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/1023759
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. To prepare you, your assessment includes:

(1) class participation, including discussion, interactive questions,* and motions practice (30%);
(2) final exam on Tues., March 15, with at least one issue-spotter and one essay (80%).

*We will intersperse class with interactive instant-feedback questions that you will answer by either (1) logging onto https://pollev.com/maryfan150 or (2) texting MARYFAN150. Please pre-register at https://www.polleverywhere.com/signup?arlt=signupbutton&usrc=signup_button so you get credit for participation. To enhance learning while reducing stress, how many you get correct will not hurt your grade but your participation will count. If you are on the margin of a grade, I will use extraordinary performance to bump.

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. This includes in-class motions practice assignments as well as interactive questions. 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 for general public dissemination interferes with the free exploration, expression and evolution of ideas. In addition, listening to a recording 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 optimal live 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.
READING ASSIGNMENTS

The reading assignments are typically approximately 38 pages or less per class because it is important that you read each assignment. There are 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.

<table>
<thead>
<tr>
<th>Class 1: Mon. Jan. 4</th>
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<tbody>
<tr>
<td>I. Overview: Civil Rights, Remedies and Police Regulation</td>
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<tr>
<td>• Before class, please complete the quick participant sign-up form at <a href="https://www.polleverywhere.com/signup?arlt=signupbutton&amp;usrc=signup_button">https://www.polleverywhere.com/signup?arlt=signupbutton&amp;usrc=signup_button</a> so that you get credit for participating on our interactive questions throughout the quarter.</td>
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<tr>
<td>• 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); one-page chart posted online.</td>
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<th>Class 2: Wed. Jan. 6</th>
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<tr>
<td>II. Fourth Amendment Regulation of Searches</td>
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<tr>
<td>A. Defining a “Search” Triggering the Fourth Amendment</td>
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<tr>
<td>1. The Reasonable Expectation of Privacy Test</td>
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<tr>
<td>• Casebook pp. 337-340 (overview of right and main remedy); 361-378</td>
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<td>• Supplement pp. 43-56</td>
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<th>Class 3: Fri. Jan. 8</th>
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<tr>
<td>2. The Third-Party Exposure Corollary</td>
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<tr>
<td>• Casebook pp. 379–390 (through note 4)</td>
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<tr>
<td>3. Technology &amp; Third-Party Exposure: Transitional Cases</td>
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<tr>
<td>• Casebook pp. 390–404 (through note 4)</td>
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<th>Class 4: Mon. Jan. 11</th>
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<tr>
<td>B. Motion Tracking, Data Aggregation and (Some) Pushback</td>
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- Supplement pp. 56-75

**C. Wiretapping, Electronic Surveillance and Searches of Electronic Files**
- Casebook pp. 900-903; 909-920 (through note 3)

### Class 5: Wed. Jan. 13

**III. The Warrant and Probable Cause Requirements**
- Casebook pp. 418-449 (end before Section 3 on exemptions); 699-703 (*Hudson v. Mich.* maj. op. on no exclusionary remedy for knock-and-announce violations)
- Supplement pp. 76-79

### Class 6: Fri. Jan. 15

**IV. Fourth Amendment Regulation of Seizures**
- Casebook pp. 405-411; 413-415; 417-418 (end on *Brendlin* excerpt)

**V. Exceptions to the Warrant “Requirement”**

1. **“Consent”**
   - Casebook pp. 641-657
   - Supplement pp. 190-200
   
   Third-party consent materials may carry over to the next class.

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### Mon., Jan. 18: Martin Luther King, Jr. Holiday, No Class

### Class 7: Wed. Jan. 20

Third-party consent, continued.

2. **Arrests**
   - Casebook pp. 495–515
   - Supplement pp. 94-96

3. **Searches Incident to Arrest: The Original Rule**
   - Casebook pp. 515–524 (through note 3)
<table>
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<tr>
<th>Class 8: Fri. Jan. 22</th>
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<tr>
<td>4. Cutbacks on the Power to Search Incident to Arrest: Cars, Cell Phones</td>
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<tr>
<td>(a) Auto Searches Incident to Arrest</td>
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<tr>
<td>• Casebook pp. 524 (from note 4)-534</td>
</tr>
<tr>
<td>(b) Cell Phones Seized Incident to Arrest</td>
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<tr>
<td>• Casebook pp.96-119</td>
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**Special Guest Star:**

Aravind Swaminathan, Partner and Global Co-Chair, Orrick, Herrington & Sutcliffe
Cybersecurity & Data Privacy team
https://www.orrick.com/About/Pages/default.aspx

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<th>Class 9: Mon. Jan. 25</th>
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<tr>
<td>5. The Automobile Exception</td>
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<tr>
<td>• Casebook pp.475-495</td>
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<tr>
<td>6. Inventory Searches</td>
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<td>• Casebook p.535</td>
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**Special Guest Star:**

Lt. Joel Guay
Seattle Police Department

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<th>Class 10: Wed. Jan. 27</th>
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<tr>
<td>7. Exigent Circumstances</td>
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<tr>
<td>• Casebook pp. 449-465</td>
</tr>
<tr>
<td>• Supplement pp. 79-93</td>
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<tr>
<td>8. Plain View</td>
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<tr>
<td>• Casebook pp. 465-474 (through <em>Horton v. California</em>)</td>
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Class 11: Mon. Feb. 1

**VI. General Reasonableness: Exceptions to the Probable Cause Standard**

1. *Terry* Stops and Frisks
   - Casebook pp. 535–558
     (a) The Reasonable Suspicion Standard
     - Casebook pp. 559–562
     - Supplement pp. 120-131 (through Part I of the dissent)

Class 12: Wed. Feb. 3

   (b) Race, Socioeconomic Status and Reasonableness of Suspicion
   - Casebook pp. 563–585 (through note 4)
   - Supplement pp. 136-144

Class 13: Mon. Feb. 8

2. “Special Needs” Searches
   - Casebook pp. 597-615;
   - Supplement pp. 144-164 (through the first portion of the dissent on this page).

Class 14: Wed. Feb. 10

**VII. Limits on Remedies**

1. The Good Faith Exception
   - Casebook pp. 658-663 (through majority opinion); 667 (from note 4)-672
   - Supplement pp. 201-209 (through majority opinion)

2. Standing
   - Casebook pp. 673-682

3. Independent Source

4. Inevitable Discovery

5. Impeachment
### Mon., Feb. 15: Presidents Day Holiday, No Class

### Class 15: Wed. Feb. 17

#### VIII. The Fifth Amendment Privilege Against Self-Incrimination

##### A. The Core Textual Privilege against Self-Incrimination

- Casebook pp. 692–699; 706-709

### Class 16: Fri. Feb. 19

#### (Private Practice Issues)

##### B. The Fifth Amendment Privilege and Compelled Production

- 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).

### Class 17: Mon. Feb. 22

#### X. 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 18: Tues. Feb. 23 – 5-6 p.m., Room 127

##### B. Cameras and Police Control

- Please note the special time and place: 5-6 p.m. in room 127.
- No need to read in advance.
- There will be free drinks and food in room 115 from 4:30 – 5 p.m.

### Class 19: Wed. Feb. 24

##### C. *Miranda* Trigger: Custodial Interrogation
- Casebook pp. 795 (from “Custody”)–813
- Supplement pp. 215-227

Class 20: Mon. Feb. 29

D. Invocations, Waivers and Trickery

- Casebook pp. 814–841 (through note 6)
- Supplement pp. 228-240

Class 21: Wed. March 2

E. Limits on the Exclusionary Remedy for *Miranda* Violations

- Casebook pp. 841–855; 860-882

Class 22: Mon. March 7

XI. The Sixth Amendment versus Fifth Amendment *Miranda* Right to Counsel

- Casebook pp. 882-897; 154 (from “When Does the Right to Counsel Begin”)–158
  (through Rothgery)

XII. Right to Counsel & Eyewitness Identification Issues

- Casebook pp. 160-171
- Supplement pp. 3-4

Class 23: Wed. March 9

Review Class