

**CRIMINAL INVESTIGATION
IN A DIGITAL AGE
ADJUNCT PROFESSOR DANIEL C. IRICK
UNIVERSITY OF FLORIDA LEVIN COLLEGE OF LAW
FALL 2022 SYLLABUS – LAW 6936 – 2 CREDITS**

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Office Hours: Wednesday from 6:00 p.m. to 6:30 p.m. and from 8:30 p.m. to 9:00 p.m. in our classroom, as well as on Zoom or by appointment.

Meeting Time: Tuesdays 6:30 p.m. – 8:30 p.m.

Location: 285A

Course Description:

This seminar will explore the interplay between the existence of ever-more-complex-and-interrelated data and devices and the current legal framework for federal criminal investigations. It will cover the Electronic Communications Privacy Act (as amended), the Fourth Amendment, the Federal Rules of Criminal Procedure, and Department of Justice policy. The seminar will involve in-depth statutory analysis as well as discussion of the practical and legal implications of conducting criminal investigations at the intersection of existing rules and emerging technologies. This seminar provides an opportunity to satisfy the Advanced Writing Requirement.

Course Objectives/Learning Outcomes:

At the end of this course, students should be able to perform the following:

- Describe the constitutional, statutory, administrative, and ethical framework of federal criminal investigations.
- Distinguish between the legal standards involved in obtaining evidence via subpoena, court order, and search warrant.
- Distinguish between obtaining historical and prospective content and non-content electronic evidence.
- Identify constitutional, statutory, policy, and ethical limitations on gathering evidence and using the evidence gathered.
- Engage in critical interpretation of selected statutes and rules discussed during the course – in particular, the Electronic Communications Privacy Act (as amended over time), the Federal Rules of Criminal Procedure, and the Federal Rules of Evidence.
- Based on a given fact pattern, craft a legal and ethical plan to investigate and, if appropriate, prosecute suspected illegal activity.
- Craft a persuasive legal argument using a discrete legal question.

Required Reading Materials:

No textbook is required. Instead, you are required to read and prepare materials that will be posted on Canvas, or available on Westlaw or the Internet. You must register for the Canvas course and you must have the materials with you in print or easily accessible electronic form in class. You are responsible for checking your Canvas page and the e-mail connected to the page on a regular basis for any class announcements or adjustments.

Class Attendance:

Students are expected to attend and participate in class. I am assuming that each student enrolled in this course is committing to attend every class to the best of their abilities, and class attendance is required by both the ABA and the Law School. In accordance with ABA guidance on acceptable rates of classroom absences, you are permitted two absences from class, for any reason, including for job interviews, school activities, work tasks, illness or medical appointments other than those related to COVID-19, and life. For ease of administration and to respect your privacy, I do not make any differentiation between “excused” or “unexcused” absences, with two exceptions listed below. This means that there is no need to tell me why you will be or were absent from class, so long as you have two or fewer absences total. If possible, professional courtesy encourages you to notify me if you will not be in class. Please budget accordingly so that you are not left at the end of the semester with a needed absence and your budget depleted.

The two exceptions to this policy are (1) absences for observance of a University-recognized religious holiday and (2) absences due to COVID-19, both of which do not count toward your two total absences. Excused absences, including observance of religious holidays, are consistent with University policies, <https://catalog.ufl.edu/ugrad/1617/regulations/info/attendance.aspx>, and require appropriate documents and/or notification before or shortly after class about your absence.

In addition, please notify me should you have a family or medical situation or an emergency that will require missing more than two classes, and we will discuss how to accommodate your situation. For each absence beyond two, grade will be reduced by one-third of a grade (e.g., A- to B+). If you miss four or more scheduled classes, I have the discretion to render you ineligible to receive credit for the course.

Professional Courtesy

As a matter of professionalism, you are expected to be on time for class—meaning seated and ready to begin when class starts. Arriving late is disruptive not only to me, but to your fellow students. Please do not arrive late to class or leave early absent extenuating circumstances. If you need to do so, please sit near one of the exits to minimize your disruption to others and notify me in advance. Please make sure your cell phone is turned off during class. I reserve the right to deduct points from your final grade if you engage in behavior that significantly disrupts the learning environment for your classmates. After two late arrivals, each additional late arrival will be counted as a class absence.

Although laptops and comparable technology are not prohibited, I would encourage you to use them judiciously. Without a textbook, I understand that you may rely on them for your readings and your notes, but please close all other browser windows, including your email. Unfortunately, many of us succumb to the temptation to multi-task, and for the time we are together, you owe yourself, your classmates, and me your focused attention. I appreciate eye contact and engagement (laughter at my bad jokes can count as engagement) and participation is part of your grade.

Course Expectations:

Each class session will involve a mix of lecture, exercises, and discussion, all focusing on the week’s assigned material. For some classes, guest speakers may join us. The requirements for the seminar are:

- *Reading and Viewing:* Each class session will require you to read and/or view materials. You are expected to read and view those materials before class, so that you are prepared to discuss them in the seminar. Readings and viewings will be posted on Canvas.
- *One “discussion leader” day:* For one week during the semester, you will be required to serve as a discussion leader. For one class during the semester, you should have prepared at least two discussion questions and/or hot topics on the Canvas discussion board by the day before class (Monday) at 12:00 pm and be prepared to lead your colleagues in a discussion of these questions during class.
- *Peer Review.* Near the end of the semester, you will conduct a peer review of a colleague’s paper draft, developing critical skills involving constructive criticism.
- *Paper Presentation.* At the end of the semester you will be required to make a short presentation of the argument you are making in your final paper. Guidelines for the presentation will be provided.
- *Final Paper.* A final paper of 25 pages, not including title page and table of contents, is required. The paper will be due on November 15, 2023. The seminar paper must be primarily of an analytical rather than descriptive nature. Factors relevant to the grading of papers (in no particular order) are: Depth of Research; Organization and Clarity; Thoroughness; Originality; Accuracy and Professionalism; Compliance with Directions; Addressing Irick Comments from Draft, Citations, and Strict Compliance with Honor Code (including proscriptions against plagiarism). This seminar is structured in such a way as to satisfy the College of Law’s Advanced Writing Requirement. According to the Faculty Handbook,

All J.D. candidates must complete—under close faculty supervision—a major, written product that shows evidence of original scholarship based on individual research. Students often satisfy this requirement in a seminar course...If fulfilled in an advanced course, the required writing may take the form of one or a number of finished written products that together demonstrate these qualities. The general standard for fulfillment of the advanced writing requirement is one or more papers that are cumulatively at least 25 pages of double-spaced, 12-point text or the equivalent.

- *Paper Progress.* Key steps of the writing process are provided below. Detailed requirements for each step are provided on Canvas. Canvas will not accept late submissions, so please ensure you meet the submission deadlines. Late submissions may not be accepted, but at the very least, will receive a grade reduction.

Key Dates	Due
Sept. 2	Three potential research ideas
Sept. 9	Develop a thesis and tentative outline for leading research idea
Sept. 27	Obtain approval from Prof. Irick of final research thesis [Must have met at least once one-on-one with Prof. Irick before this time]
Oct. 7	Final thesis plus detailed outline (2-3 pages)
Oct. 21	5 pages of Draft Paper for Peer Review (plus the detailed outline)
Oct. 25	Return edits to classmate (due by start of class)
Nov. 4	Draft Paper for Prof. Irick
Nov. 11	Receive edits from Prof. Irick
Nov. 23	Final Paper

Grading Evaluation:

Students will be evaluated based upon participation, assignments, and a longer analysis that satisfies the writing requirement subject to any adjustment for attendance. There is no exam for this class.

Class Component	Percent of Grade
Participation (includes presentation, peer review, and any weekly assignments)	30%
Pre-final paper submissions (outline, draft, etc.)	20%
Final Paper (25 pages)	50%
TOTAL	100%

University Policy on Academic Misconduct: Academic honesty and integrity are fundamental values of the University community. Students should be sure that they understand the UF Student Honor Code at <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/additional-information/honor-code-and-committee/honor-code> and <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/additional-information/honor-code-and-committee/honor-code-violations>.

Please pay particular note to the following:**Prohibition on Publication of Class Recordings:**

All classes will be recorded via Mediasite in case students must miss class for health reasons. The Office of Student Affairs will determine when students may have access to these recordings, and the recordings will be password protected. Students are allowed to record video or audio of “class lectures.”³ However, the purposes for which these recordings may be used are strictly controlled. The only allowable purposes are (1) for personal educational use, (2) in connection with a complaint to the university, or (3) as evidence in, or in preparation for, a criminal or civil proceeding. All other purposes are prohibited. Specifically, students may not publish recorded lectures without the written consent of the instructor.

Publication without permission of the instructor is prohibited. To “publish” means to share, transmit, circulate, distribute, or provide access to a recording, regardless of format or medium, to another person (or persons), including but not limited to another student within the same class section. Additionally, a recording, or transcript of a recording, is considered published if it is posted on or uploaded to, in whole or in part, any media platform, including but not limited to social media, book, magazine, newspaper, leaflet, or third party note/tutoring services. A student who publishes a recording without written consent may be subject to a civil cause of action instituted by a person injured by the publication and/or discipline under UF Regulation 4.040 Student Honor Code and Student Conduct Code.

Information on UF Law Grading Policies:

The Levin College of Law’s mean and mandatory distributions are posted on the College’s website and this class adheres to that posted grading policy. The following chart describes the specific letter grade/grade point equivalent in place:

Letter Grade	Point Equivalent
A (Excellent)	4.0
A-	3.67
B+	3.33
B	3.0
B-	2.67
C+	2.33
C (Satisfactory)	2.0
C-	1.67
D+	1.33
D (Poor)	1.0
D-	0.67
E (Failure)	0.0

The law school grading policy is available at <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/uf-law-student-handbook-and-academic-policies>.

Policy related to make-up exams or other work:

The law school policy on delay in taking exams can be found at: <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/forms-applications/exam-delays-accommodations-form>.

University Policy on Accommodating Students with Disabilities:

Students requesting accommodation for disabilities must first register with the the [Disability Resource Center](#). Once registered, students will receive an accommodation letter which must be presented to the Assistant Dean for Student Affairs (Dean Mitchell) when requesting accommodation. Students with disabilities should follow this procedure as early as possible in the semester, as accommodations are not retroactive. It is important for students to share their accommodation letter with their instructor and discuss their access needs as early as possible in the semester. This course does not have an exam, but questions about delays can be found [here](#).

Student Course Evaluation: UF expects each student to provide feedback on the quality of instruction in this course by completing online evaluations at <https://evaluations.ufl.edu>. Evaluations are typically open

during the last two or three weeks of the semester, but students will be given specific times when they are open by the Office of Student Affairs. Summary results of these assessments are available to students at <https://evaluations.ufl.edu/results/>.

Preferred Names and Pronouns

Many of you may have a preferred name that is not the name given to me on the official roll. It is important to the learning environment that you feel welcome and safe in this class. I want you to be comfortable participating in class discussions and communicating with me on any issues related to the class. I would like to refer to you by your preferred pronoun and last name. As such, if your preferred name is not the name listed on the official UF roll, please let me know as soon as possible by e-mail or otherwise before the first day of class.²

Discourse, Inclusion, and the Classroom

As a law student and future lawyer, it is important that you be able to engage in rigorous discourse and critical evaluation while also demonstrating civility and respect for others. This is even more important in the case of controversial issues and other topics that may elicit strong emotions. As a group, we are likely diverse across racial, ethnic, sexual orientation, gender identity, economic, religious, and political lines. As we enter one of the great learning spaces in the world—the law school classroom—and develop our unique personality as a class section, I encourage each of us to:

- commit to self-examination of our values and assumptions;
- speak honestly, thoughtfully, and respectfully;
- listen carefully and respectfully;
- reserve the right to change our mind and allow for others to do the same;
- allow ourselves and each other to verbalize ideas and to push the boundaries of logic and reasoning both as a means of exploring our beliefs as well as a method of sharpening our skills as lawyers.

Weekly Course Schedule of Topics and Assignments:

This syllabus is offered as a guide to the direction of the course. I suggest you use the Canvas site to access your assignments as everything should be linked and easy to find there. I will post future assignments on Canvas at least a week before the class and may be adjusted based on the availability of our speakers. Our pace will depend in part on the level of interest and the level of difficulty of each section, but I try hard to keep us on track so you should try hard not to fall behind. ABA Standard 310 requires that students devote 120 minutes to out-of-class preparation for every “classroom hour” of in-class instruction. This seminar has 2 “classroom hours” of in-class instruction each week, requiring **at least four hours** of preparation outside of class. Accordingly, the readings reflect a diversity of videos and readings with varied difficulty, depending on the texts we will rely upon each week (e.g., cases, statutory, policy documents, news articles). **Students should expect to spend at least two hours outside of class reading and preparing for every hour of class.**

	Date	Topics	Reading
1	8/23	<i>Introduction to Federal Investigations</i> Federal vs. State Investigations Types of Federal Investigations	Amendments 1, 4, 5, and 6 to the U.S. Constitution Fed. R. Crim. P. 6 and 41 Wire Fraud Statute - 18 U.S.C. 1343

	Date	Topics	Reading
		<p>Overview of relevant legal authority and standards:</p> <ul style="list-style-type: none"> - U.S. Constitution - United States Code - Rules of Evidence - Fed. R. Crim. P. - Probable cause and other standards - Ethical standards - Justice Manual (JM): <p>https://www.justice.gov/jm/title-9-criminal</p> <ul style="list-style-type: none"> - U.S. DO.J. Criminal Resource Manual <p>The chronology of a complex federal investigation – building the wall of evidence.</p>	<p>CFAA – 18 U.S.C.A. § 1030</p> <p>Material Support Statute - 18 U.S.C. § 2339B</p> <p>CSA – 21 U.S.C. § 841</p> <p>Unregistered foreign agents – 18 U.S.C. 1951</p> <p>IEEPA - 50 U.S.C. § 1705(b)</p> <p>Money Laundering – 18 U.S.C. 1956</p> <p>JM 9-2000 et seq. – skim materials, including the chart at 9-2.400</p> <p>JM 9-3.000 – org chart</p> <p>JM 9-27.000 et seq. – read the preface and 9-27.300</p> <p>JM 9-28.010</p> <p>JM 9-90.010</p>
2	8/30	<p><i>Overview of the Non-Electronic Portions of a Modern Investigation</i></p> <p>GJ Investigations, Parallel Proceedings, Undercover Agents, Cooperators, Open-Source Information, and the Use of Deception</p>	<p>Reading and Assignment TBD</p>
3	9/6	<p><i>Warrants – Part 1</i></p> <p>Overview – Probable Cause and Uses</p>	<p>Reading and Assignment TBD</p>

	Date	Topics	Reading
4	9/13	<i>Electronic Evidence Gathering Statutes – Part 1</i> Overview – Applicable Standards and Uses	Reading and Assignment TBD
5	9/20	<i>Jurisdiction, Venue, Notice, and Non-Disclosure</i>	Reading and Assignment TBD Three potential paper thesis proposals: Due via CANVAS by 5:00 p.m. on 9/21
6	9/27	<i>Electronic Evidence Gathering Statutes – Part 2</i> Focus on Non-Content Data / Historical	Reading and Assignment TBD
7	10/4	<i>Electronic Evidence Gathering Statutes – Part 3</i> Focus on Prospective Content	Reading and Assignment TBD Thesis Approval Required from Professor Irick
8	10/11	<i>Warrants – Part 2</i> Focus on Prospective Non-Content	Reading and Assignment TBD
9	10/18	<i>Warrants – Part 3</i> Focus on Tracking Warrants	Reading and Assignment TBD

10	10/25	<i>Warrants – Part 4</i> Focus on Particularity and Biometrics	Reading and Assignment TBD Submit thesis, outline, plus 5 pages of Text for Peer Review via EMAIL by 5:00 p.m. to Prof. Irick and your assigned reviewer
11	11/1	<i>Warrants – Part 5</i> Focus on Reasonable Execution	Reading and Assignment TBD
12	11/8	<i>Warrants – Part 6</i> Focus on Geofence, Triggerfish, NITs, and Special Techniques and Problems	Reading and Assignment TBD
13	11/15	<i>Putting it all Together – Using Electronic Evidence in a Criminal Prosecution</i>	Reading and Assignment TBD Assignment: FINAL PAPER DUE at 5:00 pm (25 pages double-spaced).