CRIMINAL PROCEDURE I

Spring 2011 Syllabus Professor Butterfoss

Required Texts:

Tomkovicz & White, "Criminal Procedure: Constitutional Constraints Upon Investigation And Proof" (6th Ed.) (Lexis/Nexis 2008)
ISBN: 9781422421727

Goals of the course:

This course focuses on constitutional issues (4th, 5th, and 6th Amendments) raised by pretrial law enforcement investigatory practices. The principal topics covered are search and seizure, entrapment, confessions, identification procedures, and the exclusionary rule. We will study almost exclusively cases decided by the United States Supreme Court. This will allow us to learn the "current law" (what the police can and can not do) as well as study overarching themes in the Court's (and individual justice's) jurisprudence that hopefully will bring a better understanding of the cases and provide insight into how future cases may be decided.

Finally, there will be a heavy emphasis on analyzing problems—often through students playing the roles of prosecuting attorney, defense attorney, trial judge, or appellate judge—to gain an understanding of how the Court's decision are applied "at the street level" and to develop the skill of articulating arguments that may help clients (criminal defendants or the government) prevail at hearings or in cases deciding whether evidence secured by the government should be "suppressed" and excluded from trial on constitutional grounds.

Class rules and information:

1. Class meets on Tuesdays and Thursdays from 4:00 to 5:15 in Room 101. Regular and punctual class attendance is required; I will take attendance. Missing more than 4 classes is grounds for being withdrawn from the class. Be in your seats ready to begin class at 4:00. Late arrivals are disruptive to the class.

2. Your grade will be determined by an exam at the end of the semester (largely multiple choice questions). I also reserve the right, consistent with Academic Rule 1-107(C)(5), to increase grades based on consistent and high quality class participation, and to lower grades based on excessive absences, consistent late arrivals, or lack of preparation or effort in class, or **violation of the computer policy (see #4 below).**

3. You are required to register on the TWEN course page. Listed below are 28 assignments; we will generally cover one assignment per class meeting, although there likely will be some adjustments along the way.

4. **Laptop policy**: **use of a laptop computer during class for purposes unrelated to class (such as checking email, participating in chat rooms, surfing the web, etc.) is prohibited. If you are discovered utilizing the computer for purposes unrelated to class, your grade for the semester may be lowered by one-half grade.**

Assignments:

Assignments labeled "Background" will not be discussed in class; they can be read in cursory fashion—they usually provide an historical context for the cases that follow.

For the problems listed to be prepared I will assign (in class) prosecutors and defense lawyers to make arguments, and a judge and appeals court to make the decision. Many, but not necessarily all, of the problems marked to be prepared will be discussed in class**.** Problems labeled "Read" will be discussed in a more general way (not through role plays) in order to highlight the issues raised.

1. **Register on TWEN**
   Introduction pp.ix-xvii [Background]
   a) An Overview of the Criminal Justice System
   b) Due Process and the Incorporation of the Bill of Rights

   The Threshold of the Fourth Amendment: Searches and Nonsearches pp.3-27
   Katz v. United States
   United States v. White
   Smith v. Maryland
   California v. Ciraolo
   Questions for First Class (on TWEN under Supp. Course Materials)

2. Searches and Nonsearches continued pp. 28-41
   Bond v. United States
   Kyllo v. United States
   Prepare Problems 1-8, 1-9, 1-10; 1-11 and **TWEN Problem 1** (on TWEN page)

3. The Requirement of Probable Cause pp.49-78
   Spinelli v. United States
   Illinois v. Gates
   Whren v. United States
   Read Problem 2-10
   Prepare Problems 2-6, 2-7, **14D-1, 14D-2 (pp. 984-85)**

4. The Warrant Requirement pp.87-96; 100-118; 122-133
   Johnson v. United States
   United Stated v. Watson (skip Marshall dissent)
   Atwater v. City of Lago Vista
   Wilson v. Arkansas (and notes preceding re: Groh v. Ramirez and Maryland v. Garrison)

5. Remedies: The Exclusionary Rule pp. 833-846 (notes 1 & 2 only) [Background]

Weeks v. United States
Mapp v. Ohio

Fruit of the Poisonous Tree pp. 900-903; 912-20 (notes 1-3)

Wong Sun v. United States
Hudson v. Michigan (majority opinion only)

Effect of a Warrant: The Good Faith Exception pp. 963-970; 980-984;2010 Supp. 31-42

United States v. Leon
Massachusetts v. Sheppard
Herring v. United States
Prepare Problems 14D-7, 14D-10

6. "Standing" pp. 851-875

Rakas v. Illinois
Minnesota v. Carter
Prepare Problems 14A-2, 14A-4, 14A-7 and
TWEN Problem 2

7. Exceptions to the Warrant Requirement:

Search Incident to Lawful Arrest pp.143-170; 2010 Supp. pp. 2; 4-17

Chimel v. California
United States v. Robinson
New York v. Belton
Virginia v. Moore (2010 Supp. note case)
Arizona v. Gant (2010 Supp.)
Read Problems 4A-2, 4A-5, 4A-8
Prepare Problems 4A-3, 4A-10, TWEN Problem 2A

8. More Exceptions: Exigent Circumstances pp. 170-200; 2010 Supp. p. 3

Payton v. New York
Steagald v. United States
Warden v. Hayden
Vale v. Louisiana
Michigan v. Fisher (2010 Supp. Note case)
Read Problems 4B-3, 4B-6
Prepare Problems 4B-2, 4B-7

9. More Exceptions: The Automobile Exception pp. 207-236

Chambers v. Maroney
Texas v. White
United States v. Chadwick
United States v. Ross **(See Supp. Materials on TWEN page)**
California v. Carney
California v. Acevedo
Wyoming v. Houghton (note case)
Prepare Problems 4C-2, 4C-7, 4C-8

10. More Exceptions: Inventory Searches pp. 242-257
South Dakota v. Opperman
Illinois v. Lafayette
Colorado v. Bertine
Read Problems 4D-1, 4D-6, and TWEN Problem 3
Prepare Problems 4D-4, 4D-10

11. More Exceptions: Consent Searches pp. 263-295
Bumper v. North Carolina **(See Supp. Materials on TWEN page)**
Schneckloth v. Bustamonte
United States v. Matlock
Georgia v. Randoph
Illinois v. Rodriguez
Read Problems 4E-2, 4E-3
Prepare Problems 4E-5, 4E-7, 4E-11

12. More Exceptions: The Plain View Doctrine pp.301-312
Horton v. California
Arizona v. Hicks
Read Problem 4F-10
Prepare Problems 4F-1, 4F-4, 4F-6

13. The Balancing Approach: Stop and Frisk pp. 319-335
Terry v. Ohio
Dunaway v. New York

14. Nonseizures, Terry Seizures, and Arrests pp. 335-359
United States v Mendenhall
Florida v. Bostick
California v. Hodari
In re E.D.J. **(See Supp. Materials on TWEN page)**
Prepare Problems 5A-5, 5A-6, 5A-10

15. Reasonable Suspicion pp. 366-383
Illinois v. Wardlow
Alabama v. White
Florida v. J.L.
Read Problems 5A-15
Prepare Problems 5A-13, 5A-14, 5A-18

16. The Permissible Scope of Stops pp. 388-407
Hayes v. Florida
United States v. Sharpe
United States v. Place
Prepare TWEN Problem 4

17. The Permissible Scope of Frisks pp. 407-424; 2010 Supp. p. 18
Michigan v. Long
Minnesota v. Dickerson
Maryland v. Buie
Arizona v. Johnson (2010 Supp. note case)
Prepare Problems 5A-27, 5A-28, 5A-31

18. The Demise of Individualized Suspicion pp. 433-465; 2010 Supp. pp. 20-21
New Jersey v. T.L.O.
Michigan v. Sitz
Indianapolis v. Edmond
Illinois v. Lidster
Safford v. Redding (2010 Supp. note case)

19. The Further Demise of Individualized Suspicion pp. 465-487
Skinner v. Railway Labor Executives' Association
Chandler v. Miller
United States v. Flores-Montano

More Balancing: When Probable Cause is Not Enough pp. 498-513 [Background]
Tennessee v. Garner
Schmerber v. California
Winston v. Lee

20. Entrapment pp. 521-547
Sherman v. United States
United States v. Russell
Hampton v. United States
Jacobsen v. United States
Prepare Problems 6-1, 6-4, 6-5, 6-6, 6-7

21. Confessions: Due Process as a Limit pp. 557-573 [Background]
Ashcraft v. Tennessee
Spano v. New York

Confessions: The Privilege Against Self Incrimination pp. 589-613
Miranda v. Arizona
New York v. Quarles
Prepare Problem 8A-3 (p. 624),

22. Custody pp. 626- 633
Berkemer v. McCarty
Prepare Problems 8B-1, 8B-2, 8B-7, 8B-9

23. Interrogation pp. 638-654; 2010 Supp. p. 22

Rhode Island v. Innis
Illinois v. Perkins
Prepare Problems 8C-2, 8C-3, 8C-5, 8C-6, 8C-7, 8C-9, 8C-11

Waiving the Miranda Protections pp. 658-668; 2010 Supp. p. 23-24

North Carolina v. Butler
Colorado v. Spring
Moran v. Burbine (in Notes)
Berghuis v. Thompkins (2010 Supp. note case)

24. Invoking the Miranda Protections pp. 672-700; 2010 Supp. 25-28

Michigan v. Mosley
Edwards v. Arizona
Davis v. United States
Minnick v. Mississippi
Arizona v. Roberson (in Notes)
Maryland v. Shatzer (2010 Supp.)
Read Problems 8E-11, 8E-14
Prepare Problems 8E-3, 8E-4, 8E-6, 8E-7, 8E-8, 8E-16

25. Miranda and The Fruit of the Poisonous Tree pp. 913-14; 929-35; 613-24; 941-56

New York v. Harris (in Notes)
Oregon v. Elstad (skip dissents)
Dickerson v. United States
Missouri v. Seibert
United States v. Patane
Read Problem 14C-7
Prepare Problems 14C-3, 14C-8, 14C-10

26**.** Exclusionary Rule Exceptions: Independent Source; Inevitable Discovery pp.880-894

Silverthorne Lumber Co. v. United States
Murray v. United States
Nix v. Williams
Prepare Problems 14B-1, 14B-4, 14B-6

27**.** The Right to Counsel: At Trial pp. 711-723 [Background]

Betts v. Brady
Gideon v. Wainwright
Scott v. Illinois

The Right to Counsel: During Pretrial Questioning pp. 729-741; 2010 Supp. 29

Massiah v. U.S.
Brewer v. Williams (skip dissents)
Montejo v. Louisianna (2010 Supp. note case)
Rothgery v. Gillespie County (2010 Supp. note case)
Notes and Questions pp. 746-49; 757-58; 764
Prepare Problems 10-4, 10-5, 10-6 and **8C-8 (p. 656)**

28.	The Right to Counsel: Pretrial Identification Procedures	pp. 773-782; 786 (Note 1); 788-791; 793-798; 2010 Supp. p. 30
	U.S. v. Wade (majority opinion) *Kirby v. Illinois* (majority opinion) *United States v. Ash* (majority opinion) Prepare Problems 11-2, 5, 6	
	Pretrial Identification Procedures: Due Process *Stovall v. Denno* *Manson v. Brathwaite* (majority opinion) Prepare Problems 12-1, 2, 8	pp. 807-815