Syllabus

Class Schedule:

Class meets Mondays and Wednesday at 10:30 to 11:45 a.m. in Room 225.

Office hours:

My office is Room 433H. I can also be reached at (703) 993-8080 or clerner@gmu.edu. Office hours are Wednesdays at 11:45 to 1:00 in Room 221.

Required course material:

Saltzburg & Capra, American Criminal Procedure Investigative (9th ed. 2010). This is a softbound book. Please note that I am not assigning Criminal Procedure: Cases and Commentary, which is a hardbound book that is more expensive. The assigned book ("Investigative") consists of the first 6 chapters or 925 pages of the Cases and Commentary book, which is 1733 pages long. The Investigative casebook essentially covers the "cops and robbers" part of criminal procedure; the next casebook, which is the second half of the Cases and Commentary casebook, is called American Criminal Procedure: Adjudicative. This is also a softbound book, paginated from 857 to 1733. This is not assigned; it covers the trial aspect of criminal procedure ("bail to jail"). Should we cover any of this material, I will email you cases or articles. If you know you will be taking other classes in criminal procedure or are planning to pursue a career in criminal law, you can buy the Cases and Commentary casebook. However, it costs more than the assigned casebook and weighs a ton, so I would not generally recommend it. Also, you do not have to buy the supplement.

Classroom participation:

Classroom participation will be based on a “present and prepared” sign-in system. I will distribute a sign-in sheet at the beginning of each class. If you’ve done the reading and are prepared to discuss it, you should initial your name. If you are absent, or are unprepared for, 4 or fewer classes, your grade will be increased one step (e.g., from a B+ to an A-). If you are absent, or are unprepared for, 10 or more classes, your grade will be decreased one step (e.g., from a B+ to a B).
Internet policy:

Use of the internet in any form is prohibited during class.

Recording policy:

Recording of the class in any way is prohibited.

Final exam:

The exam will be given on December 8 at noon. It will be closed-book.

Reading assignments:

We’ll cover about 30-35 pages in the textbook per class. Supplemental readings will also be assigned. At the end of each week, I will tell you how far to read for the next week. The topic outline below is subject to revision over the course of the semester.

Assignment for first class (Monday, August 20):

Saltzburg & Capra, American Criminal Procedure Investigative (9th ed. 2010)
771-777 (Brewer v. Williams) and 1-7 (what is a criminal case)

Is the result in Brewer (child murderer goes free as the result of a technical violation of law) “intolerable in any society which purports to call itself an organized society,” (Burger, C.J., dissenting), or have “[t]he dissenters . . . lost sight of the fundamental constitutional backbone of our criminal law. . . . [G]ood police work is something far different from catching the criminal at any price. It is equally important that the police, as guardians of the law, fulfill their responsibility to obey its commands scrupulously,” (Marshall, J., concurring)? [Unfortunately, these quotes from the Burger and Marshall opinions, which were included in earlier editions of the casebook, have been omitted from the 9th edition.]

Assignment for second class (Wednesday, August 22):

Saltzburg & Capra pp. 7-16 (incorporation and Duncan v. Louisiana); 30-40 (introduction to Fourth Amendment and Katz v. US)
I. Introduction: Basic Themes of Class: Saltzburg & Capra 771-777; 1-16

II. The Fourth Amendment

A. Introduction to the Fourth Amendment; what is a search or seizure
   2. Applications of Katz, S&C 40-84

B. The warrant requirement
   1. Prerequisites to getting a warrant and what is probable cause, S&C 85-128; 166-169; 591-595
   2. Obtaining and executing the warrant, S&C 129-166
   3. When to apply the Warrant Clause
      a. Arrests, S&C 169-193
      c. Search incident to arrest and pretextual stops, S&C 288-324
      d. Pretexcutal stops, S&C 324-335
      e. Plain view, plain touch, cars S&C 335-361
      f. Exigent circumstances, S&C 361-380
      g. Administrative searches and special needs, S&C 380-449
      h. Consent, S&C 462-484
      i. Wiretapping and computer searches, S&C 484-494
C. Remedies for Fourth Amendment violations

1. The exclusionary rule and alternatives, S&C 494-510
2. Good faith, S&C 510-541
3. Standing, S&C 541-557
4. Fruits of the search, S&C 557-582
5. Illegally seized evidence in non-criminal contexts, S&C 582-591

III. Self-incrimination

A. Policies and scope of privilege, S&C 596-608
B. What is compulsion, S&C 608-622
C. What is protected and immunity, S&C 622-651
D. Confessions and due process; the special federal standard, S&C 651-670
E. Miranda, S&C 670-683
   1. The impact and scope of Miranda, S&C, 683-743
   2. Waiver of Miranda rights, S&C 743-767
E. Confessions and the Sixth Amendment right to counsel: Massiah, S&C 767-795

IV. Lineups, S&C 796-819

V. Right to counsel, S&C 831-847

VI. Screening and charging, S&C 857-884.