

CRIMINAL PROCEDURE I SYLLABUS
DEAN GALLINI, FALL 2021

CHAPTER 1: LAWYERING, COURSE PLACEMENT, AND CONFLICTS

I. Where Investigatory Criminal Procedure Fits

A. **An Overview of the Criminal Process**

1-13 (Introductory readings)

B. **Who is the “Typical” Defendant?**

14-15

C. **Understanding Incorporation**

15-17 (Introduction)

18-22 (Malloy v. Hogan) → background

II. The Importance of Lawyering

A. **Meet Adnan Syed**

22-26

B. **What is “Effective Assistance” of Counsel?**

26-27 (Introductory comments)

27-46 (Strickland v. Washington)

Adnan Syed filings (online repository)

CHAPTER 2: FOURTH AMENDMENT REMEDIES

I. Meet Alex Levin

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II. Introduction to the Fourth Amendment Text (and Accompanying Debates)

87-91 (Introductory comments)

III. The Rise of the Exclusionary Rule

91-94 (Introductory comments)

95-104 (Mapp v. Ohio)

104-07 (Silverthorne Lumber Co. v. United States)

Alex Levin filings (online repository)

IV. The Decline of the Exclusionary Rule

107-16 (United States v. Calandra)

116-30 (United States v. Leon)

130-39 (Davis v. United States)

- V. Exceptions to Exclusion
139-41 (Introductory comments)
 - A. **Good Faith Revisited (*Leon in Action*)**
141-46 (Massachusetts v. Sheppard)
 - B. **Attenuation**
146-53 (Wong Sun v. United States)
153-57 (United States v. Ceccolini)
157-65 (Utah v. Strieff)
 - C. **Independent Source**
165-74 (Murray v. United States)
 - D. **Inevitable Discovery**
174-83 (Nix v. Williams)

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- I. The Threshold Question: Does the Fourth Amendment Apply?
185-91 (Introductory comments)
- II. What is a Fourth Amendment “Search”?
 - A. **Meet Ross Ulbricht**
191-95
 - B. **The Reasonable Expectation of Privacy Test**
195-202 (Katz v. United States)
Ross Ulbricht filings (online repository)
 - Size or Nature of Property*
203-08 (Open fields → Oliver v. United States)
209-16 (Curtilage → United States v. Dunn)
216-21 (Activities within the home → Kyllo v. United States)
 - Defendant’s Effort to Protect their Privacy*
221-27 (Knowing exposure → California v. Greenwood)
227-32 (Assumption of the risk → United States v. White)
233-36 (Contraband → Illinois v. Caballes)
 - Nature of the Government Intrusion*
236-43 (Greater intrusion → Florida v. Riley)
243-50 (Lesser intrusion → Smith v. Maryland)
250-76 (Lesser intrusion → Carpenter v. United States)

- C. **The Constitutional Trespass Test**
277-83 (United States v. Jones)
283-87 (Florida v. Jardines)

III. What is a Fourth Amendment “Seizure”?

- A. **Meet Albert Jones**
287-88

- B. **Seizures of People**
288-301 (United States v. Mendenhall)
Albert Jones filings (online repository)
302-06 (Brendlin v. California)
306-12 (California v. Hodari D.)

- C. **Seizures of Property**
312-16 (United States v. Karo)

- D. **Standing**
316-22 (Rakas v. Illinois) → background

IV. Complete Quiz 1

CHAPTER 4: JUSTIFICATIONS FOR SEARCHES, SEIZURES, AND OTHER LIMITED INTRUSIONS

- I. Introduction
323-27 (Introductory comments)

- II. Probable Cause
 - A. **Meet John Wayne Gacy**
327-32

 - B. **Defining the Doctrine**
333-48 (Illinois v. Gates)
John Wayne Gacy filings (online repository)
348-52 (United States v. Grubbs)
353-58 (Florida v. Harris)

 - C. **Probable Cause to do What?**
359-64 (Whren v. United States)

- III. Reasonable Suspicion
 - A. **Introduction**
365-70

B. The New York Stop & Frisk Litigation

370-73

C. Defining the Doctrine

373-89 (Terry v. Ohio)

Stop & Frisk Litigation filings (online repository)

D. Terry & Informants

389-91 (Adams v. Williams)

392-95 (Alabama v. White)

396-98 (Florida v. J.L.)

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403-11 (Illinois v. Wardlow)

IV. The Standards Face Off: Probable Cause vs. Reasonable Suspicion

427-30 (Dunaway v. New York)

431-34 (United States v. Sokolow) → background

434-41 (United States v. Sharpe)

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I. Introduction

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II. Requirements for a Valid Warrant

A. Neutral & Detached Magistrate

457-62 (Shadwick v. Tampa) → background

466-67 (notes following United States v. Parker)

B. Particularity

467-75 (Groh v. Ramirez)

C. Oath or Affirmation

475-81 (Clay v. State) → background

D. Other Challenges to the Facial Validity of a Warrant

481-86 (Franks v. Delaware)

III. Arrest Warrants

A. Meet Robert Durst

491-93

B. The Need for an Arrest Warrant

494-96 (United States v. Watson) → background

Robert Durst filings (online repository)
496-502 (Payton v. New York, skip the notes)

- C. **Executing an Arrest Warrant**
503-12 (Steagald v. United States, note 2 only)

IV. Search Warrants

- A. **Searching the Avery Salvage Yard**
512-15
- B. **Is there a Search Warrant Requirement?**
516-18
- C. **Executing & Returning a Search Warrant**
518-25 (United States v. Banks)
Steven Avery filings (online repository, Casefile Documents 1 & 2 only)

CHAPTER 6: SEARCH WARRANT “EXCEPTIONS” & WHEN SEARCH WARRANTS ARE NOT REQUIRED

- I. Introduction
547-49

As to each exception, understand & evaluate:

specific justification requirements (what the police must have or do in a particular case to allow them to search without warrant &, perhaps, without probable cause)

scope requirements for lawful search & seizure without warrant under each exception (re: persons, areas, vehicles, containers)

timing (when the warrantless search may/must be conducted)

general rationale for creating each exception to warrant “requirement” (remember the preference for warrants)

- II. Exigent Circumstances

- A. **Introduction**
549-50
- B. **Meet O.J. Simpson**
550-54
- C. **The Cases**
554-65 (Kentucky v. King)
O.J. Simpson filings (online repository)
577-79 (notes following Missouri v. McNeely)

587-89 (notes 3-5 following United States v. Caraballo)

III. Searches Incident to Arrest

A. **Introduction**

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B. **Meet Richard Kuklinski**

590-96

C. **The Cases**

- i. *Establishing the Search Incident to Arrest Doctrine*
596-600 (United States v. Robinson)
Richard Kuklinski filings (online repository)
- ii. *Accessing the Arrestee's Home*
600-04 (Maryland v. Buie) → background
- iii. *Accessing the Arrestee's Car*
604-12 (Arizona v. Gant)
- iv. *Accessing the Arrestee's Cell Phone*
613-23 (Riley v. California)

IV. Consent

A. **Introduction**

624-25

B. **Meet Zach Witman**

625-27

C. **The Cases**

- 628-43 (Schneckloth v. Bustamonte)
Zach Witman filings (online repository)
643-51 (Illinois v. Rodriguez)
652-59 (Fernandez v. California)

V. Automobile Exception

A. **Introduction**

659-62

B. **Meet Michael Garrett & Paul Rivera**

662-67

C. **The Cases**

667-77 (California v. Acevedo)
Garrett & Rivera filings (online repository)
677-84 (Wyoming v. Houghton)
684-92 (Collins v. Virginia)

VI. Plain Sense Seizures

A. **Introduction**

692-93

B. **The Cases**

- i. *Plain View Seizure*
696-706 (Horton v. California)
- ii. *Plain Feel*
707-11 (Minnesota v. Dickerson)
711-14 (Pennsylvania v. Mimms) → background

VII. Inventory Searches

A. **Introduction**

723-24

B. **The Cases**

725-31 (Florida v. Wells)

VIII. Complete Quiz 2

CHAPTER 7: INTERROGATION METHODS & THE DUE PROCESS “VOLUNTARINESS” TEST

I. Introduction

A. **Interrogation Methods**

787-92

B. **Social Science Responds**

792-95

II. The West Memphis Three

795-801

III. Voluntariness & the Due Process Protection

A. **Establishing the Doctrine**

801-14 (Spano v. New York)

West Memphis Three filings (online repository)

CHAPTER 8: *MIRANDA* & ITS PRECURSOR (*ESCOBEDO*)

I. *Miranda*: The History

- A. **Who was Ernesto Miranda?**
833-34
- B. ***Miranda* in Historical Context**
834-35
- C. ***Miranda* in Legal Context**
836-37
- D. **The Precursor to *Miranda***
837-44 (*Escobedo v. Illinois*) → background

II. Aurora & Boston

- A. **The Aurora Movie Theater Shooting**
845-51
- B. **The Boston Marathon Bombing**
851-57

III. *Miranda*: The Basics

- 857-76 (*Miranda v. Arizona*)
Holmes & Tsarnaev filings (online repository)

IV. *Miranda* Triggers

- A. **Custody**
877-86 (*Berkemer v. McCarty*)
886-90 (*JDB v. North Carolina*)
- B. **Interrogation**
901-11 (*Rhode Island v. Innis*)
916-21 (*Illinois v. Perkins*) → background
- C. **Exceptions to *Miranda***
922-34 (*New York v. Quarles*)

CHAPTER 9: *MIRANDA* IN PRACTICE

- I. Brendan Dassey Meets Teresa Halbach—or does he?
935-40

II. Invoking & Waiving *Miranda* Rights

- 941-49 (Michigan v. Mosley)
- Brendan Dassey filings (online repository)
- 949-56 (Edwards v. Arizona)
- 956-61 (Davis v. United States)
- 961-74 (Berghuis v. Thompkins)

III. (Re)Initiation

- 974-79 (Oregon v. Bradshaw)
- 980-86 (Maryland v. Shatzer) → background

IV. The Limits of *Miranda* Exclusion: *Miranda* Fruits & Sequential Confessions

A. **Witnesses as a *Miranda* “Fruit”**

- 987-92 (Michigan v. Tucker) → background

B. **Repeated Statements as a *Miranda* “Fruit”**

- 992-1001 (Oregon v. Elstad)
- 1001-12 (Missouri v. Seibert)

C. **Physical Evidence as a *Miranda* “Fruit”**

- 1012-18 (United States v. Patane)

V. Review Chart

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CHAPTER 10: CONFESSIONS & THE SIXTH AMENDMENT

I. Introduction

A. **Chapter Organization**

1021-24

B. **An Introduction to *Brewer***

1024-32

II. *Massiah*: The Basics

- 1032-37 (Massiah v. United States)
- 1037-53 (Brewer v. Williams)
- Brewer v. Williams filings (online repository)

III. Complete Quiz 3

CRIMINAL PROCEDURE (FALL 2021)
INTRODUCTORY COMMENTS

Dean Gallini
Room 409; (503) 370-6024
bgallini@willamette.edu

CLASS TIMES; ROOM: Tuesday & Thursday, 1:40-3:10 pm; Room 201. There will be a few times during the semester where my travel schedule will require us to meet fully remotely. At present, we will meet remotely on August 31, September 14 (note: asynchronous only), September 16, and October 26. It's possible that we will meet remotely on other dates, and I will alert you to those changes, if any, as soon as I know them. When we do meet remotely, click this link to join:

<https://willametteuniversity.zoom.us/j/99362865037>

When you join, Zoom will put you in the “waiting room.” Please plan to join no later than 1:35 pm so that I can both admit you and account for your attendance.

TARDINESS: Early is on time; on time is late. If you are more than thirty minutes late to class, I will mark you absent. If you are fewer than thirty minutes late to class, then you should expect that I will call on you are seated (or, as applicable, once your camera is enabled). **If you are late a second time, I will reduce your final grade by one incremental level (e.g., a B would drop to a B-).** If, however, you anticipate in advance being late to a particular class, then you need only let me know beforehand (in person or via email) in order to be excused from the preceding two sentences of this policy.

OFFICE HOURS: Monday, 12:30-1:30 pm, or by appointment. These times merely represent the periods of the week where you can be certain (unless I provide you with advance notice to the contrary) that I will be in my office awaiting your visit. Let me be clear, however, that if you would like to visit with me outside of those hours, I will absolutely make time for you at a time that is convenient for your schedule.

You should also feel free to email me. Typically, although not always, I respond to emails the same day I receive them. If, however, you email me after 8 pm, you should expect that I will not respond until the following day.

TEACHING ASSISTANT & OFFICE HOURS: At your disposal is an enthusiastic teaching assistant who is eager to help you learn Criminal Procedure and succeed in this course. Alex Carroll (email: alexcarr93@gmail.com) currently serves as law clerk to the Honorable Stephen M. Doyle, Chief United States Magistrate Judge of the Middle District of Alabama. He is also my long-time research assistant and a 2020 graduate of the University of Arkansas School of Law. Alex took this course with me during the spring 2019 semester and served as my teaching assistant for this course during the spring 2020 semester. He has a passion for this area of the law and is thrilled to be (virtually) joining us this semester.

Please note that Alex's availability serves two purposes. First, he will have one regular weekly hour available to meet with you on a first come first serve basis. You can think of this time as his open office hour. Second, he will conduct a more traditional full-class review session at the end of each

class week. Finally, please put a note on your calendars now that Alex can answer your individual questions until Friday, April 9, at 5 p.m., but cannot help you thereafter.

- *Open office hour*: Mondays, 3:15–4:15 p.m.
- *Full class review sessions*: Thursdays, 3:30–4:30 p.m.

TEXT: GALLINI, INVESTIGATIVE CRIMINAL PROCEDURE: INSIDE THIS CENTURY’S MOST (IN)FAMOUS CASES (1st ed.). Be sure to register your book online at eproducts.westacademic.com. You will need to register your book in order to gain access to (1) the online casefile repository, and (2) a handful of free commercial review supplements. A brief disclaimer: this is a first edition so you *will* discover mistakes alongside things that may need to be changed. Please let me know when you catch a typo! Beyond that, I welcome your feedback on how the book works (or not) for you.

GENERAL BACKGROUND ON COURSE COVERAGE: The Syllabus shows the coverage of the course. Generally this course focuses on: (1) criminal investigation practices, more precisely, “contacts” between the police and persons suspected or accused of crime, at the time of or shortly before and after arrest; (2) the federal constitutional rights of suspects in their contacts with the police or, stated another way, the federal constitutional restrictions (or lack of restrictions) on the police, based on the 4th, 5th, 6th, and 14th amendments; (3) the exclusionary rule, which limits the admissibility of evidence obtained by the police from suspects in violation of their federal constitutional rights; and (4) United States Supreme Court jurisprudence. We mainly study Supreme Court cases and the underlying values of the different incarnations of the Court over the past three decades. The Court sets forth federal constitutional law; its words are law like statutes.

By the end of the course, you should be able to carefully read and dissect a judicial opinion. You should likewise have an understanding of the constitutionality of various police investigative techniques. You should have a basic understanding of the warrant process—both arrest and search—alongside when warrants are unnecessary. More generally, you should have a firm understanding of how the Supreme Court impacts criminal procedure (from both a present and historical perspective). Finally, you should be able to identify the characteristics of what makes for a persuasive written argument on a topic related to investigative criminal procedure.

SYLLABUS: The Syllabus outlines the topics we will cover and gives the reading assignments for each topic. I will post precise assignments for each week of class on our WISE course website. When assigned material carries over from one class or one week to a later class or week (which it will frequently), you must review the material for that later class or week in order to be prepared for our discussion.

ATTENDANCE: I will enforce an attendance policy, which requires you to attend 80% of the classes in this course. That means you must attend 21 out of our 26 class periods (we meet only twice a week). When we meet remotely, “attendance” means (1) having reliable internet access, (2) access to Zoom and (3) camera on at all times (note: you are more than welcome to adopt a virtual background).

As a general rule, all absences count including those you incur as a result of (1) job interviews, (2) your participation in a clinic, or (3) being sick, tired, or hung-over. I reserve the right to allow you to

make up one absence incurred because of participation in a school-sponsored moot court or trial competition by writing a paper. I also reserve the discretion to excuse one or more absences you incur because of a documented family or medical emergency. Past qualifying emergencies have included things like (1) a sudden death in the family, (2) pregnancy complications, (3) sudden illness, or (4) car accidents. Routine or follow-up medical appointments are not emergencies within the meaning of this policy.

I will enforce the attendance policy by noting who is absent each class. That aside, I view all classes as important to your understanding of the course. We will cover in class everything for which you are responsible. I will also try to explain the organizations, approaches, analyses, and levels of completeness that I think are important.

COVID ATTENDANCE CONSIDERATIONS: Notwithstanding the above attendance policy, I want to strongly encourage those of you who believe that you may have been exposed to COVID, or who have symptoms consistent with COVID, to stay home. Accordingly, if you affirm, by email, a minimum of one hour before class begins that you will be absent because you are experiencing symptoms consistent with COVID or had recent “close contact” with a COVID-positive individual, then you may watch a recording of the class later in the day and comply with the balance of this policy. Note that your affirmation is subject to the College of Law’s Honor Code.

In order to avoid being marked absent, you must send me a memorandum within 24 hours after the completion of the class (a) stating that you watched the class recording, and (b) providing me with a summary of major points from the class, and a list of questions (if any) that you still have after watching the class. As a general rule, that memorandum should be no shorter than two pages and no longer than five.

Upon receipt, I will count you as “present” for that class. Note that by relying on this policy, you are certifying per the Honor Code that you are self-quarantining for a COVID-related (or possibly COVID-related) reason. I will exercise my discretion to determine how many times you may be marked as “present” via this mechanism, but I am unlikely to ask further if you do so no more than three times (in addition to the standard <25% of absences) during the semester.

If you test positive for COVID, please notify Dean Mac Alpine and student-affairs-office@willamette.edu or use the online Student COVID-19 CARE report form. In that instance, we will work out an alternative approach to participation for a longer period of time. Finally, if public school districts begin moving instruction to all remote learning again, be assured that we will revisit this policy in order to address issues that you may have with school-aged children at home.

CLASS PARTICIPATION: I expect preparation for and participation in class. This is a discussion-heavy course and you should be prepared to talk frequently in class. Consistent with that approach, I will call on volunteers and non-volunteers. You will get one free pass if I call on you and you are not prepared. **I will count your lack of preparation as an absence if it happens a second time and reduce your final grade by one incremental level (e.g., a B would drop to a B-).**

I will **increase the exam scores** of those who distinguish themselves in class by a full grade. For example, if you received a “B” based on your exam performance but distinguished yourself in class, your final grade would climb to a “B+”. Although I will liberally award class participation grade

increases to roughly 20% of the class, I will do so based on the quality of your participation and not the quantity.

GRADING: Your final grade will come from the following sources: three separate out of class open-book multiple choice exams worth 20% each (twenty-questions each) and one final exam containing a single essay worth 40%.

FINAL EXAM: Open book on December 3 at 1:30 pm. You may bring into the exam and use your own class notes, outlines, and other materials you actually prepared or actually participated in preparing with others. You may also bring in the Gallini text and any other materials I distribute to the whole class. You may not under any circumstance bring in commercial outlines.

EXAM POLICIES: The last day for me to answer your individual questions will be on the last instructional day of the semester (November 30) at 5pm. I will thereafter hold a review session,¹ during which I will answer only questions that students have submitted via email beforehand. You are encouraged to ask as many questions as you want by sending as many emails as you want. I will acknowledge your submission via brief return email. If you do not receive a return email from me, please consider resubmitting your questions. There is no deadline for sending in questions – I will accept questions from you until right before I actually begin the review class. During the review itself, I will present the questions and offer answers in the exact order in which we covered the material. I reserve the right to cancel a previously scheduled live review session if, in my subjective opinion, the number of questions asked does not merit the review. Should cancellation be necessary, I will still answer all questions over email.

Following our review, you are welcome to send in (via email) as many questions as you like. Rather than receiving an individual response from me, however, I will make your question anonymous and send my response to the entire class. I will answer all questions until right before the exam. I will cut-off questioning only a few hours before the exam or, at earliest, on midnight the night before. I will make this judgment call depending on the volume/repetition of questions.

IN-CLASS PROFESSIONALISM:

- *Laptops:* Laptops are not permitted in class (of course with the exception of our remote meetings). All classes will be recorded and posted on our class WISE site shortly after class is over. Accordingly, you will always have the opportunity to go back and watch anything you may have missed in class.
- *Preferred pronouns/honorifics:* I will take verbal attendance during our first two classes together. When I call your name, please let me know your preferred honorific and pronoun. I will note it on my seating chart.

When we meet remotely, please enter your preferred honorific and pronoun in your zoom profile name. To change your name after entering our class, click on the “Participants” button at the top of the Zoom window. Next, hover your mouse over your name in the

¹ At some point late in the semester, I will ask the class to vote on whether you would like me to hold a live review session or record an audio review session and post it on WISE.

“Participants” list on the right side of the Zoom window. Click on “Rename”. Enter the name you’d like to appear in the Zoom meeting and click on “OK”.

- *Cellphones*: Cellphones may **not** be used in class. While in class either turn your cellphones off or silence the ring so that your phone does not disrupt the class. If your phone rings more than once during the semester, I may ask you to leave class. If you anticipate that a personal issue might arise during our class time that might require cell phone usage/disruption, please simply email me in advance so that we can plan accordingly together.
- *Recording class*: When we meet remotely, you should not record classes yourself using Zoom or any other software. You should also not take screenshots of class, nor should you publicly post any such screenshots.
- *Social media*: Please be thoughtful about posting comments about our class and accompanying discussions. Of course, positive and supportive notes are encouraged but social media is otherwise not the appropriate place to engage in nuanced debates about complex legal topics.
- *Classroom conversations*: In this class, we take on sensitive issues of class, gender, race—among many others. Accordingly, we need to be thoughtful and careful in expressing our views in the hope that we can avoid unnecessary offense to any members of the class. That said, I certainly do not wish to stifle legitimate debate; instead, I want an open discussion that includes all lived experiences, viewpoints, intersectionalities, and backgrounds. My collective hope is that we focus our discussions on the law and above the personal level so as to avoid unnecessary emotional injury. Of course, we may not always get it right—myself included. If you find a particular comment/behavior inappropriate or offensive, I encourage you to professionally approach the person and politely correct the comment/behavior, always assuming good faith in our community.
- *Miscellaneous*: Once class begins, please try to remain in your seat. Getting up and down in the middle of class disrupts both your classmates and me. If you imagine that you will need to exit class for a personal reason, simply let me know beforehand and we can make arrangements to have you sit closer to the exit.

SELECTED FEDERAL CONSTITUTIONAL PROVISIONS
(Quick Reference)

Amendment IV. Search and Seizure

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V. Grand Jury Indictment for Capital Crimes; Double Jeopardy; Self-incrimination; Due Process of Law; Just Compensation for Property

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI. Jury trials for crimes, and procedural rights

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Amendment XIV. Citizenship; Privileges and Immunities; Due Process; Equal Protection;

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

* * *