

Criminal Procedure
 Professor Lynn Branham
 Spring Semester, 2024

Wednesday and Friday
 2:00 – 3:15 p.m.
 Room 6

SYLLABUS

| CLASS DATE | ASSIGNMENT | SUBJECT |
|-------------------|---|--|
| January 17 | 574 – 589 (up to § A.4) <i>Frazier v. Cupp</i> (posted on Canvas) | Confessions – Due Process |
| January 19 | 590 – 603 (<i>Miranda</i>) 635 – 639 (<i>Duckworth</i>) | Confessions – <i>Miranda</i> |
| January 24 | 603 – 606 (to end of <i>Dickerson</i>) 607 (§ B.2) – 622 | Confessions – <i>Miranda</i> |
| January 26 | 622 (§ B.3.b) – 632 (up to § B.3.c) 655 (§ B.5) – 665 (to end of <i>Berghuis</i>) | Confessions – <i>Miranda</i> |
| January 31 | 640 (<i>Oregon v. Elstad</i>) – 655 | Confessions – <i>Miranda</i> |
| February 2 | 670 (§ B.5.b) – 686 | Confessions – <i>Miranda</i> |
| February 7 | 686 (<i>Davis</i>) – 700 | Confessions – <i>Miranda</i> |
| February 9 | 701 – 705 (to end of <i>Massiah</i>) 706 – 716 (up to § C.3) | Confessions – Sixth Amendment Right to Counsel |
| February 14 | 716 – 732 (up to § D) 756 (<i>Wade</i>) – 766 | Confessions – Sixth Amendment Identification Procedures – Sixth Amendment Right to Counsel |
| February 16 | 766 – 776 783 (<i>Neil</i>) – 798 | Identification Procedures – Sixth Amendment Right to Counsel and Due Process |
| February 21 | 32 – 37 (<i>Katz</i>) 47 – 65 | The Fourth Amendment: Searches Defined |
| February 23 | 66 – 76 (up to § B.5) 79 (discussion of <i>U.S. v. White</i>) – 83 (to end of <i>Smith</i>) 84 – 93 (<i>Carpenter</i>) | The Fourth Amendment: Searches Defined |

| | | |
|-------------|--|---|
| February 28 | 95 – 97 (<i>Illinois v. Caballes</i>) 37 – 46 (<i>U.S. v. Jones</i>) 102 – 107 (<i>Florida v. Jardines</i>) 111 – 121 (up to § C.2) | The Fourth Amendment: Searches Defined Probable Cause |
| March 1 | 121 – 145 | Pretextual Searches and Seizures Mistakes of Law Issuance and Execution of Search Warrants |
| March 6 | 145 – 157 362 – 366 (<i>U.S. v. Watson</i>) 159 – 162 (<i>Payton</i>) | Execution of Search Warrants Arrest Warrants and Warrantless Arrests |
| March 8 | 158 – 159 162– 174 221 – 225 | Exigent Circumstances Searches Incident to Arrest |
| March 13 | 226 – 234 (<i>Riley</i>) 250 – 253 201 – 206 | Searches Incident to Arrest Protective Sweeps Plain View Doctrine |
| March 15 | 206 – 220 (up to § E.4) 234 (discussion of <i>N.Y. v. Belton</i>) – 243 | Vehicle Searches |
| March 20 | 244 – 247 253 – 270 271 – 279 (to end of <i>N.Y. v. Burger</i>) | Vehicle Inventory Searches Consent Searches Administrative Searches |
| March 22 | 296 – 303 318 – 337 | Checkpoints Drug Testing |
| | SPRING BREAK | |
| April 3 | 366 – 382 400 – 401 (§ G.2) 98 – 102 405 – 408 | Seizures Defined Types of Seizures Reasonable Suspicion |
| April 5 | 408 – 431 | Reasonable Suspicion |
| April 10 | 391 – 399 459 – 472 | “ <i>Terry Frisks</i> ” Exclusionary Rule |

| | | |
|----------|------------------------|--|
| April 12 | 485 – 510 | Who Can Invoke the Exclusionary Rule Exceptions to the Rule |
| April 17 | 510 – 531 | Exceptions to the Exclusionary Rule |
| April 19 | 531 – 550 472 – 485 | Exceptions to the Exclusionary Rule |
| April 24 | REVIEW | |
| April 26 | REVIEW | |

LEARNING OBJECTIVES AND OUTCOMES: By the end of this course, students will:

- understand the constitutional rules governing the suppression of confessions under the Due Process Clauses of the Fifth and Fourteenth Amendments, *Miranda*, and the Sixth Amendment right to counsel and as the fruit of a Fourth Amendment violation.
- know the constitutional rules governing pretrial identification procedures and restrictions on the admissibility of an in-court identification following an unconstitutional lineup.
- comprehend how the Supreme Court has interpreted the scope of rights accorded by the Fourth Amendment.
- know the rules governing application of the Fourth Amendment exclusionary rule.
- be able to identify, articulate, and critique the rationales for different constitutional and judicially created rules governing criminal procedure in the investigatory context.
- be able to apply the legal rules learned in this class to new fact patterns – to spot the legal issues subsumed in a set of facts, identify, make, and rebut arguments on the resolution of a legal issue, and pinpoint the relevant facts bearing on an issue’s resolution.
- have honed skills in active listening and self-evaluation and in proffering and responding to views and arguments on controversial issues with civility, dignity, and respect.

CLASS POLICIES:

Attendance and Preparation. It is my privilege to have the opportunity to work with you this term as you master certain fundamentals of the law of criminal procedure. To enhance the learning experience I hope this class will afford you and to assist in the development of your analytical abilities, all students are expected, of course, to attend class and be fully prepared for class discussions. Students should consequently read all the material assigned for a class unless otherwise instructed.

I fully recognize that a student may not be able to attend a class because of an illness, job interview, or family crisis or for another legitimate reason. It is not necessary that you inform me of the reason for an absence, though you certainly may if you wish. If you do miss a class, please secure notes of the class from three fellow students. And please note that because of the interactive nature of this class, I do not tape classes.

I have typically found my students to be enthusiastic learners who are well prepared for class. In the unlikely event that a student misses more than three classes or is not adequately prepared for class, I may meet with the student and procure feedback from Associate Dean Ben Trachtenberg. Based on the feedback I receive from him and the student, I will then determine what follow-up measures, if any, need to be taken. Examples of measures that might be deemed appropriate under the circumstances include enlisting the support services available at the law school or main campus, reducing a student's grade in the course, or encouraging or requiring a student to drop the course for that term.

Course-Related Materials Prepared By Others. No course-related full or partial outlines or transcripts prepared by other students, transcribed copies of such outlines or transcripts, or commercially prepared materials other than your casebook are allowed in the classroom, whether in print or electronic form.

Computer Use. Computers and other electronic devices brought into the classroom should be used during class sessions only to take notes and to retrieve notes you have prepared to facilitate your participation in class discussions. Audio or video recordings of the class are not permitted except when a student has received permission to record the class as an accommodation under section 240.040 of the university's *Collected Rules and Regulations*. Although I am sure that students will respect these and other class policies, it is important to remember that a violation of them could trigger the imposition of disciplinary sanctions.

BOOKS: The casebook we will be using during this course is Erwin Chemerinsky & Laurie L. Levenson, *Criminal Procedure: Investigation* (4th ed. 2022). The book is published by Wolters Kluwer.

After you have read about a criminal-procedure topic and we have discussed that topic in class, I encourage you to read a supplementary resource to buttress your understanding of the topic. I recommend either one of the following two books for this purpose: (a) Wayne LaFave, Jerold Israel, Nancy King, & Orin Kerr, *Criminal Procedure* (6th ed. 2017) (Hornbook Series), which is published by West Academic Publishing; or (b) Joshua Dressler, Alan C. Michaels, & Ric Simmons, *Understanding Criminal Procedure Volume 1: Investigation* (8th ed. 2021), which is published by Carolina Academic Press.

EXAMINATION: The examination in this course, which will be held at the end of the term, will be closed book/closed computer.

CONTACT INFORMATION AND OFFICE HOURS: My office is in Room 311, and my email address is lynnbranham@missouri.edu.

My office hours are on Wednesdays from 3:30 to 5:30 p.m. and on Thursdays from 3:00 to 5:00 p.m. If you cannot meet with me at any of these times, I would be happy to meet with you at another mutually convenient time, confer via Zoom or FaceTime, or have a teleconference with you. It would be helpful if you could give me advance notice if you would like to meet with me so that I can reserve that time for you. Thank you.

NOTICE TO STUDENTS WITH DISABILITIES: If you anticipate barriers related to the format or requirements of this course, have emergency medical information to share, or need to make special arrangements in case the building must be evacuated, please talk with Dean Trachtenberg or Denise Boessen, the school's registrar, as soon as possible. If disability-related accommodations are necessary, please register with the Office of Disability Services, S5 Memorial Union, (573) 882-4696, (<http://disabilityservices.missouri.edu>), and then contact Dean Trachtenberg or Denise Boessen, who will notify me of your eligibility for reasonable accommodations. For other MU resources for students with disabilities, click on "Disability Resources" on the MU homepage.