

**CRIMINAL PROCEDURE**  
**SUMMER 2009**  
**ADJUNCT PROFESSOR LAWRENCE J. MORRIS**  
[lawrence.morris@us.army.mil](mailto:lawrence.morris@us.army.mil)  
(703) 945.4705  
Tues/Thurs 6-8:40 p.m.

**Introduction: Why we're here.** It is one of the most dynamic and interesting areas of the law. Even if you never practice criminal law, every lawyer should know the basics of the rules that govern when the government can search and take people's things, get citizens to give evidence against themselves, and bring the machinery of government to bear against them in a criminal courtroom. It is important as a lawyer-citizen, and you will find that many of the principals and methods of analysis you develop here will apply to other areas of your study and practice. The criminal process says much about us as a people, our concept of due process, sanctity of the home, trust and accountability of police and public officials, "privacy," and fair trials.

**What you'll take away.** This class will expose you to the Constitutional theory behind criminal procedure while offering enough practical pointers to equip you to spot, analyze, assert, and defend criminal issues. Your participation in class will help you continue to hone this vital legal skill.

- Rudiments of criminal procedure.* Pass exam for this class, pass bar, begin practice. Mix theory of criminal process with enough of the practical side that you are equipped to analyze, assert or defend against claims and issues in this area.

- More exposure to con law.* As you will see, the bulk of this class is rooted in analysis of the 4th, 5th, and 6th amendments. There is much spillover between this class and traditional con law, especially in method of analysis, not to mention foundational concepts such as incorporation.

- More case analysis/conceptual linkages.* Every case you read, analyze and try to reconcile makes you a better lawyer. Concepts we will tackle in this course will recur in other areas of study and practice.

### **Attendance and Participation**

Coming to class and participating is not only worth your time, it enriches the learning experience for everyone. While I understand that you may occasionally need to miss a class or part of a class, I expect you to attend class regularly and will expect your active participation. It is often better to listen, think, and talk, than to type down every word that is uttered in class. Exceptional participation will increase your grade, while frequent absences and lack of participation can also lower your grade. Consistent with George Mason's attendance requirements, frequent absences may also preclude you from taking the final exam.

### **Preparation**

This course involves a good bit of reading. While you should read and be prepared to discuss every case, spend your time trying to reconcile the cases and concepts. Be aware that the cases and commentary in the notes section are often more intriguing, and challenging, than the "major" cases covered in the main text. If the assignment says **read** be prepared to brief and discuss the material in class. If the assignment says **skim**, given time constraints, we are less likely to discuss the reading in class. Nonetheless, the reading is still useful (and testable) because it involves background material, which can help you understand the key concepts. I will generally tip you to the portion of the class that will be responsible for being prepared to

recite in detail for the following class; that does not relieve you from reading or responsibility for the material, but enables you to prepare appropriately.

### **Evaluation**

Your grade will be based primarily on your performance on the final exam. As discussed above, class participation may adjust your grade up or down one half letter grade. Any topic covered in the assigned reading is testable even if it is not discussed in class. Similarly, any issue discussed in class may be included on the exam even if it is not contained in the assigned reading.

### **Casebook**

Steven Saltzburg and Daniel Capra, American Criminal Procedure, Cases and Commentary, 8th Edition 2007 (West Publishing). [REQUIRED]

Steven Saltzburg and Daniel Capra American Criminal Procedure, Cases and Commentary, 8th, Ed. 2008 Supplement [REQUIRED, but OK to share so long as you read and prepare the cases]

High Court Case Summaries on Criminal Procedure, Keyed to Saltzburg and Capra, 8th Edition [OPTIONAL]

### **Assignments:**

With the exception of any supplemental materials, which will be made available, all assignments are from Saltzburg and Capra's American Criminal Procedure and the Supplement. Reading assignments may be modified depending on the pace of classroom discussion and the availability of guest speakers. I do not list the corresponding pages from the supplement, as you can figure that out (most of the supplement is just cases, so I am happy to give you the case cites if you don't want to buy the supplement).

**19 May:** *Basic Principles of Criminal Procedure and an Introduction to the Fourth Amendment.* Skim 1-31, Read well 32-72, read 73-85.

**21 May:** *Defining a Search and Seizure; The Tension Between the Reasonableness and Warrant Clauses; and Obtaining a Search Warrant.* Read 86-134, skimming 127-34.

**26 May:** *Obtaining a Search Warrant (Continued); Arrests in Public and the Home.* Read 134-90, skimming 162-66.

**28 May:** *Stop and Frisk.* Read 190-265, Skimming 228-231.

**2 June:** *The Line Between Stop and Arrest; Searches Incident to Arrest.* Read 265-326, Skimming 269-82. Come to class with questions from first four classes.

**4 June:** *Pretext Stops; Plain View and Plain Touch Seizures; Automobile and other Moveable Objects; Exigent Circumstances.* Read 326-382, Skimming 331-337

**9 June:** Administrative Searches and Consent Searches. Skim 382-420 (but pay particular attention to *T.L.O.*, *Skinner*, and *Von Raab*), Read 420-484

**11 June:** *Wiretapping and Undercover Activity*. Read 484-492. *Remedies for 4<sup>th</sup> Amendment Violations*. Read 493-557

**16 June:** *Remedies for 4<sup>th</sup> Amendment Violations (Continued)*. Skim 558-567, Read 567-600 (skim 595-600). Come to class with questions from the last four classes.

**18 June:** *The Privilege Against Self-Incrimination*. Read 601-671, Skimming 648-660.

**23 June:** *Confessions and Due Process*. Read 671-71458, Skimming 708-714, Guest Speaker: The Judging Function in a Criminal Trial

**25 June:** *Confessions (Cont.)*, 714-778.

**30 July:** *Conclude Confessions; 6<sup>th</sup> Amendment Right to Counsel*. Read 778-812, Skim 813-819, 840-848, 865-874, 983-996.

**2 July:** Military Commissions (separate handout). Review, recap, and answer your questions in preparation of the final exam.

**8 July: Final Exam – 6 p.m.**