

**CRIMINAL PROCEDURE  
SYLLABUS  
FALL 2024**

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**Office Hours**

*To be announced.*

**Overview**

This course will introduce you to the issues of constitutional criminal procedure. Of primary focus will be issues arising out of the Fourth, Fifth, and Sixth Amendments to the United States Constitution. We will also cover a few procedural issues such as plea bargaining, eyewitness identification, and jury trials. The purpose of the course is to build a foundational knowledge about substantive and procedural issues of criminal procedure. In addition, the course will develop strong analytical and reasoning skills.

Underlying the discussion of constitutional criminal procedure is a debate about police power. It is a conversation that brings up hard issues of racial justice, poverty, surveillance, and why we criminalize certain behaviors. The constitutional rights protected in the Fourth, Fifth, Sixth, and Eighth Amendments are limitations on government power. How society has balanced those rights has changed over time and continues to evolve. We are in the middle of a national conversation on race and criminal justice, and this class will address how that police power has been directed against African-Americans, Latinos, immigrants, and citizens in poor communities. Every generation must balance issues of privacy, liberty, public safety, criminal investigation, and punishment anew. This class will provide the groundwork for future balancing.

By the end of this class, you should be able to do the following nine things:

- (1) Understand the Fourth, Fifth, Sixth amendments to the US Constitution and Supreme Court cases interpreting them. You will improve your ability to read a complex constitutional opinion. This involves identifying the issue(s) and describing the rule or test that the majority uses to resolve the issue, as well as the alternative rule or rationale put forth by the concurrence and/or the dissent.
- (2) Identify changes in doctrine over time, inconsistencies, and/or factors that appear to explain different outcomes.
- (3) Have a basic understanding of the police as an institution in the United States, and the ways in which this institutional framework influences police behavior towards citizens and residents of this country.
- (4) Understand the relationship between police institutional behavior and the efficacy of the constitutional criminal procedure doctrines we are studying (e.g., what sorts of behaviors do the doctrines encourage? Why might police fail to follow some of the doctrines?).

- (5) Think critically about various mechanisms that might be used to regulate the police – courts, statutes, administrative rules, civil liability – and the benefits/burdens of each approach.
- (6) Think critically about the criminal justice system, particularly with respect to competing values (truth, efficiency, integrity, public safety, finality, and control of government officials).
- (7) Identify the ways in which Supreme Court justices implicate, prioritize or challenge these values in their opinions.
- (8) Be able to offer a reasoned critique of those opinions, using both doctrine and policy arguments.
- (9) In a novel fact pattern, recognize an issue of Fourth, Fifth, Sixth amendment importance, understand the law governing that issue, make the prosecution and defense arguments regarding the law's applicability, and recognize how and why one argument is superior to another in a suppression hearing.

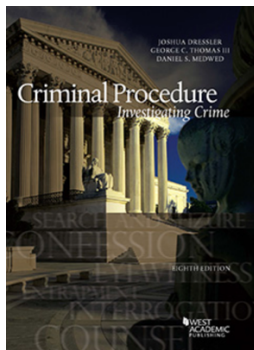
### **Classes**

Class attendance is mandatory, as required by the ABA. If you are ill, please do not come to class, even if you have tested negative for COVID. I will be happy to answer any of your questions by phone or in the office hours. I understand that there are times when due to illness or personal matters you may be unable to attend class or to be prepared for class. Each student may miss class or “pass” when called on up to four times over the course of the semester (four total absence or pass). **If you miss class and/or “pass” more than four times, I reserve the right to lower your grade or administratively withdraw you from the course.** Absences to observe religious holidays do not count if you notify me in advance that you will be absent.

You are expected to contribute in class, but if you are not prepared on a given day, let me know before class and I will not call on you. Do not rely on last minute email, just tell me before class, no need to explain why. My best estimate of our class schedule is provided in the class outline in the remainder of the syllabus, but note that length of classes will vary depending on your contributions.

## Assignments

The reading assignments are listed on the syllabus. The page numbers refer to the assigned textbook: Joshua Dressler, George C. Thomas & Daniel S. Medwed, CRIMINAL PROCEDURE: INVESTIGATING CRIME, 8TH ED.



For the assigned reading, you are required to know the facts, holding, and reasoning in each case (or substance of each note, or article listed in the syllabus) and may be asked questions about the material.

I will be calling on the students to explain the facts, rule, reasoning, and help facilitate a discussion about the case. You are expected to read all assigned pages. These cases form the organizing structure of the course, and will be tested on the final exam.

I have created a syllabus so that you can use it as a roadmap for understanding the framework of the class. I cannot promise that we will follow the syllabus exactly. It is simply not possible to predict how each class discussion will proceed. I will make appropriate changes in the schedule of readings as necessary. And, I reserve the right to make still further adjustments and changes, including the deletion of, and addition of specific cases, and to restructure proposed assignments as I deem appropriate and prudent.

## Evaluation

Students must complete a closed book, in-class final exam. It will likely include some combination of multiple-choice questions, true-false questions, short answers, and longer essay questions.

NOTE: if public health circumstances force us into a remote testing environment, the basis of evaluation for this course is subject to change.

Your performance on the exam will determine your grade for the course; however, I will use extraordinary or substandard class participation to break ties in the grading process.

## Midterm Assessment

There will be one midterm assessment. The assignment is mandatory but graded on a Pass/Fail basis. To earn a Pass, your final product must demonstrate a good faith effort to complete the assignment to the best of your abilities.

**No Laptops**

For pedagogical reasons, I prohibit laptops, tablets, and similar devices. The relevant research generally finds that laptops tend to diminish attention and learning while significantly increasing distractions for both students using the laptop and students sitting nearby. Additionally, students who take handwritten notes retain, on average, more material and better understand the material compared to students who take notes on laptop.

**If this presents any issue, please either communicate with me or contact the appropriate university office.**

## Class Outline

### I. INTRODUCTION

#### Assignment 1

##### A. OVERVIEW OF CRIMINAL JUSTICE SYSTEM

Dressler et al., 35-44 (*skim*)<sup>1</sup>

##### B. DUE PROCESS AND INCORPORATION

Dressler et al., 47-48 (*skim*)

##### C. INTRODUCTION TO THE EXCLUSIONARY RULE

Dressler et al., 73-92; 504-506

##### D. Supp. MATERIALS: MARYLAND V. PRINGLE (2003) (on Blackboard)

### II. THE FOURTH AMENDMENT

#### A. Searches and seizures

#### Assignment 2

What is a search?—Katz: expectations of privacy (REP)

Dressler et al., 69-72, 93-102, 120-121

#### Assignment 3

Enhanced technology searches

Dressler et al., 102-120, 142-144 (Note 7)

Supp. Materials: Hoffa v. United States (1966) (*skim*, but read my notes carefully)

#### Assignment 4

Enhanced technology searches, cont.—

Dressler et al., 144-157, 157-177

#### Assignment 5

Dressler et al., 177-188

Byrd v. United States, 1–15 (on Blackboard)

#### Assignment 6

Open fields and curtilages

Dressler et al., 121-142

What is a seizure?

Dressler et al., 188-191

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<sup>1</sup> ***Skim:*** Read in sufficient depth to understand the material, but no need to take extensive notes.

Dressler et al., 454-456 (Note 3)

*Recommended:* Kerr, [Is Kyllo Still Good Law?](#)

*Recommended:* Monte Reel, [Secret Cameras Record Baltimore's Every Move from Above, Bloomberg](#)

## **B. Warrants and Probable Cause (PC)**

### Assignment 7

Probable cause—Gates: totality of the circumstances  
Dressler et al., 193-222

### Assignment 8

Search warrants  
Dressler et al., 236-243, 250-253

*Recommended:* USA Today Multimedia: [Awash in Warrants](#)

*Recommended:* Warrant Execution: [NY Times Violence in Forced Entry Raids](#) (Warning graphic images)

### Assignment 9

Execution of search warrants  
Dressler et al., 244-250,

Reasonableness, profiling, & pretext—Whren  
Dressler et al., 292-293 (Note 6), 305-314, 440 (Note 4)

Supp. Materials: Atwater v. Lago (2001) (*skim*, but read my notes carefully)

*Recommended:* [Stanford Open Policing Project: Traffic Stop Data](#) (explore the data on the website)

## **C. Exceptions to Warrant and/or PC Requirements**

### Assignment 10

Terry stops and reasonable articulable suspicion (RAS)  
Dressler et al., 387-410, 432-440

*Recommended:* Video: [“The Scars of Stop and Frisk”](#)

*Recommended:* Kyle Smith, [We Were Wrong About Stop-and-Frisk](#), *National Review*

### Assignment 11

RAS Requirements and limitations  
Dressler et al., 410-430, 443-449

*Recommended:* Osagie K. Obasogie, The Bad Apple Myth of Policing, *The Atlantic* (Aug. 2, 2019)

Assignment 12

Search incident to arrest

Dressler et al., 264-286, 457-460 (Note 5, King), 292 (Note 5)

Assignment 13

Arrests with/without warrants

Dressler et al., 223-234

Use of force & deadly force

Dressler et al., 234-236

Assignment 14

Protective sweep

Dressler et al., 449-454

Exigent circumstances

Dressler et al., 254-263

Plain view exception

Dressler et al., 347-358

Assignment 15

Automobile arrests

Dressler et al., 456-457 (Note 4), 287-291, 293-295 (Note 8)

*Recommended:* Constitutionality of COVID 19 Checkpoints, ABA Journal Article

Assignment 16

Automobile exception

Dressler et al., 314-325

Assignment 17

Automobile exception, cont.—

Dressler et al., 325-346

Assignment 18

Administrative searches and special needs

Dressler et al., 461-480

Assignment 19

Consent searches

Dressler et al., 358-386

Review:

*United States v. Drayton* (Dressler et al., 425)

*California v. Hodari D.* (Dressler et al., 426–430)

#### **D. Remedies**

##### Assignment 20

Exceptions to the Exclusionary Rule

Dressler et al., 523-533, 548-562

##### Assignment 21

Standing (*skim*)

Dressler et al., 484-504

Fruits doctrine: inevitable discovery & independent source

Dressler et al., 509-523

##### Assignment 22

Introduction of the Fifth Amendment: “Compelled,” “criminal case” and “witness”

Dressler et al., 609-620

### **III. THE FIFTH AMENDMENT**

##### Assignment 23

Miranda rights—Miranda

Dressler et al., 620-640

*Recommended:* S. Gross & M. Possley, For 50 Years, You’ve Had the “Right to Remain Silent” *The Marshall Project*, June 12, 2016

##### Assignment 24

“Custody,” “interrogation,” “self-incriminating,” “testimonial”

Dressler et al., 685-704

Public emergency exception

Dressler et al., 645-655

*Recommended:* Weisselberg, *In the Stationhouse After Dickerson* (introduction & pp. 1131-1134)

##### Assignment 25

Two-stage interrogation and fruits

Dressler et al., 655-662, 672-685

*Recommended:* Davis, Leo and Follette, *Selling Confessions*



*Recommended:* Kassin, On the Psychology of Confessions

Assignment 26

Invocation and waiver  
Dressler et al., 704-734

*Recommended:* Reid, Clarifying Misrepresentations About Law Enforcement Interrogation Techniques

*Recommended:* The Law Library of Congress, Miranda Warning Equivalents Abroad