

Criminal Procedure
Summer 2008
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Tues/Thurs 6-8:40 p.m. Room # 332

Introduction

The goal of this class is to introduce you to the criminal justice system and the constitutional limits placed on law enforcement officers investigating crime. This class focuses primarily on the Fourth and Fifth Amendments, touching on the Sixth Amendment toward the end of class. Criminal Procedure is one of the most fascinating and rapidly changing areas of the law. Every citizen and lawyer should know when the government can search your house and seize your property, compel you to give evidence against yourself, and bring the power of the government against you in a criminal trial. Following September 11th, criminal procedure is particularly relevant and dynamic as America seeks to balance its need for safety and security, with our concepts of fairness and due process, the sanctity of the home and privacy, and trust and accountability of government officials. I look forward to exploring this exciting topic with you.

What you'll take away

This class will expose you to the constitutional theory behind criminal procedure while offering enough practical pointers to equip you to spot, analyze, assert, and defend criminal issues as you begin your legal career. Additionally, this class will build on constitutional law's foundational concepts and method of analysis. The ability to identify the key concepts in a case, and link and reconcile these concepts with other competing concepts is crucial to becoming an effective lawyer. Your participation in class will help you continue to hone this vital legal skill.

Attendance and Participation

Coming to class and participating is not only worth your time, it enriches the learning experience for everyone. While I understand that you may occasionally need to miss a class, I expect you to attend class regularly and require your active participation. It is often better to listen, think, and talk, than to type down every word that is uttered in class. Exceptional participation will increase your grade, while frequent absences and lack of participation can also lower your grade. Consistent with George Mason's attendance requirements, frequent absences may also preclude you from taking the final exam.

Preparation

This course involves a good bit of reading. While you should read and be prepared to discuss every case, spend your time trying to reconcile the cases and concepts. Be aware that the cases and commentary in the notes section are often more intriguing, and challenging, than the "major" cases covered in the main text. If the assignment says **read** be prepared to brief and discuss the material in class. If the assignment says **skim**, given time constraints, we are less likely to discuss the reading in class. Nonetheless, the reading is still useful (and testable) because it involves background material, which can help you understand the key concepts.

Evaluation

Your grade will be based primarily on your performance on the final exam. As discussed above, class participation may adjust your grade up or down one third letter grade. Any topic covered in the assigned reading is fair game for the exam even if it is not discussed in class. Similarly, any issue discussed in class may be included on the final exam even if it is not contained within the assigned reading.

Casebook

Steven Saltzburg and Daniel Capra, American Criminal Procedure, Cases and Commentary, 8th Edition 2007 (West Publishing). [REQUIRED]

Steven Saltzburg and Daniel Capra American Criminal Procedure, Cases and Commentary, 8th, Ed. 2007 Supplement [REQUIRED]

High Court Case Summaries on Criminal Procedure, Keyed to Saltzburg and Capra, 8th Edition [OPTIONAL]

Assignments:

With the exception of any supplemental materials, which will be made available, all assignments are from Saltzburg and Capra's American Criminal Procedure and the Supplement. Reading assignments may be modified depending on the pace of classroom discussion and the availability of guest speakers.

20 May: *Basic Principles of Criminal Procedure and an Introduction to the Fourth Amendment.* Skim 1-31, Read 32-65. Supp 1-7.

22 May: *Defining a Search and Seizure; The Tension Between the Reasonableness and Warrant Clauses; and Obtaining a Search Warrant.* Read 66-127, Skimming 86-90.

27 May: *Obtaining a Search Warrant (Continued); Arrests in Public and the Home.* Skim 127-137, Read 138-90. Supp 8-17.

29 May: *Stop and Frisk.* Read 190-265, Skimming 228-232. Supp 17-26.

3 June: *The Line Between Stop and Arrest; Searches Incident to Arrest.* Read 265-326, Skimming 273-284

5 June: *Pretext Stops; Plain View and Plain Touch Seizures; Automobile and other Moveable Objects; Exigent Circumstances.* Read 326-382, Skimming 330-337

10 June: Administrative Searches and Consent Searches. Skim 382-420, Read 420-484

12 June: *Wiretapping and Undercover Activity.* Read 484-492.

17 June: *Remedies for 4th Amendment Violations.* Read 493-557

19 June: *Remedies for 4th Amendment Violations (Continued).* Skim 558-564, Read 565-600.

24 June: *The Privilege Against Self-Incrimination.* Read 601-671, Skimming 648-660.

26 June: *Confessions and Due Process.* Read 671-758, Skimming 710-717,750-758

1 July: *Waiver of Miranda; 6th Amendment Right to Counsel.* Read 758-812, Skim 842-864

3 July: Review, Recap, Answer your questions in preparation of the final exam.

14 July: Final Exam!