

*CRIMINAL PROCEDURE*  
Summer 2009

**PICK UP SYLLABUS AND FIRST ASSIGNMENT (at page #6 of Syllabus) FROM  
MRS. K. DREIER, RM 183B**

**I. FIRST ASSIGNMENT**

READ: **Every line of *infra* pages 6-12 of this Syllabus.**

WRITE: **Special written** assignment on page 8 of the Syllabus.

What is a “search”?

- (a) **KATZ v. U.S.** — P. 349 CB
- (b) **U.S. v. WHITE** — P. 368 CB
- (c) **OLIVER v. U.S.** — (*on the Web*)
- (d) **FOOTNOTES FROM OLIVER** — (*on the Web*)
- (e) **HESTER v. UNITED STATES** — (*on the Web*)
- (f) **U.S. v. DUNN** — (*on the Web*)
- (g) **CALIFORNIA V. CIRAULO** — (*on the Web*)
- (h) **FLORIDA v. RILEY** — (*on the Web and p. 361 cb*)
- (i) **CALIFORNIA v. GREENWOOD** — (*on the Web and p. 374 cb*)
- (j) **SMITH V. MARYLAND** — P. 378 CB Note #1
- (k) **KYLLO v. UNITED STATES** — (*on the Web and p. 387 cb*)
- (l) **UNITED STATES v. KARO** — P. 379 CB
- (m) **DOW CHEMICAL v. U.S.** — (*on the Web*)
- (n) **UNITED STATES v. BOND** — (*on the Web*)

**FIRST CLASS**

Be prepared to discuss the cases assigned above. You will be asked to apply the principles, reasoning and language from those cases to the following hypothetical scenarios:

**INTRODUCTION TO SCENARIOS**

Rumors have filtered to the Dean of the Law School that a few male law students have been using the stalls in the third floor restrooms to sell marijuana. The Dean decides<sup>1</sup> to install video cameras and microphones in the ceiling over each stall in both the men’s and women’s restrooms. All installations were completed on May 11, 2009. Rumors have circulated among the student body (there has been no public announcement) that the Dean has installed video cameras in the men’s and women’s lavatories.

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<sup>1</sup> Neither the faculty nor the student body was informed about these installations.

## SCENARIO #1

One of the cameras in the **women's third floor restroom** has infrared capabilities (records in the dark). This particular camera recorded **female-student A** snorting cocaine in a completely darkened restroom stall (except for a small pen light used by **female-student A**) on Thursday, May 14, and placing the unused portion in her purse. After viewing this video recording, the Dean informs the University Police (DPS). Student **A** is arrested by DPS as she is leaving the Law School building. The police searched **A's** purse and found 10 vials of cocaine and the **name of student X as her dealer**. **A** claims her Fourth Amendment rights have been violated. Word of **A's** arrest and her resulting claims spread rapidly throughout the law school.

## SCENARIO #2 [two hours *after A's* arrest]

An equally sophisticated camera in the men's restroom records **male-student X** in a stall selling cocaine from a brown-leather backpack to **male-student C**. **X** and **C** are arrested later that day in the Law School's student lounge. There are four other students in the lounge at the time of the arrests of **X** and **C**. **X**, **C** and the four other students all had brown leather backpacks. The police used a recently developed "**light probe**" capable of detecting minute particles of heroin (inside opaque container) to examine all six (6) backpacks. The "**light probe**" indicated that each backpack contained heroin. As a result, the backpacks were opened and heroin was found in each. **X** had three (3) pounds of cocaine, \$8,000 in cash, and the names of fifty (50) law students (including **A** and **C**) listed as buyers in his backpack. DPS also found a note from **X** to **Z** telling **Z** to meet **X** in a third floor men's restroom at 11:00 A.M. on Monday, May 18, 2009. **X** plans to call "our" law office and 3:00 P.M. on May 18, 2009 to set up an appointment for an interview. We have confirmed that there is no conflict with our other clients. What Fourth Amendment issues should we consider **before** the telephone conversation or appointment? Be prepared to identify at least two (2) issues.

## SPECIAL WRITTEN ASSIGNMENT(S)

based on  
**Scenario #2**

- I. **Each prosecutor\*** must submit (upon entering class in the envelope marked “Special Written Assignment”) a **statement** (available from Mrs. K. Dreier in Room 183B) stating whether the use of the “**light probe**” in **Scenario #2** constituted a **search** under the **Fourth Amendment**.
- A. **If so**, the **prosecutor** must identify a **case** (only one!!) from the **First Assignment’s reading list** (p. 6 of **Syllabus**) that **supports** his/her **conclusion**.
- B. **If not**, the **prosecutor** must identify a **case** (only one!!) from the **First Assignment’s reading list** (p. 6 of **Syllabus**) that **supports** his/her **conclusion**.

*\*Students whose last name begin with the letters A – N.*

- II. **Each defense attorney\*\*** must submit (upon entering class in an envelope marked “Special Written Assignment”) a **statement** (available from Mrs. K. Dreier in Room 183B) stating whether the use of the “**light probe**” in **Scenario #2** was a **search** under the **Fourth Amendment**.
- A. **If so**, the **defense attorney** must identify a **case** (only one!!) from the **First Assignment’s reading list** that **supports** his/her **conclusion**.
- (a) **If not**, the **defense attorney** must identify a **case** (only one!!) from the **First Assignment’s reading list** that **supports** his/her **conclusion**.

*\*\*Students whose last names begin with the letters O – Z.*

**OPTIONAL** (means you **need not** do the following):

In Scenarios **#1 and #2**, the affected students have been charged with possession of a controlled substance, intent to distribute a controlled substance, distribution of a controlled substance, and use of a controlled substance in a public place. The court will convene a suppression hearing on Wednesday, May 20, 2009 to determine whether any of these drugs should be **suppressed**.

Judge Carlton Bailey will preside. You (**Prosecutors/Defense attorneys**) may present (on May 20, 2009) **any argument, matter, or issue** to Judge Bailey that you believe will be helpful to your client and the court. (See the file marked **Prosecutors/Defense Attorneys request for an order!** Available **in class!**) (**Neither** Prosecutor nor Defense attorney **is required** to take any action.) However, if you wish to request relief, you may submit your **requested relief** to Judge Bailey in written form on May 20, 2009. **One page only!!**

\*Students with **last names** beginning with the letters “**A-N**” are **prosecutors**.

\*\*Students with **last names** beginning with the letters “**O-Z**” are **defense attorneys**.