

Criminal Procedure I: Investigation (Law 206)
Fall 2024
David A. Lord

I. Class Schedule

This class will meet on Wednesdays from 6:05 p.m. to 9:00 p.m. We will have two breaks during each class. Please note that there are two Wednesdays when we are not meeting. One of these is due to the practical exercise described in Section VII (This activity requires you to either do a police ride-along or an active court session and write a short paper about the events). The other Wednesday is being treated a Monday by the school for scheduling purposes and is noted below. The final exam is on December 13, 2024 at 6:00 p.m.

II. Learning Outcomes

By the end of the course, students will have acquired the following skill-set:

- (A) A broad understanding of the key U.S. Supreme Court jurisprudence in 4th, 5th, and 6th Amendment law;
- (B) An understanding of the interrelatedness of legal concepts involving these three amendments to the U.S. Constitution;
- (C) An appreciation of the differing viewpoints and debated concepts that apply to criminal procedure;
- (D) An ability to apply case law in this field to individual fact patterns and make cogent arguments on contested legal issues.

III. Contact information and availability

My email address is dlord1@gmu.edu. I would welcome you to contact me with any questions or concerns and am happy to schedule a meeting, as needed, throughout the Fall term.

IV. TWEN

I will create a TWEN page for this course where the PowerPoint lectures from class will be available. These will be of substantial use to you in preparing for the exam.

V. Required Texts and Supplemental Materials

The required text for this class is *American Criminal Procedure: Investigative – Cases and Commentary, 12th Edition* by Stephen A. Saltzburg and Daniel J. Capra (ISBN 978-1-64708-646-6). Please note that this is a soft-bound, book with a red(ish) cover. Pay careful attention to which version you are purchasing, as these authors have a more inclusive book which includes adjudication. That is not the volume you need for this class. Students frequently ask whether they can purchase the prior edition of a book,

in this case the 11th edition. While I won't prohibit that, if you elect to pursue that path, it will be your responsibility to assess where the texts diverge and to download any cases unavailable in the older version to make sure that you are up to date on the current case law. I have identified each week the most critical cases so that you can make sure to know if there are other cases you would need to pull from another source if you are using a prior version of the textbook. You may also elect to access the listed cases and read them from some other source. These cases are the most important in criminal procedure and form the basis for exam questions, in addition to cases that will be discussed in the lectures. If you elect to do this however, please note that you may end up missing some of the material that helps create a more cohesive overall framework for understanding criminal procedure.

I am mindful of the many time constraints facing law students. For the reading each week, I've been highly selective about which portions of the text need to be read and the most important cases that you need to focus on in order to master this area of the law. *Some of the cases that I cite as being of significant importance do not have a full copy of the opinion in the text. If you are assigned to brief that case, you may need to do additional research in order to be able to meaningfully discuss the case in class.*

VI. Classroom Participation and Attendance

Generally, each class will begin with a mock motion to suppress. Two students will volunteer to act as defense attorney and prosecutor. A video will be made available prior to class involving a scenario of law enforcement interaction with a suspect. The student acting as the defense attorney will be responsible for identifying any conduct by the law enforcement officer that they believe to be legally or constitutionally problematic and will argue why it should result in the Court suppressing evidence if the suspect in the video is charged with the crime. The prosecutor will be responsible for responding to these arguments and answering whether the government can constitutionally defend the conduct at issue. All of the class will be engaged in a general discussion of the videos.

In terms of reading, every student is expected to be thoroughly engaged in class discussions about the cases. However, to reduce anxiety and improve the quality of case presentation, the cases that we plan on discussing each class will be identified in the prior session and each case will be assigned to a particular student. That student will be responsible for summarizing the facts and holding as well as offering their view of the issues. However, all students are expected to engage in conversation about the cases and are responsible for reading the decisions.

You will note that this text in many ways is part case-book and part hornbook. As a result, some of the cases that we will be discussing offer only a cursory summary in the casebook and the student assigned the case may need to access the full text of the decision online.

Please understand that it is Mason's policy that if a student is absent for *any* reason for more than 20 percent of the sessions of a course, the student is not eligible for credit in that course. A student who is not present for at least 75 percent of a session of the course is absent from that session. (AR 4-1.1.) Missing three sessions of this course would result in this provision being triggered. Please also note that while missing less than 3 courses would not result in your being precluded from receiving credit from the course, any absence will factor into class participation.

Class participation will consist of attendance, the practical exercise discussed below, engagement in class discussion, and preparation for the class activities. If a student is deemed to have exceptional class participation, they will be eligible to have their final grade increased one level (for example, from a B to a B+ or from a B+ to an A-), **assuming it does not cause a violation of the university's mandatory curve.** Similarly, the failure to meaningfully participate can result in a one-step decrease on a student's grade level.

VII. The Final Exam and Evaluation

The final exam will take place December 13, 2024 at 6:00 p.m. and students will have three hours to complete it. The exam will be open-book. Half will consist of multiple choice and true/false questions. The additional portion will consist of an essay in which you are provided a fact pattern and asked to assess the constitutional issues in it.

Additionally, each student is required to complete a practical exercise that gives them real life exposure to the issues that we are discussing this semester. The default for this is to either complete a police ride-along or attend court proceedings at least once before the day of the final and submit a one-page paper reflecting on the experience. We will talk more about this activity in class and how to find an opportunity to complete this assignment that allows you a meaningful chance to explore the issues we are discussing. This activity stand in lieu of one class session as identified below. **The paper must be submitted by 11:59 p.m. on December 13, 2024.** While I favor attending a court session or police ride along, I am open to any other practical real-life application of these concepts. For example, in the past I've had students who have chosen to write about attending a Congressional hearing on criminal law. If you are utilizing an alternative approach, please clear it with me in advance. The activity is pass/fail. However, the impact on the final grade is as follows: Any student who does not satisfactorily complete the project will have their grade reduced by one level (for example, from a B to a B- or from a B- to a C+).

Class #1: Wednesday, August 21

Theme: Introduction to the 4th Amendment and the exclusionary rule. How to address a 4th Amendment problem. What is a search? Expectation of privacy vs. property rights view of the 4th Amendment; Standing

Reading assignment: Saltzburg and Capra pp. 561-578; 609-619; 33-38; 53-78; 111-116 (63 pages)

Cases of significance

- Weeks v. US/Mapp v. Ohio/Wolf v. California
- Katz v. United States
- United States v. Jones
- Oliver v. United States
- Florida v. Jardines
- Kyllo v. US
- Illinois v. Cabales
- Rakas v. Illinois
- Minnesota v. Carter
- Minnesota v. Olson

Wednesday, August 28 – No class, this stands in lieu of the practical application described in Section VII, above. I would highly encourage you to consider using this time to complete the exercise, rather than waiting until the end of the semester.

Wednesday, September 4 – No class as university is observing a Monday schedule

Class #2: Wednesday, September 11

Theme: 3rd party doctrine: what is probable cause?;

Reading assignment: Saltzburg and Capra 81-85; 89-105; 149-182 (53 pages)

Cases of significance

- US v. Miller/Smith v. Maryland
- US v. Jacobsen/Illinois v. Andreas
- Carpenter v. United States
- Spinelli v. US (including Aguillar)
- Illinois v. Gates
- Massachusetts v. Upton
- Maryland v. Pringle
- Florida v. Harris

Class #3: Wednesday, September 18

Theme: Particularity requirement; Seizure of a Person; “Stop and Frisk”/Terry Stops part 1.

Reading assignment: Saltzburg and Capra pp. 193-205; 120-140; 245-265 (52 pages)

Cases of significance

- Andresen v. Maryland
- Torres v. Madrid
- California v. Hodari D.
- Florida v. Royer
- US v. Mendenhall
- US. V. Drayton
- Terry v. Ohio
- Minnesota v. Dickerson (referenced in text, likely need to pull decision)
- Adams v. Williams
- Pennsylvania v. Mimms
- Maryland v. Wilson

Class #4: Wednesday, September 25

Theme: Stop and Frisk/Terry Stops pt. 2, limits of a Terry Stop, Pretextual stops

Reading assignment: Saltzburg and Capra pp. 265-300; 314-330; 387-394 (67 pages)

Cases of significance

- Kansas v. Glover
- Florida v. J.L.
- Navarette v. California
- Illinois v. Wardlaw
- Whren v. United States
- Ohio v. Robinette,
- US v. Sharpe
- US v. Place

Class #5: Wednesday, October 2

Theme : Search incident to arrest and plain view

Reading assignment: Saltzburg and Capra pp. 333-347; 359-384; 396-405 (48 pages)

Portions you can omit: N/A

Case of significance

- Chimel v. California
- Maryland v. Buie
- U.S. v. Robinson
- Riley v. California
- Birchfield v. North Dakota
- Atwater v. City of Lago Vista
- Horton v. California
- Arizona v. Hicks

Class #6: Wednesday, October 9 – Class will meet via Zoom due to Professor’s out of town teaching commitment

Theme: Vehicle searches and exigent circumstances

Reading Assignment: Saltzburg and Capra pp. 347-359; 405-445 (57 pages)

Portions you can omit: N/A

Cases of significance

- New York v. Belton
- Arizona v. Gant
- Michigan v. Long (may need to pull)
- Carroll v. United States
- Chambers v. Maroney
- Coolidge v. New Hampshire
- California v. Carney
- Collins v. Virginia
- California v. Acevedo
- Wyoming v. Houghton
- South Dakota v. Opperman
- Florida v. Wells
- Warden v. Hayden
- Brigham City v. Stuart
- Mincey v. Arizona
- Schmerber v. California/Missouri v. McNeely
- Kentucky v. King

Class #7: Wednesday, October 16

Theme: Special Needs searches and consent

Reading Assignment: Saltzburg and Capra pp. 448-458; 465-468; 489-512; 523-530; 533-551 (61 pages)

Cases of significance

- New York v. Burger
- New Jersey v. TLO
- City of Ontario v. Quon
- Maryland v. King
- Michigan Dept of State Police v. Stitz
- City of Indianapolis v. Edmond
- Illinois v. Lidster
- US v. Flores-Montano
- Schneckloth v. Bustamonte/US v. Drayton
- US v. Matlock
- Illinois v. Rodriguez
- Georgia v. Randolph

Class #8: Wednesday, October 23

Theme: Limitations on the Exclusionary Rule

Reading Assignment: Saltzburg and Capra pp.300-304; 578-609; 621-648; 657-658 (61 pages)

Cases of significance

- Heien v. US
- US v. Leon
- Massachusetts v. Shepherd
- Arizona v. Evans
- Herring v. United States
- Brown v. Illinois
- Rawlings v. Kentucky
- Utah v. Strieff
- Murray v. United States
- Nix v. Williams
- Franks v. Delaware

Class #9: Wednesday, October 30

Theme: Fourth Amendment Review; background to the 5th Amendment; Voluntariness

Reading Assignment: Saltzburg and Capra pp. 673-678; 685-698; 722-742 (38 pages)

Cases of Significance

- Lefowitz v. Turley
- Fisher v. US
- Schmerber v. California
- Pennsylvania v. Muniz
- Brown v. Mississippi
- Spano v. New York
- Colorado v. Connelly
- Hiibel v. Sixth Judicial District Court of Nevada, Humboldt County

Class #10: Wednesday, November 7

Theme: The Basics of *Miranda*

Reading Assignment: Saltzburg and Capra pp. 743-801(58 pages)

Cases of significance:

- Miranda v. Arizona
- Dickerson v. United States
- New York v. Quarles
- Oregon v. Elstad
- Missouri v. Seibert
- Harris v. New York
- Mincey v. Arizona
- US v. Patane
- Vega v. Tekoh

Class #11: Wednesday, November 14

Theme: What is interrogation?, What is custody?, and waiver of *Miranda* rights

Reading Assignment: Saltzburg and Capra pp. 801-861 (60 pages)

Cases of Significance

- Berkemer v. McCarty
- Stansbury v. California
- J.D.B. v. North Carolina
- Rhode Island v. Innis
- Illinois v. Perkins
- Moran v. Burbine
- Berghuis v. Thompkins
- Edwards v. Arizona and Oregon v. Bradshaw
- Davis v. United States
- California v. Prysok
- Pennsylvania v. Muniz
- Arizona v. Roberts/Minnick v. Mississippi, Maryland v. Shatzer
- Michigan v. Mosely

Class #12: Wednesday, November 21

Theme: Review Session. The right to Counsel and the 6th Amendment ad Review Session
Additional instruction will be offered on additional issues related to the identification of suspects)

Reading Assignment: Saltzburg and Capra pp. 861-894; 945-962 (50 pages)

Cases of Significance:

- Massiah v. United States
- Brewer v. Williams
- US v. Henry/Kuhlmann v. Wilson
- Maine v. Moulton
- Texas v. Cobb
- Illinois v. Patterson
- Michigan v. Jackson/Montejo v. Louisiana
- Powell v. Alabama
- Gideon v. Wainwright
- Argersinger v. Hamlin
- US v. Wade/Coleman v. Alabama