

Criminal Procedure: Police Practices

University of Florida Levin College of Law

Syllabus

Spring 2009

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PLEASE READ THESE INSTRUCTIONS WITH CARE

Introduction

The course proposes to explore the Constitutional law that defines permissible police procedure in criminal investigations. Our primary concern will be the Supreme Court's interpretations of the Fourth (searches and seizures), Fifth (self-incrimination), and Sixth Amendments (right to counsel in the investigatory stage).

TWEN

I expect students to register for the TWEN class "Criminal Procedure: Police Practices" and to supply it with a valid e-mail address.

Readings

The primary text for this course is Welsh White and James Tomkovicz, *Criminal Procedure: Constitutional Constraints Upon Investigation and Proof* (LexisNexis 6th ed. 2008) (ISBN: 9781422421727). Reading assignments are listed in a separate document, titled "Readings," posted to the TWEN class "Criminal Investigation" under the "Syllabus" heading. I reserve the right to modify these assignments as the semester progresses. Please pay careful attention to the revision date noted at the bottom of the "Readings" document. As the semester progresses I might post additional recommended or required readings to TWEN under the "Course Materials" heading. For the first class please read pages ix-xviii and 3-21.

Study Guides

I would also encourage you, as you prepare for both individual class sessions and the end-of-semester exam, to take advantage of the many commercially available hornbooks and study guides. In conjunction with our in-class discussions and your out-of-class study groups, these can be useful in filling the inevitable gaps. I have listed as recommended texts Joshua Dressler and Alan Michaels' *Understanding Criminal Procedure: Volume I: Investigation* (LexisNexis 4th ed. 2006) (ISBN: 9780820569994), along with its 2008 Supplement (ISBN: 9781422426678), and Wayne LaFave, Jerold Israel, and Nancy King, *Principles of Criminal Procedure: Investigation* (Thomson-West 4th ed. 2004) (ISBN: 031415213X). I have also made available for your use on TWEN a handful of interactive on-line review lessons prepared by the Center for Computer-Assisted Legal Instruction, a.k.a. CALI. The password for their use can be obtained from the library's reference desk. Please note that there are many other perfectly fine materials for your review.

Office Hours

Wednesdays, Thursdays, and Fridays from 11:00am-12:00pm. It is not necessary to have an appointment. I would also encourage you to come at other times, with or without an appointment.

In addition to my office hours, I will be happy answer questions posted to the pertinent TWEN forum. Students are encouraged to post follow-up questions to my answers. In my experience, I have found this venue particularly useful to students in the hectic weeks leading up to the exam.

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Grading

A student's grade will be based primarily on the quality of his final exam. I also expect to make upward or downward adjustments to the final grade on the basis of the quality of the student's contributions to the classroom discussion.

Participation

Your thoughtful participation in class is critical to its success. To ensure that all have the opportunity to contribute, only one-third of the students will be "on call" in any given session. Each student will be assigned to a group — A, B, or C — and each class session will have a designated group. I will make group assignments within the first three class session. Prior to that time all students will be on call. I will at the start of each class select at random those students I will call upon that day. Selection one class does not preclude selection the next. Because the reading schedule itself is subject to change, I might make adjustments to the "on-call" assignments as classes are dropped or added.

Exam

The exam is three hours long and will take place on April 29, 2009 at 8:30am. You will be responsible for all issues raised in the assigned readings, whether or not they are discussed in class. You will also be responsible for all issues raised in class, whether or not they are covered in the assigned readings.

Credit

A passing grade in this class will result in the award of three credits.

Etiquette

Students are expected to refrain from activities that could distract themselves or others from the discussion. These include, among others, e-mail and instant-message communication, internet browsing, side conversations, game playing, and eating. To facilitate compliance, I request that students turn off and put away all electronic devices before class begins. This prohibition includes but is not limited to laptop computers, cell phones, PDAs, and pagers.

CLASS	ON-CALL	READING ASSIGNMENT	SUBJECT
1	ALL	ix-xviii 3-21	INTRODUCTION Pt. I SEARCHES AND SEIZURES Ch. 1 The “Threshold” of the 4th Amend. Right to be Secure Against Searches
2	A	21-41; prob. 1-5 (43-44)	
3	B	49-73	Ch. 2 Unreasonableness & the Probable Cause Requirement
4	B C	73-78; prob. 2-9 (83-84) 87-90	Ch. 2 Unreasonableness . . . (continued) Ch. 3 Unreasonableness & the Warrant Requirement [A] The Warrant Requirement & Searches of Persons, Houses, & Effects
5	A	91-114	[B] The Warrant Requirement & Seizures of Persons
6 & 7	B	114-33; prob. 3-12 (138-39)	[C] The Issuance, Content, & Execution of Warrants:
8 & 9	ALL	143-86; prob. 4A-4 (187-88)	Ch. 4 Reasonable Searches Without Warrants: The Nature & Scope of the Exceptions to the Warrant Requirement [A] Searches Incident to Arrests & Searches for Arrestees
10	A	193-200; prob. 4B-9 (205-206)	[B] Exigent Circumstances Searches
11 & 12	ALL	207-236; prob. 4C-7 (240)	[C] Vehicle & Container Searches
13	B	242-57; prob. 4D-5 (259-60)	[D] Inventory Searches
14 & 15	ALL	263-95; prob. 4E-9 (298-299)	[E] Consent Searches
16	C	301-312; prob. 4F-8 (315)	[F] The “Plain View” Doctrine
17	A	319-35	Ch. 5 The Balancing Approach to 4th Amend. Reasonableness [A] Stops, Frisks, & the Right to be Secure in One’s Person, House, & Effects [1] The Const’l Doctrine & its Theoretical Underpinnings
18 & 19	ALL	335-360; prob. 5A-2 (361)	[2] “Seizures” of Persons
20	B	366-383; prob. 5A-20 (387)	[3] The Showing Needed to “Stop” & “Frisk”
21 & 22	ALL	388-424; prob. 5A-31 (431)	[4] The Permissible Scope of “Stops,” “Frisks,” & “Sweeps”

23	C	498-513; prob. 5C-8 (515-516)	[C] Higher Than Usual Standards of Reasonableness
24	A	557-579; prob. 7-3 (581-582)	Pt. III CONFESSIONS Ch. 7 Due Process of Law & Confessions
25 & 26	ALL	589-624; prob. 8A-3 (624-625)	Ch. 8 The Privilege Against Self-Incrimination & Confessions [A] The Constitutional Basis
27	B	626-633; prob. 8B-9 (637-638) 638-654; prob. 8C-1 (654)	[B] Custody [C] Interrogation
28	C	658-660; notes on 667-668 672-700; prob. 8E-5 (702)	[D] Waiver [E] Invocation of Protections
29 & 30	ALL	729-65; prob. 10-9 (769)	Ch. 10 Confessions & the Right to Assistance of Counsel
31	A	833-848	Pt. V EXCLUSIONARY RULES Ch. 13 The Sources of & Rationales for the Exclusionary Rules
32 & 33	ALL	851-875; prob. 14A-9 (878-879)	Ch. 14 The Scope of & Exceptions to the Exclusionary Rules [A] The "Standing" Limitation
34	B C	880; 887-894; prob. 14B-4 (896-897) 900-941; 951-956; prob. 14C-6 (959)	[B] The "Independent Source" & "Inevitable Discovery" Doctrines [C] The "Attenuation" Doctrine
35	A	963-984; prob. 14D-6 (987)	[D] The "Good Faith" Exception
36	B	991-1007; prob. 14E-8 (1012)	[E] The "Impeachment" Limitation