Syllabus—Criminal Procedure
Law 534, Section 001
Professor Dawson

Course Time and Room: Monday and Wednesday, 1:30-2:45, Room 108 (except as noted on weekly schedule below)

Office Hours Time and Room: Room #240, Monday & Wednesday 2:45-4:00; Tuesday 10:15-11:30

Professor’s Information:
Professor Edward Dawson
Office #240
Office Phone: 618-453-8735
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Office Hours/ Availability:
You are welcome to come by during office hours without making an appointment. You may also request an appointment outside office hours by sending me an email, or stop in anytime I’m in my office and the door is open. You can also send me questions by email, but I may ask you to come by if the question isn't easily answered by email. I check my email regularly during business hours (9 am-6 pm Monday through Friday); outside of those times I may not respond the same day.

Required Course Books:
We have a casebook and the 2017 supplement for the casebook. There are two versions of the casebook; the longer hardbound version has the material for both this class and Crim Pro 2 (the “bail to jail” class), the shorter paperback version (Basic Criminal Procedure) includes only the material for this class. Get the hardback if you know you are going to take Crim Pro 2, get the paperback if you don’t and you want to save some money. The page numbers for both versions are the same.

• Kamisar, LaFave, et al., Modern Criminal Procedure: Cases, Comments, and Questions, 14th ed. OR Kamisar, LaFave, et al., Basic Criminal Procedure, 14th ed.
• Kamisar, LaFave, et al. Modern Criminal Procedure 14th ed., 2017 Supplement

Course Overview:
This course focuses on constitutional limitations on criminal procedure during the early phases of criminal proceedings, including investigation, search, arrest, and interrogation. We will primarily be studying (1) the 4th amendment’s limitations on arrests, searches and seizures and the (2) 5th amendment’s right against self-incrimination, with some additional brief coverage of (3) protections derived from the 6th amendment right to counsel, and (4) protections under the 6th and 14th amendments that apply to identification procedures. The second course on criminal procedure, the “bail to jail” course, covers later stages of the process; you should consider taking that course either if you know you want to be a criminal lawyer or if you want full coverage of the criminal procedure topics on the bar exam.
Learning Objectives:

At the end of this course, a student should be able to:

• Understand a criminal defendant’s fundamental constitutional rights during the investigatory stage of criminal proceedings and explain the content of these rights with reference to specific cases, statutes, and doctrines covered in class.

• Master the fundamentals of constitutional criminal procedure by learning the relevant constitutional provisions and judicial doctrines, and applying the rules to determine whether there is a constitutional violation in a hypothetical case.

• Be able to answer bar-style multiple-choice questions and write bar-style essay answers on criminal law topics covered on the Multistate Bar Exam including “arrest, search and seizure,” “confessions and privilege against self-incrimination,” and “lineups and other forms of identification.”
  
  o The topics covered on the MEE and MBE in criminal law are listed here¹ and here.

• Orally explain cases and doctrines covered in the class, through practice via call and individual and group problem solving.

• Express and explain a sophisticated understanding of how legal doctrine develops over time through a line of precedents, and how doctrine may change with changes in composition of the Supreme Court.

• Understand and explain how the doctrines covered in the course can affect tactics used by police and investigators in investigating crime, and how police and investigators attempt to work with and around those doctrines.

Reading:

For each class, you are expected to do the assigned reading, and I will ask you questions about the reading in class according to the call policy described below. The reading for the class is short in terms of pages but very dense—there are a lot of cases excerpted and summarized for each day’s reading. The assigned reading includes “principal” cases as well as many note cases. The cases the book describes as “major note cases,” whose name is in ALLCAPS in the book, are important cases which I often use as call cases in class. That is, you should be prepared to discuss on call the principal cases as well as the major note cases.

Class Attendance:

You are allowed six absences for this course. Since the material for this course is challenging, I recommend you not miss class unless it is truly necessary. As described in the call policy in the next section, being unprepared in class can count as an absence. The school’s attendance policy is available here: http://law.siu.edu/_common/documents/rules-code/attendance-rules-ay17-18.pdf

Call and Attentiveness Policy:

I will call on students using a random call list—once you have been called on (if you are prepared) you won’t be eligible to be called on again until I have been through the entire list. You may “note out” before class by giving me a note or telling me that you are not prepared to

¹ On this syllabus, highlighting indicates a clickable hyperlink.
be on call; noting out counts as an absence. If I call on you and you are unprepared or have not done the reading, I will mark you as absent for that class, the absence will count towards the limit for the semester, and you will remain on the call list.

If you appear to be using a computer or phone during class for non-class activities in a way that is distracting to other students, I will warn you once by email and if I observe it again will disallow your use of the computer during class.

**Recording Policy:**

The course sessions generally will not be recorded, unless required for a disability accommodation. If you are going to be absent and would like for me to record the class, if you give me advance notice I will try to get that set up for you.

**Assignments and Problems:**

We will occasionally have in-class problems that we will work as group exercises or individual written assignments. These problems will not be graded, but your completion and participation can affect your class participation grade.

**Grades:**

Your grade will be determined by a combination of your performance on a midterm and your performance on the final exam, with possible adjustments for class participation. The midterm counts for 20% of your grade, and the final for 80%. Grades for the course will be assigned based on the law school grading policy, which is available at [http://www.law.siu.edu/_common/documents/rules-code/grading-rules-ay16-17.pdf](http://www.law.siu.edu/_common/documents/rules-code/grading-rules-ay16-17.pdf)

The midterm will be on Monday, October 10, during the normal class period, and will consist of several multiple-choice questions.

The final exam will be on Wednesday, December 6, at 1:15-4:15 PM. It will consist of one or more essays and several multiple-choice questions. The final exam will be cumulative, that is, it will cover material from the entire semester.

Your class participation may affect your grade. I may adjust your grade =/- .3 points based on your class performance on call, on any in-class assignments, your willingness to volunteer or engage in dialogue, and your willingness to ask questions to clarify material you do not understand. You do not have to volunteer to speak or ask questions outside of class to be considered a good participant; you do have to be prepared when you are called on and participate in or complete exercises and problems during class.

**Workload Expectations:**

The American Bar Association standards for accrediting law schools define “a “credit hour” as an amount of work that reasonably approximates: (1) not less than one hour of classroom or direct faculty instruction and two hours of out-of-class student work per week for fifteen weeks, or the equivalent amount of work over a different amount of time.” This is a 3-credit hour class, meaning that we will spend two 75-minute blocks of time together each week. The amount of assigned reading and out of class preparation should take you about 3 hours for each class session and 6 hours for the week. All told, applying the ABA standard to the number
of credits offered for this class, you should plan on spending a total of 9 hours per week (3 in class and 6 preparing for class) on course-related work.

**TWEN Page:**

There is a TWEN page for this course, and you should sign up for it. On that page I will post course documents such as this syllabus, handouts, and any powerpoint slides I use in class. For some classes, assigned reading will also be posted on the TWEN page.
Weekly Schedule and Outline:

Below is a list of the reading assignments and topics for each course session. The sessions are organized within an outline format that is intended to give you an overview of how each session fits into the larger structure of the course. I may adjust the assignments may change depending on how fast we move through the material; I will give you advance notice of changes and update the syllabus as we go. I may also assign additional reading or distribute problems to be worked in advance of class. When I do I will give you advance notice in class and post the material on TWEN in advance of the day for which it is assigned.

In the schedule below, all page references are to the main casebook except for references preceded by “Supp.,” which refer to the 2017 supplement to the casebook.

In addition to the scheduled classes, we will have one or more videoed makeup or review lectures as needed to make up for missed class days. I will give you more information about these as they are scheduled and become available.

I. Introduction

1. Wednesday, 8/23/17
   Topic: Introduction to the Course; Introduction to Constitutional Criminal Procedure,
   Reading: pp. 1-33; Supp. pp. 3-6

2. Supplemental Video Lecture
   This is a video lecture that makes up for the eclipse closure on Monday, August 21. It covers topics that either are useful background to the doctrine, or may broaden your perspective on the fairness of the criminal-justice system as a whole. I will let you know as soon as the video is available; you don’t have to watch it as soon as it’s posted but I recommend you do because it may help you get a different perspective on the material we cover during the semester. Also, if you watch the video, it will tell you how to get a “call pass” that will allow you one free pass when called on during the semester.
   Topics: Constitutionalization of Criminal Procedure, Actual Innocence, Racial Disparities in Criminal Procedure; The Right to Counsel (short overview).
   Reading: pp. 37-59; Supp. pp. 7-11

II. Arrest, Search and Seizure

3. Monday, 8/28/17
   Topic: Exclusionary Rule
   Reading: pp. 202-227; Supp. p. 29 §1

4. Wednesday, 8/30/17
   Topic: Exclusionary Rule (cont’d); Intro to Expectation of Privacy
   Reading: pp. 227-247

Monday, 9/4/16—No class, Labor Day
5. **Wednesday, 9/6/17**
   Topic: Protected Areas and Interests
   **Reading:** pp. 247-267; Supp. p. 29-30 §2

6. **Monday, 9/11/17**
   Topic: Probable Cause
   **Reading:** pp. 267-286; Supp. pp. 30-31 §3

7. **Wednesday, 9/13/17**
   Topics: Search Warrants; Warrantless Arrests and Searches of the Person pt. 1,
   **Reading:** pp. 286-314; Supp. pp. 31-33 §4.

8. **Monday, 9/18/17**
   Topic: Warrantless Arrests and Searches of the Person pt. 2
   **Reading:** pp. 314-338; Supp. pp. 33-35 §5 (NOTE THAT the *Birchfield* case at pp. 33-35 of the Supp. is a major note case, which I will treat as a call case in class).

9. **Wednesday, 9/20/17**
   Topic: Warrantless Entries and Searches
   **Reading:** p. 338-358

10. **Monday, 9/25/17**
    Topic: Warrantless Seizures and Searches of Vehicles and Containers
    **Reading:** pp. 358-382

11. **Wednesday 9/27/17**
    Topics: Stop and Frisk pt. 1
    **Reading:** pp. 382-405; Supp. p. 35-40 §8 (NOTE THAT the *Rodriguez* case at pp. 37-40 of the Supp is a major note case, which I will treat as a call case in class).

12. **Monday 10/2/17**
    Topic: Stop and Frisk Cont’d, Administrative Inspections and Searches; Catch-up (as needed)
    **Reading:** pp. 405-418; Supp. pp. 40-45

13. **Wednesday 10/4/17**
    Topic: Consent Searches
    **Reading:** pp. 418-437 Supp. pp. 45-46 §10 (NOTE THAT the *Birchfield* case in the Supp. is a major note/ call case)

**MIDTERM EXAM**

14. **Monday, 10/9/17—MIDTERM EXAM**
    The midterm exam will be a multiple-choice exam that will cover all material through 10/4/17. I will give you more information about the exam in September.
II. Undercover Investigations and Surveillance

15. Wednesday 10/11/17
   Topic: Undercover Investigations
   Reading: pp. 437-466

16. Monday 10/16/17
   Topic: Network Surveillance
   Reading: pp. 466-486, Supp. p. 47-48 §1

III. Police Interrogation and Confessions

17. Wednesday 10/18/17
   Topic: Custodial Interrogation: Introduction and Background
   Reading: pp. 505-531
   Optional: If you want to listen to the full argument audio of *Miranda v. Arizona*, it is available at this link: [https://www.oyez.org/cases/1965/759](https://www.oyez.org/cases/1965/759)

18. Monday, 10/23/17
   Topic: *Miranda* rights
   Reading: pp. 531-551; 638-646

19. Wednesday 10/25/17
   Topic: *Miranda*: Warnings, Custody, and Interrogation
   Reading: pp. 552-572, Supp. p. 51 §557

20. Monday 10/30/17
   Topic: *Miranda*: Testimony, Custody, Exceptions, and Waiver
   Reading: pp. 571-595 (stop at end of n. 23); problem materials for in-class exercise (to be posted on TWEN)

21. Wednesday 11/1/17
   Topic: Invocation and Consequences
   Reading: pp. 595-617

22. Monday 11/6/17
   Topic: Invocation; Comparison with Right to Counsel
   Reading: pp. 618-636; Supp. p. 51

23. Wednesday 11/8/17
   Topic: Due Process; Evidence Derived From Confessions
   Reading: pp. 652-669

24. Monday 11/13/17
   Topic: Due Process Voluntariness and 6th Amendment Redux
   Reading: pp. 677-693, 698-703, 711-716
IV. Scope of the Exclusionary Rules

25. Wednesday 11/15/17
   Topic: Standing
   Reading: pp. 827-842

   Thanksgiving Break—Week of Monday 11/20 and Wednesday 11/22

26. Monday 11/27/17
   Topic: Fruits of the Poisonous Tree and Impeachment
   Reading: pp. 842-866, Supp. p. 59-60 §2 (NOTE THAT the Streiff case in the Supp. is a major note/call case)

V. Lineups, Showups, and Other Pretrial Identification Procedures

27. Wednesday 11/29/17
   Topic: Identification Procedures: Use and Limits
   Reading: pp. 717-742, Supp. p. 53 §1

28. Review Session: TBA
Emergency Procedures:
Southern Illinois University Carbondale is committed to providing a safe and healthy environment for study and work. Because some health and safety circumstances are beyond our control, we ask that you become familiar with the SIUC Emergency Response Plan and Building Emergency Response Team (BERT) program. Emergency response information is available on posters in buildings on campus, available on BERT’s website at www.bert.siu.edu, Department of Safety’s website www.dps.siu.edu (disaster drop down) and in Emergency Response Guideline pamphlet. Know how to respond to each type of emergency.

Instructors will provide guidance and direction to students in the classroom in the event of an emergency affecting your location. It is important that you follow these instructions and stay with your instructor during an evacuation or sheltering emergency. The Building Emergency Response Team will provide assistance to your instructor in evacuating the building or sheltering within the facility.

Disability Support Services:
Disability Support Services provides the required academic and programmatic support services to students with permanent and temporary disabilities. DSS provides centralized coordination and referral services. To utilize DSS services, students must come to the DSS to open cases. The process involves interviews, reviews of student-supplied documentation, and completion of Disability Accommodation Agreements. http://disabilityservices.siu.edu. Upon completion of a Disability Accommodation Agreement with DSS, students should bring the agreement to the School of Law Registrar’s Office to ensure the School of Law provides the proper classroom and examination accommodations.

Saluki Cares:
The purpose of Saluki Cares is to develop, facilitate and coordinate a university-wide program of care and support for students in any type of distress—physical, emotional, financial, or personal. By working closely with faculty, staff, students and their families, SIU will continue to display a culture of care and demonstrate to our students and their families that they are an important part of the community. For Information on Saluki Cares: (618) 453-5714, or siucares@siu.edu, http://salukicares.siu.edu/index.html. At the School of Law, Assistant Dean Judi Ray is also available to help students access university resources. Her email is judiray@siu.edu, and her phone number is 618-453-3135.