

# CONSTITUTIONAL CRIMINAL PROCEDURE

## VERMONT LAW AND GRADUATE SCHOOL, FALL 2024

**PROFESSOR SHANNON HEERY (SHE/HER/HERS)**

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**CLASS MEETINGS: MONDAY/WEDNESDAY 9:55 AM – 11:10 PM, OAKES 110**

**OFFICE HOURS:** I am available both in person and virtually. Please use these; I really enjoy getting to know you all!

***In-Person Office Hours:*** I am available for open office hours on **Wednesdays from 11:15 a.m. to 12:15 p.m.**

***Location:*** My Office, Waterman 218, or sometimes First Branch!

***Virtually:*** I am generally available Thursdays between 9:30 a.m. – 11 a.m. and 2 p.m. - 4 p.m. for virtual appointments. Reach out via email to request a virtual meeting time. In your message, please include a few times that you are available. If Thursday does not work due to your schedule, let me know, and we can arrange another time that is mutually convenient. I have included a Teams Link for all Virtual Office Hours on our Canvas home page. Anytime we schedule a virtual appointment, use that link to meet.

***Those don't work?*** Simply reach out via email and we can plan another time to meet!

### TEACHING ASSISTANTS:

- Isabella (Bella) Pickett: [IsabellaPickett@vermontlaw.edu](mailto:IsabellaPickett@vermontlaw.edu), Office Hours: TBD
  - Lindsey Wood: [LindseyWood@vermontlaw.edu](mailto:LindseyWood@vermontlaw.edu), Office Hours: TBD
  - Emily Starobin: [EmilyStarobin@vermontlaw.edu](mailto:EmilyStarobin@vermontlaw.edu), Office Hours: TBD
  - Reagan (Rae) Neville: [ReaganNeville@vermontlaw.edu](mailto:ReaganNeville@vermontlaw.edu), Office Hours: TBD
- \*Look for information via Canvas regarding the scheduled office hours of each of the TA's in this class. They are a great resource to use.

### REQUIRED TEXTS:

1. **Lee and Richardson, [Criminal Procedure, Cases and Materials](#), 3rd Edition (West Academic).**
2. **Canvas:** Other materials used will be available online via canvas. Throughout the semester, I will post additional material, from videos to podcasts to readings, through Canvas. It is your responsibility to keep track of these individually distributed handouts as well as to read, view, or listen to anything assigned. Please follow the postings closely so you have completed all assignments prior to class.
  - \*Please reach out to me or to your TAs if you have any questions while navigating the Canvas page. I will use various features from the page, including “groups” for assigning random groups for classwork (see section below on Group Work).

**COURSE DESCRIPTION:**

Constitutional Criminal Procedure examines the issues that arise under the Fourth, Fifth, Sixth, and Fourteenth Amendments during the government's investigatory phase of a criminal case. This course will explore the relationships between constitutional doctrines, policies, and current social issues. Students will ultimately learn how to identify and analyze potential constitutional violations during the investigation of a Criminal case.

**LEARNING OUTCOMES:**

A Student who successfully completes this course will be able to:

1. learn, analyze, and evaluate, Supreme Court law interpreting applicable portions of the Fourth, Fifth, Sixth and Fourteenth Amendments to the United States Constitution as it applies to a criminal case;
2. identify constitutional violations that may lead to suppression of evidence or other relief in a criminal case;
3. develop a realistic understanding of the criminal process or "life of a case" through the criminal system;
4. prepare and argue constitutional criminal legal issues while applying the particular facts of a criminal case;
5. analyze and identify areas of criminal procedure where policy or legal reform is needed;
6. understand the immense impact of criminal cases and investigations on real human beings and society at large;
7. examine the criminal system and our rules of constitutional criminal procedure rules with empathy, understanding the role of individual actors and the wide-reaching impact of their discretion.

**CLASSROOM ENVIRONMENT, EXPECTATIONS, AND VALUES: Creating an Accountable Space**

- (1) The class is structured with the understanding that everyone learns at a different pace and in different ways and that we each bring different lived experiences to the classroom and to our discussion of criminal procedure. I plan to vary the way we cover the material throughout the semester to appeal to all preferred learning methods.
- (2) I hope to have lively class discussions in which everyone will *listen* to each other's opinions with *civility and respect*. That does not mean that everyone must agree with everyone else. My expectation is simply that everyone treats one another with common courtesy and professional integrity as you discuss the material. It also means that when you disagree with one another, you do so in a professional manner.
- (3) All members of the VLGS community, including professors, are expected to treat each other with respect. I seek to promote an environment that avoids words/remarks or actions that show bias or prejudice based on age, disability, ethnicity, gender, gender identity, national origin, native language, race, religion, sexual orientation, or socioeconomic status. I also want us to be able to engage in honest discourse. If you have any concerns about anything said or done in class, by me or by one of your colleagues, please talk to me about your concerns.
- (4) Criminal procedure cases frequently involve sensitive material that can be distressing. Please keep in mind that everyone else's lived experiences are not your own and you may not know what another person has been or is going through. Do not make assumptions

about your classmates. Instead, show sensitivity to your classmates and to the subject matter.

- (5) Be open to new ideas. Our environment should foster growth and learning.
- (6) It is okay to admit not knowing or understanding something. It is safe to make a mistake. This is true for everyone in class and all class members should strive to create and maintain that feeling for all other class members.
- (7) Be willing and unafraid to express yourself: including your thoughts, opinions, or any concerns.
- (8) Come to class prepared and engaged! Preparation and active contribution are very important in our class.

Please consult and abide by the Vermont Law and Graduate School's Better Community Statement (which can be found in the [student handbook](#) and is reprinted here):

As members of the Vermont Law and Graduate School (VLGS) community, we choose to be a part of an academic community that is dedicated to principles that foster integrity, civility, and justice.

As citizens of a broad and pluralist society, we encourage those of all cultures, orientations, and backgrounds to educate and respect one another in a safe environment.

- We respect the dignity of all persons and assume the best about them.
- We challenge and reject all forms of bigotry while striving to learn from each other's differences.
- We celebrate our differences while appreciating our similarities.
- We value an inclusive environment that is accepting of each other's physical, cognitive, social, and professional differences.
- We respect the rights of each and every member of the community, regardless of race, ethnicity, national origin, religion, age, gender, sexual orientation or lifestyle, medical condition, or socio-economic status.
- We realize that our common interests exceed our individual differences.

As members of the Vermont Law and Graduate School community, we affirm our rights to freedom of expression and association, and the belief that they must be exercised responsibly. The spirit of building a better community is best served when the ideals of integrity, civility, and justice are expressed and debated with tolerance, understanding, appreciation, and good will.

**CLASS ATTENDANCE:**

Class attendance is mandatory. Vermont Law and Graduate School Academic Regulation II.A provides that a student will receive a grade of F-Wd if they are absent from 20% of regularly scheduled classes. The Academic Regulations permit individual professors to set a higher requirement (but not a lower requirement). ***For this class, you will receive a grade of F-Wd if you are absent from more than three regularly scheduled classes.***

Pursuant to Vermont Law and Graduate School's attendance policy, I am required to record class attendance. **I have no authority to excuse any absence or to allow more absences than the Attendance Policy allows.** Students are responsible for monitoring their own compliance with the attendance policy. I tally attendance at the *end of the semester*; therefore, I cannot update you with your number of missed classes. To alleviate any concern that an issue will arise with your ability to attend classes, be diligent about recording your own attendance and be prepared to have a little wiggle room in case you are unable to attend later in the semester.

I take attendance by QR code that is presented on the first slide of the day. Because we need to begin class, this is typically removed within a minute of the class beginning (at 9:55 a.m.).

If you are present in class and were on time, but you have difficulty with the QR code or link: you **must** email me immediately when this occurs so I can note your timely attendance.

If you are present for class but missed the QR code due to arriving late: you **must** email me *upon arrival* to let me know that you were late and missed the QR code, but you are now currently in class. I will then be able to give you credit for attending class. Otherwise, I cannot.

Two tardies equals one unexcused absence. As described above, being on time means you are in the classroom and ready to participate in class when it starts at 9:55 a.m. Joining class on Teams does not count as attendance. Additionally, students cannot consistently absent themselves for long periods during class. Of course, I understand if you need to excuse yourself occasionally, but doing so every class, multiple times in the same class, or in another unreasonable way indicates that you are not complying with the participation requirement (see below) in the course and may count as an absence or otherwise impact your final grade.

For more information, please speak directly with the Registrar's Office. If additional absences are due to a health issue or another extraordinary circumstance beyond your control, contact Vice Dean for Students Brennan as a withdrawal or medical leave may be appropriate.

On occasion, we may need to have class virtually on Teams due to inclement weather or other unforeseen circumstances. I ask that you all commit to full participation in a virtual forum as well if this situation arises.

#### **CLASS PARTICIPATION, DISCUSSION AND PREPARATION:**

Like the practice of law, our class is a collaboration. Your classmates depend on your participation to get the most out of the course. Additionally, we sometimes work in small groups (as discussed in more detail below), which requires the entire class to have read the material. Therefore, I expect every student to complete the assigned readings and fully participate in each class.

Class discussion, including responding to questions asked by me and points made by your classmates, is an essential component of this course. That said, ***please do not confuse quantity with quality.*** Being a part of class discussion includes actively listening, not disengaging, or merely waiting to speak, and contributing in useful ways in accordance with the classroom environment section above. If you find yourself talking frequently in class, take the

responsibility for listening more. If you never talk in class, take the responsibility for contributing more.

This class will involve a mix of Socratic method and other forms of teaching/learning. You should consider yourselves to be “on call” at all times, even if I called on you in a recent class or earlier during the same lesson. You are free to “pass” once if something is going on and you have not had time to prepare for class. To pass, you must notify me before class starts (either via email or in person) and I will not call on you that day. However, you should expect to be called on during a future class in short order. Passing more than once will put you in jeopardy of negatively impacting your final grade (in accordance with the paragraph below).

In addition to cold calls, I will take volunteers and I hope that you will volunteer and share your reasoning with the class. I will not hold it against you if you decline to volunteer. However, to diversify perspectives, I will not rely solely upon volunteers in this course.

As you will see in the “Grading” section, I do not grade “participation” as a factor in determining your final grade. Do not interpret that to mean your participation is not required. To the contrary, I assume you all will be excellent participants! Essentially, if you follow the expectations in this syllabus, you will have no issue. However, if you consistently pass or violate other classroom rules, ***I reserve the right to lower your final grade by up to one letter grade (this means your grade could lower from an A- to a B-, for example) to reflect these violations of classroom expectations.***

Now that I have clarified the expectations, let me also say that I am incredibly understanding if, ***in advance of class***, you alert me to any issues, *other than a lack of preparedness*, that impact your participation. If, due to the nature of the topic matter, a personal life experience, or another sensitive personal reason, a certain class is not one that you feel comfortable contributing to, please let me know in advance of class via email. You do not need to provide the specific reason why in this circumstance. I trust you all to be sincere and not use this to get out of being “on-call.”

#### **IN-CLASS EXERCISES/GROUP WORK AND OUT OF CLASS WORK:**

In addition to classroom discussion, your participation in in-class exercises, group work, and out of class work is a consideration for assessing your overall performance.

We may do various exercises throughout the semester, including advocacy roles where we argue facts. Students may be required to participate in role-playing exercises (as a witness, the prosecutor, the defense counsel, the defendant, the judge, etc.). These exercises may be required both in and out of the classroom. Often, these exercises occur in groups.

Similarly, we will use groups at various times to discuss assigned readings or other topics in this course. Please do not underestimate the value of group work. As an attorney, you are often required to collaborate with a team. It bears repeating that I often use the “groups” tab on canvas to create random groups. Please familiarize yourself with this tab so you can easily access your group assignments.

### **OTHER FORMATIVE ASSESSMENTS:**

You might periodically get discussion assignments, group work assignments, short quizzes, short answer questions or other exercises that will be graded only for completion. The completion of these assignments will count toward your grade, as reflected in the Grading Section below. My hope is that these exercises give you practice engaging with the concepts we cover in this course before the exam (and an opportunity to see how much you have already learned at various points in the semester).

### **ASSIGNED READINGS AND COURSE MATERIAL:**

There is a separate document with your reading assignments. These readings are tentative and may change throughout the semester as current events, time, and interest necessitate. Again, **you must check our Canvas site regularly to stay current on the assignments for each week. I may update individual weekly modules with any additional materials required for classes. The casebook reading assignments are unlikely to change unless reduced.**

A note: our book contains *notes*, topical articles, and other material. If I have assigned it, it is important to framing your consideration and understanding of criminal procedure issues. The cases are not the only things that matter. You must read every assigned reading. I would strongly suggest paying attention to topic headings, sections, all notes after, *and footnotes* within, the readings.

Because there is a lot to learn regarding Constitutional Criminal Procedure, and because I do not try to overburden you with excessive reading assignments, I will often discuss updates to a case or body of law. These updates may not be assigned reading (though, at times, short updates are contained in the *notes* after a case or in articles you are assigned to read); however, you are responsible for knowing the information and how it may shift the analysis of the Constitutional issue. The information will be accessible to you in my PowerPoint slides.

### **HOW A CRIMINAL CASE MOVES THROUGH COURT/PROCEDURAL HISTORY/SCOTUS FOCUS:**

Almost every case we cover in this course is an opinion of the Supreme Court of the United States. It is critical that you focus on how the case arrived in front of the Court. What were the steps that happened at the trial level, then where did the case go next? At its inception, was it a federal or a state level case? How does this impact the individual? What facts do you think shifted the Courts' focus? What facts, if changed slightly, might have led to a different outcome? These are all questions you should come to class prepared to answer in addition to briefing the case. While evaluating each case's procedural history, seek out definitions for unfamiliar motions or other terms of art that you have not heard before. Also, consider facts that would best support the argument by the prosecutor or the defense attorney. All of this may be asked of you if you are called on at random. Read the cases carefully, taking time to understand majority opinions, concurrences, and dissents and the legal theories and underpinnings of their rationale.

### **POWERPOINTS:**

I utilize PowerPoint slides throughout the course. I will provide you with a pdf version of my slides at the end of each week through Canvas. I ask that you not share these slides with anyone outside of our course.

You will see that my PowerPoint slides for this course are robust. Learning criminal procedure requires you to understand the rationale of the Court and Its composition at the time of the opinion. The slides are designed to detail various parts of the opinion, for a deeper understanding of the case. As noted above, they will, at times, cover cases that we have not read to ensure you are up to date on a particular area of Constitutional Criminal Procedure.

#### **ACCOMMODATIONS:**

If you have a disability and would like to request an accommodation for any reason and/or any aspect of the class, please review our accommodations policy [here](#). Follow the instructions by completing the on-line form and uploading the required supporting documentation to ensure the accommodation is considered in a timely manner. Contact Associate Dean of Diversity, Equity, and Inclusion, Lisa Ryan, for any accommodation request or questions. Please note that requests made within two weeks of an examination may not be granted in time. Please make your request as soon as possible.

#### **QUESTIONS:**

You are welcome to reach out directly to me or to any of the TAs with questions; however, please know that I am not a big fan of answering substantive questions *via* email. One of the reasons for this is because I value getting to know each of you, so I prefer the kind of back-and-forth exchange we can have when talking with each other. With that understanding, please feel free to ask me a question via email or canvas if you think the question is straightforward enough that it does not warrant a meeting or if you think it is something I should clarify with the class.

#### **GRADING:**

1. 10% - Exercises, Group Work, Discussion Groups, and Other Formative Assessments
2. 20% - Midterm
3. 70% - Final Exam

#### **EXAMS:**

You will have one midterm exam and one final exam. The exams may include multiple choice questions, true/false questions, short answer questions, and essay questions. They may also require you to review materials in a criminal case file and assess possible motions to suppress. I will discuss the exams more as we progress through the course. For now, please know that you are responsible for all material covered in class (including any guest speakers or information otherwise discussed or distributed for class and anything posted in Canvas, such as information in handouts, supplementary readings, video clips, in-class exercises, etc.) unless I tell you otherwise. This is important to note now. As expressed above in the assigned readings and course materials section, understanding that the course covers a significant amount of material, I have chosen not to assign you every vital case. If you see cases that only appear in a note in the book *or* cases solely discussed in class / appearing in my slides, these are still a part of our study in this course and may be tested on the final exam to the same extent you learned them in this course. For cases we did not read, you will only be tested on what is discussed in class and/or covered in the slides or notes.

***Midterm Exam:***

The midterm exam will be an in-person one hour exam through examsoft **on Wednesday, October 30, 2024**, during our class session. The midterm exam will be closed book; however, ***you will be allowed one printed sheet of 8.5 x 11 paper that you may bring for use during the exam.*** You may use both sides of the paper. You may handwrite or type. You can truly put whatever you would like on the piece of paper as long as it is only one sheet of that size.

***Final Exam:***

The final exam will be an in-class examination available through examsoft on a date later determined by the registrar. The final exam will be closed book; however, ***you will be allowed one printed sheet of 8.5 x 11 paper that you may bring for use during the exam.*** You may use both sides of the sheet. You may handwrite or type. You can truly put whatever you would like on the piece of paper as long as it is only one sheet of that size.

***Case Names:*** Because we are dealing with Supreme Court opinions, I do expect you to know case names, especially of major cases in the course.

***Exam Review:***

There will be a two-week deadline from the publication of your grade in the course to reach out to me to schedule a review of your final exam. This is so that the exam is fresh in both of our minds, enabling a productive and helpful conversation. I will first have you meet with my administrative assistant, Brenda Caron, to review the materials. You will then need to schedule a follow-up appointment with me if you have remaining questions.

**COMPUTERS AND TECHNOLOGY:**

If you choose to use a laptop or other electronic device during class, use it *only* for class related purposes. Do not use the internet unless I ask you to do so or if you need to send me an email related to your class attendance, as noted above. I recognize that we all think we are terrific multi-taskers, and even if that is true for you, it can be very distracting to others, including classmates sitting near you or behind you. For the same reason, texting during class is also prohibited. Please silence all electronic devices during class.

**RECORDING CLASS:**

Do not independently record the class without checking with me beforehand and/or obtaining permission to do so. Links to class recordings will be available on our Canvas site in a module entitled “All Recordings.”

**SYLLABUS AND AMENDMENTS:**

This is an important document for our class. It sets the expectations for each of you as we begin the semester. To incentivize your careful attention to it, I will offer a food item of the majority’s choice (e.g. pizza, ice cream, etc.) “party” at the end of the semester if we make it through the course without *anyone* asking me a question that is answered in this syllabus. An important lesson to learn from law school that will immensely benefit your practice as an attorney, is always check the rules to find the answer *first*. Conversely, if someone asks me a question that can be found in this syllabus, I will alert the person to that and ask that you seek the answer yourself. Any Amendments to the Syllabus will be made in writing.

**FINAL THOUGHTS:**

I value all perspectives and experiences, and I expect each of you to contribute in meaningful ways to class discussion based on your careful preparation for class, as well as on the individual experiences and perspectives that shape and influence your understanding of the material. I hope to meet you all on an individual basis during the semester so do not hesitate to contact me! I look forward to working with each of you.

Please affirm that you have read the syllabus for our course in its entirety:

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Signature (virtual signature is fine)

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Print Name

When you have affirmed above, please save only the signed last page of this document (p. 9) as a pdf and upload it to canvas under the “Syllabus Affirmation” assignment.