

CRIMINAL PROCEDURE

LAW 601 / SECTION 4

SPRING 2018

M/W/F 11-11:50; ROOM #107

SPEARIT

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THE PROFESSOR

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LOCATION: Suite 236N

OFFICE HOURS: MW 1-4 and by appointment

NOTE ON OFFICE HOURS:

Please note—aside from regular office hours I maintain an “open door” policy by which you can stop by my office anytime my door is open/cracked. If my door is shut, it means that I am preparing for class, working on school business, or working on scholarship—so unless it is an emergency, please stop by at another time or schedule a time to meet.

COURSE BOOKS & MATERIAL

- 1.) **Modern Criminal Procedure: Cases, Comments, Questions** by Kamisar, LaFare, Israel, King, Kerr, & Primus, (14th ed.), 2015.
- 2.) Additional cases and materials to be provided by instructor.

GRADING

- 30%** Final Exam
- 30%** Midterm Exam
- 15%** Motion to Suppress (due on 3/7 by midnight)
- 15%** Motion Revision (due on 4/25 by midnight)
- 10%** 5-page issue analysis

ACCOMMODATIONS

Please see professor.

COURSE DESCRIPTION & OBJECTIVE

DESCRIPTION:

This course in Criminal Procedure is a survey course that explores investigation and adjudication. It will explore various topics that explain how our national and state systems of criminal justice have developed over the years. The course will consider questions that arise under the fourth, fifth, and sixth amendments regarding investigations, interrogations, and charging decisions. It will also consider the way the judicial system handles criminal cases, including the right to counsel (and the "effective assistance" of counsel), prosecutorial discretion and plea bargaining, joinder and severance, discovery, the right to jury trial, double jeopardy, sentencing, and appellate review. Primary topics include search and seizure, interrogation, pretrial identification procedures and the exclusionary rule. The course focuses almost exclusively on cases decided by the United States Supreme Court. This approach allows students to understand the "current law" regarding what the police can and cannot do, as well as study overarching themes in the Court's jurisprudence that hopefully will bring a better understanding of the cases and provide insight into how future cases may be decided.

OBJECTIVE:

The primary focus of the course is to understand the main issues of criminal procedure in context. There will be a heavy emphasis on analyzing problems, primarily through role-plays and simulation. Students will play the roles of prosecuting attorney, defense attorney and trial judge to gain an understanding of how the Court's decisions are applied "at the street level" and to develop the skill of articulating arguments that may help clients (criminal defendants or the government) prevail at suppression hearings.

A secondary course focus is to hone student test-taking skills. As criminal procedure is a subject of the Texas Bar Examination, the course will focus on bar style multiple choice questions as well as essay style questions. The goal is to develop better exam strategies with ongoing feedback from the instructor.

Finally, students will focus on developing practical writing skills by drafting a motion to suppress evidence and memorandum of support. This exercise will ground students in an important evidentiary aspect of litigation, while considering the strategies behind such a motion.

STUDENT LEARNING OUTCOMES

After reading course materials, briefing cases, participating in class discussions, and successfully completing Criminal Procedure, students will be able to analyze the facts of a case and determine the procedural issues at stake. The student will then be able to evaluate the facts to determine whether a constitutional violation has occurred. More specific outcomes include the ability to:

- 1.) Explain the constitutional and statutory provision implicated in enforcing the criminal law.
- 2.) Identify the constitutional and statutory limits on the application and enforcement of the law.
- 3.) Explain the search and seizure clause of the Fourth Amendment.
- 4.) Identify when government action constitutes a seizure.
- 5.) Analyze situations when warrants are required and when exceptions exist.
- 6.) Explain the requirements for lawful interrogations and identifications.
- 7.) Explain the criminal court procedure, from the charging decision to the appeals process.
- 8.) Understand the roles of police officers, judges, prosecutors, defense attorneys, juries, and legislators in the application of criminal law.
- 9.) Distinguish the rules of evidence and professional responsibility from the rules of criminal procedure.

ACADEMIC CALENDAR:



THURGOOD MARSHALL SCHOOL OF LAW

TEXAS SOUTHERN UNIVERSITY
ACADEMIC CALENDAR 2017 – 2018

FALL SEMESTER 2017 (SEVENTY DAYS OF CLASSES)

Orientation	Monday-Friday	August 14-18, 2017
First Day of Class	Monday	August 21, 2017
Last Day to ADD/DROP	Friday	August 25, 2017
Labor Day (NO CLASSES)	Monday	September 4, 2017
<i>Purge of all unpaid course selections</i>	Thursday	September 20, 2017
Mid Term Examinations	Mon – Fri	October 16-20, 2017
VETERANS DAY (NO CLASSES)	Friday	November 10, 2017 (tentative)
Thanksgiving Holiday	Thurs – Fri	November 23-24, 2017
Last Day of Classes	Thursday	November 30, 2017
Last Day to Drop a Class	Thursday	November 30, 2017
First Year Professors' Grades due	Thursday	November 30, 2017
Reading Period (NO CLASSES)	Friday - Sunday	December 1-3, 2017
Final Examinations	Mon – Fri	December 4 -Dec. 15, 2017
Commencement	Saturday	December 16, 2017

SPRING SEMESTER 2018 (SEVENTY DAYS OF CLASSES)

School Opens	Tuesday	January 2, 2018
First Day of Class	Monday	January 8, 2018
Last Day to ADD/DROP	Friday	January 12, 2018
M L K Holiday (No Classes)	Monday	January 15, 2018
<i>Purge of all unpaid course selections</i>	Wednesday	February 7, 2018
President's Day Holiday (No Classes)	Monday	February 19, 2018
Mid Term Examinations	Mon – Fri	March 5– 9, 2018
Spring Break	Mon – Fri	March 12 – 16, 2018
Good Friday (No Classes)	Friday	March 30, 2018
Last Day of Classes	Wednesday	April 25, 2018
Last Day to Drop a Class	Wednesday	April 25, 2018
First Year Professors' Grades due	Wednesday	April 25, 2018
Reading Period (No Classes)	Thur. – Sun	April 26 - 29, 2018
Final Examinations	Mon- Fri	April 30 – May 11, 2018
Hooding Ceremony	Friday	May 11, 2018
Commencement	Saturday	May 12, 2018

Please note that the calendar events and /or dates are subject to change.

TMSLAW REGISTRAR
Approved 5/31/2017

POLICIES & PROCEDURES

- Attendance is mandatory: school of law policy, informed by the ABA accreditation standards, requires regular and punctual attendance. Excused absences must be cleared with the professor in advance.
- Roll will be called at the very beginning of class. Failure to be in attendance when your name is called will result in an absence. If you arrive after your name has been called you may stay in class, but you will not receive attendance credit. ***Please do not ask to be placed on the role if you are late.*** According to school policies, 5 unexcused absences will result in notice to the Dean's office.
- No computer, cell phone, tablet, or other electronic device is allowed in class.
- Outstanding class participation can raise your grade by a mark, i.e. a "B" will be raised to a "B+".
- Students will have opportunities to earn one point extra credit for attending select events to be described by the professor.
- To enhance the learning experience, you will have opportunity to learn through class participation and rigorous questioning. Students should read all material assigned for a class and be fully prepared for class discussion.
- Students will write a 5-page analysis of a criminal procedure issues found in a movie, music, literature, or other cultural production. For this assignment, students should introduce and identify the legal issue(s), articulate the law that governs the issue, decide the proper outcome and whether the film/book came to the correct conclusion. More details on this will be given in class, but the overarching idea is to begin understanding criminal procedure in context by treat the production as a hypothetical for an issue-spotting exercise.

READING ASSIGNMENTS

I. Introduction

Week 1

- 1/8 Introduction to the course, materials and goals (CB 2-24).
- 1/10 Sources of Criminal Procedure, Due Process (DP) v. incorporation, substantive DP, free standing DP, right to technology (CB 25-32; n3, 4; 32-38).
- 1/12 4th Amendment and Race (CB 39-40; 51-59); also download and read Arizona v. United States (opinion only),

<http://www.supremecourt.gov/opinions/11pdf/11-182b5e1.pdf>

Week 2

1/15 **Holiday, no class.**

1/17 Right to Counsel; Right to Appointed Counsel (**CB 60-69, n2, 3, n1-5; 70-75, n 2, 5, 8**).

1/19 **(NO CLASS MEETING)**: The Critical Stage and the Attachment of the Right to Counsel; Right to Counsel in Proceedings other than Criminal Prosecution; Collateral Attack; Equality Principle (**CB 76-81, n1, 2, 3; 82-93, n1, 2, 5, 6, 7, 8**).

Week 3

1/22 The Right to Waive Counsel; Standby Counsel; Faretta; Requisite Warnings by Judges; Competency Standard; Limits to Pro se: Misconduct by Defendant (**CB 96-101, n1-4; 103-06 n1-5, 106-109 n1-3, 5**).

1/24 Performance of Counsel; Strickland Standard (**CB 119-124 n1, 2, 3, 5, 6; 124-32; 136-38 n3-5**).

1/26 Strickland Applied (**CB 143-152 n1-2**).

Week 4

1/29 Chronic Exceptions; Assistance of Experts; Conflicts of Interest; Post-Conviction Review; Disqualification of Counsel (**161-63 n1, 2, 3, 4; 170-72 n1, 2, 3; 173-77 n1-7; 178 n1; 183-89 n1-3**).

1/31 Client Control; Appointed Counsel and Frivolous Appeals (**CB 190-99 n1, 2, 3, 7, 9, 10; n1-2**).

II. Police Practices

2/2 Arrest, Search, Seizure; The exclusionary rule; Good faith defense (**CB 202-15**).

Week 5

2/5 **(No Class Meeting)** Limits of Exclusionary Rule (**CB 218-26 n2, 3, 4, 5, 6, 7, 8, 10; 232-37, n2-4**).

2/7 Protected Areas and Interests; 4th Amendment Interests; Garbage; Curtilage v. Open Fields; Business Premises and Prison Cells (**CB 242-47, n1, 2, 3, 4, 5; 247-53, n1; 254-63, n2, 3, 7, 8, 9**).

2/9 Probable Cause; Stale information; Intentional/reckless inclusion of false info; police perjury; Informer's Privilege (**CB 267-80, n2, 3, 4, 5, 6, 7; 280-81, n1, 2, 3; 281-84 n1-4**).

Week 6

2/12 Search Warrants; Execution of the Warrant; Computer Searches; Warrantless Searches (CB 286-91, n1-6; 291-99, n1, 2, 3, 5, 6; 300-01 n1, 2, 3, 4; 302-05, n1, 2, 3).

2/14 High Speed Chases; Judicial Determination of Probable Cause; Driving while License Suspended; Other Searches of Person (CB 314-19, n1-2; 319-25, n1, 4, 5; 328-332, n1-7).

2/16 Warrantless Entries and Searches of Premises; Exigent Circumstances (CB 338-43, n1-4; 344-51, n1, 2, 4, 6, 7; 351-57, n1, 2, 4, 5).

Week 7

2/19 (No Class—Holiday)

2/21 Warrantless Seizures & Searches of Vehicles and Containers; Search of personal belongings of passengers; No established policy (CB 358-62, n1-4; 362-69, n1-4; 372-81, n1, 2, 4, 5, 6, 7).

2/23 Stop & Frisk / Reasonable Suspicion; Throwdown or abandonment of property; drug courier profile; Anonymous tips; Consent search after a verbal traffic warning (CB 382-91, n1, 3, 4, 5, 6; 395-97 n5-6; 398-405, n1-9).

Week 8

2/26 Temporary seizure of effects; Protective Search; Voice exemplar; Area code enforcement inspections, Border searches; Random drug testing; Reduced expectations of privacy for parolees (CB 405-06 n1, 2; 406-10, n1-7; 411-18).

2/28 Consent Searches; Show of authority; Consent by deception; Third party consent; Who may consent; Limits on third party consent; D's refusal to consent (CB 418-35 n1-13 & n1-5).

3/2 Undercover Investigations; Secret agents and the 4th Am.; N. 1 & 3, Katz and the reasonable expectation of privacy; Entrapment Defense; Inducement; Predisposition (CB 437-443, n1-4; 445-52, n1-3; 455-60).

Week 9

3/5 Police Interrogations & Confessions; The Third Degree; Due Process “Voluntariness” vs “Totality of the Circumstances” Test; Supervisory Authority over Fed Crim Justice vs 14th Am Due Process (CB 505-26).

3/7 Midterm Review (MTS Due by midnight)

3/9 Midterm

Week 10—**March 13-17 Off (Spring Break)**

Week 11

3/19 Miranda Revolution, Miranda; Can (Did) Congress Repeal Miranda?; Admissibility of Confessions; Forty-six years with *Miranda* (CB 526-41; 545-51).

3/21 Custody v. custodial interrogation; Jail plant Situation; What constitutes “testimonial evidence?”; Waiver of rights/Conditional waiver, Invocation of right to counsel and cessation of interrogation (CB 556-60 n5, 6; 564-67; 569-78 (c), 8, 9, 10, 11; 593-98 n22, 23, 25).

3/23 Break in Custody; What constitutes initiation of further communication with the police; How direct, assertive and unambiguous must a suspect be in order to invoke right to counsel?; 5th v 6th Am right to counsel; the 6th Am is offense specific; (CB 598-604, n27; 605-13 n28, 29; 617 n1-3; 625-30).

Week 12

3/26 Juveniles & false confessions; Miranda & Mentally Retarded, Litigation of Confession issue in Habeas Proceeding, Privilege Against Compelled Self Incrimination; the smart D who knew his rights (CB 633-36 n35, 36, 37; 640-42; 652-55; 657-61).

3/28 Freeing a Murderer; Fabrication of scientific evidence; Offering protection from other inmates to get D to talk; False confessions; Massiah Revisited; Interrogation vs Deliberate Elicitation; Trickery/Deception (CB 663-65; 668-69 n1-4; 673-75; 678-83; 684-87 n2-8; 698-708).

3/30 **Holiday NO Class**

Week 13

4/2 Lineups, Showups, & Other Pretrial Identification Procedures, the Problems with Eyewitness Identification; Lineups and Self Incrimination (CB 717-30 n1-3, 6, 10 & n1, 3, 5, 9).

4/4 Grand Jury Testimony/Self Incrimination; Immunity Grants (CB 789-797; 797-800).

4/6 Scope of Exclusionary Rules (CB 827-41 n1, 2, 3, 6, 9, 11, 12, 13).

III. The Commencement of Formal Proceedings

Week 14

4/9 Fruit of the Poisonous Tree (CB 842-45; 845-51 n1, 3, 4, 9; 852-60 n1, 6).

4/11 Right to Preliminary Hearing; Defense Uses; Application of the Rules of Evidence (CB 947-52 n1, 3, 4, 5, 6; 952-56 n1-7; 966-68 n1-3 & 1, 2).

4/13 Challenges to Grand Jury Composition; Misconduct Challenges; Joinder and Severance of Offenses; Failure to Join; Speedy Trial (CB 979-82 n1-3; 995-1000; 1062-67; 1068-72; 1103-10 n1).

IV. Pretrial and Trial

Week 15

4/16 Pretrial Discovery and Related Rights; Specifics; Discovery of Defenses (CB 1122-32; 1132-38; 1145-46).

4/18 Guilty Pleas; Voluntariness Standard (CB 1188-97 n1-3, 5, 7, 8, 9, 10, 12; 1199-1205 n1, 3, 4, 5, 9; 1208-09; 1283-86).

4/20 Reprosecution and Double Jeopardy; Reprosecution by a Different Sovereign (CB 1369-75 n1-4; 1400-1403).

Week 16

4/23 Course Review

4/25 Final Review (MTS Revision due by midnight)