Instructor: Professor Shane Rodriguez
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Professor Rodriguez’s Law School Web Page: http://mslaw.edu/rodriguez-criminal-procedure/
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Westlaw TWEN: www.lawschool.westlaw.com
Google Voice Text: 978.751.3568 (If you need to reach me outside of class)
Class Times: Monday & Wednesdays, 4:30 p.m. - 5:45 p.m.
Purpose and Course Description: The purpose of this course is to have the student cover and master a wide range of criminal procedure topics which reflect the Supreme Court’s current position on issues and topics of significant importance regarding the operation of our federal and state criminal justice systems. Our goals are to create highly competent students who are well prepared to successfully complete the bar examination as well as preparing them to become proficient and skilled practitioners.
Grading Criteria: Your midterm examination and final examination contribute to your final grade in this class. Lack of class participation has the potential to impact negatively on that grade. I reserve the right to substitute all or a portion of the midterm exam for separate and multiple mini exams throughout the semester. Advance notice will be given if I choose to use this testing method.
Final Exam: To be scheduled during Exam Week. All students are expected to arrange their affairs so as to enable them to be in class on the date and time of the final exam.
*Additional Case List: Throughout the semester, I may substitute Massachusetts cases and materials for the assigned cases in your text book. If and when this occurs, I will give you advance notice and I will also either provide you with the actual case (via TWEN) or provide you with this actual case citation so you can look up the case.

SEE Criminal Procedure Spring 2014 Case Schedule (Calendar view) on TWEN

**Section One**  
*January 22, 2014 (Class 1)*  
**Introductions, Overview of Course, Class Expectations and Classroom Rules.**

An overview of the criminal justice process. Introduction to the rights, rules and remedies governing the protections afforded accused and suspect persons.

**Section Two** (Class 1 & 2)  
**The 14th Amendment and the applicability of the Bill of Rights to the states.**

The Bill of Rights are the first ten amendments to the Constitution of the United States.

The Fundamental Rights (or Ordered Liberty) and Incorporation theories.

The modern approach: The shift to Selective Incorporation.

The 4th Amendment.

Arrest, search and seizure issues including the Exclusionary Rule and protected areas of interest.

**Section Three**  
**Protected areas and interests.**

Probable cause and search warrants.

**Section Four**  
**Warrantless arrest and search of persons.**

Warrantless seizure and search of premises.

Warrantless seizure and search of vehicles and effects.

**Section Five**  
**Lesser intrusions: stop and frisk.**

Lesser intrusions: inspections and regulatory searches.
Section Six
Chapter Four
Police encouragement and the defense of entrapment.

Chapter Four
The right to counsel, transcripts and other aids; poverty, equality and the adversary system.

The right to appointed counsel.


Police interrogation and confessions.

The due process voluntariness test for admitting confessions.

Section Seven
Massiah and Escobedo: The Court grows disenchanted with the voluntariness test and turns to the right to counsel.

Applying and explaining Miranda.

Section Eight
The Court reaffirms Miranda.

Massiah and Miranda: compared and contrasted.

March 9 - 16
SPRING BREAK

March 19, 2014
MID-TERM EXAM

*Tentative Date

Section Nine
Chapter Seven
Lineups, show-ups and other pre-trial identification procedures.

Investigation by subpoena.

4th Amendment limitations and the Privilege Against Self-Incrimination provided by the 5th Amendment.

Pretrial release, the right to bail and preventive detention.

The Excessive Bail Clause of the 8th Amendment.

Section Ten
The decision whether to prosecute.
Prosecutorial discretion, speedy trial and discovery issues.

**Section Eleven**  
**Chapter Fourteen**  
Guilty pleas, including plea bargaining and requisites of a valid plea. Introduction to the right to trial by jury.

**Section Twelve**  
Finish the right to jury trial, jury selection and discuss fair trials and a free press. The battle between the 1st Amendment and the 6th Amendment.

**Section Thirteen**  
**Chapter Seventeen**  
The role of counsel in representing the accused, including the level and range of assistance that counsel must provide. Rights provided by the 6th Amendment.

The trial.

The defendant’s right to be present at trial.

Confrontation and compulsory process.

The defendant’s right to remain silent -- or to testify -- and due process requirements.

**Section Fourteen**  
Retrials and double jeopardy issues.

The same offense limitation.

Issues concerning aborted proceedings and re-prosecution following acquittals and convictions.

**Section Fifteen**  
Sentencing procedures, review, and discuss the final examination.

SEE CRIMINAL PROCEDURE 2014 CALENDAR VIEW OF ASSIGNED CASES BY DATE ON TWEN
CLASS EXPECTATIONS

Frequent Absences
I call on students randomly and will have the pleasure of speaking with each of you in class this semester. Obviously, you must be present in class to participate. Professors at MSL are authorized to lower the grades of frequently-absent students by one-third of a grade. By way of illustration, this means that a final grade of C will be lowered to a C- if the student is absent from class an inordinate number of times; a B- will be lowered to a C+, and so on. Although this is a policy I don’t enjoy implementing, it is one I will employ, and have employed, when forced to do so. Missing more than three classes over the course of the semester without an extraordinary excuse will bring you into the “frequent” range.

This doesn’t mean that you can never be absent from class. I do understand that life occasionally interferes with law school and, at times, there is just nothing one can do about it. If you are going to miss class, please e-mail or call me. I simply won’t call on you that day. Of course, if you make a habit of sending such e-mails or making such calls, I will apply the policy regarding frequent absences.

I will sporadically take attendance at the beginning of class. You will be marked absent if you are not present when we take attendance. If you arrive late on a day when I take attendance, please don’t even bother approaching me after class to ask that the absence mark be removed; it will be a useless task.

It is never a valid excuse to skip a Criminal Procedure class to prepare a paper or complete other work for another class. Correlatively, please don’t ever skip another class to prepare for Criminal Procedure. Please learn to manage your time to do all outside-of-class work during non-class time.

Notes And Tape Recorders In Class
I test what I teach, and I teach by the syllabus. This means that, if you do all the reading and come to all the classes, you will see no surprises on either the mid-term or final exam. You therefore should come to class and develop an effective method of recording what goes on. Since the classes are interactive and it is not always possible to take copious notes on every point, I recommend the use of tape/digital recorders in class. A recorder should assist in rounding out, or filling gaps in, notes. It also can serve as a “safety net” in a fast-paced class.

Some students take notes on a laptops or netbook, and this is fine. One caveat, however: I sometimes notice that students are more consumed with typing out what is said in class word-for-word than with listening and participating. The purpose of class is not for you to be a scribe; it is for you to develop analytical skills, and this cannot be achieved if you are monistically involved with typing.

Being Prepared For Class
I expect you to be prepared for every class, and I treat an unprepared student as an absent student. Do not come to class if you have not done the reading.

But you have to do more. To begin to understand what you are reading, you must do more than just read the assignments. You have to be prepared enough to present the material to the class as if you were teaching it. That means you have to not only remember the essence of what you’ve read but understand it enough to explain it to someone else—in words they will understand. The point is not to remember every bit of detail but to draw—and understand—the essential concepts from the detail you read.
I expect you to observe the following rules in class. I don’t believe any of these rules are unreasonable:

1. **Timeliness.** Please arrive on time. Late arrivals are disruptive to the class. I understand that evening students coming from Boston after work sometimes get caught in traffic. But, tardiness should still be the exception rather than the rule. When I take attendance it will be at the beginning of the class. Late students will be marked absent, and I won’t change this designation if you later come in.

   If tardiness becomes an issue, i.e., if it starts to cause disruptions, I will impose a hard-and-fast rule that those arriving late will not be allowed into the classroom.

2. **Cell Phones and Messaging.** There will be no cell phone use in class. Please turn off your cell phone before the class begins. If there is some emergency requiring you to be immediately reachable, you must approach me before class and inform me of the situation, in which event I will allow you to keep your cell phone on if it has a “vibrate” only option.

   There will be no text messaging, instant messaging, or other forms of communication in class. This is disruptive and rude. Students doing so will be asked to leave the class immediately, and will be marked as absent for the entire class.

3. **Laptop Computers.** While I believe that laptop computers are an invaluable classroom tool, lately their use sometimes is troublesome. Like cell phones, they beep and make noises when starting up. Please arrive early enough to start your laptop prior to class so the start up noises won’t be disruptive.

   It is never appropriate to use computers to play computer games, send and receive instant messages, surf the net, or perform other computer functions not related to the task at hand. I may wander around the room a bit while teaching and will probably catch at least some of such off-focus activity if it occurs.

   **You will be asked to leave class for violations of this directive.**

4. **Study Aides and Irrelevant Material.** While attending class, you may have on your desk a casebook, various notebook(s), and your required supplemental reading book(s). Although I cannot control what you read outside of class, while you are in class you are not permitted to have “canned briefs,” “case notes,” “published outlines,” “Emanuel’s,” “Gilbert’s,” “Law in a Flash,” or any other so-called “study aides.” Please also refrain from bringing to class newspapers, magazines or any other reading material not related to what we are covering in class that day. I do tend to walk around the classroom and often will see if you bring such materials to class.

5. **Talking in Class.** This will be an interactive class, and it is normal for there to be a bit of a “buzz” while we are discussing a case, or a concept or a “hypothetical.” However, I still expect you to listen while others are talking so you can respond if called upon, and, most importantly, to respect others by not talking over them. I will not tolerate talking that doesn’t involve the subject matter at hand.
6. **Eating/Drinking in Class.** I generally don’t approve of anything that might divert your focus from the class discussion, and eating and drinking in class certainly falls into that category. On the other hand, I do understand that stressed-for-time students, especially evening students, often are unable to take meals at normal hours, and therefore need some sustenance to get them through. Generally, therefore, I tolerate small snacks and drinks during class. I will not tolerate full meals, full “submarine” sandwiches, or anything of the like. I also will not tolerate undue noise while eating, e.g. stubborn plastic wrappers, crunchy foods, etc. I will ban all foods and drinks in class if I think they are becoming a distraction.

7. **Civility Above All Else.** It is my intention to treat each of you with the utmost courtesy and respect, even when we disagree. In turn, I expect that each of you will also treat each other with respect and courtesy. Passionate argument(s) is terrific if kept civil and respectful. Remember: argue the issues, not the personalities!