

**Law 529 Section One: Criminal Procedure: Pretrial  
Course Memorandum  
Spring 2026**

Professor Chris Behan  
Monday and Wednesday, 3:00-4:15  
Room 108 (Courtroom)

**Course Overview**

Every criminal case begins with an investigation and arrest of the accused. Recognizing the potential for governmental tyranny and overreach, the Framers of the Constitution included several provisions in the Bill of Rights that protect citizens from government agents. Through the years, the United States Supreme Court has wrestled with the dilemmas created when law enforcement officers seek to protect society from criminal activity while simultaneously respecting the Constitutional rights of all citizens. This has created a rich body of case law, rules, and doctrines that govern the pretrial investigative phase of criminal law.

This course focuses on the protections provided by the Fourth, Fifth, and Sixth Amendments throughout the pretrial investigative process. Topics covered include search and seizure, the warrant requirement and its exceptions, the exclusionary rule, right to counsel, self-incrimination, interrogations, and identifications.

**Learning Objectives**

At the end of this course, students will be able to:

- Understand the textual and interpretive bases for the protections provided by the Fourth, Fifth, and Sixth Amendments in the pretrial investigative phase.
- Correctly identify and be able to orally explain investigative criminal procedure issues, in the context of appellate cases and hypothetical problems presented in the classroom.
- Critique Supreme Court cases and doctrines on investigative criminal law on their ability to protect the interests of citizens and accused persons, and whether these doctrines provide clear and cogent guidance to government agents.
- Engage and consider non-dominant perspectives on criminal justice with respect and empathy.
- Answer bar-style multiple-choice questions and write bar-style essay answers on pretrial investigative criminal procedure topics covered on the bar exam.

## **Class Meetings**

This is a live class that meets Monday and Wednesday from 3:00-4:15 PM, starting Monday, January 12 and ending Wednesday, April 22. Most class meetings will be in Room 108. Some meetings may occur via MS Teams if I am out of town. If I am going to be out of town and must hold a class session via MS Teams, I will give you ample advance notice. Classes will not be held on Monday, January 19 because of the Martin Luther King, Jr. holiday. I will provide make-up information about that class.

The final examination schedule has not yet been released. I will provide information about the final examination when it is available.

## **Course Materials.**

The textbook for the course is Ohlin, *Investigative Criminal Procedure: Doctrine, Application, and Practice* (2d Edition, Aspen Publishing, 2024), ISBN 979-8-8861-4317-1. You may use either a hard copy or electronic copy of the text.

## **Contact Information**

- a. *General.* My office is Room 254, across the hallway from classroom 251. Telephone number is 618-453-8722. E-mail address is [cbehan@siu.edu](mailto:cbehan@siu.edu). If you need to reach me and I am not in my office, leave a text. I prefer text messages to calls. If you text, identify yourself in the text. I likely won't know who you are if you don't!
- b. *Office Hours.* My office hours are Tuesdays from 2-4 PM. You may also drop in without an appointment if my office door is open, or you can schedule an appointment for an in-person or MS Teams meeting. I try to be responsive to student requests for meetings.
- c. *Electronic Communication.* Check your e-mail regularly. I will use D2L to send messages pertaining to class. Make sure you check the actual email address you used to register for D2L. The School of Law has adopted a rule requiring students to use their assigned siu.edu email address for law school-related business. Thus, excuses such as, "well, I use my gmail account and that's why I never got your email," are unacceptable.
- d. *Problems and Issues.* Despite the best efforts of professors and students, class is not always perfect. Sometimes a lecture or concept is unclear. Sometimes a fellow student will do or say something insensitive or inappropriate that is not fully resolved by the professor in the classroom. You may experience personal frustration with something I do or say in the classroom. If you experience a problem or identify an issue in the class, please come see me so we can discuss it and resolve it. Some of my best growth and development as a professor has come from students taking the time to alert me to issues or problems of which I had not previously been aware.

## **Workload, Class Structure and Class Rhythm**

The American Bar Association standards for accrediting law schools contain a formula for calculating the amount of work that constitutes one credit hour. According to ABA Standard 310(b)(1), "a "credit hour"

is 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 (a 100-minute block each Monday and Wednesday). 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, averaged out over the full semester, and including studying for and taking the final examination. 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.

The class follows a predictable structure and rhythm:

- (1) *Before Class.* There is a reading assignment for each class session. The reading assignments will typically include cases, notes following the cases, and problems and hypotheticals in the textbook. You are expected to read the assignment, brief and understand the cases, and work out proposed solutions to any of the problem cases on your own prior to class.
- (2) *During Class.* We will discuss the cases, note cases, discussions, questions, and problem cases from the book in class. I cold-call on students to discuss cases and problems. When I call on a student, anything in the assigned reading is fair game for questioning, including the primary case, note cases, discussion materials, and problem cases.

### **Attendance, Class Preparation and Participation**

Attendance is required. In accordance with law school rules, you may miss no more than four (4) class sessions during the semester without having to withdraw from the class or face the grade penalty under the School of Law rules. You are responsible for managing your own absences and, as an adult and a professional, should realize that if you take all absences early in the semester and run into a problem later in the semester, you will have created a problem for yourself from which no one else is obligated to rescue you. Also, if you are assessed an absence for inadequate preparation, that absence counts towards your total. If you exceed the number of absences (including absences assessed for inadequate preparation), you are subject to penalties in School of Law Rule 5(g). These include involuntary withdrawal from the course, a grade reduction, or failing the class.

I will verbally call roll at the beginning of each class period. If you are not present when I call roll, you'll be assessed an absence.

Class preparation and participation are not only keys to successful learning, but they are also an integral part of this course. I believe class participation is critical to a successful learning experience. From a pedagogical perspective, nothing is better than a classroom in which students have read the material and are engaged in the classroom experience; conversely, few things are worse than the reverse.

I cold-call on students, using a spreadsheet that randomly generates an order for cold-calling. It is possible to be called on multiple sessions in a row. I expect you to be prepared for class. If it becomes

evident during our discussion that you are not prepared or have not been paying attention to class, I will announce that I am moving on from you. You will be assessed as absent for the class.

I expect you to listen and be mentally engaged in class. Active, sustained listening is a critical skill for lawyers. I use a minimal number of slides in the class; they do not substitute for good note-taking practices by students.

In addition to participating in class when called on, I expect you to listen respectfully to others. Attempts to dominate classroom discussions, interruptions of myself or others, eye-rolling or disruptive body language and behavior, or other unprofessional classroom behaviors will result in class participation grade reductions and/or assessed absences.

When I call on a student in class, I am focused on that student and the dialogue we are having. I will entertain questions from other class members after those discussions but not during them.

Furthermore, I do not call on every student who raises their hands, every time. Frequently, you may hear me say something such as, "We are moving on. I am not calling on you at this time." This is not personal, but rather a reflection of my judgment that it is time to move to another topic. If questions remain about a subject after I have moved on, you may approach me after class or during office hours to discuss.

### **MS Teams Protocol**

If we hold any class session via MS Teams, the entire class will participate via MS Teams. I expect the following if and when we hold a class via MS Teams:

- Make sure you have a good, high-speed internet connection. If you are attending from home, ensure that no one else is using MS Teams or streaming movies or video at that time. If you can plug your computer directly into a router with an ethernet cable or USB connection, you'll find your MS Teams connection will be much better than simply using wifi.
- Attempting to attend class while driving somewhere else does not count as class attendance. Should it become apparent that is what you're doing, I'll assess an absence for the day.
- Turn off all programs on your computer except MS Teams and a word-processing program if you are using one to take notes. Do not use chat services or instant-messaging services on your computer during class.
- Do not use your cellphone during this class, or any class, unless it is to participate in an online survey or quiz as directed by me.
- If you are speaking, your video camera must be on. When your camera is on please ensure the area around you is free from distractions, including pets and people.

Remember, your MS Teams presence is intended to substitute for your personal presence in the classroom as much as possible.

- To help with bandwidth issues, you are permitted to turn your camera off when you are not speaking.
- When your camera is off, you are still part of the class. This means you are required to listen and to participate when called on, without me having to repeat the question or summarize the classroom discussion up to that point because you were not listening. If I call on you and you are not available to respond, ask me to repeat the question, or indicate in any way that you were checked out of class with your camera off, you'll be assessed an absence for the day.
- A few things to consider when your camera is on.
  - You are free to use a virtual background if you'd like, provided it is not overly distracting.
  - If you're attending class from a bedroom or other room in your home, take the time to make your bed, pick up any dirty clothes or dishes that might be lying around, and, in general, straighten the area up to look as uncluttered and professional as possible.
  - The camera should be focused on your face and not on other parts of your body such as up your nostrils, your forehead, your neck, your chest, your midsection, any other non-face part of your body, or the wall behind you.
  - The light source in the room should be in front of you, not behind you.
  - Wear acceptable clothing, such as you would wear to class. Ensure that other people in your home who might pass through camera range are also wearing acceptable clothing. Acceptable clothing does not include pajamas and/or underwear as primary attire.
  - (This section is derived entirely from experience; my other students and I have, unfortunately, seen far more than we would like to see in classes or meetings in which the participants haven't complied with these recommendations.)
- Unless you are being called on, keep your microphone muted. If you would like to participate, use the Raise Hand function on MS Teams to indicate this.
- If something happens to your internet connection during class, turn MS Teams off and on and log back on as soon as you can. There is no need to apologize for this; it happens to everyone. It may happen to me while I'm teaching (has happened before).

- I likely will not activate the MS Teams chat feature for our classes. I've found it to be more distracting than helpful during class.

Be courteous to the others in the classroom by keeping distractions to a minimum and giving the class your full attention. Do not text, send instant messages, or hold conversations with others during class.

### **Policy on Recording Class**

You are not authorized to make your own audio or video recordings of my classes. The class will be recorded by the School of Law IT department. Generally, I do not make recordings available unless necessary to accommodate a disability or unless you request and receive my approval.

### **Grading and Evaluation**

I will evaluate and assess your work in several ways:

- **Bar Essay (10%)**. This is an anonymously graded bar-style essay on a course topic, administered via D2L. You will receive a grade and feedback on your submission. If the essay does not meet minimum standards, you will be required to rewrite it. More details on the assignment to follow. This assignment satisfies the bar-assignment requirement for this course, as well as the Writing Across the Curriculum requirement. **The bar essay assignment will be given later in the semester, but it serves as a make-up assignment for MLK Day.**
- **Subject-Matter Expert Memorandum and Classroom Performance (10%)**. Beginning the second week of the semester, each class session, 1-3 students will serve as subject-matter experts (SME) for the day. The sign-up sheet for SME of the day will be posted on D2L. SME duties are as follows:
  - By noon on the day of class, turn in a SME memorandum. The format for the memorandum will be provided for you on D2L. It includes an executive summary of the reading and problems assigned for the day, short case briefs of the day's cases, and a thoughtful hypothetical question, based on an actual case that isn't included in the reading assignment, along with a suggested answer for the hypothetical. I will grade these using a rubric provided to you in advance.
  - During class, lead the class on a discussion of the hypothetical question you created. Also, serve as a go-to resource to supplement and enhance classroom discussion when other students are being cold-called.
  - To incentivize class engagement with the hypotheticals, several of them will form the basis for final examination questions.
- **Final examination (80%)**. Comprehensive, covering the entire semester. More details about format and administration of the examination will be provided later in the semester.

### Other Important Information on Support and Resources

Please see the Law School and Provost Syllabus attachments, available on the D2L page.

### **Reading & Assignment Schedule**

The reading schedule for Weeks One and Two of the semester is below. There may be times when the reading and discussion that is assigned for a designated class spills over to the next class. This does not change your obligation to be prepared for the material that is listed for the next day and class. Think of the reading schedule as akin to an airline schedule: you are required to be at the airport on time, even if the flight might be delayed a bit. **The acronym ICP refers to the Ohlin textbook.**

**I will provide an updated reading schedule after the Wednesday, 21 January class in Week Two.**

Week	Class	Date	In-Class Topics	Reading Assignment
1	1	12 January	--Intro to Criminal Procedure --Goals of Criminal Procedure Fourth Amendment: What is a Search --Reasonable Expectation of Privacy	Skim for background familiarity: ICP 1-16 Read ICP 37-59 Primary case: <i>Katz</i>
	2	14 January	--Privacy in Communications	Read ICP 59-82 Primary Cases: <i>US v. White</i> , <i>Smith v. Maryland</i> , <i>ACLU v. Clapper</i> , <i>Klayman v. Obama</i>
2	3	19 Jan <b>No class, but makeup assignment</b>	<b>The makeup assignment, a graded bar-style essay, will be given later in the semester.</b>	
	4	21 Jan	--Surveillance of Property --Privacy in Discarded Garbage	Read ICP 82-114 Primary Cases: <i>California v. Ciraolo</i> , <i>Kyllo v. United States</i> , <i>Florida v. Jardines</i> , <i>California v. Greenwood</i>