

CRIMINAL PROCEDURE 206-001

Fall 2005

Adjunct Professor Alyse Graham

Mon/Wed 10-11:15 a.m.

Room 329

Introduction

This course will focus on the Constitutional law that defines permissible police procedure in criminal investigations. The majority of the course will focus on the Fourth Amendment and the Fifth Amendment privilege against self-incrimination, and we will touch on the Sixth amendment at the end of the course. Criminal procedure is a fascinating area of the law with personal application and importance to anyone living in this country, and it is a particularly dynamic and relevant area of the law following the events of September 11, 2001. I look forward to exploring with you both the Supreme Court jurisprudence that has shaped this field as well as personal, political and current events that bring it to life.

Casebook

Joshua Dressler and George C. Thomas III, Criminal Procedure: Investigating Crime (Thomson West, 2003). This paperback casebook is an unchanged reprint of the first ten chapters of a hardcover casebook, Criminal Procedure: Principles, Policies and Perspectives (2nd ed. 2003) by the same authors. If you have access to the hardcover casebook or choose to purchase it, you may use it instead of the paperback version.

The 2005 Supplement to the casebook will be available in the bookstore shortly after the course begins. It will contain required readings for later in the course.

Although it is not required, Understanding Criminal Procedure by Joshua Dressler (LexisNexis 2003) is a very helpful resource and will be available (along with the most recent supplement) in the bookstore and in the library.

Grading

Grades in the class will be based on three components: (1) a final exam that will include issue-spotting and essay questions, (2) class participation (valuing quality over quantity) and (3) a special project to be explained in class. The majority of your grade will derive from your performance on the final exam. Class participation and performance on the special project may adjust your grade up or down. For the exam, any topic assigned for reading, whether commented upon in class or not, is fair game, as is any issue discussed in class even if not contained within the reading.

Attendance and Participation

I expect you to attend class regularly and to be prepared to participate. I also realize that sometimes you cannot. If you fail to attend class with some frequency and without sufficient explanation, you may be precluded from taking the final exam.

Contact Information

If you need to contact me, please email me at grahamstretch@starpower.net. I do not use a GMU email address.

Assignments:

The following reading assignments should be completed in preparation for the class date listed next to it. With the exception of some supplemental materials noted below that will be made available, all reading assignments are from the Dressler and Thomas casebook ("D&T"). Depending on the pace of class discussion, reading assignments may be modified as we go along. The remaining reading assignments for the semester will be provided once the course is underway.

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| Aug 22nd | D&T 50-60
Course Introduction |
| Aug 24th | Excerpt from Dressler, <u>Understanding Criminal Procedure</u> (copy center)
D&T 65-67(<u>Wolf v. Colorado</u>), D&T 69 – 85 (NOTE that material immediately before and after <u>Wolf</u> is assigned for next class)
Incorporation; Introduction to the Exclusionary Rule; Themes |
| Aug 29th | D&T 64-65, 67-69, 86 – 114 (up to Open Fields)
Introduction to the Fourth Amendment; <u>Katz</u> and progeny: What is a search? |
| Aug 31st | D&T 114 - 141
More on the Katz Doctrine; Open Fields; What is a Seizure? |
| Sept 5th | LABOR DAY HOLIDAY: NO CLASS |
| Sept 7th | D&T 142 - 169 (note esp. Problems 10 & 11 on p. 169)
Probable Cause: <u>Illinois v. Gates</u> |
| Sept 12th | D&T 170 – 182; 195 (bottom) – 209; also, skim Search and Arrest Warrants available at copy center |
| Sept 14th | D&T 209 – 237
<u>Warden, Welsh, Chimel, Robinson</u>
Exigent Circumstances and Search Incident to Arrest |
| Sept 19th | D&T 237– 249 (incl. <u>Thornton</u> in 2005 D&T Supplement)
<u>Belton and Thornton</u>
Search Incident to Arrest - Automobiles |
| Sept 21st | D&T 258 – 285 |

Chambers, Carney, Chadwick and aftermath
Automobile Exception to Warrant Requirement and Cars and Containers

- Sept 26th** D&T 285-306, 249 – 258
Acevedo, Whren, Horton, Hicks
Cars and Containers (cont'd); Pretext, Plain View and Plain Touch
- Sept 28th** D&T 307-330; 330-334
Consent: Schneckloth, Matlock, Rodriguez; Intro to Terry
- Oct 3rd** D&T 335-362
Terry v. Ohio, Dunaway; Drawing Lines after Terry
- Oct 5th** D&T 362 – 385
Mendenhall, Bostick; More line drawing
- Oct 10th** **NO CLASS – CLASS RESCHEDULED FOR TOMORROW**
- Oct 11th** D&T 386 – 409
Hodari D., Alabama v. White, Wardlow, Place
- Oct 12th** Catch up day/ in-class Terry exercise
- Oct 17th** D&T 409 - 441
(1) Long, Buie; Special Needs Doctrine and Sitz
- Oct 19th** D&T 442-464
(2) Standing: Rakas, Minnesota v. Carter
- Oct 24th** D&T 464 – 473 (The Exclusionary Rule Revisited), SKIM 473 – 491 (U.S. v. Leon
(3) and notes); READ D&T 492-510: Fruit of the Poisonous Tree
- Oct 26th** *** **CLASS BEGINS AT 9:00 a.m. and runs until 11:15 a.m. TODAY *****
(4 & 5) PANEL 4: D&T 511-512 (skim Brown on p 24); 523-541;
PANEL 5: D&T 550 – 583 Confessions: Brown, Spano; Bram, Miranda,
- Oct 31st** **CLASS WILL END AT 11:00 a.m. today**
D&T 583 – 606
(1) Miranda Custody: Mathiason, Berkemer. Miranda Interrogation: Innis,
- Nov 2nd** **NO CLASS TODAY**
- Nov 7th** D& T 606 - 626
(2) Waiver and Invocation of Miranda: Butler, Edwards
- Nov 9th** *** **CLASS BEGINS AT 9:30 a.m. and runs until 11:15 a.m. TODAY*****
D&T Supp p 38 – 61
(3) Oregon v Elstad and Missouri v. Seibert and notes
- Nov 14th** D&T 629 – 648 skim 648-59
(4) Exceptions to Miranda: Quarles; Miranda and the Stormy Seas: Dickerson
- Nov 16th** D&T 660 - 679
(5) Sixth Amendment Right to Counsel: Massiah, Brewer

Nov 21st
(1, 2, 3)

D&T 679 – 698
Massiah Waiver: Michigan v. Jackson; McNeil v. Wisconsin

Nov 23rd

NO CLASS – Thanksgiving Break

Nov 28th
(4&5)

D&T 718 – 734
Eyewitness Identification Procedures

Nov 30th

Review Session