

Criminal Procedure: Investigation (Law 206-002)
Fall 2022
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 is no class on Wednesday, October 5, due to an out of town teaching commitment on my part.

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, 11th Edition* by Stephen A. Saltzburg and Daniel J. Capra (ISBN-10: 1683289889; ISBN-13: 978-1683289883). Please note that this is a soft-bound, book with a purple cover. Pay careful attention to which version you are purchasing, as these authors have a more inclusive book which includes adjudication. There is also a 2021 supplement. You are not required to purchase this. I will provide relevant material and certain updated cases as they become relevant.

I am mindful of the many time constraints facing law students. As a general rule, approximately 60 pages of reading have been assigned per class. It is important to note

that during each class section, I may cover additional cases and principles that are not in the assigned reading. If you are absent from a class, you may contact me about any extraneous material that may be covered. A PowerPoint set of slides will be available for each lecture and will be posted on TWEN after the relevant 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 note 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, engagement in class discussion, and preparation for the class activities and case preparation discussed above. 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.

The Final Exam and Evaluation

The final exam will take place on December 9, 2022 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.

Wednesday, August 24

Theme: Welcome/and class introductions. Introduction to the 4th Amendment. What is a search/seizure? Expectation of privacy vs. property rights view of the 4th Amendment.

Reading assignment: Saltzburg and Capra pp. 35-96

Wednesday, August 31

Theme: Obtaining a warrant and the basics of probable cause.

Reading assignment: Saltzburg and Capra 109-173

Other topics/ cases to cover in lecture: *Carpenter* and cellphone location data.

Wednesday, September 7

Theme: Consensual encounter vs. seizure

Reading assignment: Saltzburg and Capra pp. 210-282.

Wednesday, September 14

Theme: Frisks and the seizure of property; scope of the seizure

Reading assignment: Saltzburg and Capra pp. 286-341

Other topics/cases to cover in the lecture: Searches of cellphones incidental to arrest (*Riley*), breathalyzers and DUI tests (*Birchmere*), custodial arrests for minor offenses (*Atwater*).

Wednesday, September 21

Theme : Hodgepodge of special 4th Amendment issues (pretextual stops, plain view and touch, *Carroll* Doctrine, exigent circumstances.

Reading assignment: Saltzburg and Capra pp. 373-434

Other topics/cases to cover in the lecture: Administrative searches and “special needs”

Wednesday, September 28

Theme: More 4th Amendment hodgepodge (Roadblocks, DNA, inventory searches and consent)

Reading Assignment: Saltzburg and Capra pp. 480-545

NOTE – NO CLASS ON WEDNESDAY, OCTOBER 5

Wednesday, October 12

Theme: Remedies and limitations of the 4th Amendment

Reading Assignment: Saltzburg and Capra pp. 562-569; 579-621; 647-651

Other topics/cases to cover in the lecture: Alternatives to the Exclusionary Rule, causation and attenuation, independent source/inevitable discovery, use of evidence outside of trial.

Wednesday, October 19

Theme: Background to the 5th Amendment

Reading Assignment: Saltzburg and Capra pp. 667-715; 728-747

Wednesday, October 26

Theme: The Basics of *Miranda*

Reading Assignment: Saltzburg and Capra pp. 747-801.

Wednesday, November 2

Theme: What is interrogation and waiver of *Miranda* rights

Reading Assignment: Saltzburg and Capra pp. 802-860

Wednesday, November 9

Theme: The right to Counsel and the 6th Amendment:

Reading Assignment: Saltzburg and Capra pp. 860-892; 939-967

Wednesday, November 16

Theme: Identification of Suspects

Reading Assignment: Saltzburg and Capra pp. 895-938.

Other topics/cases to cover in the lecture: Review for Exam