CRIMINAL PROCEDURE I

Spring 2010 Syllabus Professor Butterfoss

Required Texts:

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

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. Regular and punctual class attendance is required. Each week the class will be divided into two roughly equal sessions. I will take attendance prior to each session. Missing more than 4 sessions is grounds for being withdrawn from the class. Be in your seats ready to begin class at 8:15. 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 two 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 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; 912-13 (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. Randoph
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