

CRIMINAL PROCEDURE
TENTATIVE Fall 2013 SYLLABUS
Mondays & Wednesdays 10:45AM-12:15 PM

Professor Robert Molko
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1. Course Materials

The following book is **required**:

1. Saltzburg & Capra: American Criminal Procedure Investigative, Cases and Commentary
Ninth Edition 2010 (West) Soft Cover + 2013 Supplement

The following materials are **recommended** for reference or purchase

1. John Cornwell: Glannon Guide to Criminal Procedure 2d edition 2012 (Wolters Kluwer)
Good for Multiple choice questions practice
2. Dressler and Michaels: Understanding Criminal Procedure: Volume One-Investigation,
5th Edition 2006 (Lexis Nexis)

2. “In-Class” Methodology:

Criminal procedure is one of the most exciting and dynamic subject in law school and in criminal justice practice. It is constantly evolving with new decisions every year from the United States Supreme Court and the lower courts. It is particularly important to look at the history of Criminal Procedure in order to understand its present status and its future. For this reason, it is critical that you read all the assigned reading and brief all the assigned reading cases. Bring the casebook and its supplement to *each* class session.

We will be using the **Clicker** system during the class. Please purchase a Clicker before the start of the semester and bring it with you at every class. This is a **mandatory** requirement for the class. The CPS Pulse Radio Frequency Pads “clickers” ISBN 9781881483816 are available for purchase at the Law Bookstore. Caveat: This is a NEW 2012 version of the clicker.

3. Exams and Grading

- a. There will be a mid-term exam in essay format which will count as 20% of your final grade.
- b. There will also be a three-hour, “closed-book,” final examination which will comprise 70% of your final grade. The final examination may test you on any material assigned in the casebook, as well as any material covered in any of the additional readings and assigned exercises.
- c. 10% of your semester grade will be based on your preparation for class, your class attendance, your class participation, and your completion of any assigned exercises (e.g. CALD). In addition, exemplary presentation of cases and class discussion may result in a grade increase of .1 (e.g. from 3.0 to 3.1)

The mid-term examination will be 1.5 hour in length. The final examination will be 3 hours in length and will be a combination of multiple-choice questions and essay questions.

As the semester progresses, I may indicate in class and/or the webcourse any additional required assignments. It is your responsibility to be aware of any such assignments and their due dates. You should check the

webcourse site regularly for any changes in the syllabus and/or any assignments.

4. Attendance & Decorum:

Successful completion of this course is dependent upon satisfaction of the W.S.C.L. Attendance Policy, which is reprinted in the Student Handbook. IF YOU MISS MORE THAN FOUR (4) CLASSES, YOU WILL RECEIVE A GRADE OF "F" AND WILL NOT BE PERMITTED TO ATTEND SUBSEQUENT CLASSES. Students leaving and returning to their seats, while class is in session, disrupt the concentration of students and, therefore, the learning environment. Please refrain from walking in and out during the class unless it is absolutely necessary. Cell phones must be turned off during class and you must not access the internet during class unless specifically requested to by me. No Texting/Tweeting is allowed. You will be asked to leave the classroom for any violation of these rules and you will be deemed absent for that day also.

5. Seating Chart:

A seating chart will be distributed at the beginning of the second class session. Please print your name legibly in the seat you choose for your permanent seat. If you wish to change your seat at a later date, please notify me so that I can make the appropriate changes on the chart.

6. Office Hours: Mondays & Wednesdays 9:00-10:30AM and 12:30-1:30pm, Tuesdays 2:00- 4:00 Pm,

Students are strongly encouraged to take advantage of the professor's office hours. As the semester progresses, if you would like to discuss any issues, please make appointments (at least one day in advance) through the Faculty Appointment Book located at the front desk in the Faculty Office Suite on the third floor. My office hours will be contained in the Appointment Book. As a courtesy to other students, do not sign up for a "block" of consecutive appointments, or sign up for multiple consecutive weekly appointments all at once. If needed, I will always find time to meet with you. Please put your email address and your telephone number on the appointment list, so that I may contact you if I have to reschedule your appointment. If you are running late to an appointment or if you cannot keep a scheduled appointment, please email me AND call a faculty secretary and advise her as soon as possible (Jacqueline Alvarino 714-459-1196; Nancy Palos 714-459-1126; Bonnie Manning 714-459-1128).

8. Preparation for Class and Classroom Participation:

Preparation is a component of the grade in this course. Students are expected to have carefully read and briefed all cases (including dissenting/concurring opinions) scheduled for discussion in class. Each student should be prepared to be called upon in class to summarize the pertinent facts, issues, law and court findings and rulings of a case. The quality of the recitation is more important than the quantity. Merely reading from the casebook is NOT a proper presentation of the case and wastes a lot of time. A student whom I deem unprepared will be treated as absent for that day. You are expected to stay sufficiently ahead of the class in your preparation to insure your readiness to participate for each class. Neither the assertion that you did not anticipate the class getting so far, nor that you read the assignment too long ago to remember it will excuse a failure to be prepared for class. Be prepared to also discuss the notes and comments from the casebook.

Class Participation is also a component of the grade in this course. Legal education is a co-operative venture that requires your active engagement in class discussion. Therefore, class participation is a **mandatory** part of this course. Students are encouraged to ask questions. All views are welcome. A common maxim in law is that "reasonable minds may differ". You are expected to respect others who disagree with you. The quality of your answers and comments is more important than the quantity.

9. Quizzes, Briefing and Assigned Exercises:

In order to discuss a case intelligently in the limited time available in class, students should prepare a brief in

written form to assist them in recitation and discussion and have it readily available if called upon in class. In other words, students should not be fumbling through their textbooks or computer screens to find their “brief”. Book briefing is a poor idea and is discouraged; it is not an effective and acceptable sole method of briefing; it also often causes delays in the presentation of cases in class. **CALI** exercises are designed to supplement and test your understanding of a subject that has been covered in the Casebook and/or class. They are also good tools to practice answering multiple choice questions. In order to access the proper CALI exercise and get credit for completing it, you **MUST** use the URL link provided on the webcourse for each particular assignment. If you do not use this URL link, you will not get credit for the assignment. You must complete each exercise by the date indicated on the syllabus. Other exercises may be assigned during the semester.

10. Ethics:

Ethics is of paramount importance in the study and practice of law and particularly so in criminal prosecution and defense where the safety of society and the liberty of the accused are always at issue. Students should be familiar with the Honor Code of Western State College of Law, which may be found at Chapter IX of the Student Handbook. Any violation of law school rules and regulations relating to cheating, plagiarism, or other ethical matters addressed in the Honor Code will be vigorously enforced. A breach of ethics could also prevent you from being admitted to any state bar.

11. Practice Exams:

Students are encouraged to take practice exams. After the first weeks of class, some of the past essay exams will be posted on the class website. If you wish to discuss your answers to these practice exams with me during office hours, you must email me a copy of the practice exam question and your answer at least 2 days before our office hours meeting.

10. Website:

LexisNexis Web course: Criminal Procedure Fall 2013

You **MUST** also register on the webcourse for this class. The webcourse will provide me with a method to communicate with you by posting assignments, syllabus modifications, etc... and by mass emailing you, if necessary. I will also use the Discussion Forum on the webcourse to share my answers to students' relevant questions. This webcourse will also provide you with the URL link that you **MUST** use for each assigned CALI exercise.

Criminal Procedure Fall 2013 Syllabus

<i>Class date</i>	<i>Subject</i>	<i>Reading Assignment</i> Saltzburg & Capra Casebook pages Casebook 2013 supplement pages (S)	<i>CALI</i> Exercises You MUST use the URL Link provided on the webcourse
Aug. 26	<ul style="list-style-type: none"> • Introduction to the Course • Incorporation and Retroactivity • Fourth Amendment Introduction 	7-24 30-34	
Aug. 28	<ul style="list-style-type: none"> • Reasonable Expectation of Privacy (REP) and <i>Katz</i> 	34-64 <i>U.S. v Jones S</i>	4 th Amend. Overview
Sept. 4 (No class Sept. 2)	<ul style="list-style-type: none"> • Applying <i>Katz</i> • Warrant Clause • Probable Cause (PC)-Two-Prong Test 	64.-84 84-90 90-97	Defining the term “search”
Sept. 9	<ul style="list-style-type: none"> • Probable Cause (PC)-Totality of Circumstances Test • Probable cause (PC)- Fair probability 	97-113 113-128	
Sept. 11	<ul style="list-style-type: none"> • Warrant requirement- Specificity and Reasonableness • Executing the Warrant 	129-137,139-149 150-164	Probable cause to search/seize
Sept. 16	<ul style="list-style-type: none"> • Executing the Warrant • Warrantless Arrests • Exceptions: Plain View & Plain Feel 	166-169 169-175, 178-193 335-342	
Sept. 18 &23	<ul style="list-style-type: none"> • Exception: Stop and Frisk (<i>Terry</i> Stop) 	193-201, 204-230 232-247, 253-254, 259-269, 276-278, 280-281, 284-287	Plain View doctrine Stop &Frisk
Sept. 25	<ul style="list-style-type: none"> • Exception: Search Incident to Arrest 	288-324 <i>P v. Diaz</i> (2011) 51 Cal.4 th 84 (Cell phone search?)	
Sept. 30	<ul style="list-style-type: none"> • Pretextual arrests and Searches • Exception: Exigent Circumstances 	324-331, 333-335 361-380, <i>Michigan v. Fisher S</i> <i>Kentucky v. King S</i> <i>Missouri v. McNeely</i> (April 17, 2013) SCOTA	Search incident to arrest

Oct. 2	<ul style="list-style-type: none"> Exception: Automobile & Moveable Containers Exception: Consent Searches 	342-357 462-481 <i>Florida v. Jardines</i> (Mar. 26, 2013) SCOTA	Exigent circumstances
Oct. 7 & 9	<ul style="list-style-type: none"> Exception: Special Needs searches Road Blocks & Suspicionless Search Exception: Inventory Searches Exception: DNA buccal samples 	396-404, 423-428 <i>Florence v. Bd. of Chosen Freeholders S</i> 428-438 442-446 <i>Maryland v. King</i> (June 3, 2013) SCOTA	Automobile Searches Administrative searches
Oct. 14 Oct. 16	<ul style="list-style-type: none"> Catch-up/Review Midterm 		
Oct. 21 & 23	Remedies for 4 th Amendment violations <ul style="list-style-type: none"> The Exclusionary Rule The Good Faith Exception 4th Amendment = a Personal right 	494-510 511-541; <i>Davis v. U.S.</i> (2011) S 541-548	The Exclusionary Rule
Oct. 28	<ul style="list-style-type: none"> 4th Amendment = a Personal right Causation and Attenuation “Fruit of the Poisonous tree” doctrine 	548-557 557-572	
Oct. 30	<ul style="list-style-type: none"> Independent Source Inevitable Discovery Impeachment of witnesses Procedures re. the Exclusionary rule 	573-577 577-582 588-591 591-595	Fruit of the Poisonous Tree doctrine
Nov. 4	<ul style="list-style-type: none"> The Fifth Amendment Privilege Self-Incrimination and Confessions The <i>Griffin</i> rule 5th Amendment = a Personal right What is Protected 	596-597 601-604, 608-612, 615-619 619-622 622-628	
Nov. 6	<ul style="list-style-type: none"> Procedures re.self-incriminating claim Confessions and Due Process 	642-651 651-671	
Nov.11	<ul style="list-style-type: none"> 5th A limitations on Confessions <i>Miranda v. Arizona</i> and its progeny 	670-696	
Nov. 13	<ul style="list-style-type: none"> Exceptions to Miranda exclusions “Custody”? 	700-722. S The 2013 Boston marathon defendant	

		722-729; <i>J.D.B v. N. Carolina</i> (2011) S	
Nov. 18	<ul style="list-style-type: none"> • ‘Interrogation’?” • Waiver of Miranda rights 	729-743; <i>Florida v. Powell</i> (2010) S 743-754; <i>Berghuis v. Thompkins</i> (2010) S	Miranda I
Nov.20	<ul style="list-style-type: none"> • Invocation of 5th right to remain silent • Confessions & the 6th A Right to Counsel 	754-767, <i>Maryland v. Shatzerh</i> (2010) S <i>Salinas v. Texas</i> (June 17,2013) SCOTA 767-784	Miranda II
Nov. 25	<ul style="list-style-type: none"> • Identifications 	796-825; <i>Perry v. N. Hampshire</i> (2012) S	Other Constitutional limits to Interrogation
Nov.27?	<ul style="list-style-type: none"> • The 6th Amendment Right to Counsel 	831-856; <i>Turner v. Rogers</i> (2011) S	
Dec.2	<ul style="list-style-type: none"> • Catch-up 	Last day of class	
Dec. 4?	<ul style="list-style-type: none"> • Review session 		
TBD	Final Exam		