

**UConn–HUGS Winter Program**  
**Criminal Procedure – Syllabus**  
**Professor David Thaw**  
**Winter Semester 2017-2018**

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***Final Version (19 January 2018)***

This course is organized into fifteen Parts, each of which is divided into several Units (1.1, 1.2, etc.).

There is one book required for this class:

- Casebook (CB): Joshua Dressler and George C. Thomas, Criminal Procedure: Principles, Policies, and Perspectives (6th ed., 2017)

Students should plan on completing the reading for each session in advance of the class period for which they are assigned (except the first class as students may register up until the first class, however students are encouraged to make their best effort to read in advance of the first class). For example, for the **10 Jan 2018 (Wednesday – Evening Session)** class period, the students should read pages **95-96, 96-104, 105-115, 116-134, 135-146, 147-161, 162-173, 173-176** in the Casebook (CB).

Thoughts on Learning Criminal Procedure as a non-U.S. student:

*My job with this course is to help you under U.S. Criminal Procedure. This can be challenging for non-U.S. students as the U.S. system embodies an incredibly strong (perhaps the strongest) presumption against guilt of modern democratic systems. Stated differently, there are many procedural requirements which, if not fulfilled, can result in an otherwise-apparently guilty defendant being released.*

*Much of Criminal Procedure is a course in Constitutional Law. This is because while there are over 50 different criminal codes in the U.S., each with its own procedural code, the procedural requirements in the U.S. Constitutional apply to all criminal proceedings within the United States. Accordingly, for this course, we focus primarily on basic procedural guarantees afforded by the U.S. Constitution. (Sometimes are greater than the procedural guarantees originally written into some criminal codes.) The U.S. bar examination generally tests this material as well.*

*Criminal Procedure generally is divided into two portions: “investigative” procedure and “adjudicative” procedure. The first covers the requirements of law enforcement officers when investigating crimes, and focuses largely on the 4<sup>th</sup>, 5<sup>th</sup>, and 6<sup>th</sup> Amendments to the U.S. Constitution. The second covers the requirements of the pre-trial, trial, appellate and other post-conviction procedures of the criminal justice system.*

*I strongly encourage all students to come to me with questions – both during class and at other times. You may ask questions about subjects from a previous class during subsequent classes.*

The material expected to be covered in each class is broken out by session and listed in **bold underline** below. As this is a highly-compressed class, these dates are **subject to change** as necessary.

*Official course announcements will be posted on the class website*

*(<http://www.davidthaw.com/teaching/crimpro>) and students are responsible for keeping up with these announcements.*

### *Constitutional Law and Criminal Law Basics*

#### **09 Jan 2018 (Tuesday – Evening Session)**

Introduction: Lecture the Criminal System, Criminal Procedure, and the Values of Procedural Choices

1. The American Federalist Republic
  - 1.1. The Constitution and the Structure of Government
    - 1.1.1. Background
    - 1.1.2. The United States Constitution (<https://www.law.cornell.edu/constitution>)
  - 1.2. Mechanics of the United States Government
  - 1.3. U.S. State and Jurisdictional Government(s)/Structural Variations
2. Criminal Law Constitutional Authority/"Sovereigns"
  - 2.1. State Criminal Law Authority/Tenth Amendment
    - 2.1.1. General Police Power
    - 2.1.2. Limits of the Federal Constitution
  - 2.2. Federal Criminal Law Authority
    - 2.2.1. Commerce Clause
    - 2.2.2. Monetary, Wire, Mail, and Computer Fraud
    - 2.2.3. International Issues and Immigration/Citizenship
    - 2.2.4. Military Law
3. Basics of Criminal Law
  - 3.1. Nature, Sources, Limits **[lecture]**
    - 3.1.1. Common Law/Historical Ties
    - 3.1.2. Model Penal Code
    - 3.1.3. Modern Relationships with the Legislature
    - 3.1.4. Modern Relationships with the Judiciary
  - 3.2. Basics of Criminal Procedure
    - 3.2.1. Pre-Trial Procedures **[lecture]**
    - 3.2.2. Trial Procedures **[lecture]**
    - 3.2.3. Standards of Proof **[lecture]**
  - 3.3. Useful Terminology **[lecture/website]**

## ***The “Investigative” Process (a.k.a., the Fourth, Fifth, and Sixth Amendments)***

### **4. The Fourth Amendment (“Searches” and “Seizures”)**

#### **4.1. Introduction and Overview**

4.1.1. Introduction to the Fourth Amendment and its Scope (**CB 71-74**)

4.1.2. Introduction to “Probable Cause” (**CB 177-178**)

4.1.3. Introduction to Remedies for Fourth Amendment Violations (**CB 74-76**)

4.1.3.1. *Weeks v. United States* (**CB 76-79**)

4.1.3.2. *Mapp v. Ohio* (**CB 83-94**)

### **10 Jan 2018 (Wednesday – Evening Session)**

#### **4.2. Searches**

4.2.1. General Principles: Trespass and Privacy (**CB 95-96**)

4.2.2. *Katz v. United States* (**CB 96-104**)

4.2.3. *United States v. White* (**CB 105-115**)

4.2.4. *Smith v. Maryland* (**CB 116-134**)

4.2.5. *Kyllo v. United States* (**CB 135-146**)

4.2.6. *United States v. Jones* (**CB 147-161**)

4.2.7. *Florida v. Jardines* (**CB 162-173**)

#### **4.3. Seizures**

4.3.1. *United States v. Karo* (**CB 173-176**)

### **11 Jan 2018 (Thursday – Evening Session)**

#### **4.4. Probable Cause**

4.4.1. Introduction (**CB 177-178**)

4.4.1.1. *Spinelli v. United States* (**CB 178-188**)

4.4.1.2. *Illinois v. Gates* (**CB 188-205**)

4.4.2. The *Terry* Doctrine (**CB 384-389**)

4.4.2.1. *Terry v. Ohio* (**CB 389-409**)

4.4.3. *Terry* and De Facto Arrests

4.4.3.1. *Dunaway v. New York* (**CB 409-417**)

4.4.4. “Seizure” vs. “Non-Seizure” Encounters

4.4.4.1. *United States v. Mendenhall* (**CB 417-427**)

4.4.4.2. *California v. Hodari D.* (**CB 427-433**)

4.4.5. “Reasonable Suspicion”

4.4.5.1. *Alabama v. White* (**CB 433-447**)

4.4.5.2. *Illinois v. Wardlow* (**CB 447-454**)

### **13 Jan 2018 (Saturday – Morning Session)**

#### 4.5. Arrest Warrants

4.5.1. *Payton v. New York* (CB 205-213)

4.5.2. Notes on Arrest Warrants and *Payton* (CB 213-219)

#### 4.6. Search Warrants

4.6.1. Introduction and Background (CB 219-223)

4.6.2. Basic Requirements (223-224)

4.6.2.1. *Lo-Ji Sales, Inc. v. New York* (CB 224-227)

4.6.3. Execution

4.6.3.1. Introduction (CB 228-229)

4.6.3.2. *Wilson v. Arkansas* (CB 228-229)

4.6.3.3. *Richards v. Wisconsin* (CB 229-238)

### **13 Jan 2018 (Saturday – Afternoon Session)**

4.6.4. Exceptions

4.6.4.1. Exigent Circumstances (CB 238-239)

4.6.4.1.1. *Kentucky v. King* (CB 239-251)

4.6.4.2. Search Incident to Arrest

4.6.4.2.1. *Chimel v. California* (CB 251-262)

4.6.4.2.2. *Riley v. California* (CB 262-275)

4.6.4.3. Cars (Arrest of Automobile Occupants)

4.6.4.3.1. *New York v. Belton* (CB 276-286)

4.6.4.3.2. *Gant v. Arizona* (CB 286-297)

### **15 Jan 2018 (Monday – Evening Session)**

4.6.4.4. Containers (Including Cars)

4.6.4.4.1. *Chambers v. Maroney* (CB 306-313)

4.6.4.4.2. *California v. Carney* (CB 313-320)

4.6.4.4.3. *United States v. Chadwick* (CB 320-331)

4.6.4.4.4. *California v. Acevedo* (CB 331-338)

4.6.4.5. Plain View (and Touch)

4.6.4.5.1. *Horton v. California* (CB 339-346)

4.6.4.5.2. *Arizona v. Hicks* (CB 346-351)

4.6.4.6. Consent

4.6.4.6.1. *Schneckloth v. Bustamonte* (CB 352-362)

4.6.4.6.2. *Georgia v. Randolph* (CB 362-376)

4.6.4.6.3. *Illinois v. Rodriguez* (CB 376-383)

### **16 Jan 2018 (Tuesday – Evening Session)**

#### 4.7. Remedies for Fourth Amendment Violations

4.7.1. Standing (CB 493-497)

- 4.7.1.1. *Alderman v. United States* (CB 493-494)
- 4.7.1.2. *Rakas v. Illinois* (CB 497-507)
- 4.7.1.3. *Minnesota v. Carter* (CB 507-517)
- 4.7.2. The Exclusionary Rule
  - 4.7.2.1. Introduction (CB 517)
    - 4.7.2.1.1. *Weeks v. United States* (revisited) (CB 76-79)
    - 4.7.2.1.2. *Mapp v. Ohio* (revisited) (CB 83-94, 517-520)
  - 4.7.2.2. Scope of the Exclusionary Rule (CB 520)
    - 4.7.2.2.1. *Silverthorne Lumber Company v. United States* (CB 520-522)
  - 4.7.2.3. “Independent Source” and “Inevitable Discovery” Exceptions (CB 522)
    - 4.7.2.3.1. *Murray v. United States* (CB 522-530)

### **17 Jan 2018 (Wednesday – Evening Session)**

- 4.7.2.4. “Attenuation” Exception (CB 530)
  - 4.7.2.4.1. *Wong Sun v. United States* (CB 530-538)
- 4.7.3. Modern Considerations and Narrowing of the Exclusionary Rule
  - 4.7.3.1. *United States v. Leon* (CB 538-553)
  - 4.7.3.2. *Hudson v. Michigan* (CB 553-568)
  - 4.7.3.3. *Herring v. United States* (CB 568-576)

## **5. The Fifth Amendment (Protection Against Self-Incrimination)**

- 5.1. Introduction – Language of the Amendment (CB 3, 615)
- 5.2. Police Interrogation
  - 5.2.1. *Bram v. United States* (CB 615-618)

### **18 Jan 2018 (Thursday – Evening Session)**

- 5.2.2. *Miranda v. Arizona* (CB 625-645)
  - 5.2.2.1. *Miranda* “Checklist” (CB 645-646)
- 5.2.3. *Miranda* Clarified
  - 5.2.3.1. Doctrinal Considerations (CB 650-652)
  - 5.2.3.2. *New York v. Quarles* (CB 652-662)
  - 5.2.3.3. *Orgeon v. Elstad* (CB 662-670)
  - 5.2.3.4. *Dickerson v. United States* (CB 670-678)
  - 5.2.3.5. *Missouri v. Seibert* (CB 678-690)
- 5.2.4. *Miranda* and Custody
  - 5.2.4.1. *Berkemer v. McCarty* (CB 691-700)
- 5.2.5. *Miranda* and Interrogation
  - 5.2.5.1. *Rhode Island v. Innis* (CB 701-710)
- 5.2.6. *Miranda* Mechanics – Waiver and Invocation
  - 5.2.6.1. *North Carolina v. Butler* (CB 711-720)

- 5.2.6.2. *Berghuis v. Thompkins* (CB 720-733)
- 5.2.6.3. *Edwards v. Arizona* (CB 733-743)
- 5.3. Confessions
  - 5.3.1. *Miranda* and the Involuntary Confession Rule (CB 618-622)

## **20 Jan 2018 (Saturday – Morning Session)**

*(All items below here will be only covered to a very limited extent, in a brief review session of key “rules” found on the Bar Exam. It is unlikely we will cover all such rules, nor is it reasonable to attempt to do so in a 3 credit course.)*

**Students are responsible for the \*rules\* covered in class on the Final Exam.** *(Students are not responsible for making persuasive arguments about those rules, or for rules not covered during the Saturday class session.)*

- 6. The Sixth Amendment (Right to Counsel) and Related Protections
  - 6.1. The Right to Counsel
    - 6.1.1. The Right to Appointed Counsel (CB 1042-1043)
      - 6.1.1.1. *Gideon v. Wainwright* (CB 1043-1052)
      - 6.1.1.2. *Scott v. Illinois* (CB 1052-1059)
      - 6.1.1.3. *Douglas v. California* (CB 1059-1065)
      - 6.1.1.4. *Ross v. Moffitt* (CB 1065-1069)
    - 6.1.2. Right to Self-Representation
      - 6.1.2.1. *Faretta v. California* (CB 1070-1086)
    - 6.1.3. Effective Assistance of Counsel (CB 1087-1088)
      - 6.1.3.1. *Strickland v. Washington* (CB 1088-1108)
  - 6.2. Statements to Law Enforcement
    - 6.2.1. Police Questioning in the Absence of Counsel
      - 6.2.1.1. *Messiah v. United States* (CB 755-764)
    - 6.2.2. Waiver of Counsel
      - 6.2.2.1. *Brewer v. Williams* (CB 764-778)
      - 6.2.2.2. *Patterson v. Illinois* (CB 778-788)
      - 6.2.2.3. *Montejo v. Louisiana* (CB 788-801)
    - 6.2.3. Interaction Between *Miranda* and *Messiah*
      - 6.2.3.1. *McNeil v. Wisconsin* (CB 801-808)
  - 6.3. Third-Party Witness Identification (“Lineups,” “Photo Arrays,” etc.)
    - 6.3.1. Right to Counsel During Investigative Eyewitness Procedures (CB 827-878)
      - 6.3.1.1. *United States v. Wade* (CB 828-843)
- 7. Miscellaneous Due Process Considerations
  - 7.1. Entrapment

- 7.1.1. Introduction (**CB 809**)
- 7.1.2. *Sherman v. United States* (**CB 809-815**)
- 7.1.3. *Jacobson v. United States* (**CB 815-826**)

***The “Adjudicatory” Process (a.k.a., “Bail-to-Jail”)***

**8. Pretrial Release**

- 8.1. Constitutional Interests at Stake (**CB 859-862**)
- 8.2. Bail and Other Pretrial Release Mechanisms (**CB 862-864**)
  - 8.2.1. *Stack v. Boyle* (**CB 864-870**)
- 8.3. Preventative Detention (i.e., “Remand”)
  - 8.3.1. *United States v. Salerno* (**CB 870-888**)

**9. Charging and Indictment**

- 9.1. Prosecutorial Discretion (**CB 890-898**)
  - 9.1.1. *United States v. Armstrong* (**CB 898-907**)
  - 9.1.2. *Blackledge v. Perry* (**CB 907-910**)
- 9.2. Preliminary Hearings (Pretrial Judicial Screening)
  - 9.2.1. Introduction to Judicial Screening (**CB 937-940**)
  - 9.2.2. *Coleman v. Alabama* (**CB 910-917**)
- 9.3. Grand Juries
  - 9.3.1. Introduction (**CB 917-925**)
  - 9.3.2. *United States v. Williams* (**CB 925-936**)
  - 9.3.3. Grand Juries and the Fifth Amendment (**CB 940-955**)
  - 9.3.4. *Hoffman v. United States* (**CB 942-955**)

**10. Pre-Trial Procedures**

- 10.1. Suppression (**CB 955-959**)
- 10.2. Venue (**CB 959-964**)
- 10.3. Joinder and Severance (**CB 1001-1009**)
- 10.4. Discovery
  - 10.4.1. Non-Constitutional (Statutory) Discovery (**CB 964-968**)
  - 10.4.2. Constitutionally-Guaranteed Discovery
    - 10.4.2.1. Introduction (**CB 968-969**)
    - 10.4.2.2. *Brady v. Maryland* (**CB 968-969**)
    - 10.4.2.3. *United States v. Agurs* (**CB 969-979**)
    - 10.4.2.4. *Smith v. Cain* (**CB 979-984**)
    - 10.4.2.5. *Arizona v. Youngblood* (**CB 984-994**)
    - 10.4.2.6. *Williams v. Florida* (**CB 994-1001**)
- 10.5. Speedy Trial (**CB 1009-1010**)

10.5.1. *Barker v. Wingo* (CB 1010-1024)

11. Pre-Trial Agreements (“Plea Bargaining” and “Plea Agreements”)

- 11.1. Plea Bargaining (CB 1123-1136)
- 11.2. Guilty Pleas
  - 11.2.1. General Characteristics (“Voluntary”, “Knowing”, and “Intelligent”) (CB 1136)
    - 11.2.1.1. *Brady v. United States* (CB 1136-1148)
  - 11.2.2. “Factual Basis” Requirement (CB 1148)
    - 11.2.2.1. *North Carolina v. Alford* (CB 1148-1154)
- 11.3. Right to Counsel and Attorney Competency Requirements
  - 11.3.1. Introduction (CB 1154-1155)
  - 11.3.2. *Missouri v. Frye* (CB 1155-1164)
  - 11.3.3. *Lafler v. Cooper* (CB 1164-1173)
- 11.4. Plea Agreement Negotiations
  - 11.4.1. Dealmaking (CB 1173)
    - 11.4.1.1. *Bordenkircher v. Hayes* (CB 1173-1181)
  - 11.4.2. Breaking Plea Agreements (CB 1181)
    - 11.4.2.1. *Santobello v. New York* (CB 1181-1188)
    - 11.4.2.2. *United States v. Brechner* (CB 1188-1192)
  - 11.4.3. Procedural Implications/Effects (CB 1192)
    - 11.4.3.1. *McMann v. Richardson* (CB 1192-1198)

12. Trial Processes

- 12.1. Right to a “Jury Trial”
  - 12.1.1. Introduction (CB 1199-1200)
  - 12.1.2. *Duncan v. Louisiana* (CB 1200-1213)
- 12.2. Jury Selection
  - 12.2.1. “Fair Cross-Section” Requirement (CB 1213)
    - 12.2.1.1. *Taylor v. Louisiana* (CB 1213-1222)
  - 12.2.2. Voir Dire (CB 1222-1223)
    - 12.2.2.1. Special Considerations for Race and Related Biases (CB 1223)
    - 12.2.2.2. *Ham v. South Carolina* (CB 1223-1230)
    - 12.2.2.3. Special Considerations for “High Profile” Criminal Prosecutions (CB 1230)
    - 12.2.2.4. *People v. Newton* (CB 1230-1236)
    - 12.2.2.5. “For Cause” Challenges (CB 1236)
    - 12.2.2.6. *United States v. Salamone* (CB 1236-1246)
    - 12.2.2.7. Peremptory Challenges (CB 1246-1249)
    - 12.2.2.8. *Batson v. Kentucky* (CB 1249-1271)
- 12.3. Jury Nullification (CB 1271)



- 12.3.1. *United States v. Thomas* (CB 1271-1288)
- 12.4. Right to Confrontation (of Witnesses)
  - 12.4.1. Face-to-Face Confrontation (CB 1288)
    - 12.4.1.1. *Maryland v. Craig* (CB 1288-1299)
  - 12.4.2. Exclusion of Co-Defendant Confessions (CB 1341)
    - 12.4.2.1. *Cruz v. New York* (CB 1341-1347)
    - 12.4.2.2. *Gray v. Maryland* (CB 1347-1355)
- 12.5. Right to Compulsory Process
  - 12.5.1. Introduction (CB 1355-1357)
  - 12.5.2. *United States v. Burr* (CB 1357-1359)
  - 12.5.3. *Taylor v. Illinois* (CB 1359-1368)
- 12.6. Right to Testify
  - 12.6.1. Introduction (CB 1368-1370)
  - 12.6.2. *Griffin v. California* (CB 1370-1379)
- 12.7. Jury Deliberation/Verdicts
  - 12.7.1. Introduction (CB 1379-1383)
  - 12.7.2. *United States v. Thomas* (CB 1383-1386)

### 13. Sentencing

- 13.1. Theories of Punishment<sup>1</sup> (CB 1387-1389)
  - 13.1.1.1. Introduction [lecture]
  - 13.1.1.2. Retribution ("Moral" Justifications) [lecture]
  - 13.1.1.3. Deterrence ("Utilitarian" Justifications) [lecture]
  - 13.1.1.4. Application of Punishment – Whom, When, and How Much?
    - 13.1.1.4.1. *The Queen v. Dudley and Stephens* [lecture]
    - 13.1.1.4.2. Degrees of Punishment
- 13.2. Sentencing Systems Overview (CB 1389-1395)
- 13.3. The U.S. (Federal) Sentencing Guidelines ("U.S.S.G.")
  - 13.3.1. Introduction (CB 1395)
  - 13.3.2. *Mistretta v. United States* (CB 1395-1406)
- 13.4. Constitutional Limitations on Sentencing
  - 13.4.1. The Formality of Sentencing (Modern View) (CB 1418-1419)
    - 13.4.1.1. *Apprendi v. New Jersey* (CB 1419-1437)
    - 13.4.1.2. *Blakely v. Washington* (CB 1437-1464)
  - 13.4.2. Judicial "Vindictiveness"
    - 13.4.2.1. *North Carolina v. Pearce* (CB 1464-1470)

### 14. Double Jeopardy

- 14.1. Introduction (CB 1471-1473)

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<sup>1</sup> This topic is covered in greater detail in Criminal Law, and only a brief overview of the listed topics is provided here.

- 14.2. The “Same Offense” (CB 1473-1475)
  - 14.2.1. *Blockburger v. United States* (CB 1475-1480)
  - 14.2.2. *Brown v. Ohio* (CB 1480-1489)
  - 14.2.3. *Missouri v. Hunter* (CB 1489-1494)
- 14.3. Former Acquittal (Collateral Estoppel/Issue Preclusion)
  - 14.3.1. *Fong Foo v. United States* (CB 1494-1498)
  - 14.3.2. *Ashe v. Swenson* (CB 1498-1506)
- 14.4. The “Mistrial Doctrine”
  - 14.4.1. *Downum v. United States* (CB 1506-1514)
- 14.5. “Dual Sovereignty” Exception
  - 14.5.1. *Bartkus v. Illinois* (CB 1514-1522)
- 15. Post-Trial Procedures (Appeals and *Habeas Corpus*)
  - 15.1. Appeals (CB 1523-1524)
    - 15.1.1. Evidence (In)Sufficiency
      - 15.1.1.1. *Jackson v. Virginia* (CB 1524-1531)
    - 15.1.2. The Doctrine of “Harmless Error” (CB 1531-1533)
      - 15.1.2.1. *Arizona v. Fulminate* (CB 1533-1546)
    - 15.1.3. Retroactivity of Appeals (CB 1546-1549)
  - 15.2. (Federal) *Habeas Corpus*
    - 15.2.1. Introduction and History (CB 1549-1554)
    - 15.2.2. Retroactivity of *Habeas Corpus*
      - 15.2.2.1. *Teague v. Lane* (CB 1554-1564)
    - 15.2.3. Procedural Default: “Cause and Prejudice” (CB 1564-1565)
      - 15.2.3.1. *Wainwright v. Sykes* (CB 1565-1575)
      - 15.2.3.2. *Smith v. Murray* (CB 1575-1586)
  - 15.3. Closing Thoughts (CB 1598-1590)

*Review Session; Special Topics in American Law*

**Again, please do not hesitate to ask questions at any time during the course!**

## FINAL EXAM INFORMATION

**In-Class Exam:** administered by HUGS Staff on **22 Jan 2018 (Monday)** from **1900h – 2200h (7:00pm – 10:00pm)**. *This time may be subject to change – please consult with HUGS staff to confirm.*

*The Professor has no ability to change the scheduling of the final examination – HUGS Staff make these determinations.*

The final examination will comprise two parts:

- 1) An open-book multiple choice section. These questions will be designed to match “bar exam” questions.
- 2) An open-book essay question. You may use any offline or online resources **except you may not under any circumstances communicate with another person about the exam, other than the proctor, during the exam.**

*The Professor recommends, if possible, that students type the essay portion of the examination.*

*Students may handwrite the essay portion, but are reminded that (just as on the bar exam) if their handwriting is not legible, the Professor is not permitted to “guess” what it illegible writing means. Please write clearly!*