

Criminal Procedure

Professor Paul G. Cassell

Fall Semester, 2009

Welcome to Criminal Procedure. This course will consider how we balance society's need for effective law enforcement against the individual's right to fair treatment in the criminal justice system. I hope that you find these subjects to be as exciting and interesting as I do. A brief outline of information about the course follows.

TEXTBOOK

The required text for the course is Y. KAMISAR, W. LAFAVE, J. ISRAEL, & N. KING, BASIC CRIMINAL PROCEDURE (12th ed. 2008) (referred to as "Text"). Also required is a paperback supplement to the textbook. Finally, I have put together a handout of additional materials (referred to as "Handouts"). These materials are available to you on TWEN under "Course Materials." I will also be making use of Powerpoint slides during classes. These are also be available to you on TWEN.

READING ASSIGNMENTS

Although I will not specifically discuss them in class, at some point early in the semester you will want to read chapter 1 in the text, An Overview of the Criminal Justice Process (pp. 1-24).

CHAPTER 2 – NATURE AND SCOPE OF 14TH AMENDMENT DUE PROCESS

1. *"Ordered Liberty" and Other Theories*
Text, pp. 24-30
4. *Supervisory Powers*
Text, pp. 42-46

CHAPTER 6 – ARREST, SEARCH AND SEIZURE

1. *The Exclusionary Rule.*
Text, pp. 218-48
Handout, pp. 1-3 (Exclusionary rule replacement found in the proposed amendment to the Violent Crime Control Act of 1995)
Text, pp. 248-54
2. *Protected Areas and Interests.*
Text, pp. 254-82
3. *"Probable Cause".*
Text, pp. 282-307

4. *Search Warrants.*
Text, pp. 307-322
5. *Warrantless Arrests and Searches of the Person.*
Text, pp. 322-53
6. *Warrantless Entries and Searches of Premises*
Text, pp. 353-63
Handout, pp. 4-19 (Utah Supreme Court decision in *Brigham City v. Stuart*)
Text, pp. 363-71
7. *Warrantless Seizures and Searches of Vehicles and Containers*
Text, pp. 371-399
8. *Stop and Frisk*
Text, pp. 399-435

[Note: We skip section 9 here, and return to it shortly.]

10. *Consent Searches*
Text, pp. 449-64

More on Vehicle Searches

Handout, pp. 20-24 (*U.S. v. Walker I*, 933 F.2d 812 (10th Cir. 1991))
Handout, pp. 25-31 (“The Heat on Utah’s Cocaine Lanes”)

9. *Administrative Inspections and Regulatory Searches*
Text, pp. 435-49

Is There a Better Way? Utah State Constitutional Interpretation
Text, 46-47

Read handout, pp. 32-33 (selected Utah/U.S. constitutional provisions).
Handout, pp. 34-43 (*State v. Larocco*, 794 P.2d 460 (Utah 1990))

Handout, pp. 44-51 (*State v. Anderson*, 910 P.2d 1229 (Utah 1996))
Reread handout, pp. 4-19 (*Brigham City v. Stuart*)
Handout, pp. 52- 58 (*State v. Tiedemann*)
Handout, pp. 59 (Developments in the Utah Constitutional Revision Commission)
Handout, pp. 60-65 (Cassell Remarks to the CRC in Support of Abolishing Utah's Exclusionary Rule)

CHAPTER 9 – POLICE INTERROGATIONS AND CONFESSIONS

1. *Historical Background*
Text, pp. 539-61

2. *The Miranda "Revolution"*
 - a. *Miranda v. Arizona*
Text, pp. 561-88

 - b. *Miranda's Application (I): Custody, Interrogation, Waiver*
Text, pp. 588-622

 - c. *Miranda's Application (II): Resumption of Questioning and Other Issues*
Text, pp. 622-56

 - d. *Miranda's Impact in Practice and Congress' "Repeal" of Miranda*
Text, pp.656-70
Reread text pp. 623 n.a (videotaping of interrogations)
Handout, pp. 66-94 (Cassell analysis of the costs of *Miranda*)
[Note: additional material about *Miranda* is posted on my faculty webpage – click on "Supplemental Classroom Materials and Information," then "Overhaul Miranda" in the left-hand column.]

3. *Miranda, the Privilege Against Compelled Self-Incrimination, and 14th Amendment Due Process.*
Text, pp. 670-77

4. *The Patane and Seibert Cases.*
Text, pp. 677-90

5. *Some Final Questions About Miranda*
Text, pp. 690-700

6. *The "Due Process" - "Voluntariness" Test Revisited*
Text, pp. 700-21

7. *Massiah Revisited: Massiah and Miranda Compared*
Text, pp. 721-43

CHAPTER 12 — THE SCOPE OF THE EXCLUSIONARY RULES

1. *"Standing" to Object to the Admission of Evidence*
Text, pp. 872-86
2. *The "Fruit of the Poisonous Tree"*
Text, pp. 886-904
3. Use of Illegally Obtained Evidence for Impeachment.
Text, pp. 905-16

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Further readings, if any, to be announced.

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I would like to tell you how much material to read for each class, but that uncontrollable variable—class participation— makes that difficult. My best guess is that we will cover about 20 pages in the textbook for each class. I have not referred to the supplement in this reading assignment. You are, however, *responsible for reading the relevant portions of the supplement that relate to the assigned pages in the textbook*. I will try to give more precise guidance at the end of each class.

SUPPLEMENTAL MATERIALS

You should not need to buy any study aids. If you want to consult one without spending any money, the library has on reserve copies of the following good sources:

WAYNE R. LAFAVE & JEROLD S. ISRAEL, *CRIMINAL PROCEDURE* (the “green hornbook”);

JEROLD S. ISRAEL & WAYNE R. LAFAVE, *CRIMINAL PROCEDURE: CONSTITUTIONAL LIMITATIONS* (the “nutshell”);

JOSHUA DRESSLER, *UNDERSTANDING CRIMINAL PROCEDURE* (very understandable black letter law hornbook); and

CHARLES H. WHITEBREAD & CHRISTOPHER SLOBOGIN, *CRIMINAL PROCEDURE: AN*

ANALYSIS OF CASES AND CONCEPTS (treatise).

For more detailed research, the best sources are WAYNE R. LAFAVE & JEROLD S. ISRAEL, CRIMINAL PROCEDURE (three-volume blue hornbook); and WAYNE R. LAFAVE, SEARCH & SEIZURE (four-volume blue hornbook) (search and seizure issues). For a good, current overview of federal case law, see Project, "Annual Review of Criminal Procedure: United States Supreme Court and Court of Appeals," each year in the GEORGETOWN L.J.

CLASS SCHEDULE

Class will meet Wednesday, Thursday, and Friday mornings from 9:10 to 10:25.

I'M AVAILABLE TO HELP!

I want to be fully accessible to you. You can swing by my office any time or call my office (801-585-5202) or send me an email at cassellp@law.utah.edu, I will also give you my home telephone number as the final exam approaches.

Please let me know if you have any suggestions for making this is a more enjoyable and rewarding class.

CLASS PARTICIPATION

Class participation will be considered in calculating the final grade. Class participation can only improve your grade, not lower it (unless you are unprepared on your assigned days).

FINAL EXAM

It is very early in the course to talk about the final exam, but there always seems to be a great deal of interest in the subject. I anticipate (but do *not* promise) that the final exam will have three one-hour essay questions. At least two of the questions will be classic "issue spotting" questions (that is, a fact pattern to which you must apply principles learned in the course) and perhaps one question will be a "policy" question (that is, a question raising issues of legal policy based on what we have talked about in the course). The policy question may ask you to criticize some view or doctrine that the instructor has expounded in class.

The exam will be "open book" exam administered over a three to four hour period. All exams must be typed or legibly hand written. There will be a page limitation on the length of the answers. I will make a strong effort to insure that my final exam focuses on what we have talked about in the course.

If you concentrate on what is covered during class discussions, I have no doubt that you can do well on the final. To see the type of exam that I write, you can look at my Criminal

Procedure exam from the last several years. They are available in the library or on my webpage. I will carefully explain the final exam in more detail towards the end of the course.

CASELL – CRIMINAL PROCEDURE

The reading assignment for the first day of class will focus on the “incorporation” doctrine. In the casebook (Kamisar et al., Basic Criminal Procedure), please read pp. 24-30 and pp. 42-46

The reading assignment for the second day of class will focus on “the exclusionary rule.” In the casebook, please read pp. 218-48. In addition, in my supplemental materials, please read pp. 1-3 (the proposed legislative replacement for the exclusionary rule) . Those materials will be available on TWEN shortly.

Although I will not specifically discuss them in class, at some point early in the semester you will want to read chapter 1 in the text, An Overview of the Criminal Justice Process (pp. 1-24).

I look forward to meeting everyone in class for what I hope will be an interesting class about the tensions between promoting effective law enforcement and protecting individual liberties.