

Criminal Procedure: Investigation (Law 206)
Summer 2022
David A. Lord

I. Class Schedule

This class will meet on Mondays and Wednesdays from 6:00 p.m. to 9:10 p.m. We will have two breaks during each class. Classes begin on Monday, May 16th. Please note that there will be no class on either Monday, June 27th or Wednesday, June 29th. Class is also not held on Independence Day, July 4th, so the final session of the course will take place on the evening of July 6th and will focus on exam preparation.

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

I will provide my preferred contact information during our first class. I would welcome you to contact me with any questions or concerns and am happy to schedule in-person or virtual meetings as needed, throughout the Summer Term.

IV. 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. 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. This can be particularly pronounced during a summer course, because of the large volume of material that must be covered during a condensed period. 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 will cover additional cases and principles that are not in the assigned reading. I have generally identified these topics below. These materials may be incorporated

into the final exam, so it is imperative that if you miss a class session, you find another means for adequately educating yourself on these topics – either by reading those portions of the text or obtaining notes from another student. When I utilize PowerPoint presentations in class, these will be made available to students.

V. Classroom Participation and Attendance

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 constitute 20% of your final grade in this course. Class participation includes: attendance, preparation through reading the required materials, and the quantity and quality of direct verbal participation during class. I'm mindful that participation can cause anxiety for some individuals and that is not my intention. If this is something you would like to discuss further, please feel free to reach out to me about any concerns or accommodations that may need to be facilitated.

Note that the textbook is highly selective about which cases it includes prolonged text from. For this reason, each class you can anticipate that there are some cases discussed in a cursory manner in the text that we will want to explore in greater depth in the class. One means of facilitating this will be by certain cases being either assigned or volunteered for, one class prior to when they will be discussed, with the student expected to be prepared to discuss the facts, opinion, dissent, etc. Note that any student who has a case assigned to them in this fashion for a class will not be otherwise called upon during that particular class session for discussion, but is free to volunteer to otherwise participate as they see fit in the class discussion.

VI. The Final Exam and Evaluation

20% of your grade will be based on participation as identified in Section V above. The remaining 80% will be based on the final examination. The final examination will consist of both a short answer/multiple choice portion, as well as one or more essays. The law school's mandatory grade curving policy will apply.

One significant advantage of the class schedule this semester is that there will be a week with no class, immediately before the week of final exams. This will hopefully provide you with additional time to prepare. Our last class session will also introduce you more fully to the structure and nature of the exam and will include a comprehensive overview of the topics we will have covered this semester.

I am presently determining whether the exam will be closed-book and will update you when a decision is made.

VII. Schedule of Classes

Monday, May 16

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

Other topics/cases to cover in lecture: Incorporation, retroactivity, initial take on the exclusionary rule (to be discussed in detail later in the semester), action by private citizens. *Carpenter* and cellphone location data.

Wednesday, May 18

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

Reading assignment: Saltzburg and Capra 109-173

Other topics/ cases to cover in lecture: Reasonableness vs. a warrant, execution of the warrant, arrests in public and the home.

Monday, May 23

Theme: Consensual encounter vs. seizure

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

Other topics/cases to cover in the lecture:

Note: Please note that I am presently scheduled to conduct a jury trial on Monday, May 23rd. I do not anticipate that this will disrupt the class schedule for the day, but please note that these trials are inherently unpredictable. It will be important to pay attention to your email this day for any alterations or delays in the class start time.

Wednesday, May 25

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, June 1

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”

Monday, June 6

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

Reading Assignment: Saltzburg and Capra pp. 480-545

Other topics/cases to cover in the lecture: Electronic surveillance and undercover activity.

Wednesday, June 8

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, use of evidence outside of trial.

Monday, June 13

Theme: Background to the 5th Amendment

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

Other topics/cases to cover in the lecture: Procedural aspects of self-incrimination

Wednesday, June 15

Theme: The Basics of *Miranda*

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

Other topics/cases to cover in the lecture

Tuesday, June 21

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

Reading Assignment: Saltzburg and Capra pp. 802-860

Other topics/cases to cover in the lecture

Wednesday, June 22

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

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

Wednesday, July 6

Theme: Identification of Suspects

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

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