct. App.\)](#)
- [Va. Code Ann. § 18.2-251.03 \(Lexis Advance through the 2023 Regular Session\)](#)
- [Va. Code Ann. § 18.2-46.4 \(Lexis Advance through the 2023 Regular Session\)](#)
- [Va. Code Ann. § 18.2-46.6 \(Lexis Advance through the 2023 Regular Session\)](#)

**CLASS 13 (April 18, 2024):**

**RECENT CRIMINAL PROCEDURE CASE LAW**

**Readings:**

- [Lee v. United States, 582 U.S. 357, 137 S. Ct. 1958 \(2017\)](#)
- [Collins v. Virginia, 138 S. Ct. 1663 \(2018\)](#)
- [Jones v. Mississippi, 141 S. Ct. 1307 \(2021\)](#)
- [Gamble v. United States, 139 S. Ct. 1960 \(2019\)](#)
- [Madison v. Alabama, 139 S. Ct. 718 \(2019\)](#)
- [United States v. Tsarnaev, 142 S. Ct. 1024 \(2022\)](#)

**Due April 25, 2024: Final Paper**