Criminal Procedure: Investigations  
Professor Andrew Manuel Crespo  
Spring Semester, 2016  
Wednesdays & Thursdays, 1:00-3:00pm

Course Overview:  
This course examines the complex sociolegal relationship between the people and the police. Our primary focus will be on the role of the judiciary in balancing society’s often competing interests in liberty and security. Topics will include the principal constitutional criminal law doctrines of the Fourth and Fifth Amendments, as they relate to custodial interrogation, search and seizure (including stop and frisk, probable cause, arrests, warrants, and surveillance), and the right to counsel. Beyond doctrinal examination, we will explore the many social, institutional and policy challenges associated with modern day policing, particularly as it exists and is carried out in American cities.

Teaching Method & Class Policies:  
Socratic Method – Class is conducted primarily through Socratic “cold calling,” with limited volunteering. I aim to call on a large portion of the class during each session, drawing largely from a randomized list. As such, being called on does not preclude being called on again later in the same class or the following day.

No Call List – Students are expected to come to class having completed the reading and prepared for discussion; passing is not permitted. Students may, however, place their names on a “no call list” by emailing me (acrespo@law.harvard.edu) and my assistant, Ashley Nahlen (anahlen@law.harvard.edu), by 9:00am on the morning of class.

No Laptop Policy – Laptops are not permitted in class. If special circumstances require you to use a laptop, please let me and the Law School’s Accessibility Services staff know (accessibility@law.harvard.edu).

No Personal Narratives Policy – We will often discuss hard and challenging topics in this class, as the criminal justice system, by its
very nature, grapples with societal and interpersonal conflict in some of its most troubling manifestations. It is possible that you or your classmates, or people close to you, have had experiences that directly relate to topics we will discuss in class—including perhaps having been stopped or questioned by the police, or having been the victim of a crime. Your life experiences will, of course, inform your perspectives on the topics we discuss. Your comments in class, however, should not directly recount those experiences. This policy is designed to foster full and open communication, which is often difficult to maintain if discussion shifts from the merits of the laws, policies and problems we will discuss to the merits of individual classmates’ personal reactions to events in their own lives—reactions that are often hard to debate or contest.

By way of example, it would contravene this policy to frame a class comment by saying, “I have a friend who was falsely accused of assaulting someone, and so I don’t think the Court gave enough weight to . . . .” Or to say, “As a Latino man, I think the police should . . . .” It is, however, perfectly permissible—indeed, expected—that you will express the substance of your views, stripped of the personal narrative. (E.g., “Some people are falsely accused, and I think that is an important consideration to take into account when . . . .” or “I think that race and ethnicity factor into these interactions by . . . .”).

Reading Assignments: The course is organized into eight units, each of which contains specific subtopics that we will aim to cover over the course of the semester. The syllabus is designed to be flexible, in response to the pace and dynamics of our in-class discussion. To accommodate that flexibility, weekly reading assignments will be posted to the course website on a rolling basis, with each week’s assignment generally posted no later than the preceding Thursday. Reading assignments are available on the website in two places: (1) on the “syllabus page,” which will collect all past and current assignments in one location; and (2) via the class session “module buttons” located on the bottom of the course homepage.
Except as otherwise noted, all page numbers refer to Allen, Stuntz, Hoffman, Livingston & Leipold, *Criminal Procedure: Investigation & Right to Counsel* (2d ed. 2011). Assignments bearing the notation “Supp.” refer to the corresponding Allen, Stuntz et al., *Comprehensive Criminal Procedure 2015 Supplement*. Assignments bearing the notation “CW” are available via the “module page” of the course website for the applicable class session. (Note: Module pages will appear as “unavailable” prior to the posting of the relevant assignment.) If you would like printed copies of any of supplemental materials posted on the website in a given week, you may email my assistant Ashley Nahlen (anahlen@law.harvard.edu).

**Final Exam:** The final grade in this class will be determined on the basis of a one-day (8 hour) exam. We will discuss the details of the exam later in the semester.

**Office Hours & Class Questions:** My office hours are Fridays from 2:00-4:00pm in Griswold 308. Appointments are available between 2:00pm and 3:15pm. To schedule an appointment, please email my assistant, Ashley Nahlen (anahlen@law.harvard.edu). Between 3:15pm to 4:00pm, I hold open office hours, meaning that any student or group of students from our class may come without an appointment for a nonprivate discussion with whomever else comes by during that time window.

For substantive questions about topics discussed in class, I may ask you to email me so that I have the opportunity to provide a written response to the class as a whole via the course website.

**Course Website:** The course website is the primary mechanism by which I make class announcements, including updates to reading assignments. Please make sure to set your Canvas account to forward course announcements to your @law email address.

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ASSIGNED READING

1. REMEDIES, RIGHTS & REGULATION

- **The Exclusionary Rule (Jan. 27)**
  
  - *People v. Defore*, 150 N.E. 585 (N.Y. 1926)

- **Exclusion as Judicial Regulation (Jan. 28)**
  
  - On Deterrence (Notes 8-10) 350-52
  - On Perjury (Note 7) 349-50
  - Other Remedies 353-61

2. THE ORIGINS OF CONSTITUTIONAL CRIMINAL LAW: RACE & DUE PROCESS

- **"Due Process of Law" (Feb. 3)**
  
  - *Hurtado v. California*, 110 U.S. 516 (1884)
  - *Rochin v. California*, 342 U.S. 165 (1952)

3. INTERROGATION AND “THE CRIMINAL PROCEDURE REVOLUTION”

- **The Road to Miranda (Feb. 4)**
  
  - *Ashcraft v. Tennessee*, 322 U.S. 143 (1944)
  - *Cicenia v. Lagay*, 357 U.S. 504 (1958)
• **“You have the right…” (Feb. 10)**

• **Miranda’s Mechanics**

  **Invocation (Feb. 11)**
  - Metropolitan Police Department Form PD-47  CW
  - Interrogation Transcript  CW
  - A wise Public Defender’s Business Card  CW

  **Warnings & Waivers (Feb. 17)**
  - On Warnings 811
  - On Waivers 828
  - *United States v. Lall*, 607 F.3d 1277 (11th Cir. 2010)  CW

  **Interrogation & Custody (Feb. 18)**
  - On Custody 795
4. Privacy & Autonomy

- Reasonable Expectations (Mar. 2-3)

March 2nd
- Note Seven: On Curtilage 371-72
Note Two: Bond v. United States, 529 U.S. 334 (2000)  376-77

March 3rd
On Undercover Agents  921-22
Smith v. Maryland, 442 U.S. 735 (1979)  CW

Surveillance & Privacy in the Twenty-First Century

March 9th
On Electronic Surveillance & Electronic Data  900-01
On Wiretapping under Title III  901-04
On the Search of Electronic Files under the SCA  909-10

March 10th
ACLU v. Clapper, 959 F. Supp. 2d 724 (S.D.N.Y. 2013)  CW

Seizures & Consent (Mar. 23rd)


5. The Warrant “Requirement”

Understanding Probable Cause (Mar. 24)

On Probable Cause and Warrants  418-19
On the Probable Cause Standard  432-35
Ornelas v. United States, 517 U.S. 690 (1996)  CW
• Warrants & Their Exceptions

The Warrant Process (Mar. 30)
- On the Warrant “Requirement” 421-22
- On the Oath or Affirmation Requirement 423-24
- On Magistrates 424-25

Exigencies & Emergencies (Mar. 30)
- Hopkins v. Bonvicino, 573 F.3d 752 (9th Cir. 2009) CW
- Stanton v. Simms, 134 S.Ct. 3 (2013) CW

Plain View (Mar. 31)
- Arizona v. Hicks, 480 U.S. 321 (1987) 466-69

Automobiles (Mar. 31)

Arrests & Searches Incident Thereto (Apr. 6)
- On Searches Incident to Arrest 515-16
- Chimel v. California, 395 U.S. 752 (1969) 516-21
6. REASONABLENESS

• Stop and Frisk (Apr. 7)
  o On Stop and Frisk
    - Terry v. Ohio, 392 U.S. 1 (1968) 539
    - Note Four: Dunaway v. New York, 442 U.S. 200 (1979) 552
    - Note Two: Pennsylvania v. Minnms, 434 U.S. 105 (1977) 555

• Reasonable Suspicion, Racialized Suspicion & Pretext (Apr. 13)
  o Florida v. J.L., 529 U.S. 266 (2000) 559-561
  o U.S. Dep’t of Justice, Guidance Regarding the Use of Race 575

• Policing as a Program (Apr. 14)
  o N.Y. Times Video – Stop and Frisk in Brownsville (July 2010) CW
  o N.Y. Times Video – The Scars of Stop and Frisk (June 2012) CW
  o N.Y. Times Video – Omnipresence (Sept. 2014) CW

• Deadly & Excessive Force (Apr. 20)
  Note: the assignment below includes video and images (marked with asterisks) that depict the use of deadly force against two individuals—Eric Garner and twelve-year-old Tamir Rice—both of whom died as a result.
  o The Nation, Stopped-and-Frisked ‘For Being a F**king Mutt’ CW
  o On Criminal Prosecution 357-59
7. RIGHTS, REMEDIES & REGULATION RECONSIDERED

• **Standing (Apr. 20)**
  

• **Good Faith (Apr. 21)**
  
  o *Davis v. United States*, 131 S.Ct. 2419 (2011) Supp. 201-10
  o *Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972) CW