INTRODUCTION

This is a course about the constitutional rights of criminal defendants. We will focus on protections secured under the 4th, 5th, and 6th Amendments to the U.S. Constitution.

The purpose of the course is to explore, in-depth, the meaning of the constitutional provisions involved. There are always three layers of meaning where constitutional guarantees are concerned. There is the level of doctrine - what the black letter law is. There is the level of policy - what the law ought to be. And there is the level of theory - why is the law as it is. We will explore all three levels.

This hierarchical structure organizes our investigation. First, we note that the language of the Fourth Amendment is cast in terms like “unreasonable search and seizure”; freedom from “self-incrimination”; the “right to counsel.” More than one Constitutional scholar has described these phrases as opaque or vague. The threshold question for you as students is how do we go about the business of interpreting these opaque provisions? During this course, you will be introduced to some of the methods, strategies, and tools for performing this interpretive task.

Similarly, the decisions of the court are complex, apparently conflicting, and on first blush appear a kind of doctrinal maze. How do we make sense of these conflicting cases? The challenge here past simply learning black letter law, only an elementary first step, is to try to develop a theory which explains why the court is deciding cases the way it does, a theory to reconcile the cases, and provide a deeper understanding of the doctrine the court develops.

Thus, we have two tasks: to learn something about the process of interpreting the constitution (the reasoning process involved) and to learn something substantive - delving beneath the surface - about the law of criminal procedure itself.

CLASS PREPARATION

All students must rigorously study to pass this course. A minimum of two hours of study is necessary for each hour of class.

Preparation is self-evident. Inadequate preparation is painfully obvious. As the Professor, I will be the judge of adequate class preparation.

Failure to be prepared on any assigned case will constitute an absence from the class. To be prepared, each student must brief - and each brief must be typed - each case, which is “required reading.” I reserve the right to collect briefs. I do realize you have many pressures as students. Students who are members of registered firms may submit briefs or memos jointly.
I also reserve the right to schedule any firm to prepare a case on 24 hours’ notice. Recitation in class is a wonderful preparation for the lawyering you will do as attorneys.

Finally, research questions may arise involving new case law, or topics related to cases in the text. I reserve the right to request the class to read any new cases that arise or to prepare one or two brief research memos during the semester.

**LAW FIRM REGISTRATION**

Students are invited to form themselves into law firms of two to four people. Firms are invited to collaborate in the preparation of briefs and other in class activities. All members of the firm are expected to have a working knowledge of the case. *A law firm registration form is on page 6.*

**GRADING POLICY**

Grades will be based on two considerations: (a) an open book test\(^1\) and (b) class participation. Class participation is a discretionary factor which we will use to bring up the final grade where on balance we feel the test clearly understates your command of the material. A bump for class participation will only occur where, in the considered opinion of the professor, class participation is genuinely outstanding. As a rule: a bump, given only to outstanding students, advances a grade one “tick” from a C+ to a B-, or a B to a B+. The Professor will decide in his sole and wise discretion who deserves a bump.

**ATTENDANCE**

Students are expected to attend regularly and to be on time. Regular attendance means no more than **three (3) unexcused absences.** After four unexcused absences, I respectfully reserve the right to drop the student from the class. Of course life happens. Sometimes there are circumstances beyond the control of the student. If you must be absent, the Law School rules require that you notify the Dean of Students of your absence by completing the on line form which can be found at [http://www.law.miami.edu/students/dean-of-students](http://www.law.miami.edu/students/dean-of-students). But again, you are only allowed three (3) unexcused absences.

**TEXTBOOK**

The text in this class will be Allen, Stuntz, Hoffman, Livingston Leipold and Meares, *Criminal Procedure: Investigation and Right to Counsel*, 3E (2016). Unless otherwise stated, all assignments refer to this text.


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\(^1\) Open book means that you may bring your casebook and any notes you prepared or collaborated in preparing.
Office hours will be held on Mondays from 12:30pm – 1:30pm in Room G-475. My office telephone is (305) 284-6314 and email is djones@law.miami.edu. My assistant is Alina Hernandez at (305) 284-4438 or email at: ahernandez@law.miami.edu.

Assignments

I. Introduction

Session 1: Required Readings


After doing the reading, write a short essay 300-1000 words addressing one or more of the following questions:

1. What are the core, initial assumptions about limitations on state power vis-a-vis individual rights?
2. What are the current core concerns? Is there continuity? Tension?
3. Many scholars say there are two competing schools or models of interpretation. Are there? If there are, how would you characterize the models?


Session 2: Required Reading – 273-302

II. The Fourth Amendment

A. The Scope of the Fourth Amendment

Session 3: Required Reading – 346-375

Session 4: Required Reading – 377-412

Justifying Searches and Seizures

Session 5: Required Reading – 412-442
Session 6: Required Reading – 442-473

Session 7: Required Reading – 473-504

Session 8: Required Reading – 504-525


Session 9: Required Reading – 525-557

Session 10: Required Reading – 558-589


Session 11: Required Reading – 590-624

Session 12: Required Reading – 626-658

**Reasonable Use of Force/Scope of the Exclusionary Rule**

Session 13: Required Reading – 659-687

Session 14: Required Reading – 690-725

Session 15: Required Reading – 725-747

**III. Criminal Investigations in the Fourth Amendment’s Shadow**

Session 16: Required Reading –763-800

**IV. Eye-Witness Identification**

Session 17: Required Reading 138-149
*Kirby v. Illinois*, 406 U.S. 682 (1972) (on TWEN)
*United States v. Ash*, 413 U.S. 300 (1973) (on TWEN)

V. The Fifth Amendment

Session 18: Required Reading – 805-837
Session 19: Required Reading – 837-869
Session 20: Required Reading – 869-899
Session 21: Required Reading – 900-929
Session 22: Required Reading – 929-959
Session 23: Required Reading – 959-987

VI. Parting Thoughts

Session 24: Review

If you have a disability, or suspect that you may have a disability, the Law School encourages you to contact Jessie Howell, Director, Accessibility & Student Inclusion at the Office of Disability Services for information about available opportunities, resources, and services. Her phone number is 305-284-9907, and her email address is jhowell@law.miami.edu. You may also visit the Office of Disability Services website at www.law.miami.edu/disability-services.
CRIMINAL PROCEDURE

Prof. Donald Jones

Fall 2019

LAW FIRM

REGISTRATION FORM

1. Firm Members: (List student members – up to four)

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____________________________________________________________________

2. Firm address: (List e-mail address)

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3. Firm name: ________________________________________________________

4. Meeting hours: (If any regularly scheduled meetings)

Please return this form to my assistant, Alina Hernandez, in Room G477 or email information to aherandez@law.miami.edu.