

CRIMINAL PROCEDURE I: Fall 2012 Preliminary Syllabus

This is a preliminary syllabus, so the final version may have changes. The assignments for the first two weeks will remain unchanged, however, and scheduled class days should not change.

Professor Derik Fettig

Office 306B East

651-523-2645

dfettig01@hamline.edu

Office Hours: To be posted; always available for drop-ins or by appointment

Required Texts:

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

(Note: We will be using the 6th Ed., not the 7th Ed. that will be available at some point this fall)

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, the exclusionary rule, entrapment, confessions (*Miranda* and subsequent cases), the right to counsel (5th and 6th Am.), and identification procedures. We will study almost exclusively cases decided by the United States Supreme Court to learn the current law and to identify overarching themes in the Court's jurisprudence to provide insight into how future cases may be decided.

Also, there will be an emphasis on analyzing problems—often through students playing the roles of prosecuting attorney, defense attorney, trial judge, or appellate judge in class—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 in cases where the court must decide whether evidence secured by the government should be "suppressed," i.e., excluded from trial due to a constitutional violation committed by a government actor.

Class rules and information:

1. Class meets on Tuesdays and Thursdays from 9:40 to 11:10 a.m. in Room 4. Regular and punctual class attendance is required. Missing more than five classes without prior approval or explanation as to the reason for your absence is grounds for being withdrawn from the class.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 an **open book, self-scheduled** exam at the end of the semester (long and short essay questions). The open book policy will allow you to bring in your casebook, and any notes or outlines that you created; you will not be permitted to bring in commercial outlines. 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—including recent cases not included in your casebook or supplement—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, at my discretion.

Assignments:

The 2012 supplement to your casebook can be found on the TWEN site under “Course Materials.” Also, I will post additional cases on our TWEN site for class discussion (these are noted clearly in the 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 (with the exception of weeks with only one class session), although there likely will be some adjustments during the course of the semester. You are responsible for reading all of the note cases included in a particular assignment, but for some class I have attempted to highlight note cases of particular significance.

For the problems listed to be prepared, I will assign—usually in class—prosecutors and defense lawyers to make arguments, and a judge to make the decision. **Many, but not necessarily all, of the problems marked to be prepared will be discussed in class.**

Week 1 (8/16)
(Thursday class only)

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

Oliver v. United States (note case)

United States v. Dunn (note case)

United v. Knotts (note case)

Week 2 (8/21 & 8/23)

2. Searches and Nonsearches continued 2012 Supp. pp. 1-3; pp. 28-41
United States v. Jones (2012 Supp. note case)
Bond v. United States
Kyllo v. United States
United States v. Jacobson (note case)
Prepare Problems 1-8, 1-9, 1-10; 1-11
3. The Requirement of Probable Cause pp.49-78
Spinelli v. United States
Illinois v. Gates
Maryland v. Pringle (note case)
Whren v. United States
Prepare Problems 2-1, 2-6, 2-7

Week 3 (8/28)

(Tuesday class only)

4. The Warrant Requirement pp. 87-95; 100-114; 2012 Supp. pp. 4-5; 170-75; 180-86
Johnson v. United States
United States v. Watson (skip Marshall dissent)
Atwater v. City of Lago Vista (and *McLaughlin* in preceding note)
Florence v. Board of Chosen Freeholders (2012 Supp. note case)
Payton v. New York (majority opinion only)
Steagald v. United States
5. No Class

Week 4 (9/6)

(Thursday class only)

6. Warrant Contents and Execution pp. 114-118; 122-133
United States v. Grubbs
Wilson v. Arkansas (and preceding notes re: *Groh v. Ramirez* and *Maryland v. Garrison*)

Remedies: The Exclusionary Rule pp. 833-46 (notes 1 & 2 only) [**Background -- Skim**]
Weeks v. United States [Background]
Mapp v. Ohio [Background]

“Standing” Limitations pp. 851-875
Rakas v. Illinois
Minnesota v. Carter
Prepare Problems 14A-2, 14A-4, 14A-7 and **TWEN Problem 1** (on TWEN site)

Week 5 (9/11 & 9/13)

7. 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

Fruit of the Poisonous Tree (Attenuation) pp. 900-903; 912-20 (notes 2-3 only)
Wong Sun v. United States
Hudson v. Michigan (majority opinion only)

8. Effect of a Warrant: The Good Faith Exception pp. 963-970; 980-984; 2012 Supp. 56-67
United States v. Leon (majority opinion only)
Massachusetts v. Sheppard
Herring v. United States (2012 Supp.)
Davis v. United States (2012 Supp. note case following Herring)
Prepare Problems 14D-7, 14D-10

Exceptions to the Warrant Requirement:
The Plain View Doctrine pp.301-312
Horton v. California
Arizona v. Hicks
United States v. Lemus (See Course Materials on TWEN) (skim highlighted portions of Kozinski dissent from denial of rehearing en banc by 9th Cir.)
Prepare Problems 4F-1, 4F-4, 4F-6

Week 6 (9/18 & 9/20)

9. Exceptions to the Warrant Requirement:
Search Incident to Lawful Arrest pp. 143-162; 2012 Supp p. 6; 163-170;
2012 Supp. pp. 7-20

Chimel v. California
United States v. Robinson
Virginia v. Moore (2012 Supp. note case)
New York v. Belton
Arizona v. Gant (2012 Supp.)
Prepare Problems 4A-3, 4A-10

10. Exceptions to the Warrant Requirement:
Exigent Circumstances pp. 193-96; 2012 Supp. p. 21; 196-97; 199 (note 2); 2012 Supp. pp. 22-24
Warden v. Hayden
Michigan v. Fisher (2012 Supp. note case)
Vale v. Louisiana (majority opinion only)
Kentucky v. King (2012 Supp. note case)
Prepare Problems 4B-2, 4B-7

- Exceptions to the Warrant Requirement:
Consent Searches pp. 263-295
Bumper v. North Carolina (See Course Materials on TWEN)
Schneekloth v. Bustamonte
United States v. Matlock
Georgia v. Randolph
Illinois v. Rodriguez
Prepare Problems 4E-5, 4E-7, 4E-11

Week 7 (9/25 & 9/27)

11. Exceptions to the Warrant Requirement:
The Automobile Exception pp. 207-236
Chambers v. Maroney
Texas v. White
California v. Carney
United States v. Chadwick
United States v. Ross (note case)
California v. Acevedo
Wyoming v. Houghton (note case)
Prepare Problems 4C-2, 4C-7, 4C-8
12. Exceptions to the Warrant Requirement:
Inventory Searches pp. 242-257
South Dakota v. Opperman
Illinois v. Lafayette
Colorado v. Bertine
Prepare Problems 4D-4, 4D-10

Week 8 (10/2 & 10/4)

13. The Balancing Approach: Stop and Frisk (“*Terry*” Stops) pp. 319-335
Terry v. Ohio
Dunaway v. New York
- Terry* Seizures pp. 335-359
United States v Mendenhall
Florida v. Bostick
California v. Hodari
In re E.D.J. (skim for holding) (See Course Materials on TWEN page)
Prepare Problems 5A-5, 5A-6, 5A-10
14. Reasonable Suspicion pp. 366-383
Illinois v. Wardlow
Alabama v. White
Florida v. J.L.
Prepare Problems 5A-13, 5A-14, 5A-18

Week 9 (10/9 & 10/11)

15. The Permissible Scope of Stops pp. 388-407
Hayes v. Florida
United States v. Sharpe
United States v. Place
Illinois v. Caballes (note case)
Prepare Problems 5A-21 and 5A-22
16. The Permissible Scope of Frisks and Sweeps pp. 408-14; 2012 Supp. p. 25; 414-24
Michigan v. Long
Arizona v. Johnson (2012 Supp. note case)
Minnesota v. Dickerson
Maryland v. Buie
Prepare Problems 5A-27, 5A-28, 5A-31

Week 10 (10/16)

(Tuesday class only)

17. Searches Without Individualized Suspicion:
Schools and Checkpoints pp. 433-45; 2012 Supp. p. 26; 445-65
New Jersey v. T.L.O
Safford v. Redding (2012 Supp. note case)
Michigan v. Sitz
Indianapolis v. Edmond
Illinois v. Lidster
Prepare Problems 5B-1 and 5B-5

Week 11 (10/23 & 10/25)

18. Searches Without Individualized Suspicion:
Drug Testing and Borders pp. 465-489
Skinner v. Railway Labor Executives' Association
Chandler v. Miller
United States v. Flores-Montano
Prepare Problems 5B-11
19. Entrapment pp. 521-547
Sherman v. United States
United States v. Russell
Hampton v. United States
Jacobsen v. United States
Prepare Problems 6-5, 6-6, 6-7

Week 12 (10/30 & 11/1)

20. Confessions: Due Process as a Limit pp. 557-573
[Background -- Skim]
Ashcraft v. Tennessee [Background]
Spano v. New York [Background]
- Confessions: The Privilege Against Self Incrimination pp. 589-605
Miranda v. Arizona
- Public Safety Exception pp. 605-613
New York v. Quarles
Prepare Problem 8A-3 (p. 624)
21. Custody pp. 626- 632 (notes 1 & 2 only); 2012 Supp. p. 27-43
Berkemer v. McCarty
J.D.B. v. North Carolina (2012 Supp. case)
Howes v. Fields (2012 Supp. note case)
Prepare Problems 8B-1, 8B-9
- Interrogation pp. 638-654; 2012 Supp. p. 44
Rhode Island v. Innis
Illinois v. Perkins
Florida v. Powell (2012 Supp. note case)
Prepare Problems 8C-2, 8C-3, 8C-5, 8C-6,

Week 13 (11/6 & 11/8)

22. Waiving the Miranda Protections pp. 658-60; 2012 Supp. pp. 45-46; 661-68;
North Carolina v. Butler
Berghuis v. Thompkins (2012 Supp. note case)
Colorado v. Spring
Moran v. Burbine (in Notes)
23. Invoking the Miranda Protections 672-93; 2012 Supp. 47; 693-700; 2012 Supp. 48-50
Michigan v. Mosley
Edwards v. Arizona
Davis v. United States
Berghuis v. Thompkins (2012 Supp. note case)
Minnick v. Mississippi
Arizona v. Roberson (in Notes)
Maryland v. Shatzer (2012 Supp. note case)
Prepare Problems 8E-3, 8E-4, 8E-6, 8E-7, 8E-8, 8E-16

Week 14 (11/13 & 11/15)

24. Miranda and Fruit of the Poisonous Tree pp. 913-14; 929-35; 613-24; 941-56; 991-92
New York v. Harris (1990) (in Notes)
Oregon v. Elstad (majority opinion only)
Dickerson v. United States
Missouri v. Seibert
United States v. Patane
Harris v. New York (1971) (majority opinion only)
Prepare Problems 14C-3, 14C-8, 14C-10
25. The Right to Counsel: At Trial pp. 711-723 [Background]
Betts v. Brady [Background]
Gideon v. Wainwright [Background]
Scott v. Illinois [Background]

The Right to Counsel: During Pretrial Questioning pp. 729-741; Notes pp. 746-49;
2012 Supp. pp. 51-52; 757-58; 764;
2012 Supp. p. 69

Massiah v. U.S.
Brewer v. Williams (skip dissents)
Montejo v. Louisiana (2012 Supp. note case)
Rothgery v. Gillespie County (2012 Supp. note case)
Maine v. Moulton (note case)
Fellers v. United States (note case)
Kansas v. Ventris (2012 Supp. note case)
Prepare Problems 10-4, 10-5, 10-6 and 8C-8 (p. 656)

Week 15 (11/20)
(Tuesday class only)

26. 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, 11-5, 11-6

Pretrial Identification Procedures: Due Process pp. 807-815; 2012 Supp. p. 53

Stovall v. Denno
Manson v. Brathwaite (majority opinion only)
Perry v. New Hampshire (2012 Supp. note case)
Prepare Problems 12-1, 12-2, 12-8

Note: If there is sufficient interest, I will schedule an optional exam review session at the end of the semester.