Summary of Changes in Dressler's Crim Pro, 8th

HOW DOES THIS EDITION OF CHAPTER 1 DIFFER FROM THE LAST EDITION?

We intend Chapter 1 to serve as an introduction for the investigation course as well as the prosecution course. We wrote Note 1 in Section B so that it can be answered by students who read *Brown v. Mississippi* but not *Powell v. Alabama* and vice-versa.

In *Duncan v. Louisiana*, we added a paragraph telling the reader about the racial dimension of the case, which involved white segregationist resistance to school desegregation.

HOW DOES THIS EDITION OF CHAPTER 2 DIFFER FROM THE LAST EDITION?

This chapter has not undergone significant change. We have made only minor edits of some of the Notes.

Because of the Supreme Court's recent exclusionary rule decisions (covered in Chapter 5) and recent public discussion of the qualified immunity doctrine in civil actions, we have emphasized slightly more than in the past the question of what remedies should be available for Fourth Amendment violations if there is no exclusionary rule (or if no evidence is seized during a search). We ask the question here but we leave the discussion until Chapter 5.

HOW DOES THIS EDITION OF CHAPTER 3 DIFFER FROM THE LAST EDITION?

Mercifully, the Supreme Court did not hand down any new "search" cases since our last edition. We have added a few new Note cases, added a new Problem or two, and made some very minor edits in *Carpenter* and *Jardines* to tighten them up slightly. We don't think those edits will affect your discussion (or class notes) in any way.

HOW DOES THIS EDITION OF CHAPTER 4 DIFFER FROM THE LAST EDITION?

Besides the addition, deletion, and redrafting of some Notes and Problems, the following significant changes are noteworthy:

We added a new Introduction to the chapter which, along with what is covered in Chapter 1, speaks to issues that permeate the Fourth Amendment materials (and, indeed, later chapters): racism in the enforcement of criminal laws and the difficult task of mitigating it through the judicial system

Section B. (Arrest Warrants): We have added a special note at the end of this section dealing with the issue of police use of excessive force in making arrests.

Section C.2. (Search Warrants; Execution of a Search Warrant): We included an Introduction and a special Note regarding the no-knock entry of Breonna Taylor's apartment by the Louisville Metro Police in the well-publicized 2020 incident.

Section D.1. (Warrant Clause: Exigent Circumstances): We added Notes on two recent Supreme Court cases, *Lange v. California* (2021) and *Caniglia v. Strom* (2021).

Section D.2.a. (Warrant Clause; Searches Incident to an Arrest; General Principles): We added Justice Powell's concurring opinion in *United States v. Robinson*.

Section D.2.b. (Warrant Clause: Searches Incident to an Arrest: Arrests of Automobile Occupants): For space purposes, we made a very minor cut in Justice Stevens's dissent in *Carney*.

Section D.4. (Warrant Clause: Plain View (and Touch) Doctrines: For space purposes, we made a very minor cut in Justice Brennan's dissent in *Horton*.

Section E.1.d. (Reasonableness Clause: The Diminishing Roles of Warrants and Probable Cause; "Reasonable Suspicion"): We added *Kansas v. Glover* (2020) in the form of a Problem.

HOW DOES THIS EDITION OF CHAPTER 5 DIFFER FROM THE LAST EDITION?

Besides minor changes in some Notes, the deletion of some Problems and the addition of new Problems, here are the more significant changes from the last edition:

Section B.3. (Exclusionary Rule; The Exclusionary Rule Is Narrowed (And On Life Support?)

- We have deleted Justice Stevens's dissent in *United State v. Leon*. We had deleted most of his dissent in prior editions anyway, but we had previously retained his discussion of the Framers' deep suspicion of search warrants and, therefore, his objection to adopting a rule that it is presumptively reasonable to rely on a defective warrant. His historical argument is accurate, but that point is included in various opinions in Chapter 4, so we decided to cut out his brief discussion of the same matter here.
- We have made minor deletions in Justice Breyer's dissent in *Hudson v. Michigan* to make his discussion a tad easier to follow.
- We deleted Part IV of the majority opinion in *Davis* (in which Justice Alito discusses whether the ruling would stunt the development of the Fourth Amendment) and a very small portion of Justice Sotomayor's concurrence in the judgment.

Section C. (Civil Remedies for Fourth Amendment Violations):

In view of the narrowing of the exclusionary rule and current controversies regarding qualified immunity, we added this new Section. We are unsure how many users will have time to cover this topic. We would appreciate hearing from you either way.

HOW DOES THIS EDITION OF CHAPTER 6 DIFFER FROM THE LAST EDITION?

There are no changes of substance. The notion that only voluntary confessions are admissible has been around for a very long time, traces first appearing in English law as early as the thirteenth century. Perhaps that is why the doctrine has survived for many centuries.

HOW DOES THIS EDITION OF CHAPTER 7 DIFFER FROM THE LAST EDITION?

We try to avoid major changes in our chapters, but we became convinced that Part A of this chapter was not working well. It had become encrusted with too much history and side trips attempting to explain applications of the fifth amendment privilege that have nothing to do with *Miranda*. Do students really need to know the difference between the due process test in civil cases (*Chavez v. Martinez*; shock the conscience) and the due process test in criminal cases (some version of voluntariness)? We decided the answer was no. Moreover, beginning with *Bram v. United States* served to confuse some students; at least a few thought it was the test today in federal cases. We decided to reduce *Bram* to a Note and make clear that it had nothing to do with run-of-the-mill confession cases until we get to Miranda. Finally, we added *Escobedo v. Illinois* as the first principal case because the majority and dissent are trying out their *Miranda* theories, making it a good bridge to *Miranda*. We hope this works for our users and their students. Let us know if it does not!

We also moved *Berghuis v. Thompkins* after the invocation material. Though the interesting question in *Berghuis* is waiver rather than invocation, we decided *Berghuis* is better understood once students grasp the issues about invocation.

Otherwise, the only changes are the usual minor revisions, deletions, and additions to the Notes and Questions.

HOW DOES THIS EDITION OF CHAPTER 8 DIFFER FROM THE LAST EDITION?

The only changes are the usual minor revisions, deletions, and additions to the Notes and Questions.

[No info on changes for Chapter 9]

HOW DOES THIS EDITION OF CHAPTER 10 DIFFER FROM THE LAST EDITION?

The Introduction to the chapter has been significantly redrafted and updated. Beyond this and the updating of some Notes that consider empirical research and lower court caselaw relating to eyewitness identification procedures, we made minor cuts from the majority and dissenting opinions in *Perry v. New Hampshire*.

HOW DOES THIS EDITION OF CHAPTER 11 DIFFER FROM THE LAST EDITION?

Section B. (Bail and Other Release Mechanisms): We have added a discussion of Johnson v. Arteaga-Martinez, 596 U.S. ___, ___ S.Ct. ___, ___ L.Ed.2d ___ (2022), to the Note about immigration matters that precedes *Stack v. Boyle*. We have also augmented the Notes following *Stack v. Boyle* to include exciting state-level developments in bail reform, especially with respect to movements to either modify or eliminate case bail.

HOW DOES THIS EDITION OF CHAPTER 12 DIFFER FROM THE LAST EDITION?

We augmented some of the Notes to address recent changes in charging practices and, in particular, the growing movement by progressive county prosecutors to decline to charge certain categories of crimes. This trend raises a number of questions about discretion, separation of powers, and intra-state disparities. We also added a new Note about how the COVID-19 pandemic contributed to this trend given the impact of decarceration on slowing the spread of the virus.

HOW DOES THIS EDITION OF CHAPTER 13 DIFFER FROM THE LAST EDITION?

This edition has no major changes in Chapter 13. We have, however, added a few new Notes related to the January 6th insurrection and the notion of a "victim's" right to a speedy trial. We have also provided updates to the Notes concerning the Tsarnaev case and the situation in Orleans Parish. As always, we tinkered here and there with language and organization.

HOW DOES THIS EDITION OF CHAPTER 14 DIFFER FROM THE LAST EDITION?

We decided that *Scott v. Illinois* is not important enough to be a principal case. The key post-*Gideon* case is *Argersinger v. Hamlin,* but that opinion is a mess. So, we added Notes about *Argersinger* and *Scott*. We think this approach will teach better than prior editions. We added new material about David Washington (*Strickland v. Washington*). We have always been curious about his sudden spree of bloody murders, and we found a possible cause in the *Strickland v. Washington*, Appendix to the Petition for Certiorari.

Beyond those changes, we have made the usual editing changes, added Notes and deleted others.

HOW DOES THIS EDITION OF CHAPTER 15 DIFFER FROM THE LAST EDITION?

Section A. (Plea Bargaining): We added new information to the Notes regarding the "trial tax/plea discount" and the factors that may cause defendants to accept plea deals.

Section C. (Defense Attorney Competence in Plea Negotiations): We inserted a new Note focusing on defense attorney behavior during the plea process.

Section E. (The Procedural Effect of a Guilty Plea): We added a new Note concerning appellate and collateral challenges to guilty pleas, including a discussion of the use of "appeal waivers" as a condition to a plea deal.

HOW DOES THIS EDITION OF CHAPTER 16 DIFFER FROM THE LAST EDITION?

Beyond ordinary updates and trivial edits you will discover the following changes and additions in Ch. 16:

Section A. (Right to Trial by Impartial Jury): *Ramos v. Louisiana*, 590 US ___, 140 S. Ct. 1390, 206 L.Ed.2d 583 (2020), is an important case that not only overruled *Apodaca v. Oregon* but also contains thoughtful discussions on the role of *stare decisis* in modern jurisprudence.

A.2.a. **Jury Selection: Voir Dire:** We added information about how one state, Washington, has responded to our growing understanding of implicit biases in jury selection.

A.2.d. **Jury Selection: Peremptory Challenges:** We made somewhat significant additions to the Notes following *Batson.*. These include (1) a Note about a case in which the First Circuit took the rare step of finding that prosecutors failed "Step Two" of the *Batson* analysis, (2) a Problem concerning a recent New Jersey case, and (3) an amplified discussion of state-level responses to the controversy surrounding peremptory challenges, most notably, a court rule in Arizona that eliminated peremptory challenges entirely.

Section B. (Right to be Confronted with Prosecution Witnesses):

B.2. The Search for the Meaning of Confrontation: We added a Note about Hemphill v. New York, 595 U.S. __ 142 S.Ct. 681, 211 L.Ed.2d 534 (2022), the Court's most recent foray into the Confrontation Clause and a sign, perhaps, that *Crawford* is alive and well.

Section E. Jury Decision-making. In this section, we inserted a new Problem as well as a Note about the "Not Proven" verdict in Scotland, which comprises an alternative to the traditional "Not Guilty" or "Guilty" options.

HOW DOES THIS EDITION OF CHAPTER 17 DIFFER FROM THE LAST EDITION?

Besides ordinary updates and minor edits, here is what is particularly worth noting:

Section D.1.b. (Imposing a Sentence: Constitutional Limits; Trial Versus Sentencing: Different Enterprises?; Sentencing as a More Formal Enterprise: The *Apprendi* Revolution):

We made some minor cuts in Justice Breyer's dissent in *Blakely v. Washington*.

We also made cuts in excerpts from *Booker* (Note 3) that we believe will make these difficult materials a tad easier for students to digest.

And we deleted a Note summarizing *Pepper v. United States* (2011), relating to the rule of rehabilitation in the post-*Booker* world. We decided that this was one tree in the forest we would excise on the theory that a casebook cannot cover all of the trees!

HOW DOES THIS EDITION OF CHAPTER 18 DIFFER FROM THE LAST EDITION?

The Court recently applied its dual sovereignty doctrine to unusual facts in *Denezpi v. United States*. But, in general, double jeopardy law seems settled. Perhaps this is as it should be for a doctrine that has been extant in English law since at least 1200. All the changes in the chapter other than *Denezpi* are in the nature of clarification and simplification.

HOW DOES THIS EDITION OF CHAPTER 19 DIFFER FROM THE LAST EDITION?

The major substantive addition is *Edwards v. Vannoy*, the 2021 case that spelled the end of watershed exceptions to the *Teague* rule. It now seems that habeas corpus petitioners simply cannot benefit from new constitutional rules.

We also made significant cuts in the principal harmless error case in the chapter, *Arizona v. Fulminate*. We never succeeded in getting students to navigate some of the subtle arguments in that case.

Similarly, we concluded that some of the historical and theoretical material in the habeas corpus section was unnecessary.