I. Scope of Course

This scope of this course is well captured by the informal title by which it is known among criminal law professors -- *Bail to Jail*. In other words, this class is about what happens after state or local police or federal agents have performed an investigation and gathered enough information to make at least a preliminary decision to arrest and/or charge someone with a crime. The constitutional limits on that investigative process are the subject of the separate course that at MU Law we call Criminal Procedure.

In this class, by contrast, we will cover, or at least touch on: 1) Bail and pre-trial detention; 2) prosecutorial charging discretion; 3) preliminary hearings; 4) the grand jury; 5) speedy trial; 6) criminal discovery; 7) indictments and other charging instruments; 8) joinder and severance; 9) plea bargaining and guilty pleas; 10) some jury trial procedures, including jury selection; 11) the right to counsel; 12) double jeopardy; 13) sentencing; and 14) the right to appeal.

As you will remember from your basic course in Criminal Law, the study of American criminal justice is complicated by the sometimes-significant differences between the substantive and procedural law of the federal government, the fifty states, the District of Columbia, and the several territories. In this class, we will discuss the local rules and practices of the states, but *the structural backbone of the course will be federal law*. We will cover the most significant of the Federal Rules of Criminal Procedure and the body of constitutional case law concerning the criminal trial process, as well as federal statutes such as the Bail Reform Act and the Sentencing Reform Act. There are several reasons for proceeding this way, but the most important is that post-arrest criminal procedure in every jurisdiction is driven by the local *rules of criminal procedure* and *statutes* governing bail, the trial process, sentencing, and related questions.

In short, unlike your Criminal Procedure class, which was devoted almost exclusively to the highly specific decisions of the U.S. Supreme Court construing the provisions of the 4th, 5th, and 6th Amendments governing police investigation, post-arrest criminal procedure, this course is
largely governed by codified sets of written rules that exist within a much sparser framework of federal constitutional constraints. I find that the best way to study this field is to focus on the rules and statutes promulgated by a single jurisdiction in order to understand how they interact with each other to form a (hopefully) integrated whole. Moreover, although the Federal Rules of Criminal Procedure and federal bail and sentencing statutes do not govern state practice, they are broadly influential.

You have picked a particularly apt time to take this course inasmuch as there are lively controversies boiling over subjects like the use of money bail and prosecutorial charging and plea bargaining discretion. We will discuss these questions and current reform movements along with the other more quotidian aspects of the subject.

II. Required Materials

The materials required for this course will be:

A. KAMISAR, LAFAVE, ISRAEL, KING, KERR & PRIMUS, ADVANCED CRIMINAL PROCEDURE
B. Federal Rules of Criminal Procedure
C. Additional materials posted on LexisNexis Canvas

III. LexisNexis CANVAS

Throughout the semester, I will use the Canvas-based system on LexisNexis to provide you with announcements, weekly reading assignments, supplemental materials, and so forth. THIS IS DIFFERENT FROM THE CANVAS SYSTEM OPERATED BY THE UNIVERSITY. You must self-enroll in the course on LexisNexis to access the material. If you are not familiar with LexisNexis, please follow the following instructions to get yourself enrolled:

You will need your LexisNexis password to enroll in the course, and to access materials in the course.

Enrollment Instructions for LexisNexis Webcourses

2. Scroll to Lexis Classroom in the right pane.
3. Click Add a Course.
4. Locate the professor's name.

Note: the professor's name only appears if the course is available and published.
5. Click the professor's name to see all the courses published by the professor.
6. Click the course name to enroll in the course.
7. Enter the course code if you are prompted. The course code for Criminal Justice Administration is CJE6DH.

Technical Questions or Problems?
Please contact the UMC Law Help Desk at umclawhelpdesk@missouri.edu, or at 573-884-7800.

IV. Teaching method

Classes will often be devoted to lecture, discussion, or Socratic analysis of cases and statutes. In addition, however, because this is a class about how criminal litigation is conducted, we will occasionally engage in small group simulation exercises, short writing assignments involving the drafting of indictments or motion practice, etc. Each student will be assigned to participate in at least one graded simulation exercise with a written and oral component during the semester.

“Trial Teams”

By the second day of class, you will be assigned to a three-person “trial team.” From time to time, I will ask you prepare for certain in-class exercises as a team. Mostly, this will just mean that you should put your heads together before class, either in person or by phone, Zoom, or e-mail, to discuss the exercise together and, if necessary, agree on a unified approach to the problem. Sometimes, your “trial team” may be asked to work together in more formal simulation exercises. Once you are assigned to your “trial team,” you should ensure that you have exchanged contact information with your teammates so that you can communicate and coordinate easily.

V. Reading assignments generally and FIRST READINGS

Generally, I will give out reading assignments on the last class day of each week for the following week. I will post the assignment on LexisNexis Canvas. I do not give assignments earlier because I find some students, in an excess of zeal, will read far ahead and consider themselves “prepared” for class. However, when the time comes to discuss the material, the reading happened so long ago that the student doesn’t remember much about it.

The reading and assignments for January 1 through February 1 follow:

Assignments, January 18- February 1, 2022

Tuesday, January 18: Module #1: Introduction to the Criminal Justice Process

Required reading: 1) Kamisar, LaFave, et al., pp. 2-23
2) Northampton Police Dept- Discretion in Arrest Situations (2 pages) (posted on LexisNexis Canvas under Module #1)

Recommended reading: Goldstein, Police Discretion: The Ideal vs. The Real
Thursday, Jan 20:  
**Module #2: Arrests, Summonses, Warrants & Initial Appearance**

*Required reading:*

1) *Re-read* Kamisar, LaFave, et al., pp. 5-12  
2) U.S. Constitution, Amendment IV  
3) *Gerstein v. Pugh* (excerpts) (5 pages)  
4) *Cnty of Riverside v. McLaughlin* (excerpts) (5 pages)  
5) *Manuel v. City of Joliet* (synopsis) (1 page)  
6) Sample federal pleadings re: arrest:  
   a) Criminal complaint – terrorism  
   b) Criminal summons  
   c) Arrest warrant  

**NOTE:** Items 3-6 are all posted on LexisNexis Canvas under Module #2.

Tuesday, January 25  
**Module #3: Bail & Pretrial Detention: An Introduction**

*Required reading:*

1) Kamisar, LaFave, et al., pp. 843-854  
2) U.S. Constitution, Amendment VIII  
3) Standard Federal Bond/Release Forms (posted on LexisNexis Canvas under Module #3)  
   a) Appearance Bond  
   b) Order Setting Conditions of Release  
   c) Additional Conditions of Release  
4) Stephanie Wykstra, *Bail reform, which could save millions of unconvicted people from jail, explained*, VOX  
   (Also posted on LexisNexis Canvas under Module #3)

Thursday, January 27  
**Module #3: Preventive Detention & Bail Reform Act of 1984**

*Required reading:*

1) Kamisar, LaFave, et al., pp. 854-868  
2) The Bail Reform Act, 18 U.S.C. §§ 3141-3145  
   (available online & posted on LexisNexis Canvas under Module #3)  
3) Standard Federal Pretrial Detention Order (posted on LexisNexis Canvas under Module #3)

Tuesday, Feb 1  
**Module #3: Two Federal Bail/Detention Hearings**
No new reading. The relevant facts are posted on LexisNexis Canvas under Module #3. I will assign participants in the hearings and give you additional instructions at our first class meeting.

A list of links to standard forms created by the U.S. courts for use in bail & detention hearings is posted on LexisNexis Canvas under Module #3. Most of these forms are also posted separately under Module #3.

VI. Attendance & Preparation for Class

I consider it essential to your learning process that you attend class every day absent some compelling reason to the contrary, and that you come to class each day prepared to participate in a discussion of the assigned material, or to participate in one of the assigned simulation exercises. (See the special note in Section X below on availability of class recordings to students obliged to be absent due to COVID, another serious illness, or personal emergency.)

VII. Grades

Your grade will be based 75 % on a final written, essay-style exam; 15% on your participation in your assigned in-class simulation exercise(s); and 10% on a midterm multiple choice quiz. This combination of grading methods is designed to give you timely feedback and to let you exhibit and me assess varying aspects of your emerging skills as a lawyer.

VIII. Academic Honesty

Academic integrity is fundamental to the activities and principles of a university. All members of the academic community must be confident that each person's work has been responsibly and honorably acquired, developed, and presented. Any effort to gain an advantage not given to all students is dishonest whether or not the effort is successful. The academic community regards breaches of the academic integrity rules as extremely serious matters. Sanctions for such a breach may include academic sanctions from the instructor, including reduction of your final grade or even failing the course for any violation, and in addition may include disciplinary sanctions imposed pursuant to the Honor Code, ranging from an admonition to academic probation to expulsion from the law school. When in doubt about plagiarism, paraphrasing, quoting, collaboration, or any other form of cheating, consult the course instructor.

IX. Medical Information & Americans With Disabilities Act

If you have emergency medical information to share with me, please inform me immediately. Ordinarily, I’d encourage you to see me in person privately, but under the current circumstances that won’t be possible, so you can either e-mail me or call me on my cell phone listed above.

If you need academic accommodations because of a disability, please contact Associate Dean Ben Trachtenberg or Registrar Denise Boessen who will work with you to determine an appropriate response to your needs.
To request academic accommodations (for example, a notetaker), students must also register with the Office of Disability Services, (http://disabilityservices.missouri.edu), S5 Memorial Union, 882-4696. It is the campus office responsible for reviewing documentation provided by students requesting academic accommodations, and for accommodations planning in cooperation with students and instructors, as needed and consistent with course requirements. For other MU resources for students with disabilities, click on "Disability Resources" on the MU homepage.

X. Statement on Classroom recordings

The University of Missouri has a moderately complex set of rules regarding the recording of class sessions. University of Missouri System Executive Order No. 38 lays out principles regarding the sanctity of classroom discussions at the university. The policy is described fully in section 200.015 of the Collected Rules and Regulations. The pre-COVID-19 policy in this class was that I did not make, and students could not make, audio or video recordings of course activity, except students permitted to record as an accommodation under section 240.040 of the Collected Rules.

The circumstances of the COVID-19 pandemic have led to some reconsideration of these rules. Here’s the long and short of it for this class: I will try to remember to record every class session on Zoom; however, I will not make recordings of sessions available except to students who are obliged to miss class due to infection with COVID, another serious health condition, or a genuine personal emergency. Should you have to miss one or more classes due to one of these circumstances, please advise me and I will make the applicable class recording(s) available to you.

HOWEVER, this does not amount to permission for you personally to record either class sessions or any other communications with the professor or students without prior permission from the professor and any students who are recorded.

Students are not permitted to redistribute audio or video recordings (whether posted on Canvas or otherwise) of statements or comments from the course to individuals who are not students in the course without the express permission of the faculty member and of any students who are recorded.

Students who record and/or distribute audio or video recordings of class activity except pursuant to the foregoing conditions are subject to discipline in accordance with provisions of section 200.020 of the Collected Rules and Regulations of the University of Missouri pertaining to student conduct matters.