

**DEPAUL UNIVERSITY COLLEGE OF LAW
CRIMINAL PROCEDURE**

Professor John F. Decker

Summer 2008

Phone: 312.362.8740

E-mail: jdecker1@depaul.edu

Office: 409

Books Required:

1. Israel, Kamisar, LaFave & King, CRIMINAL PROCEDURE AND THE CONSTITUTION (2007 ed.).

2. ILLINOIS CRIMINAL LAW AND PROCEDURE (West 2007).

Recommended Textbooks/Hornbooks (Not required):

1. Whitebread & Sloybogin, CRIMINAL PROCEDURE (5th ed. 2008).

2. LaFave, Israel, & King, CRIMINAL PROCEDURE (4th ed. 2004).

3. Dressler, UNDERSTANDING CRIMINAL PROCEDURE (4th ed. 2006(2 volumes)).

4. Ruebner, ILLINOIS CRIMINAL PROCEDURE (4th ed. 2004)(2 volumes).

Course Objectives:

This course will attempt to develop the analytical abilities of the respective students and expose them to various aspects of the pre-trial, trial and post-trial stages of our criminal justice system. Particular emphasis will be placed on the constitutional restrictions - fourth, fifth and sixth amendment -- on the gathering of evidence of a crime.

Course Method:

The instructor will rely on a combination of the Socratic and lecture approach. Students will be expected to grasp an understanding of the principles of criminal procedure and differing perspectives as they relate to (1) the federal system,(2) Illinois law, and (3) the law as followed in a majority of jurisdictions.

Attendance/Class Preparation:

Students are expected to regularly attend class, read advance reading assignments and be prepared to discuss the assignments in class. Any student who has an excuse for not (1) attending class, or (2) being prepared for class should present such excuse in writing to the instructor before said class, if possible, or as soon as possible after said class. The professor reserves the right to exclude any student from the final exam who has a combination of **three** or more (1) unexcused absence(s) or (2) failure(s) to be prepared for class. (E.g. A student who has one unexcused absence and two unexcused failures to prepare could be barred from the final examination.)

Evaluation:

Although a variety of testing devices are available, a traditional comprehensive examination will be utilized. Because the subject matter of the course is relatively complex, such an approach was deemed most appropriate inasmuch as it allows the student to concentrate on the wide variety of problems which may be encountered in the criminal justice system. Ideally, an examination should serve two functions: (1) provide students an opportunity to analyze problem(s) relating to the subject matter considered in class discussion or in class assignments, identify the relevant issue(s) within, formulate a solution (or alternative solutions) considering their knowledge of the subject matter and their ability to evaluate and appraise such matter, and thereafter intelligently express the solution(s) as well as all relevant matter considered and utilized in coming to such a solution(s) and (2) provide the instructor a vehicle to ascertain a student's ability to analyze such problem(s) and his/her proficiency to develop **as well as** describe the solution(s) and the methodology used in arriving at such solution(s). Accordingly, the answer(s) to the questions asked must reflect the following: (1) a recognition of the issue(s); (2) an understanding of the applicable rule(s) of law; (3) an application of such rule(s) of law to the facts and issue(s) under consideration; (4) a consideration of the policy underlying the rule(s) relevant to the issues and facts at hand; and (5) an intelligent, rational and logical presentation of such analysis. Of course, the analysis is much more important to the instructor than the ultimate solution(s) chosen.

WITH REGARD TO THE FINAL EXAM FRAMEWORK, THE INSTRUCTOR WILL REQUIRE EITHER ESSAY (TO HYPOTHETICAL QUESTIONS), OBJECTIVE RESPONSES (TO MULTIPLE CHOICE QUESTIONS), OR BOTH. The single examination will be given at the regularly scheduled examination period set out for this course by the Administration of DePaul College of Law. The examination is closed book. **THE EXAMINATION QUESTIONS MAY BE BASED ON THE ASSIGNED WRITTEN MATERIALS, MATTERS DISCUSSED IN CLASS, OR BOTH.**

General Outline of Course

1. Introductory Comments
2. Supreme Court Review of State Criminal Procedure:
Purpose, Impact, Problems -- pp. 33-54
Palko v. Connecticut
Adamson v. California
Duncan v. Louisiana
Katz v. U.S. -- pp. 86-91
Terry v. Ohio -- pp. 221-30
Mapp v. Ohio -- pp. 57-63
Hudson v. Michigan -- pp. 73-86
U.S. v. Wade -- pp. 450-57
Kirby v. Illinois -- pp. 457-59
3. Overview of Procedures in Criminal Cases
 - A. Generally -- pp. 1-15
 - B. Police-Citizen Encounters
 1. "Consensual" vs. "Seizure"? -- pp. 235-51; 264-70
Florida v. Royer
U.S. v. Drayton
Brendlin v. California
Schneekloth v. Bustamonte
 2. Investigatory Stops -- Reasonable Suspicion - pp. 230-35; 251-55
Florida v. J.L.
Illinois v. Wardlow
U.S. v. Place
 3. "Frisks" of Suspects Believed to be Armed and Dangerous
Terry v. Ohio, supra
 - C. "Pretext" Stops and Arrests -- pp. 158-69
Whren v. U.S.
Atwater v. City of Lago Vista
 - D. Arrest--Probable Cause -- pp. 114-35
Spinelli v. U.S.
Illinois v. Gates
Maryland v. Pringle

- E. Search Incident to Arrest -- pp. 150-58; 180-85
 - U.S. v. Robinson*
 - Chimel v. California*
- F. Booking & Inventory -- pp. 154 n.c.
 - Illinois v. Lafayette* -- (NOTE CASE)
- G. Initial Court Appearance -- pp. 146 n.a.
 - Gerstein v. Pugh* (NOTE CASE)
 - County of Riverside v. McLaughlin* (NOTE CASE)
- H. Pretrial Release, Bail & Preventive Detention - pp. pp. 513-25
 - Stack v. Boyle*
 - U.S. v. Salerno*
- I. Preliminary Examination -- pp. 543-51
 - Coleman v. Alabama*
- J. Grand Jury, Subpoenas & Privilege Against Self-Incrimination -- pp. 551-60; 468-512
 - Vasquez v. Hillery*
 - Costello v. U.S.*
 - Boyd v. U.S.*
 - U.S. v. Dionisio*
 - U.S. v. Mandujano*
 - Kastigar v. U.S.*
 - Fisher v. U.S.*
 - U.S. v. Hubbell*
- K. Plea Bargaining -- pp. 600-14
 - Bordenkircher v. Hayes*
 - Santobello v. New York*
 - Mabry v. Johnson*
 - U.S. v. Benchimol*
 - U.S. v. Ruiz*
- L. Arraignment & Guilty Pleas -- pp. 615-23
 - Boykin v. Alabama*
 - Henderson v. Morgan*
 - North Carolina v. Alford*
- M. Right to Speedy Trial -- pp. 561-78
 - Barker v. Wingo*
 - Doggett v. U.S.*
 - U.S. v. Lovasco*
- N. Double Jeopardy -- pp. 833-80
 - 1. "Same Offense" Limitation
 - Ashe v. Swenson*
 - U.S. v. Dixon*
 - 2. Dual Sovereignty
 - Heath v. Alabama*
 - 3. Civil Sanctions
 - Hudson v. U.S.*

- 4. Mistrials
 - Arizona v. Washington*
 - Oregon v. Kennedy*
- 5. Retrials after Conviction or Acquittal
 - U.S. v. Scott*
 - Burks v. U.S.*
- O. Discovery -- pp. 579-84; 593-99
 - Williams v. Florida*
 - Pennsylvania v. Ritchie*
- P. Right to Jury Trial - pp. 624-63
 - 1. When Required, Size and Unanimity
 - Blanton v. City of North Las Vegas*
 - Burch v. Louisiana*
 - Singer v. U.S.*
 - 2. Fair Cross-Section Requirement
 - Carter v. Jury Commissioner*
 - Taylor v. Louisiana*
 - Turner v. Murray*
 - Lockhart v. McCree*
 - 3. Peremptory Challenges
 - Batson v. Kentucky*
 - J.E.B. v. Alabama*
- Q. Sentencing - pp. 897-913
 - Blakely v. Washington*
- R. Post Conviction Review -- lecture
 - 1. Appeals --
 - 2. Collateral Review
 - a. Illinois Collateral Remedies
 - b. Federal Habeas Corpus
 - Herrera v. Collins* -- pp. 816-32
- 4. Police Phase: The Gathering of Evidence
 - A. Due Process and the Exclusion of Improperly Seized Evidence
 - 1. Development of the Exclusionary Rule pp. 55-63
 - Wolf v. Colorado*
 - Mapp v. Ohio, supra*
 - Hudson v. Michigan, supra*
 - 2. "Good Faith" Non-compliance with the Constitution
 - U.S. v. Leon* - pp. 63-73
 - 3. Other Limitations on the Reach of the Exclusionary Rule -- lecture
 - B. Arrest, Search and Seizure
 - 1. Fourth Amendment Privacy -- What is a "Search"?
 - pp. 86-107
 - Katz v. U.S., supra*

California v. Greenwood

Florida v. Riley

U.S. v. Karo

Kyllo v. U.S.

2. What is a "Seizure"? -- *Supra*
3. Justifying the Search and/or Seizure -- General Concerns
 - a. Probable Cause -- *Supra*
 - b. The Warrant Clause: Its Importance -- lecture
 - c. Warrant Problems Generally
 1. Particularity and Reasonableness
Maryland v. Garrison -- pp. 135-41
 2. Neutral & Detached Magistrate -- lecture
 3. Execution of Warrants
Richards v. Wisconsin - pp. 141-44
 4. Protective Sweep (NOTE CASE)
Maryland v. Buie - pp. 182-83 n.b
 5. Plain View - lecture
 6. Maintaining Status Quo (NOTE CASES)
Segura v. U.S.-- p. 188 n.1
Illinois v. McArthur -- p. 188 n.2
 - d. Arrest Warrant Requirement & Exceptions
U.S. v. Watson -- pp. 145-50
Payton v. New York -- pp. 176-80
Steagald v. U.S. -- pp. 178 n.b (NOTE CASE)
 1. Hot Pursuit Exception -- lecture
 2. Exigent Circumstances Exception -- lecture
 3. Consent Exception -- lecture
 - e. Search Warrant Requirement & Exceptions
 1. Search Incident to Arrest -- *Supra*
 2. Inventory -- *Supra*
 3. Exigent Circumstances
Vale v. Louisiana - pp. 185-89
 4. Emergency (NOTE CASE)
Brigham City v. Stuart - p. 187 n.a
 5. Consent
Georgia v. Randolph -- pp. 270-77
 - f. Automobile Searches & Seizures
 1. Stop of Auto -- lecture
 2. Probable Cause
California v. Carney -- pp. 189-93
California v. Acevedo -- pp. 201-10
Wyoming v. Houghton - pp. 210-16
 3. Search Incident to Arrest -- pp. 194-201
Thornton v. U.S.
Knowles v. Iowa

4. Inventory
Colorado v. Bertine - pp. 216-20
 5. Stop and Frisk (NOTE CASE)
Michigan v. Long - pp. 227-28 n.b
 6. Consent -- lecture
 - g. Electronic Surveillance of Conversations
U.S. v. White -- pp 107-10
Berger v. New York -- p. 89 n.c (NOTE CASE)
 - h. Special Problems, "Special Needs": Searches and Seizures requiring neither probable cause nor reasonable suspicion
Samson v. California - pp. 256-63
- C. Police Interrogation - lecture
1. Due Process and Voluntariness
 2. Interrogation of Counsel-Represented Defendants after Formal Charge - *Massiah et al*
 3. Custodial Interrogation -- *Miranda et al*