Criminal Procedure: Investigation
Professor Mary D. Fan • Win. 2015

Time & Place: Mon. Wed. Fri. 10:30 a.m. – 12:20 p.m., Rm. 117
Office Hours: Mon. 1:30-3:00 p.m., Fri. 1:30-2:30 p.m. Appointments are also available.
Contact Info: mdfan@uw.edu. Gates Hall rm.315. Harborview, 401 Broadway, rm.421

Course Description

Criminal procedure is about your civil liberties and the regulation of police power. When can you be stopped, questioned, frisked, physically restrained, or arrested? Can your laptop, cell phone, email and other personal items and information be searched? Can your conversations be wiretapped? Can your movements be tracked? Such questions fall under the umbrella of the law of search and seizure, the topic of this course. We will cover issues such as:

- searches of your home, car, yard, trash, and financial records;
- computer and cell phone searches;
- searches of email and other electronic data;
- technologically-assisted searches such as wiretaps, GPS monitoring and thermal imaging;
- stops and frisks;
- traffic stops;
- excessive force;
- racial and socioeconomic status profiling;
- “special needs” searches in schoolyards, airports, subways and roadblocks;
- the Fifth Amendment privilege against self-incrimination;
- custodial police interrogation and Miranda rights;
- when the Sixth Amendment right to counsel attaches;
- police line-ups and the perils of eyewitness identification; and
- the embattled exclusionary rule as a remedy for constitutional violations and other alternatives such as civil rights suits under 42 U.S.C. § 1983.

Course Materials


Course website: https://canvas.uw.edu/courses/948327
COURSE INFORMATION

Assessment: In addition to making you an informed professional regarding some of the biggest civil liberties and governmental power questions of our times, criminal procedure helps prepare you for the bar and practice. Criminal procedure questions may appear as multiple-choice and essay questions on the bar exam. Accordingly, to prepare you, your assessment includes:

(1) class participation and at least one motions practice or related simulation (25%);
(2) in-class multiple-choice mid-term exam on Wed., Feb. 18 (25%);
(3) final exam on Tues., March 17, with at least one issue-spotter and one essay (50%).

Questions & News Board: If you have a relevant news item or question about the law we are covering, please post on the online bulletin board so that the whole class can benefit from the item or question and answer. If the question entails a long answer better delivered in person or a sensitive matter, please feel very welcome to ask in person. Of course, I also am always happy to talk in person regarding career advice, papers and related personal matters.

Preparedness and Attendance: Punctual class attendance, preparedness and active participation are essential to your learning and success and the creation of a rewarding and dynamic class experience for all. It is particularly important to be present because I use a participatory method to give everyone the opportunity to learn by application and engagement. I understand that life sometimes produces unavoidable obligations or emergencies necessitating an absence or rendering one less prepared for a day. It is better that you come to class and learn, rather than miss a class because of concern over not being fully prepared and fall behind. If the basis for an absence or a no-pressure pass for a class arises, please let me know in advance of class.

Recording Policy: In criminal procedure, we discuss controversial issues freely and openly. People also may share experiences with the criminal justice system. Recording interferes with the free exploration, expression and evolution of ideas and never translates as effectively as an in-class, in-person experience because learning is a multi-textured live process, not canned and one-dimensional. I want to ensure that the incentives are calibrated for you to get the live optimal experience. Therefore, I do not record classes for general dissemination. If you must miss class, please get the notes from a classmate and come see me if you have any questions about the material.

Disability-Related Needs: To request academic accommodations due to a disability, please contact Disability Resources for Students (DRS), 448 Schmitz, (206) 543-8924 (V), (206) 543-8925 (TTY). If you have a letter from DRS, please present the letter to me so we can discuss the accommodations you might need in this class.
The reading assignments are typically about 35 pages or less per class because it is important that you read each assignment. There are very few exceptions to this rule of thumb – mainly because of the supplement, which uses wide spacing on small pages.

This is a working syllabus. Each class has a unique composition with different issues of interest and paces. As events unfold, the assignments below may be modified. Dates may shift. I will inform you in class of any modifications and also post an announcement on the course web site.

### Class 1: Mon. Jan. 5

**I. Overview: Civil Rights, Remedies and Police Regulation**

- Casebook pp. 81-84 (criminal procedure as the main source of police regulation); 352-360 (on remedies); 630–640 (law governing excessive force); 989-994 (grand juries); 1004-1005 (C. The Investigative Power); supplementary chart & op-ed.

### Class 2: Wed. Jan. 7

**II. Fourth Amendment Regulation of Searches**

A. Defining a “Search” Triggering the Fourth Amendment

1. The Reasonable Expectation of Privacy Test

   - Casebook pp. 337-340 (overview of right and main remedy); 361-378
   - Supplement pp. 43-56

### Class 3: Fri. Jan. 9

2. The Third-Party Exposure Corollary

   - Casebook pp. 379–390 (through note 4)

3. Technology & Third-Party Exposure: Transitional Cases

   - Casebook pp. 390–404 (through note 4)

### Class 4: Mon. Jan. 12
B. Pervasive Surveillance, Data Aggregation and Privacy: (Some) Pushback

- Supplement pp. 56-74

C. Wiretapping, Electronic Surveillance and Searches of Electronic Files

- Casebook pp. 900-903; 909-920 (through note 3)

Class 5: Wed. Jan. 14

III. The Warrant and Probable Cause Requirement

- Casebook pp. 418-449 (end before Section 3 on exemptions)
- Supplement pp. 74-78

Class 6: Fri. Jan. 16

IV. Fourth Amendment Regulation of Seizures

- Casebook pp. 405-411; 413-415; 417-418 (end on Brendlin excerpt)

V. Exceptions to the Warrant “Requirement”

A. “Consent”

- Casebook pp. 641-657
- Supplement pp. 170-179

Mon., Jan. 19: Martin Luther King, Jr. Holiday, No Class

Class 7: Wed. Jan. 21

B. Arrests

- Casebook pp. 495–515
- Supplement pp. 92-94

C. Searches Incident to Arrest: The Original Rule
• Casebook pp. 515–524 (through note 3)

Class 8: Fri. Jan. 23

D. Cutbacks on the Power to Search Incident to Arrest: Cars, Cell Phones

1. Auto Searches Incident to Arrest
   • Casebook pp. 524 (from note 4)-534

2. Inventory Searches
   • Casebook p.535

3. Cell Phones Seized Incident to Arrest
   • Casebook pp.95-118

Class 9: Mon. Jan. 26

A. Exigent Circumstances
   • Casebook pp. 449-465
   • Supplement pp. 78-92

B. Plain View
   • Casebook pp. 465-474 (through Horton v. California)

Class 10: Wed. Jan. 28

V. General Reasonableness: Exceptions to the Probable Cause Standard

A. Terry Stops and Frisks
   • Casebook pp. 535–558

B. The Reasonable Suspicion Standard
- Casebook pp. 559–562
- Supplement pp. 118-134

### Class 11: Mon. Feb. 2

**C. Race, Socioeconomic Status and Reasonableness of Suspicion**

- Casebook pp. 563–585
- Supplement pp. 134-138

### Class 12: Wed. Feb. 4

**D. “Special Needs” Searches**

- Casebook pp. 597-615; 628 (from note 4 on administrative inspections)-630
- Supplement pp. 138-169

### Class 13: Mon. Feb. 9

**VI. Limits on Remedy for a Fourth Amendment Violation**

**A. The Good Faith Exception**

- Casebook pp. 658-663 (through majority opinion); 667(from note 4)-672
- Supplement pp. 180-193

**B. Standing**

- Casebook pp. 673-682

**C. Fruit of the Poisonous Tree Doctrine & Its Corollary Limits on Remedy**

1. Inevitable Discovery

2. Independent Source

- Casebook pp. 692-706

*Parts of the reading and discussion of limits on remedies may carry over to Wednesday.*
Class 14: Wed. Feb. 11

Limits on remedies carryover from Monday. Remedies is an issue common to the Fourth and Fifth Amendments.

VII. The Fifth Amendment Privilege Against Self-Incrimination

- Casebook pp. 711–720; 722-726 (Kastigar v. United States only); 729 (from Section B)–748 (end after paragraphs discussing how the privilege does not protect lies).

Mon., Feb. 16: Presidents’ Day Holiday, No Class

Class 15: Wed. Feb. 18

Hour 1: In-Class Mid-Term Multiple-Choice

Hour 2: The Fifth Amendment and Compelled Production

- Casebook pp. 759 (first two paragraphs on subpoenas and the Fifth Amendment); 1024-1034

Class 16: Mon. Feb. 23

VIII. Police Interrogation and the *Miranda* Revolution

A. The Search for Constitutional Regulation of Police Interrogation
   From Due Process Voluntariness Doctrine to the Fifth Amendment

   - Casebook pp.759–789 (through *Miranda*); 790 (note 3)-792 (through note 8)

Class 17: Wed. Feb. 25

B. The Scope and Meaning of *Miranda*:
   The Custody and Interrogation Triggers and the Warning Requirement

- Casebook pp. 794-799
- Supplement pp.195-207
- Casebook pp.799-813
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<th>Class 18: Fri. Feb. 27</th>
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<tr>
<td>C. Invocations, Waivers and Trickery</td>
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<td>- Casebook pp.814–841 (through note 6).</td>
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<td>- Supplement pp.208-220</td>
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<th>Class 19: Mon. March 2</th>
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<tr>
<td>D. Further <em>Miranda</em> Cutbacks and Limitations</td>
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<td>- Casebook pp.841–855 (through note 3); 860- 882</td>
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<td>IX. The Fifth Amendment Right to Counsel During Police Interrogation Contrasted with the Sixth Amendment Right to Counsel</td>
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<td>- Casebook pp.882–897; 133-138 (maj. op. in <em>Gideon</em>); 142 (from note 4)-153 (through <em>Alabama v. Shelton</em>); 154 (from “When Does the Right to Counsel Begin”) -158 (through <em>Rothgery</em>).</td>
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<td>X. Eyewitness Identification and Police Photo Arrays and Lineups</td>
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<tr>
<td>- Casebook pp.160-171</td>
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<td>- Supplement pp.3-4</td>
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<td>XI. Review Class</td>
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