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**CRIMINAL PROCEDURE**  
**COURSE NO. 4173**  
**SYLLABUS**

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X. Cases, Codes Annotated on the Web:

(See pp. 2 – 5 for a list of all cases on the Web)

**To the Web page:**  
First: Home page for the University of Arkansas School of Law;  
Second: Young Library – Link;  
Third: Reserve Materials – Link;  
Fourth: Carlton Bailey – web resources;  
Fifth: Criminal Procedure – Link

*If claiming a disability, please see page 31 of this Syllabus*

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Page 1
I. FIRST ASSIGNMENT

READ Cases below 1(a) – 1(m) below
READ: Every line of infra pages 2 – 11 of this Syllabus.

Write and submit: The First Written Assignment at p. #4 of Syllabus

What is a “search”?

(a) BOYD v. UNITED STATES – Prof. Bailey will lecture - (on the Web)
(b) OLMSTEAD v. UNITED STATES - (on the Web)
(c) KATZ v. U.S. — P. 349 cb (1st Ed.) or P. 361 (2nd Ed.)
(d) U.S. v. WHITE — P. 368 cb 1st Ed.) or P. 379 (2nd Ed.)
(e) OLIVER v. U.S. — (on the Web)
(f) FOOTNOTES FROM OLIVER — (on the Web)
(g) HESTER v. UNITED STATES — (on the Web)
(h) U.S. v. DUNN — (on the Web)
(i) CALIFORNIA v. CIRAOLIO — (on the Web)
(j) FLORIDA v. RILEY — (on the Web and p. 361 cb (1st Ed.)) or
   P. 372 cb (2nd Ed.)
(k) CALIFORNIA v. GREENWOOD — (on the Web and p. 374 cb) or
   P. 385 cb (2nd Ed.)
(l) SMITH v. MARYLAND — P. 378 cb Note #1 (1st Ed.) or P. 389
   (2nd Ed.)
(m) KYLLO v. UNITED STATES — (on the Web and p. 387 cb (1st Ed.))
   or P. 398 cb (2nd Ed.)
(n) UNITED STATES v. KARO — P. 379 cb (1st Ed.) or P. 391 cb (2nd Ed.)
(o) UNITED STATES v. JONES - (on the Web) and P. 41 2012 Supplement
(p) DOW CHEMICAL v. U.S. — (on the Web)
(q) UNITED STATES v. BOND — (on the Web)
(r) ILLINOIS v. CABALLES - (on the Web)
FIRST CLASS

Be prepared to discuss the cases assigned above. Submit a Written Assignment based on the scenario set out below. You will be asked to apply the principles, reasoning and language from those cases to (a) a Film Clip and (b) the following hypothetical scenario:

SCENARIO for the
First Classroom Participation Points and
Written Assignment points

William “Buddy” McGirt, (“Jr.”) was tipped off that the police were imminently arriving at his parents’ home, where Jr. had been living for the last six months* Jr.’s informant also told him that the police had a warrant for his arrest. The warrant detailed, among other things, that Jr. had been selling powdered cocaine to students at the local college.

Two minutes after the informant’s call to Jr., four police cars with three officers in each car pulled up to the front of the house. At the rear of the house were three officers and a police dog – “Ginger.” Ginger was a specially trained police dog (there are only 100 dogs in the country trained like “Ginger”). This dog has never missed a “hit” when sniffing luggage containing marijuana or cocaine.

At the front door of the parents’ house, all the officers entered the yard through a white picket fence. Three of the officers posted themselves on the front porch and in the front yard. The other officers approached the front door. One of the officers knocked three times and shouted “police here to serve an arrest warrant on William B. McGirt, Jr.!” After that announcement, the police immediately entered the house. As the police were entering the front door, Jr. threw a briefcase out the window of his second-floor bedroom at the rear of the house.

The briefcase landed in his father’s vegetable garden near the gazebo in the backyard. The garden was enclosed in a wire mesh fence inside the picket fence in the backyard. The gate to the picket fence was locked. A sign on the gate read: “Please do not enter this yard unless accompanied by the owner.”

One of the officers stationed at the rear of the house in order to intercept Jr., if he attempted to escape, stepped over the picket fence and then into the garden to retrieve the briefcase. The officer called for Ginger. Ginger jumped over the picket fence and into the vegetable garden. Ginger sniffed the briefcase several times but did not alert to a “hit.” Although the briefcase was locked, the officer noticed that the side latch had

* Jr. had dropped out of college to “find himself”.

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broken, leaving that side of the briefcase slightly ajar. Using a screwdriver, the officer pried open the other side of the case and looked inside. The officer found a glassine bag containing a white, powdery substance that he believed to be cocaine. He arrested Jr. as he climbed out of the second floor bedroom window. Later a chemical analysis determined that the powdery substance was four (4) pounds of pure uncut cocaine with a street value of $200,000.

Jr. will be arraigned in Judge William Storey's court on Monday, August 25, 2014 at 2:00 p.m. Jr. is presently in the Washington County Jail facility. Assume that each of you has been retained by Jr.'s parents to represent him at the arraignment. (An arraignment is a hearing where he pleads guilty or not guilty and the Judge sets bail) For your First Written Assignment, complete the form on page #4 (see below) and place that completed form in the envelope at the desk of Mrs. Audrey Briggs – room 183B on or before noon, Monday, August 25, 2014.

First Written Assignment

[Copy this form, Complete it and Submit it to Mrs. Briggs on the First Day of Class by noon]

A. Were the Fourth Amendment Rights of “Jr.” implicated in this scenario?

2 ½ points 1. Yes _____ or No _____

2 ½ points 2. Cite a (only one (1)) case that supports your answer to A.1. above.

__________________________________________________________

B. Were the Fourth Amendment Rights of “Jr.’s” parents implicated in this scenario?

2 ½ points 1. Yes _____ or No _____

2 ½ points 2. Cite a (only one (1)) case that supports your answer to B.1. above.

__________________________________________________________

C. If “Jr.’s” Fourth Amendment Rights were implicated (A.1. above), did the police act reasonably?

2 ½ points 1. Yes _____ or No _____

2 ½ points 2. Cite a (only one (1)) case that supports your answer to C.1. above.
II. **TEXTBOOK, SUPPLEMENTARY READING LIST, AND SYLLABUS**

*Criminal Procedure (Investigation and Right to Counsel)*  
by: Allen, Hoffman, Livingston and Stuntz.  [REQUIRED]

**Cases on the Web!!** [REQUIRED]

**Syllabus:** By Professor Carlton Bailey [REQUIRED]  
Please collect the Syllabus from Ms. Briggs in Room 183B.

Supplementary Reading List:  
LaFave and Israel, *Criminal Procedure* (West) [NOT REQUIRED]  
Saltzburg, *American Criminal Procedure* (West) [NOT REQUIRED]  
(Your selection! Whatever works for you!)

III. **A GUIDE TO CASE ANALYSIS**

After reading each case in the casebook, the following questions should be answered:

1. What are the facts of the case? (Include the procedural facts). What was the court’s holding?

2. What rule(s) may be extracted from the appellate court’s holding? What are the exceptions to that rule?

3. How did the rule develop and why did it develop? What are the vital policy considerations behind the court’s ruling? (What policies are frustrated by the rule?)

4. Are there conflicting policy considerations?

5. Is the rule to be limited to the facts of this case or do the underlying policy considerations permit use or expansion of the rule to other fact situations?

6. Is the rule sound (practical)?
IV. **GRADE AND CLASSROOM ATTENDANCE POLICIES**

A. **FINAL GRADE COMPONENTS** – A TOTAL OF 500 POINTS

The final grade in the course will be based on:

1. Final Examination ............................................. 300 Points
   [Three (3) points of analysis from a long fact pattern]

2. Classroom Participation ..................................... 200 Points

   a) 15 Points – First Written Assignment
   b) 15 Points – First Film Clip
   c) Question to Professor (only one submission for points!)
   d) 70 Points – True / False Query*
   e) Extra Points – for classroom participation
      p. #8 infra
   f) Answers to other movie Film Clips
   g) Answering when called upon
   h) Not answering when called upon
   i) Special in-class hypos
   j) Volunteering **
   k) Reading key sections from assigned cases

   * At Appendix A - see p. 30
   ** See page #8 of Syllabus under Extra Points!

3. Attendance (lack thereof)

B. **CLASSROOM PARTICIPATION POLICY**

(Film Clip on first day of class = IV.A.3. _________ points!)

Students are expected to be fully prepared for each class. A student who is unprepared faces the possibility of a grade reduction. Failing to respond when called on is an example of being unprepared. A student may be excused from Classroom Participation by signing the “not prepared today” sheet before class begins. A limit of two (2) Excuses!

*CLASS DISCUSSIONS / LECTURES MAY NOT BE TAPE RECORDED!

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C. ** TRUE / FALSE QUERY - See Appendix A - see p. 30**

1. True _______ or False _______

Then support your selection with an explanation that does not exceed 300 words. Please submit a response to office #183-B, no later than noon, Wednesday December 3, 2014. Your response should not exceed 300 words.

** Please see and understand pages 6 – 8 of the Syllabus!

D. **PROFESSOR’S EXPECTATIONS FOR CLASSROOM DISCUSSION**

Students may contribute to class discussions and earn classroom participation points by:

1. Providing a statement of essential facts;

2. Identifying issue(s) to be decided by the court;

3. Identifying the test(s), precedent(s), or rule(s) the court used to resolve the issues or the ones the court should have used;

4. Explaining whether that test / precedent / rule was followed specifically, modified slightly, modified a lot – [Is it the same rule?];

5. Identifying any other basic (Black letter law) principles or any other insights gleaned from the opinion;

6. Answering the Professor’s invitation to cogitate on this . . . ;

7. Posing a question to your Professor in the “I still don’t get it” file (available each day in the class);

8. Reading an excerpt from an assigned case and then interpreting the meaning of that passage.
Extra Points for “Classroom Participation”

Any student who initiates (on two (2) or more days) a day’s classroom discussion with a full thought about an assigned case, will earn Extra Points* for classroom participation.

For example:

"I read (case). However, I did not understand what the court meant at page #_____ / paragraph _____ about . . . . ."

or

"I read (case). At page #_____ / paragraph _____, the court concluded as follows. Am I correct in assuming that the court was trying to say . . . . ."

* The total amount may equal the extra points earned by Ambassadors for their work during the semester
E. PROFESSOR’S RESPONSES TO ANSWERS GIVEN IN CLASS:

1. “KUDOS” – Can’t get much better. (Very insightful – potential to teach own class!);
2. “EXCELLENT” – Accurate, a tad insightful
3. “GOOD OR ABSOLUTELY” – Accurate, a tad insightful;
4. “OK” – Satisfactory;
5. “YOU DON’T MEAN THAT?” – Less than satisfactory;
6. “UNPREPARED OR FAILING TO ANSWER” – See V.B. p. 4.

F. ATTENDANCE POLICY

Students are expected to attend classes regularly. Excessive absenteeism will result in grade reduction. After a fourth (4th) absence, the Professor may subject the student to a single grade reduction. More than five (5) absences may result in a full letter reduction. Students who are absent seven (7) or more times will receive a failing grade. Excuses must be submitted to Ms. Briggs; Professor Bailey’s assistant in Room 183B no later than 48 hours after the missed class. Excuses are accepted only after the fourth (4th) absence and then only in the Professor’s discretion. [Excuses will not be evaluated until after the final examination.]

V. PROFESSOR BAILEY’S GENERAL INFORMATION

Students are encouraged to visit Professor Bailey at any time during the semester to discuss their classroom performances, film clips, or any other aspect of the course. You may also e-mail queries to Professor Bailey. (Try to keep them short!)

OFFICE HOURS: 9:00 – Noon on Wednesday or Friday or whenever you find the Professor in his office #315

OFFICE PHONE: 479-575-5615

E-MAIL ID: cbailey@uark.edu

BEFORE / AFTER CLASS: Students may submit Questions / Comments / Suggestions (See the Query Form on the Web)

“I STILL DON’T GET (??): File folder will be available at Professor Bailey’s assistant desk in room 183B and a folder will be available at each class session.
1788 - (In the Beginning)

Criminal Defendant

THE ORIGINAL CONSTITUTION

(1) The power of Congress to punish counterfeiting securities (government bonds), current coins, piracies and felonies committed on the high seas, and offenses against the United States (Art. I, Sec. 8, 9);

(2) the preservation of the writ of habeas corpus (Art. I, Sec. 9);

(3) the prohibition against bills of attainder (conviction without trial) and ex post facto laws (making criminal acts retroactive) (Art. I, Sec. 9—repeated in Art. I, Sec. 10 against state powers);

(4) providing for trial by jury and venue (Art. III, Sec. 2—later strengthened by the 6th Amendment);

(5) the power of Congress to punish treason and the evidentiary requirements (Art. III, Sec. 3);

(6) the requirement that citizens of each state be afforded all the privileges and immunities by the other states (Art. IV, Sec. 2); and

(7) the extradition provision (Art. IV, Sec. 2).

1789 - (James Madison Bill of Rights)

BILL OF RIGHTS

Contained within the 462-word Bill of Rights are approximately 25 constitutional guarantees; of these, 12 rights directly apply to the criminal process. For your convenience, a list of these guarantees appears below:

(1) no unreasonable searches and seizures (4th Amendment);

(2) grand jury indictments required for capital and infamous (felony) crimes (5th Amendment);

(3) the prohibition against double jeopardy (5th Amendment);

(4) the privilege against self-incrimination (5th Amendment);

(5) the right to a speedy trial (6th Amendment);

(6) the right to a public trial (6th Amendment);

(7) the right to a jury trial (6th Amendment);

(8) the right to confront prosecution witnesses (6th Amendment);

(9) the right to present defense witnesses (6th Amendment);

(10) the right to counsel (6th Amendment);

(11) no excessive bail or fines (8th Amendment);

(12) no cruel or unusual punishments (8th Amendment).
CRIMINAL PROCEDURE

BARRON v. BALTIMORE, 7 Peters 247 (1833)

5TH AMENDMENT

"... nor shall private property be taken for public use, without just compensation."

1866 - (The Fourteenth Amendment)

THE FOURTEENTH AMENDMENT

The 39th Congress adopted the 14th Amendment in 1866. Section 1 of that Amendment contains three (3) important clauses, chiefly composed by Representative John A. Bingham of Ohio:

"No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States [the privileges and immunity clause]; nor shall any State deprive any person of life, liberty, or property without due process of law [the due process clause]; nor deny to any person within its jurisdiction the equal protection of the laws [the equal protection clause]."
THE SLAUGHTERHOUSE CASES, 16 Wallace 36 (1873)  
[Privileges and Immunity Clause]

HURTADO v. CALIFORNIA, 110 U.S. 516 (1884)  
5th Amendment requirement of grand jury indictments.
PALKO v. CONNECTICUT, 302 U.S. 319 (1937)  

5th Amendment double jeopardy — "... nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb;"

"Implicit in a concept of ordered liberty"

(1) "To abolish [certain rights] is not to violate a 'principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.'" (Text)

(2) "Is that kind of double jeopardy to which the [Conn.] statute has subjected [Palko] a hardship so acute and shocking that our polity will not endure it?" (Text)

(3) "Does [this kind of double jeopardy] violate those 'fundamental' principles of liberty and justice which lie at the base of all our civil and political institutions?" (Text)
VII.

READING LIST

FOURTH AMENDMENT

The circumstances surrounding the adoption of the Fourth Amendment indicate the nuances in the language used cannot readily be construed as clear evidence of the framer’s intent. It appears that the House never consciously agreed to the present form of the Amendment. As proposed by the Committee of eleven, the provision read:

“That right - - - to be secured in their persons, papers, houses,
and effects shall not be violated by warrants issuing - - -“

That was corrected to read:

“That right - - - to be secure - - - against unreasonable searches
and seizures not be violated by warrants issuing.”

At that point, Mr. Benson objected to the words, “by warrants issuing” as not being sufficient. His proposal that they be altered to read: “and no warrant shall issue” lost by a considerable majority. However, Benson, as Chairman of the Committee appointed to arrange the Amendments, reported his version (the rejected version) of the Amendment. His alteration was never noticed and was subsequently agreed to by the Senate and ratified by the states in that form.

I. FOURTH AMENDMENT

A. What is a “Search”?  

1. Boyd v. United States ...................................(Prof. Bailey Lectures) ...(on the web)  
2. Olmstead v. United States .................................(on the web)  
4. United States v. White ................................. p. 368 cb (1st ed) or p. 379 (2nd ed)  
5. Oliver v. United States .....................................(on the web)  
6. (Footnotes from Oliver) .......................................(on the web)  
7. United States v. Dunn .....................................(on the web)  
8. Hester v. United States .....................................(on the web)  
9. California v. Ciraolo .............................................(on the web)  
10. Florida v. Riley ...........................................(on the web) & p. 361 cb (1st ed) or p. 372 (2nd ed)  
12. Smith v. Maryland ........................................... p. 387 cb (1st ed) Note #1 or p. 389 (2nd ed)  
13. Dow Chemical Co. v. United States .................................(on the web)
15. United States v. Karo ........................................ p. 379 cb (1st ed) or p. 391 (2nd ed)
17. United States v. Bond .......................................... (on the web)
18. Illinois v. Caballes ............................................ (on the web)

B. Probable Cause

20. United States v. Grubbs ..................................... (on the web)
21. Draper v. United States .................................... (on the web)
22. Aguilar v. Texas .............................................. (on the web)
23. Spinelli v. United States .................................... (on the web)
25. Ornelas v. United States .................................... p. 437 cb (1st ed) or p. 447 cb (2nd ed)
27. Massachusetts v. Upton ..................................... (on the web)
29. Wilson v. Arkansas .......................................... p. 452 cb (1st ed), (on the web) or p. 427 cb (2nd ed)
31. Wilson v. Layne .............................................. p. 458 cb (1st ed) or p. 430 cb (2nd ed)

C. The Exclusional Rule –
(What happens if the Fourth Amendment is violated?)

32. General Considerations .................................. p. 334 cb
33. Weeks v. United States .................................... (on the web)
34. Wong Sun v. United States ............................... p. 709 cb (1st ed) or p. 685 cb (2nd ed)
35. Wolf v. Colorado ............................................ (on the web)
37. United States v. Leon ........................................ (on the web) or p. 683 cb (1st ed) or p. 658 cb (2nd ed)
38. Hudson v. Michigan ........................................ (on the web) or p. 429 cb (2nd ed)
39. Herring v. United States ................................... (on the web) or p. 569 cb (2nd ed)
40. Franks v. Delaware .......................................... (on the web)
41. Hill v. California ............................................. (on the web)

D. Exceptions to the Warrant Requirement – (“Exigent Circumstances”) 

42. Maryland Penitentiary v. Hayden .................. (background facts on the web)
45. Michigan v. Fisher .......................................... (on the web)
46. Brigham City v. Stuart .................. p. 460 cb (2nd ed) or (on the web)
48. Vale v. Louisiana ....................... (on the web)
49. Secura v. United States ................ (on the web)
50. Notes on Exigent Circumstances ..... pp. 465-70 cb (1st ed) or pp. 452-55 (2nd ed)
51. Welsh v. Wisconsin ................. p. 470 cb (1st ed) or p. 455 cb (2nd ed)

E. Exigent Circumstances and the Automobile

53. Carroll v. United States ............... (on the web)
54. Chambers v. Maroney ................. (on the web)
55. Cardwell v. Lewis ...................... (on the web)
56. California v. Carney .................. (on the web)

F. Containers

58. United States v. Chadwick .............. (on the web)
59. Arkansas v. Sanders .................... (on the web)
60. United States v. Ross ................. (on the web)
63. United States v. Johns ............... (on the web)

G. Police Discretion and Profiling

65. Chicago v. Morales ..................... p. 609 cb (1st ed) or p. 586 cb (2nd ed)
66. State v. Sullivan (I) .............. (on the web)
67. Explanation of Sullivan I and Sullivan II .................. (on the web)

H. “Plainview” Exception

67. United States v. Jacobsen ............ (on the web)

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I. Public Arrest and Arrest in Suspect's Own or 3rd Party's Home - pp. 509 – 15 cb (1st ed)

70. Gerstein v. Pugh ........................................................................................................ (on the web)
71. County of Riverside v. McLaughlin . . . . p. 515 cb (1st ed), p. 500 cb (2nd ed), (on the web)
72.a. Corely v. United States ......................................................................................... (on the web)
73. United States v. Santana .......................................................................................... (on the web)
75. Washington v. Chrisman ......................................................................................... (on the web)

J. Standing .................................................................................................................. pp. 697-98 cb (1st ed)

76. Minnesota v. Olson . . . . p. 698 cb (1st ed) p. 676 cb (2nd ed), (on the web)
77. Minnesota v. Carter . . . . p. 698 cb (1st ed) or p. 675 cb (2nd ed)
79. Simmons v. United States ....................................................................................... (on the web)
80. Rawlings v. Kentucky . . . . p. 675 cb (2nd ed) or (on the web)

K. Search Incident to Arrest

82. Maryland v. Buie . . . . p. 524 cb (2nd ed) or (on the web)
84. Riley v. California .................................................................................................. (on the web)
85. Knowles v. Iowa . . . . p. 550 cb (1st ed) & (on the web)
86. Gustafson v. Florida ............................................................................................... (on the web)
89. Arizona v. Gant . . . . p. 526 cb (2nd ed) & (on the web)

L. Consent Searches

91. Schneckloth v. Bustamonte ..................................................................................... p. 668 cb
92. Ohio v. Robinette .................................................................................................... p. 679 cb
93. Florida v. Jimeno ..................................................................................................... p. 678 cb
94. United States v. Matlock ......................................................................................... (facts of case on the web)
95. George v. Randolph ................................................................................................. p. 146 of Supp
96. Illinois v. Rodriguez ............................................................................................... p. 676 cb & (facts of case on the web)

* See p. #144 Florence v. Board of Chosen Freeholders
M. “Reasonableness” – Less than Probable Cause to “Stop”

97. Camara v. Municipal Court ...................................................... (on the web)
98. Terry v. Ohio ......................................................... p. 557 cb (1st ed) or p. 539 cb (2nd ed)
99. Hiibel v. Sixth Judicial District Court of Nev., Humboldt City .... (on the web)
or p. 739 cb (2nd ed)
101. Adams v. Williams .................................................. (on the web)
102. Florida v. JL ......................................................... p. 578 cb (1st ed) or p. 559 cb (2nd ed)
108. Dunaway v. New York .... p. 570 cb (1st ed) or p. 552 cb (2nd ed)
109. Hayes v. Florida .................................................. (on the web)

N. Test for “Articulable Suspicion”

110. United States v. Cortez .................................................. (on the web)
111. Alabama v. White ........ p. 578 cb (1st ed) & (facts of case on the web)

O. Profiles, Consensual or “Terry” Stops (“Seizure”)

112. United States v. Mendenhall .... p. 411 cb (2nd ed) or (on the web)
114. Illinois v. Caballes ........ p. 378 cb (2nd ed) or (on the web)
117. United States v. Sokolow .... p. 590 cb (1st ed) or p. 569 (2nd ed)

P. “Seizure” of Person – “Chase” Context

118. Brower v. County of Inyo ........................................ p. 405 cb (1st ed)
119. Michigan v. Chesternut .............................................. (on the web)
120. Florida v. Bostick .................................................. p. 394 cb (1st ed) & (on the web)
122. California v. Hodari D ........ p. 413 cb (2nd ed) & (on the web)
123. Brendlin v. California .................................................. p. 417 cb (2nd ed) & (on the web)
Q. Reasonable Police Force

125. Scott v. Harris ........................................ p. 635 cb (2nd ed) & (on the web)

R. Search and Seizure of Persons – Special Conditions

128. Michigan v. Summers ........................................... (on the web)
131. Safford v. Redding ........................................ (on the web)
133. Ferguson v. Charleston .............. p. 643 cb (1st ed) or p. 616 (2nd ed)
134. Text cb (Other “Special Needs” Cases) ........ pp. 612-615 cb

S. Inventory Searches

135. Cady v. Dombrowski ........................................ (on the web)
136. South Dakota v. Opperman ........................................ (on the web)
137. Illinois v. Lafayette ........................................ (on the web)
138. Colorado v. Bertine ........................................ (on the web)
139. Florida v. Wells ........................................ (on the web)
140. Welch v. State ........................................ (on the web)

T. Road Blocks

142. Delaware v. Prouse .............. p. 598 cb (2nd ed) & (facts of case on the web)
143. Michigan v. Sitz .............. p. 598 cb (2nd ed) & (facts of case on the web)
144. City of Indianapolis v. Edmond .... p. 626 cb (1st ed) or p. 599 cb (2nd ed)
145. Illinois v. Lidster ......................... p. 635 cb (1st ed) or p. 608 cb (2nd ed)

U. Fruit of Poisonous Tree

146. Wong Sun v. United States ........... p. 709 cb (1st ed) or p. 691 cb (2nd ed)
147. Brown v. Illinois ........................................ (on the web)
V. Miscellaneous Cases & Acts

149. Foreign Intelligence Surveillance Act (on the web)
150. Protect America Act (on the web)
152. Bivens v. Six Unknown (on the web)
VIII.
CRIMINAL PROCEDURE

UNITED STATES CONSTITUTION

FIFTH AMENDMENT

No person shall be held to answer for a capital, or otherwise infamous crime unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

II.  FIFTH AMENDMENT

A.  Scope of the Fifth Amendment

1.  Brown v. Walker (dissent) ........ p. 753-54 cb (1st ed) or p. 713 (2nd ed)
2.  Counselman v. Hitchcock .............. p. 754 cb (1st ed) or p. 714 (2nd ed)
4.  Kastigar v. United States ............ p. 762 cb (1st ed) or p. 722 (2nd ed)
6.  Missouri v. McNeely .......................... (on the web)
7.  New Jersey v. Portash ............ p. 786 cb (1st ed) or p. 747 (2nd ed)
10. Baltimore City Department of Social Services v. Bouknight -
  p. 791 cb (1st ed) or p. 757 cb (2nd ed)

B.  Police Interrogation – When Does the Fifth Apply? (The Sixth Amendment Option)

11. Bram v. United States ................. p. 806 cb (1st ed) or p. 779 (2nd ed)
13. Massiah v. United States ........... p. 813 cb (1st ed) or p. 767 (2nd ed)
14. Fellers v. United States ............... (on the web)
15. Escobedo v. Illinois .................. p. 817 cb (1st ed) or p. 772 (2nd ed)
C.  Massiah in “Custody” or in Jail

16.  United States v. Henry .............................................. (on the web)
17.  Maine v. Moulton ...................................................... p. 931 cb & (on the web)

D.  The Rule and the Familiar Warnings

19.  Miranda v. Arizona .............................................. p. 819 cb (1st ed) or p. 773 cb (2nd ed)
23.  Duckworth v. Eagan .............................................. p. 859 cb (1st ed) or p. 870 cb (2nd ed)
24.  Florida v. Powell ................................................... p. 812 cb (2nd ed) or (on the web)

E.  What is “Interrogation”?  

25.  Rhode Island v. Innis .............................................. p. 845 cb (1st ed) or p. 799 cb (2nd ed)

F.  What is Custody?


G.  Invoking Miranda’s Second Level (Silence or Counsel)

33.  Michigan v. Mosley .............................................. p. 861 cb (1st ed) or p. 814 (2nd ed)
34.  Edwards v. Arizona .............................................. p. 863 cb (1st ed) or p. 816 (2nd ed)
35.  Arizona v. Robertson ............................................ p. 824 cb (2nd ed)
36.  Minnick v. Mississippi ........................................... p. 870 cb (2nd ed)
37.  Fare v. Michael C. .................................................. (facts of case on the web)
38.  Oregon v. Bradshaw .............................................. p. 866 cb (1st ed) or p. 822 (2nd ed)
39.  Wryick v. Fields .................................................... (on the web)
40.  Davis v. United States .......................................... p. 868 cb (1st ed) or p. 819 (2nd ed)
41.  Borghuis v. Thompkins .......................................... (on the web)
42.  Salinas v. Texas .................................................... (on the web)
43.  Michigan v. Jackson .............................................. p. 932 cb (1st ed) or p. 893 (2nd ed)

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44. Montejo v. Louisiana ......................... p. 894 cb (2nd ed) or (on the web)
45. Patterson v. Illinois ......................... p. 937 cb (1st ed) or (on the web)
47. Texas v. Cobb ............................... p. 941 cb (1st ed) & (facts of case on the web)
48. Block Burger Test ................................ (on the web)
49. Right to Counsel Equations ..................... (on the web)

H. Waiving Miranda Rights

51. Moran v. Burbine .............................. p. 874 cb (1st ed) or p. 829 (2nd ed)
52. Colorado v. Spring ............................ p. 873 cb (1st ed) or p. 840 (2nd ed)

I. Waiving Massiah Rights

53. Brewer v. Williams ............................. p. 920 cb (1st ed) or p. 882 (2nd ed)

J. Inevitable Discovery

54. Nix v. Williams ................................ (on the web)
55. Murray v. United States ...................... p. 719 cb (1st ed) or p. 694 (2nd ed)

K. "Public Safety" Exception to Miranda


L. Fruit of the Poisonous Tree and Miranda


M. Admissibility of a Confession While a Citizen is Under Arrest or is "In Detention"

59. 18 USCS Fed. R. Crim ................................ (on the web)
60. 18 USCS § 3501 ................................ (on the web)
61. Gerstein v. Pugh ................................ (on the web)
62. County of Riverside v. McLaughlin ......... (on the web)
63. Corley v. United States ....................... (on the web)

N. "Free Will" and Waiver of Miranda Rights

O. "Harmless" Constitutional Error

65. Arizona v. Fulminante ........................................ (on the web)

P. Impeachment With a product of a Miranda Violation

66. Walder v. United States ........................................ (on the web)
67. Harris v. New York ............................................. (on the web)
68. Doyle v. Ohio .......... p. 905 cb Note #7 (1st ed), p. 867 Note #7 (2nd ed)
69. Jenkins v. Anderson ........ p. 905 cb Note #7 (1st ed), p. 867 Note #7 (2nd ed)
70. United States v. Havens ................. p. 760 cb (2nd ed) or (on the web)

Q. Miranda Revisited

IX.

CRIMINAL PROCEDURE

READING LIST

SIXTH AMENDMENT

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defense.

III.

SIXTH AMENDMENT

A. The Right to the Assistance of Counsel – Guilt Determining / Sentencing Revocation Proceedings

1. Powell v. Alabama ......................................................... (on the web)
2. Betts v. Brady ................................................................. (on the web)
3. Gideon v. Wainwright ..................................................... p. 117 cb (1st ed) or p. 135 (2nd ed)
5. Argensinger v. Hamlin ..................................................... p. 125 cb (1st ed) or p. 142 (2nd ed)
6. Scott v. Illinois ................................................................. p. 129 cb (1st ed) or p. 144 (2nd ed)
7. Baldasar v. Illinois ......................................................... p. 131 cb (1st ed), Note #10 or p. 146 (2nd ed)
9. Nichols v. United States .................................................. p. 132 cb (1st ed) Note #10 or p. 146 (2nd ed)
10. Coleman v. Ala. ................................................................. p. 167 cb (1st ed) or p. 159 (2nd ed)
11. Mempa v. Rhay ................................................................. p. 167 cb (1st ed) or p. 172 (2nd ed)
12. Hamilton v. Ala. ................................................................. p. 168 cb (1st ed) or p. 159 (2nd ed)

B. Right to Counsel on Appeal – Appeal of Right

15. Griffin v. Illinois .............................................................. p. 139 cb (1st ed) or p. 184 (2nd ed)
16. Douglass v. California ...................................................... p. 139 cb (1st ed) or p. 183 (2nd ed)
17. Ross v. Moffitt (Discretionary Appeal) . . . . . . . p. 140 cb (1st ed) or p. 183 (2nd ed)
C. Right to Counsel – Where the Penalty is Only a Fine

18. Mayer v. City of Chicago ................. p. 158 cb (1st ed) or p. 197 (2nd ed)
19. United States v. MacCollom ................. p. 159 cb (1st ed)
21. Tate v. Short .................................. p. 161 cb (1st ed)

D. Indigent Defendant’s Right to An Expert

23. Ake v. Oklahoma .............................. p. 166 cb (1st ed) or p. 130 (2nd ed)

E. Effective Assistance of Counsel

27. Crawford v. Washington ..................... (on the web)
28. Nix v. Whiteside ............................... p. 188 cb (1st ed) or p. 232 (2nd ed)

F. Multiple Representation

29. Text ............................................ pp. 196-99 cb (1st ed) or p. 241 cb (2nd ed)
31. Mickens v. Taylor ............................. p. 52 (2010 Supp) or p. 249 cb (2nd ed)

G. Pro Se Representation

32. Faretta v. California ......................... p. 215 cb (1st ed) or p. 257 cb (2nd ed)
33. McKaskle v. Wiggins ........................ p. 231 cb (1st ed) or p. 267 cb (2nd ed)
34. More v. Slappy ................................. p. 238 cb (1st ed) or p. 286 cb (2nd ed)
35. Anders v. California ........................ p. 238 cb (1st ed) or p. 269 cb (2nd ed)
36. McCoy v. Court of Appeals of Wisconsin .... p. 238 cb (1st ed) or p. 269 cb (2nd ed)
37. Pennsylvania v. Finley ........................ p. 239 cb (1st ed) or p. 270 cb (2nd ed)
38. Penson v. Ohio ................................. p. 238 cb (1st ed) or p. 289 cb (2nd ed)

H. Implications of Forfeiture Statutes

I. The Right to Counsel at Lineups, Show-ups, and Photographic Arrays

40. Critical Stage Proceedings ........ pp. 239-40 cb (1st ed) or pp. 154-60 (2nd ed)
44. United States v. Ash ... p. 262 cb (1st ed), p. 165 (2nd ed), (facts of the case on the web)
45. Moore v. Illinois ...................... p. 163 cb (2nd ed)

J. The Due Process Approach – Revisited


IV. ENTRAPMENT

A. Scope of the Rule

1. Jacobson v. United States ............... p. 972 cb (1st ed) or p. 923 cb (2nd ed)
2. United States v. Russell .................. p. 983 cb (2nd ed)
APPENDIX A

CRIMINAL PROCEDURE
Fall – 2014

True / False Query

In United States v. Leon [p. 683 cb (1st ed) or p. 658 cb (2nd ed)], the United States Supreme Court purports to establish a “Good Faith” exception to the Exclusionary Rule. The Court claims that the United States v. Calandra 414 U.S. 338, 854 (1974), supports its conclusion that the exclusionary rule is designed only to preclude the state from using “fruits of a past unlawful search or seizure” to convict the citizen – defendant.

In 500 words or less,

please explain your* True or False (circle one (1)!) response,

your* answer is due [on or before]:

Wednesday, December 3, 2014.

* Two (2) or more persons may collaborate and submit a response as a team.
STUDENTS WITH DISABILITIES

Students with disabilities may request academic adjustments as provided under federal law. Requests should be made by first contacting:

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You should also contact Professor Sharon Foster (479) 575-3332 or Associate Dean Jim Miller (479) 575-5618 personally in order to use academic or testing accommodations.