

William S. Richardson School of Law

University of Hawai`i at Mānoa

Criminal Procedure – Investigative

Professor Camille Nelson

Spring 2007

Tuesday and Thursday 11:20-12:35pm

Office Hours: Tuesday and Thursday 12:45pm – 2:00pm and by appointment.

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SYLLABUS

Required textbook: Dressler and Thomas, Criminal Procedure: Investigating Crime (2003).

Manner of Proceeding:

Attendance counts. Everyone enrolled in the course will be expected to attend every class session. However, admitting of reality and the likelihood that sometimes life does not go as planned, **please contact me in advance if you find that you will be unable to attend class. I will regularly take attendance.**

Participation counts. The best way to develop your skill in analysis and advocacy that are required of legal practitioners is through experience; this class offers you a chance to practice arguing your position in an environment of exploration, but the experiment only works when everyone is engaged. To this end, you must be prepared to participate in the day's discussion every time you enter the classroom. A failure to be so prepared, **unless properly excused in advance**, will count as an absence.

People count. I cannot emphasize enough how important it is to remember that the law is not as stale and objective as it sometimes reads, and that it is at all times an institution that can and should advance the condition of humanity. Every one of our cases involved real people on both sides of the decision, and not everyone is going to agree on what the proper outcome was or should have been. Because there will be very real differences of opinion as we work through the material, it is of the utmost importance that everyone, at all times, demonstrates respect for their classmates and tolerance of divergent points of view. I look forward to collegial and professional discussions.

Grading

The formula for calculating your **final grade is based a single exam, at the end of the semester, which will account for 100% of your grade.** Exceptional attendance and participation can enhance one's grade, just as poor attendance and a lack of participation might decrease one's grade.

All you need to do to earn this credit is attend class regularly, avoid unexcused absences, and be prepared to engage in the discussion and/or respond to questions as they arise.

However, you simply cannot be adequately prepared to participate in class without doing the assigned reading, when it is assigned. If you fall behind in the reading schedule, neither the class discussion nor your contribution to it will make much sense.

Assignments

A proposed reading assignment schedule appears at the end of this material. It provides reading assignments in a chronological order that will basically predict our path through the course material. **However, be aware that the reading assignments will not exactly correspond to each successive class discussion.** I have tried to segment the materials temporally, but I will confirm the next class reading assignment during each class session, depending on our in class discussion and progress. We will spend more (or less) than one full day on any given segment, as needs dictate.

It will be easiest to adjust your focus and keep pace with these changes if you are an assignment or two ahead of the class discussion; but by all means, at least do the reading for a given day prior to that day's meeting.

Outside reading/events: While this is a stand-alone course designed to introduce you to the basics of the law enforcement in this country, you will quickly realize that it cannot be considered in a vacuum. I encourage you to keep yourself informed about local, national, and international events, and to consider the issues they raise in the context of this course. We will try, throughout the semester, to integrate some discussion of current events and emerging ideas into the larger whole of the course, but understand at the outset that our time will not permit the full discussion many of these issues would otherwise merit.

I.	Introduction to Constitutional Criminal Procedure	
a.	The Criminal Process: Failure and Legitimacy	pp. 1-52 ¹
II.	The Sixth Amendment In Action: Eyewitness Identification Procedures	
i.	The Right to Counsel	pp. 737-753
ii.	Due Process of Law	pp. 753-763
III.	The 4 th Amendment: Constitutional Constraints on Search and Seizure	
a.	Fourth Amendment: An Overview	pp. 53-74
b.	Passing the Threshold of the Fourth Amendment	
i.	What is a Search? <u>Katz</u> and Its Application	pp. 75-125
ii.	What is a Seizure?	pp. 128-131
c.	The Substance of the Fourth Amendment	
i.	Probable Cause	pp. 132-162
ii.	Arrest Warrants	pp. 162-174
iii.	Search Warrants	
1.	Constitutional Issues	pp. 174-187
2.	Elements and Execution of a Valid Search Warrant	pp. 191-202
d.	Warrants Clause: When Are Warrants Required?	
i.	Exigent Circumstances	pp. 203-209
ii.	Search Incident to Arrest Doctrine	pp. 209-226
iii.	Arrest of Automobile Occupants	pp. 226-244
iv.	Pretextual Stops and Arrests	pp. 244-253
v.	Cars and Containers	pp. 253-286
vi.	Plain View/Plain Feel Doctrines	pp. 286-297
vii.	Consent	pp. 297-332
e.	The Fourth Amendment's Reasonableness Clause: The Diminishing Roles of Warrants and Probable Cause	
i.	The <u>Terry</u> Doctrine	pp. 333-355
ii.	Drawing <u>Terry</u> Distinctions: What is a Seizure?	pp. 355-383
iii.	The Meaning of "Reasonable Suspicion"	pp. 383-399
iv.	Extensions of the <u>Terry</u> Doctrine	pp. 400-411
v.	Reasonableness and the "Special Needs" Context	pp. 411-433
f.	Remedies for Fourth Amendment Violations	
i.	Standing Issues	pp. 434-456
ii.	The Exclusionary Rule	pp. 456-464
iii.	The Good Faith Exception to the Exclusionary Rule	pp. 464-486
iv.	"Fruit of the Poisonous Tree" Doctrine	pp. 486-504
IV.	Confessions: The Voluntariness Requirement	pp. 505-516
V.	Police Interrogation and the Fifth Amendment Privilege Against Self-Incrimination	
a.	The <u>Miranda</u> Doctrine	pp. 544-583

¹ This assignment will be largely treated as background material.

- b. The Meaning of “Custody” and “Interrogation” pp. 629-649
 - c. Waiver and Invocation of Miranda Rights pp. 649-669
- VI. Police Interrogation and the Sixth Amendment Right to Counsel
 - a. Eliciting Statements in the Absence of Counsel pp. 680-699
 - b. Massiah Waiver pp. 699-710
 - c. The Distinctions Between Miranda and Massiah pp. 710-719
- VII. *Time Permitting*
 - a. The USA Patriot Act: An Uncertain Future for American Constitutional Criminal Procedure