

Syllabus—Criminal Procedure
Law 529, Section 001 and 002
Professor Dawson

Course Time and Room: Tuesday and Thursday, 11:00-12:15, Room 108

Professor's Information:

Professor Edward Dawson
Office #240
Office Phone: 618-453-8735
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Office Hours/ Availability:

My office hours are Monday and Wednesday from 10:15-12:15. During office hours, I will be available to take your questions unless I let you know in advance that I will be out on a particular day. You are welcome to come by during office hours to ask questions without making an appointment. You may also request an appointment outside office hours by sending me an email; I am generally in my office most days when I am not teaching class. 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 email regularly during business hours (9 am-5pm Mon. through Fri.); outside those times I may not respond the same day. My assistant is Cynthia Heisner, heisner@siu.edu, and her office is in room 243.

Required Course Books:

- Chemerinsky and Levenson, *Criminal Procedure: Investigation* (Wolters Kluwer 3rd ed. 2018)
- Swedlow, *Core Criminal Procedure: Learning Through Multiple Choice Questions* (Carolina Academic Press 2017)
- Supplemental cases, where noted on syllabus – these will be posted on TWEN

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 the 4th amendment's limitations on arrests, searches and seizures, and the 5th amendment's right against self-incrimination. We will also briefly cover protections derived from the 6th amendment right to counsel, and 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.”
 - The topics covered on the MEE and MBE in criminal law are listed here:
 - <http://www.ncbex.org/pdfviewer/?file=%2Fdmsdocument%2F227> (MEE)
 - <http://www.ncbex.org/pdfviewer/?file=%2Fdmsdocument%2F226> (MBE)
 - Orally explain cases and doctrines covered in the class, through practice via call and individual and group problem solving.
 - 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 from the text, and I will ask you questions about the reading in class according to the call policy described below. In general, when you are on call to discuss a case, I will limit my questions to majority opinions and concurrences (i.e., not the dissents). I still recommend you read the dissents if they are assigned, though.

The Swedlow book, *Core Criminal Procedure*, is assigned to give you practice multiple choice questions relating to each topic we cover. You can use these to test your understanding, and we will also sometimes go over questions from this book in class.

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: https://law.siu.edu/_common/documents/rules-code/attendance-19-20.pdf It explains, among other things, the penalties for exceeding the absence limit, which can include a grade reduction or withdrawal from the course.

Call and Attentiveness Policy:

I will call on students using a random call list. **Call will be “truly random,”** which means that I will use note cards to call randomly on students each class rather than working off one random list until everyone has been called on. So, you should be prepared to be called on for every class, with the one exception that I will not call on any person two classes in a row. You may “note out” before class by giving me a note or telling me that you are not prepared to 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, you will lose points on your participation grade, and you will remain on call. If you are absent on a day when I would have called on you, I will call on you during the next class you are present; you will not be penalized if you are prepared when I call on you then.

If I observe that whatever you are doing on your computer or other device is distracting other students, I will warn you once by email and if I observe it again will disallow your use of the computer or other device during class.

Recording Policy:

Classes will be recorded; the recordings will be available. Watching a recording of a class does not count to satisfy an absence unless necessary to accommodate a disability or unless you request and receive my approval.

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 (20%), your class participation score (10%), and a final exam (70%).

Grades for the course will be assigned based on the curve required by the law school grading policy, which is available at https://law.siu.edu/_common/documents/rules-code/grading-system-19-20.pdf

The midterm will be on Tuesday, October 22, during the normal class period. The final exam will be on Saturday, Dec. 7 at 8:15-am. 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 score will be based on your class performance when 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 get full points for participating; you do have to be prepared when you are called on and participate in or complete exercises and problems during class. Preparedness when called

on means being able to explain the facts, holding, and reasoning of a case from the reading. If I conclude you were unprepared when I call on you I will let you know either at the time, or shortly after the class when I called on you.

S/U Grading:

The grades of students who have been approved to take this course with S/U grading will be converted by the Registrar according to the following scale: 2.1 or greater = Satisfactory; below 2.1 = Unsatisfactory. Only students who receive a Satisfactory grade will earn academic credit for the course.

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 a minimum of 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 at least 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.

Plagiarism and Collaboration

You are welcome to collaborate in preparing for class, in working on the assignments that are due for certain classes as noted on the weekly schedule, and in discussing and giving answers to various group exercises we may do in class. Collaboration means working together to answer questions, or comparing one’s own answers against another student’s answers. It is not ok for one student to copy another student’s answers for an assignment or for students to divide up an assignment and copy each other’s answers to the other parts. Doing either of those things would be considered by me to be an honor code violation by both the copier and by the person whose answers were copied.

The exams in this class are closed-book and no outside sources or collaboration with other students are allowed.

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. If 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, “Textbook” means the Chemerinsky & Levenson casebook, and “Swedlow” means the multiple choice book. In class we will discuss the cases from the casebook, the rules they establish, the policy reasons for the rules, and sometimes work through some hypotheticals about the application of the rules. We will also sometimes work problems, exercises, and questions from the Swedlow book to confirm understanding of the material. The rest of the assigned material from the Swedlow book you can either review as you go, to confirm your understanding of the material, or use for practice/ testing your knowledge before the midterm and the final. The Swedlow book is the best way to test your knowledge by practicing questions of the type you will see on the exams in this class (and on the MBE portion of the bar exam).

I. Introduction to Course and Course Themes

1. Tuesday, August 20, 2019

Topics: Introduction to the Course; Introduction to Criminal Process; Constitutional Limits on Criminal Procedure

Reading:

- Syllabus
- Textbook pp. 1-28

II. Fourth Amendment Limits on Searches and Seizures

2. Thursday, August 22, 2019

Topic: Intro to 4th Amendment; What is a search?—General principles; open fields & curtilage; aerial searches

Reading:

- Textbook pp. 31-59

3. Tuesday, August 27, 2019

Topic: Aerial searches cont'd, Trash, Observation and Monitoring of Public Behavior

Reading:

- Textbook pp. 59-89

4. Thursday, August 29, 2019

Topics: Observation and Monitoring cont'd; Dog sniffs

Reading:

- Excerpt from *Carpenter v. United States* (available on TWEN)
- Textbook pp. 89-109
- Swedlow pp. 3-9 (Reviewing material on when is there a search)

5. Tuesday, September 3, 2019

Topics: Probable Cause

Reading:

- Textbook pp. 109-130
- Swedlow pp. 14-16 (through Q #25)

6. Thursday, September 5, 2019

Topic: Warrants and Their Execution

Reading:

- Textbook pp. 130-160
- Swedlow pp. 20-30

7. Tuesday, September 10, 2019

Topic: Exceptions to Warrant Requirement—Exigent Circumstances

Reading:

- Textbook pp. 160-191
- Swedlow pp. 26-36

8. Thursday, September 12, 2019

Topics: Exceptions to Warrant Requirement—Plain View, Automobile Exception

Reading:

- Textbook pp. 195-210
- Excerpt from *Collins v. Virginia* (available on TWEN)
- Swedlow pp. 46-54, 81-91

9. Tuesday, September 17, 2019

Topic: Exceptions to Warrant Requirement—Searches Incident to Arrest; Inventory Searches;

Reading:

- Textbook pp. 210-242
- Swedlow 54-65, 101-106

10. Thursday, September 19, 2019

Topic: Exceptions to Warrant Requirement—Protective Sweeps; Consent

Reading:

- Textbook pp. 242-265
- Swedlow pp. 75-81, 91-101

11. Tuesday, September 24, 2019

Topic: Exceptions to Warrant Requirement—“Special Needs” Searches pt. 1

Reading:

- Textbook pp. 265-266, 271-279, 283-292, 294-299, 300-307

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12. Thursday, September 25, 2019

Topic: Exceptions to Warrant Requirement—“Special Needs” Searches pt. 2

Reading: Textbook pp. 318-319, 327-334, 340-345, 349-366

- Swedlow pp. 106-116

13. Tuesday, October 1, 2019

Topics: Seizures and Arrests

Reading:

- Textbook pp. 367-393
- Swedlow pp. 9-14, 30-36

14. Thursday, October 3, 2019

Topic: Stop and Frisk

Reading:

- Textbook pp. 394-422, 426-428, 432-435
- Swedlow pp. 16 (Q26)-19, 65-75

III. The Exclusionary Rule & Its Limits

15. Tuesday, October 8, 2019

Topic: Exclusionary Rule, pt. I

Reading:

- Textbook pp. 451-480

16. Thursday, October 10, 2019

Topic: Exclusionary Rule pt. II

Reading:

- Textbook pp. 480-501
- Excerpt from *Byrd v. United States* (available on TWEN)
- Swedlow pp. 117-122

17. Tuesday, October 15, 2019

Topic: Exclusionary Rule pt. III

Reading:

- Textbook pp. 501-518, 521-22 (pt. IV of Sotomayor dissent in *Streib*), 524-533, 541-545
- Swedlow pp. 123-31

18. Thursday, October 17, 2019

Topic: Catch up as needed; Midterm Review/ Q&A.

19. Tuesday, October 22, 2019
MIDTERM EXAM

The midterm will cover material through class #17.

IV. Police Interrogation, Self-Incrimination, and Identification Procedures

20. Thursday, October 24, 2019

Topic: Due Process and Voluntariness

Reading:

- Textbook pp. 547-566
- Swedlow questions #336-340

21. Tuesday, October 29, 2019

Topics: *Miranda* Limits on Custodial Interrogation; Custody

Reading:

- Textbook pp. 566-586, 588-598
- Swedlow questions #254, 259, 267-270

22. Thursday, October 31, 2019

Topics: Interrogation; Police Conduct; Consequences of *Miranda* Violations

Reading:

- Textbook pp. 598-627
- Swedlow questions #271-280,

23. Tuesday November 5, 2019

Topic: Consequences of Violations, cont'd; Waivers

Reading:

- Textbook pp. 627-655
- Swedlow questions #291-300, 326-333
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24. Thursday, November 7, 2019

Topic: Waiver cont'd; Exceptions

Reading:

- Textbook pp. 655-687, 689-690
- Swedlow questions #311-325, 281-290

25. Tuesday, November 12, 2019

Topic: 6th Am. Right to Counsel

Reading:

- Textbook pp. 690-726 (you can skip/ skim all the dissents except in *Brewer*)
- Swedlow Questions #376-400

26. Thursday, November 13, 2019

Topic: Identification Procedures pt. I

Reading:

- Textbook pp. 751-775

27. Tuesday, November 19, 2019

Topic: Identification Procedures pt. II

Reading:

- Textbook pp. 775-801
- Swedlow Questions #401-410 (covering all of the material on ID procedures)

IX. Wrap Up and Review

28. Thursday, November 21, 2019

Topic: Semester Review

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://salukicare.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.