CRIMINAL PROCEDURE: INVESTIGATION
Fall 2015
Craig Lerner

Syllabus

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 Room 329. I am also available to meet in my office at other times.

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, which is 1,815 pages long. 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 16 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 19):

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 10th edition.]
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

1. *Katz v. United States*, 33-44

2. *Katz* revisited, 44-63

3. Applications of *Katz*, 63-103

B. The warrant requirement

1. Prerequisites to getting a warrant and what is probable cause, 103-149; 191-193; 641-646

2. Obtaining and executing the warrant, 149-191

3. When to apply the Warrant Clause

   a. Arrests, 191-214

   b. *Terry* stops, 214-309

   c. Search incident to arrest and pretextual stops, 309-350

   d. Pretextual stops, 351-361

   e. Plain view, plain touch, cars 361-368

   f. Cars, 368-389

   g. Exigent circumstances, 389-414

   h. Administrative searches and special needs, 414-494

   i. Consent, 509-528
j. Wiretapping and computer searches, 528-546

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

III. Self-incrimination
   A. Policies and scope of privilege, 647-660
   B. What is compulsion, 660-675
   C. What is protected and immunity, 675-712
   D. Confessions and due process; the special federal standard, 712-732
   E. *Miranda* and *Dickerson*, 732-762
      1. Exceptions to *Miranda*, 762-789
      2. Open questions after *Miranda*, 789-815
      3. Waiver of *Miranda* rights, 815-860
   
   E. Confessions and the Sixth Amendment right to counsel: *Massiah*, 850-882

IV. Right to counsel, 926-942

V. Prosecutorial discretion, 961-995
Tentative Reading Assignments for each class this semester. This is subject to change over the course of the semester.

Class 1 [Aug 19]: 855-862 and 1-6 (intro and what is a criminal case)

Class 2 [Aug 24]: 7-17 and 33-44 (incorporation and *Katz*)

Class 3 [Aug 26] & Class 4 [Aug 31]: 44 to 103 (*Katz* revisited and Applications of *Katz*) [Note that I will cover the materials in pages 44 to 103 (Classes 3 & 4) in a slightly different order than what is presented in the casebook.]

Class 5 [Sept 2]: 103 to 133 (Warrant requirement and *Gates*)

Sept 7: No class/Labor Day

Class 6 [Sept 9]: 191 to 193, 641 to 646, 133 to 161 (Warrant requirement)

Class 7 [Sept 14]: 161 to 191 and 194 to 200 (Executing warrant and arrest power)

Class 8 [Sept 16]: 200 to 235 (Arrests and *Terry*)

Class 9 [Sept 21]: 235 to 280 (*Terry* stops)
Class 10 [Sept 23]: 281 to 320 (*Terry* stops and search incident to arrest)

Class 11 [Sept 28]: 320 to 350 (Search incident to arrest applied to cars)

Class 12 [Sept 30]: 351 to 389 (pretextual stops, plain view, and car searches)

Class 13 [Oct 5]: 389 to 431 (exigent circumstances and administrative searches)

Class 14 [Oct 7]: 431 to 459 (administrative searches)

October 12: No class/Fall recess

Class 15 [Oct 13/observe Monday schedule]: 459 to 494 (administrative searches)

Class 16 [Oct 14]: 509 to 545 (consent searches and Title III)

Class 17 [Oct 19]: 545 to 584 (exclusionary rule)

Class 18 [Oct 21]: 584 to 620 (exclusionary rule)

Class 19 [Oct 26]: 620 to 641 and 647 to 660 (exclusionary rule and intro to 5A)
Class 20 [Oct 28]: 660 to 697 (privilege against self-incrimination)

Class 21 [Nov 2]: 697 to 732 (privilege and self-incrimination and due process)

Class 22 [Nov 4]: 732 to 762 (Miranda and Dickerson)

Class 23 [Nov 9]: 762 to 789 (Miranda)

Class 24 [Nov 11]: 789 to 815 (Miranda)

Class 25 [Nov 16]: 815 to 850 (Miranda waivers)

Class 26 [Nov 18]: 961 to 995 (prosecutorial discretion)

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

Nov 25: No class/Thanksgiving break

Class 28 [Dec 1]: 925 to 939 (right to counsel) and practice exam