Class Schedule:

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

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 the same room where class is held.

Required course material:

Saltzburg & Capra, American Criminal Procedure Investigative (10th ed. 2014). 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 1,021 pages of the Cases and Commentary book. 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 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 given on December 10 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. I have provided below a topic outline and then a tentative list of reading assignments for each class during the semester. This list is subject to revision over the course of the semester. I will email the class every Wednesday afternoon confirming the assignments for the following week.

Assignment for first class (Monday, August 25):

Saltzburg & Capra, American Criminal Procedure Investigative (10th ed. 2014) 855-862 (Brewer v. Williams) and 1-6 (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 27):

Saltzburg & Capra 7-17 (incorporation and Duncan v. Louisiana); and 33-44 (introduction to Fourth Amendment and Katz v. US)
Topic Outline--Subject to revision

I. Introduction: Basic Themes of Class: Saltzburg & Capra 855-862; 1-17

II. The Fourth Amendment
   A. Introduction to the Fourth Amendment; what is a search or seizure
      2. *Katz* revisited: S &C 44-63
      3. Applications of *Katz*, S&C 63-103
   B. The Warrant Requirement
      1. Prerequisites to getting a warrant and what is probable cause, S&C 103-149; 191-193; 641-646
      2. Obtaining and executing the warrant, S&C 149-191
      3. When to apply the Warrant Clause
         a. Arrests, S&C 191-214
         b. *Terry* stops, S&C 214-309
         c. Search incident to arrest, S&C 309-350
         d. Pretextual stops, S&C 351-361
         e. Plain view, plain touch, cars S&C 361-368
         f. Cars, S&C 368-389
         g. Exigent circumstances, S&C 389-414
         h. Administrative searches and special needs, S&C 414-494
         i. Consent, S&C 509-528
         j. Wiretapping and computer searches, S&C 528-546
C. Remedies for Fourth Amendment violations

1. The exclusionary rule and alternatives, S&C 546-563
2. Good faith, S&C 563-595
3. Standing, S&C 595-606
4. Fruits of the search, S&C 606-631
5. Illegally seized evidence in non-criminal contexts, S&C 631-646

III. Self-incrimination

A. Policies and scope of privilege, S&C 647-660
B. What is compulsion, S&C 660-675
C. What is protected and immunity, S&C 675-712
D. Confessions and due process, S&C 712-732
E. *Miranda* and *Dickerson*, S&C 732-762
   1. Exceptions to *Miranda*, S&C, 762-789
   2. Open Questions after *Miranda*, S&C 789-815
   3. Waiver of *Miranda* rights, S&C 815-850

E. Confessions and the Sixth Amendment right to counsel: *Massiah*, S&C 850-882

IV. Right to counsel, S&C 926-942

V. Prosecutorial discretion, S&C 961-995
Tentative Reading Assignments

These assignments are subject to change over the course of the semester. All pages refer to Saltzburg & Capra (10th edition).

Class 1 [Aug 25]: 855 to 862 and 1 to 6 (intro and what is a criminal case)

Class 2 [Aug 27]: 7 to 17 and 33 to 44 (incorporation and Katz)

Sept 1: No class/Labor Day

Class 3 [Sept 3]: 44 to 71 (Katz revisited)

Class 4 [Sept 8]: 71 to 103 (applications of Katz)

Class 5 [Sept 10]: 103 to 133 (warrant requirement and Gates)

Class 6 [Sept 15]: 191 to 193, 641 to 646, 133 to 161 (warrant requirement)

Class 7 [Sept 17]: 161 to 191 and 194 to 200 (executing warrant and arrest power)

Class 8 [Sept 22]: 200 to 235 (arrests and Terry)

Class 9 [Sept 24]: 235 to 280 (Terry stops)
Class 10 [Sept 29]: 281 to 320 (*Terry* stops and search incident to arrest)

Class 11 [Oct 1]: 320 to 350 (search incident to arrest applied to cars)

Class 12 [Oct 6]: 351 to 389 (pretextual stops, plain view, and car searches)

Class 13 [Oct 8]: 389 to 431 (exigent circumstances and administrative searches)

Oct 13: No class/Fall recess

Class 14 [Oct 14/(observe Monday schedule]: 431 to 459 (administrative searches)

Class 15 [Oct 15] 459 to 494 (administrative searches)

Class 16 [Oct 20] 509 to 545 (consent searches and Title III)

Class 17 [Oct 22] 545 to 584 (exclusionary rule)

Class 18 [Oct 27] 584 to 620 (exclusionary rule)

Class 19 [Oct 29] 620 to 641 and 647 to 660 (exclusionary rule and intro to 5A)
Class 20 [Nov 3] 660 to 697 (privilege against self-incrimination)

Class 21 [Nov 5] 697 to 732 (privilege against self-incrimination and due process)

Class 22 [Nov 10] 732 to 762 (Miranda and Dickerson)

Class 23 [Nov 12] 762 to 789 (Miranda)

Class 24 [Nov 17] 789 to 815 (Miranda)

Class 25 [Nov 19] 815 to 850 (Miranda waivers)

Class 26 [Nov 24] 961 to 995 (prosecutorial discretion)

Nov 26: No class/Thanksgiving break

Class 27 [Dec 1] 850 to 882 (Massiah and the 6th amendment)

Class 28 [Dec 3] 925 to 939 (right to counsel) and practice exam