Welcome to Criminal Procedure. This course will consider how we balance society’s need for effective law enforcement and the individual’s right to fair treatment in the criminal justice system. I hope that you find these subjects to be as exciting and interesting as I do. A brief outline of information about the course follows.

**TEXTBOOK**

The required text for the course is *Y. Kamisar, W. LaFave, J. Israel, & N. King, Basic Criminal Procedure* (13th ed. 2012) (referred to as “Text”). Finally, I have put together a collection of additional materials (referred to as “Cassell Materials”). These materials should be available for you shortly on the Westlaw page for this course. You can review them electronically or, if you prefer paper copies, you can simply print them from there.

**READING ASSIGNMENTS**

Although I will not specifically discuss them in class, at some point early in the semester you will want to read chapter 1 in the text, “On Studying the Legal Regulation of the Criminal Justice Process” (pp. 2-23).

**CHAPTER 2 SOURCES OF CRIMINAL PROCEDURE LAW**

1. *The “Fundamental Fairness,” “Total Incorporation” and “Selective Incorporation” Theories*
   - Text, pp. 25-27
   - Text, pp. 27-32
3. *Is there a Due Process Right to Technology that Might Establish One’s Innocence?*
   - Text, pp. 32-33
   - Cassell Materials, 1-25 (Amicus Brief for K.G. in *D.A.’s Office v. Osborne*).
   - Text, pp. 42-46
CHAPTER 6 - ARREST, SEARCH AND SEIZURE

1. The Exclusionary Rule.
   Text, pp. 222-46
   Cassell Materials, pp. 26-28 (Exclusionary rule replacement found in the proposed amendment to the Violent Crime Control Act of 1995)
   Text, pp. 247-63

2. Protected Areas and Interests.
   Text, pp. 264-92

3. "Probable Cause".
   Text, pp. 292-315

4. Search Warrants.
   Text, pp. 316-32

5. Warrantless Arrests and Searches of the Person.
   Text, pp. 332-61

6. Warrantless Entries and Searches of Premises
   Text, pp. 362-76
   Cassell Materials, pp. 53-67 (Brigham City v. Stuart – Utah Supreme Court)
   Text, pp. 376-82

7. Warrantless Seizures and Searches of Vehicles and Containers
   Text, pp. 383-408

8. Stop and Frisk
   Text, pp. 408-38

[Note: We skip section 9 here, and return to it shortly.]

10. Consent Searches
    Text, pp. 454-69

    More on Vehicle Searches

    Cassell Materials, pp. 68-72 (U.S. v. Walker I, 933 F.2d 812 (10th Cir. 1991))
    Cassell Materials, pp. 73-79 (“The Heat on Utah's Cocaine Lanes”)
9. Administrative Inspections and Regulatory Searches  
Text, pp. 439-54

Is There a Better Way?  Utah State Constitutional Interpretation  
Read Trends and Counter trends, Text, pp. 38-39
Reread Cassell materials, pp. 80 - 81 (selected Utah/U.S. constitutional provisions).
Cassell materials, pp. 82 - 91 (State v. Larocco, 794 P.2d 460 (Utah 1990))
Cassell materials, pp. 92-99 (State v. Anderson, 910 P.2d 1229 (Utah 1996))
Reread Cassell materials, pp. 53-67 (Brigham City v. Stuart)  
Cassell materials, pp. 100-106 (State v. Tiedemann)  
Cassell materials, pp. 107 (Developments in the Utah Constitutional Revision Commission)  
Cassell materials, pp. 108-112 (Cassell Remarks to the CRC in Support of Abolishing Utah’s Exclusionary Rule).

CHAPTER 9 - POLICE INTERROGATIONS AND CONFESSIONS

1. Historical Background  
Text, pp. 543-65

2. The Miranda “Revolution”  

a. Miranda v. Arizona  
Text, pp. 566-96

b. Miranda’s Application (I): Custody, Interrogation, Waiver  
Text, pp. 596-628

c. Miranda’s Application (II): Resumption of Questioning and Other Issues  
Text, pp. 628-75

d. Miranda’s Impact in Practice and Congress – The “Repeal” of Miranda  
Text, pp. 676-90
Reread text pp. 629 n.a (videotaping of interrogations)  
Cassell Materials, pp. 113-42 (Cassell analysis of the costs of Miranda)

3. Miranda, the Privilege Against Compelled Self-Incrimination, and 14th Amendment Due Process.  
Text, pp. 690-96

4. The Patane and Seibert Cases.  
Text, pp. 677-709

5. Some Final Questions About Miranda  
Text, pp. 709-16
6. The "Due Process" - "Voluntariness" Test Revisited
   Text, pp. 717-38

7. Massiah Revisited: Massiah and Miranda Compared
   Text, pp. 738-59

CHAPTER 12 - THE SCOPE OF THE EXCLUSIONARY RULES

1. "Standing" to Object to the Admission of Evidence
   Text, pp. 879-89

2. The "Fruit of the Poisonous Tree"
   Text, pp. 893-910

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Further readings, if any, to be announced.

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I would like to tell you how much material to read for each class, but that uncontrollable
variable -- class participation -- makes that difficult. My best guess is that we will cover about 20
pages in the textbook for each class. I have not referred to the supplement in this reading
assignment. You are, however, responsible for reading the relevant portions of the supplement
that relate to the assigned pages in the textbook. I will try to give more precise guidance at the
end of each class.

SUPPLEMENTAL MATERIALS

You should not need to buy any study aids. If you want to consult one without spending
any money, the library has on reserve copies of the following good sources:

WAYNE R. LAFAVE & JEROLD S. ISRAEL, CRIMINAL PROCEDURE (the “green
hornbook”);

JEROLD S. ISRAEL & WAYNE R. LAFAVE, CRIMINAL PROCEDURE: CONSTITUTIONAL
LIMITATIONS (the “nutshell”);

JOSHUA DRESSLER, UNDERSTANDING CRIMINAL PROCEDURE (very understandable
black letter law hornbook); and

CHARLES H. WHITEBREAD & CHRISTOPHER SLOBOGIN, CRIMINAL PROCEDURE: AN
ANALYSIS OF CASES AND CONCEPTS (treatise).

For more detailed research, the best sources are WAYNE R. LAFAVE & JEROLD S. ISRAEL,
CRIMINAL PROCEDURE (three-volume blue hornbook); and WAYNE R. LAFAVE, SEARCH &
SEIZURE (four-volume blue hornbook) (search and seizure issues). For a good, current overview of federal case law, see Project, “Annual Review of Criminal Procedure: United States Supreme Court and Court of Appeals,” each year in the GEORGETOWN L.J.

CLASS SCHEDULE

Class will meet Monday, Wednesday, and Thursday mornings from 9:10 to 10:35. I also anticipate that on Wednesday, August 30, at 11 a.m., we will travel to Judge Benson’s courtroom in the U.S. District Court (350 S. Main) to watch a suppression hearing (U.S. v. Morrison, 2:12-CR-260).

I’M AVAILABLE TO HELP!

I want to be fully accessible to you. You can swing by my office any time or call my office (801-585-5202) or send me an email at cassellp@law.utah.edu. I will also give you my home telephone number as the final exam approaches.

Please let me know if you have any suggestions for making this is a more enjoyable and rewarding class.

CLASS PARTICIPATION

Class participation will be considered in calculating the final grade. Class participation can only improve your grade, not lower it (unless you are unprepared on your assigned days).

FINAL EXAM

It is very early in the course to talk about the final exam, but there always seems to be a great deal of interest in the subject. I anticipate (but do not promise) that the final exam will have three one-hour essay questions. At least two of the questions will be classic “issue spotting” questions (that is, a fact pattern to which you must apply principles learned in the course) and perhaps one question will be a “policy” question (that is, a question raising issues of legal policy based on what we have talked about in the course). The policy question may ask you to criticize some view or doctrine that the instructor has expounded in class.

The exam will be “open book” exam administered over a three to four hour period. All exams must be typed or legibly hand written. There will be a page limitation on the length of the answers. I will make a strong effort to insure that my final exam focuses on what we have talked about in the course.

If you concentrate on what is covered during class discussions, I have no doubt that you can do well on the final. To see the type of exam that I write, you can look at old exams on reserve in the library. I will carefully explain the final exam in more detail towards the end of the course.
ACCOMMODATIONS

The University of Utah seeks to provide equal access to its programs, services and activities for people with disabilities. If you will need accommodations in this class, reasonable prior notice needs to be given to Barbara Dickey, Associate Dean for Student Affairs, and to the Center for Disability Services (CDS) to make arrangements for accommodations. CDS is located at 200 S Central Campus Drive, Room 162, or you can call 801-581-5020. All written information in this course can be made available in alternative format with prior notification.

CASSELL – CRIMINAL PROCEDURE – FIRST WEEK’S READING ASSIGNMENT

The reading assignment for the first day of class will focus on the “incorporation” doctrine. In the casebook (Kamisar et al., Basic Criminal Procedure), please read pp. 25-46, as well as pages 80-81 in the “Cassell materials” (selected Utah constitutional provisions) and pages 1-25 in the “Cassell materials” (Amicus Brief for K.G.).

Note: The Cassell materials can be found in TWEN (Westlaw) under the heading of my Criminal Procedure Class.

The reading assignment for the second day of class will focus on “the exclusionary rule.” In the casebook, please read pp. 222-46. In addition, it is extremely important that you read pp. 26-28 in the Cassell materials.

It is possible that for the third day of class we will move into pp. 247-63 of the text.

Although I will not specifically discuss them in class, at some point early in the semester you will want to read Chapter 1 in the text, “On Studying the Legal Regulation of the Criminal Justice Process,” pp. 2-23.

I look forward to meeting everyone in class for what I hope will be an interesting class about the tensions between promoting effective law enforcement and protecting individual liberties.