

CRIMINAL PROCEDURE I

Spring 2012 Preliminary Syllabus

Professor Derik Fetting

Please note that this is a preliminary syllabus with the assignments for the first two weeks of spring semester and a broad outline of the topics for the rest of the semester. I will distribute a final version of the syllabus on the first day of class. The assignments for the first two weeks should remain unchanged in the final syllabus; the order of topics for the rest of the semester may change.

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 emphasis on Supreme Court cases will allow us to learn the current law, i.e., what the police and federal agents can and cannot do. This focus will also help us to identify overarching themes in the Court's jurisprudence to better understand these cases and to provide insight into how future cases may be decided.

Also, 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 trial level. The role plays will allow you to develop the skill of articulating arguments that may help clients (criminal defendants or the government) prevail at hearings, particularly in cases where the court must decide whether evidence secured by the government should be "suppressed" and excluded from trial due to a constitutional violation.

Class rules and information:

1. Class meets on Tuesdays and Thursdays from 1:00 to 2:15 p.m. in Room 105. Regular and punctual class attendance is required; I will take attendance. Missing more than four classes without prior approval or explanation as to the reason for your absence is grounds for being withdrawn from the class. Please be on time for class; late arrivals are disruptive.
2. Your grade will be determined by a **closed book, self-scheduled** exam at the end of the semester (multiple choice questions and short essay). 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. I will periodically post class materials and problems to be discussed in class on the TWEN page.
4. Laptop policy: While you may bring laptops to class for note-taking, please be respectful of me and your fellow classmates when using your computer. Students using web browsers, electronic games, or email during class will be asked to leave, and repeated violations will result in a one-half grade reduction in your grade for the semester.

Assignments:

Assignments labeled “Background” will not be discussed in class in much detail, if at all; they can be read in cursory fashion and will usually provide an historical context for the cases that follow. We will generally cover the first assignment listed for a particular week in the Tuesday class and the second assignment in the Thursday class, although there likely will be some adjustments during the course of the semester.

For the problems listed to be prepared, I will assign—usually 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.

Week 1

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 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

Week 2

3. The Requirement of Probable Cause pp.49-78
Spinelli v. United States
Illinois v. Gates
Whren v. United States
Prepare Problems 2-1, 2-6, 2-7
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
United States v. Grubbs
Wilson v. Arkansas (and preceding notes re: Groh v. Ramirez and Maryland v. Garrison)

Week 3

5. Remedies: The Exclusionary Rule
Fruit of the Poisonous Tree
Effect of a Warrant: The Good Faith Exception
6. "Standing"

Week 4

7. Exceptions to the Warrant Requirement:
Search Incident to Lawful Arrest
8. More Exceptions: Exigent Circumstances

Week 5

9. More Exceptions: The Automobile Exception
10. More Exceptions: Inventory Searches

Week 6

11. More Exceptions: Consent Searches
12. More Exceptions: The Plain View Doctrine

Week 7

13. The Balancing Approach: Stop and Frisk

14. Nonseizures, Terry Seizures, and Arrests

Week 8

15. Reasonable Suspicion

16. The Permissible Scope of Stops

Week 9

17. The Permissible Scope of Frisks

18. Individualized Suspicion

19. More Individualized Suspicion

Week 10

20. Entrapment

21. Confessions: Due Process as a Limit
Confessions: The Privilege Against Self Incrimination

Week 11

22. Public Safety Exception
Custody

23. Interrogation
Waiving the Miranda Protections

Week 12

24. Invoking the Miranda Protections

25. Miranda and The Fruit of the Poisonous Tree

Week 13

26. Exclusionary Rule Exceptions: Independent Source; Inevitable Discovery

27. The Right to Counsel: At Trial

The Right to Counsel: During Pretrial Questioning

Week 14

28. The Right to Counsel: Pretrial Identification Procedures
Pretrial Identification Procedures: Due Process

Semester Wrap-up and Final Exam Review