

## CRIMINAL PROCEDURE I

Spring 2010 Syllabus

Professor Butterfoss

### Required Texts:

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

### Goals of the course:

This course focuses on constitutional issues (4<sup>th</sup>, 5<sup>th</sup>, and 6<sup>th</sup> 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. Regular and punctual class attendance is required. Missing more than 4 classes is grounds for being withdrawn from the class. Be in your seats ready to begin class at 1:00. Late arrivals are disruptive to the class.
2. Your grade will be determined by an exam at the end of the semester (likely to include significant 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.

Some problems are labeled “read,” others are labeled “prepare.” Problems to be read will be discussed very briefly, if at all, in class. For problems to be prepared we 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.

### 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 1-2, 1-6, 1-8, 1-9, 1-10; 1-11 and TWEN Problem 1

### 3. The Requirement of Probable Cause pp.49-78

*Spinelli v. United States*

*Illinois v. Gates*

*Whren v. United States*

Prepare Problems 2-3, 2-6, 2-7, 2-10, **14D-1, 14D-2 (pp. 984-85)**

### 4. The Warrant Requirement pp.87-96; 100-118; 122-133

*Johnson v. United States*

*United States 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; 912-13 (notes 1-3)  
*Wong Sun v. United States*  
 The Effect of a Warrant: The Good Faith Exception pp. 963-984  
*United States v. Leon*  
*Massachusetts v. Sheppard*  
 Prepare Problems 14D-4, 14D-7
  
6. Standing" pp. 851-875  
*Rakas v. Illinois*  
*Minnesota v. Carter*  
 Prepare Problems 14A-1, 14A-2, 14A-3, 14A-4, 14A-7, 14A-10 and  
 TWEN Problem 2
  
7. Exceptions to the Warrant Requirement: Search Incident to Lawful Arrest pp.143-170  
*Chimel v. California*  
*United States v. Robinson*  
*New York v. Belton*  
*Arizona v. Gant* (**See Supp. Materials on TWEN page**)  
 Prepare Problems 4A-2, 4A-3, 4A-5, 4A-8, 4A-10
  
8. More Exceptions: Exigent Circumstances pp. 170-200  
*Payton v. New York*  
*Steagald v. United States*  
*Warden v. Hayden*  
*Vale v. Louisiana*  
 Read Problems , 4B-6, 4B-9  
 Prepare Problems 4B-2, 4B-3, 4B-5, 4B-7  
  
 More Exceptions: The Automobile Exception pp. 207-214; 219-227  
*Chambers v. Maroney*  
*Texas v. White*  
*United States v. Chadwick*  
*United States v. Ross* (**See Supp. Materials on TWEN page**)
  
9. Automobile Exception continued pp. 214-219; 227-236  
*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*  
 Prepare Problems 4D-1, 4D-4, 4D-6, 4D-10, and TWEN Problem 3

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. Randolph*  
*Illinois v. Rodriguez*  
Prepare Problems 4E-2, 4E-3 4E-5, 4E-7, 4E-11
12. More Exceptions: The Plain View Doctrine pp.301-312  
*Horton v. California*  
*Arizona v. Hicks*  
Prepare Problems 4F-1, 4F-4, 4F-6, 4F-10
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-3, 5A-5, 5A-6, 5A-10
15. Reasonable Suspicion pp. 366-383  
*Illinois v. Wardlow*  
*Alabama v. White*  
*Florida v. J.L.*  
Prepare Problems 5A-13, 5A-14, 5A-15, 5A-18, 5A-20
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  
*Michigan v. Long*  
*Minnesota v. Dickerson*  
*Maryland v. Buie*  
Prepare Problems 5A-21, 5A-25, 5A-26, 5A-27, 5A-28, 5A-31
18. The Demise of Individualized Suspicion pp. 433-465  
*New Jersey v. T.L.O.*  
*Michigan v. Sitz*  
*Indianapolis v. Edmond*  
*Illinois v. Lidster*

19. The Further Demise of Individualized Suspicion pp. 465-487  
*Skinner v. Railway Labor Executives' Association*  
*Chandler v. Miller*  
*United States v. Flores-Montano*  
Prepare TWEN Problems 5 and 5A
- 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*
22. Custody pp. 626- 633  
*Berkemer v. McCarty*  
Prepare Problems 8A-3 (p. 624), 8B-1, 8B-2, 8B-5, 8B-7, 8B-9
23. Interrogation pp. 638-654  
*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  
*North Carolina v. Butler*  
*Colorado v. Spring*  
*Moran v. Burbine* (in Notes)
24. Invoking the Miranda Protections pp. 672-700  
*Michigan v. Mosley*  
*Edwards v. Arizona*  
*Davis v. United States*  
*Minnick v. Mississippi*  
*Arizona v. Roberson* (in Notes)  
Prepare Problems 8E-7, 8E-8, 8E-11, 8E-14, 8E-16 and TWEN Problem 6

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*  
 Prepare Problems 14C-3, 14C-6, 14C-7, 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. 729-765  
*Massiah v. U.S.*  
*Brewer v. Williams* (skip dissents)  
*United States v. Henry*  
*Kuhlmann v. Wilson*  
 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  
*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 pp. 807-815  
*Stovall v. Denno*  
*Manson v. Brathwaite* (majority opinion)  
 Prepare Problems 12-1, 2, 8