

## **Spring 2023 SYLLABUS – CRIMINAL PROCEDURE: INVESTIGATIONS**

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### **INSTRUCTOR:**

**Tim S. Braley**

### **CLASS TIMES:**

**Monday and Wednesday, 6-7:20pm.**

### **BOOK:**

***Criminal Procedure, Investigation, Chemerinsky and Levenson (4th Edition)***

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**CONTENT:** This class will focus on the constitutional and procedural aspects of criminal investigations which include Search and Seizure, the Exclusionary Rule, Police Interrogation and the Privilege Against Self-Incrimination, Identification Procedures, and the Right to Counsel to name a few. Professor Braley has over 23 years' experience as a state and federal prosecutor conducting complex criminal investigations, using the Grand Jury to investigate, employing sensitive investigatory techniques like TIII wire intercepts, defending suppression motions involving alleged violations of the 4<sup>th</sup> and 5<sup>th</sup> Amendment, and presenting complex legal and factual issues to judges and juries.

**GRADE:** The grade in this class will be based on an exam given at the end of the semester. The exam will consist of short answer/essay/multiple choice style questions.

**Learning Outcomes:** During your time in this course, you will develop competence in the following:

- Knowledge and understanding of substantive and procedural law pertaining to 4<sup>th</sup> Amendment Search and Seizure and 5<sup>th</sup> Amendment Custodial Interrogations.
- You will learn to recognize situations in which a privacy interest is implicated and analyze police conduct once implicated.
- You will learn to recognize custodial situations that implicate procedural safeguards.
- You will learn to apply basic 4<sup>th</sup> and 5<sup>th</sup> Amendment principles to hypotheticals drawn from actual searches and interrogations.

**ATTENDANCE:** The law school mandates that you attend 80% of the classes. You must comply with this requirement.

**PARTICIPATION:** Class participation is an essential part of each class. Professors will utilize hypotheticals drawn from actual practice and case readings to teach concepts. Class participation may account for as much as 5% of the final grade.

### **CONTACT INFORMATION:**

Tim S. Braley, tim12braley@comcast.net, Cell (832) 388-1117, Office/University visits by appointment consistent with all COVID protocol.

**COUNSELING AND PSYCHOLOGICAL SERVICES (CAPS):** CAPS can help students who are having difficulties managing stress, adjusting to the demands of a professional program, or feeling sad and hopeless. You can reach CAPS ([www.uh.edu/caps](http://www.uh.edu/caps)) by calling 713-743-5454 during and after business hours for routine appointments or if you or someone you know is in crisis. No appointment is necessary for the "Let's Talk" program, a drop-in consultation service at convenient locations and hours around campus. See: [http://www.uh.edu/caps/outreach/lets\\_talk.html](http://www.uh.edu/caps/outreach/lets_talk.html).

### **PRONOUN PREFERENCES:**

I go by Professor Braley. I generally use she/they, hers/theirs, you/y'all as pronouns. Please reach out to me in person, by e-mail, or by phone if you have preferred pronouns you would like for us to use, or if you favor a particular prefix, like "Dr." or "Mx.," instead of "Mr." or "Ms." I will try our best to honor your preferences. Please attribute any lapses to failings of memory and do not feel embarrassed to correct me if I make any mistakes.

## **REMOTE OFFERING**

This instructor will offer this class via “remote presence” offered remotely for part or all of the semester or by starting a zoom meeting from the podium computer to enable student remote access. Moreover, this instructor may need to travel for a few weeks during the semester, in which case some number of class sessions during the semester may be held as synchronous distance education (likely a zoom meeting) during those week(s) of travel.

## **Diversity, Inclusion, and Wellness**

This is an inclusive learning space. At UHLC, we are committed to ensuring inclusive online and classroom learning spaces, where you'll be treated with respect and dignity, and where everyone is provided the equitable opportunity to participate, to contribute, and to succeed.

In this course, all students are welcome regardless of socio-economic status, age, race, ethnicity, disability, religion, national origin, veteran's status, sex, sexual orientation, gender identity, gender expression, political affiliation, marital status and other diverse identities that we each bring to class. Our class is richer for this diversity.

Inclusive learning spaces facilitate the innovation and creative thought that enhance student success. This success arises from the participation, support, and understanding of you and your colleagues. I encourage you to speak up and to share your views, but also understand that you are doing so in a learning environment in which we're all expected to engage respectfully and with regard to the dignity of all others.

If you feel like your class performance is impacted in any way by your experiences inside or outside of class, please reach out to me. I want to be a resource for you. If you feel more comfortable speaking with someone besides me, Student Services is an excellent resource: 713-743-2182. Finally, I encourage you to bring any issues negatively impacting UHLC's openness to diversity and inclusion to the Law Center's Diversity and Inclusion committee. The D&I committee's charge includes “[building] on the Law Center's strengths as a diverse and inclusive environment.” You can contact the committee directly at [UHLCD&I@uh.edu](mailto:UHLCD&I@uh.edu).

Your suggestions are encouraged and appreciated. Please let me know ways to improve the effectiveness of this course for you personally, or for other students or student groups.

**Discrimination and Sexual Misconduct Policy:** The University is committed to maintaining and strengthening an educational, working and living environment where students, faculty, staff, and visitors are free from discrimination and sexual misconduct. If you have experienced an incident of discrimination or sexual misconduct, there is a confidential reporting process available to you. Please be aware that under the sexual misconduct policy, SAM 01.D.08, faculty are required to report to the University any information received regarding sexual misconduct as defined in the policy. Please note that the reporting obligations under the sexual misconduct policy reach to employees and students. Also, as a required reporting party, Law Center employees and faculty members are not a confidential resource. For more information, please refer to the University system's Anti-Discrimination Policy SAM 01.D.07 and Sexual Misconduct Policy SAM 01.D.08, available at: <http://www.uhsystem.edu/compliance-ethics/uhs-policies/sams/01-general-information/index.php>; <http://www.uhsystem.edu/compliance-ethics/docs/sam/01/1d7.pdf> (antidiscrimination);

[http://www.uhsystem.edu/compliance-ethics/\\_docs/sam/01/1d8.pdf](http://www.uhsystem.edu/compliance-ethics/_docs/sam/01/1d8.pdf) (sexual misconduct).

**Title IX/Sexual Misconduct:** Per the UHS Sexual Misconduct Policy, your instructor is a “responsible employee” for reporting purposes under Title IX regulations and state law and must report incidents of sexual misconduct (sexual harassment, non-consensual sexual contact, sexual assault, sexual exploitation, sexual intimidation, intimate partner violence, or stalking) about which they become aware to the Title IX office. Please know there are places on campus where you can make a report in confidence. You can find more information about resources on the Title IX website at <https://uh.edu/equal-opportunity/title-ix-sexual-misconduct/resources/>.

**READING:**

The reading assignments are drawn from the casebook and outlined below. Reading assignments will be made at the end of each class. Generally, all students should stay at least four cases ahead in their readings.

We will likely cover the entire textbook during our course. The course topics are as follows:

**Chapter 1-Introduction to Criminal Procedure pp. 1-29**

**Chapter 2-Searches and Seizure pp. 31-364**

*What is a Search*

*The Requirement of Probable Cause*

*The Warrant Requirement*

*Exceptions to the Warrant Requirement*

*Seizures and Arrests*

*Stop and Frisk*

**Chapter 3-The Exclusionary Rule pp. 373-457**

*Is the Exclusionary Rule a Desirable Remedy for Unconstitutional Behavior*

*The Origins*

*When Does the Exclusionary Rule Apply*

*Who Can Object to the Introduction of Evidence and Raise the Exclusionary Rule*

*Exceptions*

**Chapter 4-Police Interrogations and the Privilege Against Self-Incrimination pp. 459-651**

*Due Process and the Requirement of Voluntariness*

*Fifth Amendments Limits on In-Custodial Interrogation*

*Miranda*

*Consequences of Violations*

*Waiver, and*

*Exceptions*

*Fifth and Sixth Amendment Right to Counsel and Police Interrogation*

**Chapter 5-Identification Procedures pp. 657-699**