

CRIMINAL PROCEDURE
COURSE NO. 4173

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

****To the Web page: First: Home page for the University of
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Reserve Materials - Link; Fourth: Carlton Bailey - web resources;
Fifth: Criminal Procedure - Link**

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I. **FIRST ASSIGNMENT**

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

What is “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. CIRAOLO** — (*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. 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 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 indicated, among other things, that Jr. had been selling powdered cocaine to students at the local college.

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

Two minutes after the informants 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 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 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, 2008 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. For your **first written** assignment identify **one (1)** issue you wish to raise with Judge Storey and **one (1)** issue you wish to raise with Jr.

You should submit this [**one-page!!**] no more!! (No more than sixty (60) words!) Written assignment to Professor Bailey when you enter class on **Monday, August 25, 2008**. [See the envelope marked **First Written Assignment**] Please!! Submit a **full page!** (The information provided on that page **need not** cover the full page!) **No** half sheets or **scraps** of paper!

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]

Supplementary Reading List:

LaFave and Israel, *Criminal Procedure* (West) [NOT REQUIRED]

Saltzburg, *American Criminal Procedure* (West) [NOT REQUIRED]

(Your selection! Whatever works for you!)

Syllabus: By Professor Carlton Bailey [REQUIRED]

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----- **400** points
 - a) Long Fact Pattern-----100 points
 - b) Multiple Choice----- 200 points
 - c) Answer to True/False Query-----100 points
2. Classroom Participation----- **100** points
Points based on Film Clips/Special Written Assignments
3. Attendance (**lack** thereof). See **E** attendance policy pp. 6-7 of syllabus.

B. **CLASSROOM PARTICIPATION POLICY**

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.

C. **POINTS BASED ON FILM CLIPS**

1. Clips may be shown on **Monday** or **Thursday** of each week.
2. If you miss a clip, there will be **no makeups!** However, you may contribute to the class in other ways in order to score points missed in a film clip. See Professor Bailey if you have questions.
3. **Please ask Professor Bailey** if you do not understand any of these instructions.

***CLASS DISCUSSIONS/LECTURES MAY NOT BE TAPE RECORDED!**

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.

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 though not insightful;
4. "OK" - Satisfactory;
5. "YOU DON'T MEAN THAT?" - Less than satisfactory;
6. "UNPREPARED OR FAILING TO ANSWER" - See V.B.

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 Professor Bailey's secretary in Room 183 **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**.]

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: Wednesday or Friday or **whenever you find the Professor in his office**.

OFFICE PHONE: 575-5615

E-MAIL ID: cbailey@uark.edu

BEFORE/AFTER CLASS: Students may submit
Questions/Comments/Suggestions

"I STILL DON'T GET (??)": File folder on Message Board outside Professor Bailey's office (Office 315) and a folder will be available at **each** class session.

If you claim **any disability** that you believe will preclude you from complying with the requirements of this course, please see Associate Dean for Students, James Miller in office #194 or call him at (575-5618).

GENERAL RESPONSE SHEETS - ANSWER SHEET

SEE INSTRUCTIONS ON SIDE 2

PAGE 1

NAME	ID	SECTION	DATE	TIME	ROOM
A	B	C	D	E	F
G	H	I	J	K	L
M	N	O	P	Q	R
S	T	U	V	W	X
Y	Z	AA	AB	AC	AD
AE	AF	AG	AH	AI	AJ
AK	AL	AM	AN	AO	AP
AQ	AR	AS	AT	AU	AV
AW	AX	AY	AZ	BA	BB
BC	BD	BE	BF	BG	BH
BI	BJ	BK	BL	BM	BN
BO	BP	BQ	BR	BS	BT
BU	BV	BW	BX	BY	BZ
CA	CB	CC	CD	CE	CF
CG	CH	CI	CJ	CK	CL
CM	CN	CO	CP	CQ	CR
CS	CT	CU	CV	CW	CX
CY	CZ	DA	DB	DC	DD
DE	DF	DG	DH	DI	DJ
DK	DL	DM	DN	DO	DP
DQ	DR	DS	DT	DU	DV
DW	DX	DY	DZ	EA	EB
EC	ED	EE	EF	EG	EH
EI	EJ	EK	EL	EM	EN
EO	EP	EQ	ER	ES	ET
EU	EV	EW	EX	EY	EZ
FA	FB	FC	FD	FE	FF
FG	FH	FI	FJ	FK	FL
FM	FN	FO	FP	FQ	FR
FS	FT	FU	FV	FW	FX
FY	FZ	GA	GB	GC	GD
GE	GF	GG	GH	GI	GJ
GK	GL	GM	GN	GO	GP
GQ	GR	GS	GT	GU	GV
GW	GX	GY	GZ	HA	HB
HC	HD	HE	HF	HG	HH
HI	HJ	HK	HL	HM	HN
HO	HP	HQ	HR	HS	HT
HU	HV	HW	HX	HY	HZ
IA	IB	IC	ID	IE	IF
IG	IH	II	IJ	IK	IL
IM	IN	IO	IP	IQ	IR
IS	IT	IU	IV	IW	IX
IY	IZ	JA	JB	JC	JD
JE	JF	JG	JH	JI	JJ
JK	JL	JM	JN	JO	JP
JQ	JR	JS	JT	JU	JV
JW	JX	JY	JZ	KA	KB
KC	KD	KE	KF	KG	KH
KI	KJ	KK	KL	KM	KN
KO	KP	KQ	KR	KS	KT
KU	KV	KW	KX	KY	KZ
LA	LB	LC	LD	LE	LF
LG	LH	LI	LJ	LK	LL
LM	LN	LO	LP	LQ	LR
LS	LT	LU	LV	LW	LX
LY	LZ	MA	MB	MC	MD
ME	MF	MG	MH	MI	MJ
MK	ML	MM	MN	MO	MP
MQ	MR	MS	MT	MU	MV
MW	MX	MY	MZ	NA	NB
NC	ND	NE	NF	NG	NH
NI	NJ	NK	NL	NM	NN
NO	NP	NQ	NR	NS	NT
NU	NV	NW	NX	NY	NZ
OA	OB	OC	OD	OE	OF
OG	OH	OI	OJ	OK	OL
OM	ON	OO	OP	OQ	OR
OS	OT	OU	OV	OW	OX
OY	OZ	PA	PB	PC	PD
PE	PF	PG	PH	PI	PJ
PK	PL	PM	PN	PO	PP
PQ	PR	PS	PT	PU	PV
PW	PX	PY	PZ	QA	QB
QC	QD	QE	QF	QG	QH
QI	QJ	QK	QL	QM	QN
QO	QP	QQ	QR	QS	QT
QU	QV	QW	QX	QY	QZ
RA	RB	RC	RD	RE	RF
RG	RH	RI	RJ	RK	RL
RM	RN	RO	RP	RQ	RR
RS	RT	RU	RV	RW	RX
RY	RZ	SA	SB	SC	SD
SE	SF	SG	SH	SI	SJ
SK	SL	SM	SN	SO	SP
SQ	SR	SS	ST	SU	SV
SW	SX	SY	SZ	TA	TB
TC	TD	TE	TF	TG	TH
TI	TJ	TK	TL	TM	TN
TO	TP	TQ	TR	TS	TT
TU	TV	TW	TX	TY	TZ
UA	UB	UC	UD	UE	UF
UG	UH	UI	UJ	UK	UL
UM	UN	UO	UP	UQ	UR
US	UT	UU	UV	UW	UX
UY	UZ	VA	VB	VC	VD
VE	VF	VG	VH	VI	VJ
VK	VL	VM	VN	VO	VP
VQ	VR	VS	VT	VU	VV
VW	VX	VY	VZ	WA	WB
WC	WD	WE	WF	WG	WH
WI	WJ	WK	WL	WM	WN
WO	WP	WQ	WR	WS	WT
WU	WV	WW	WX	WY	WZ
XA	XB	XC	XD	XE	XF
XG	XH	XI	XJ	XK	XL
XM	XN	XO	XP	XQ	XR
XS	XT	XU	XV	XW	XX
XY	XZ	YA	YB	YC	YD
YE	YF	YG	YH	YI	YJ
YK	YL	YM	YN	YO	YP
YQ	YR	YS	YT	YU	YV
YW	YX	YY	YZ	ZA	ZB
ZC	ZD	ZE	ZF	ZG	ZH
ZI	ZJ	ZK	ZL	ZM	ZN
ZO	ZP	ZQ	ZR	ZS	ZT
ZU	ZV	ZW	ZX	ZY	ZZ

Insert Bluebook Cover page

EXAMINATION BLUE BOOK	
NAME	Exam # 1123
SUBJECT	
INSTRUCTOR	Bailey
EXAM SEAT NO.	SECTION
DATE	GRADE

BB-2
11 X 8.5
85-11615/16 PAGES

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VII. **EXEMPLARY QUERIES OF A CRIMINAL PROCEDURE EXAMINATION**

FINAL GRADE - FINAL EXAMINATION AND EXTRA POINTS FOR FILM CLIPS.

(These queries are based on the newspaper article concerning Cassandra Small, *See infra* pp. 16 of Syllabus)

PART I - MULTIPLE CHOICE

Brock has asked the court to exclude any references to the Wal-Mart employee's out-of-court identification and Scooter's identification or the dog's apparent reaction to him during the lineup. In determining whether to sustain Brock's objection and motion to exclude these out-of-court identifications, Judge Storey must consider:

- (a) whether Brock was formally charged;
- (b) the effect of both the dog and the Wal-Mart employee making simultaneous identifications;
- (c) whether either had previously identified Brock; or
- (d) the nature and gravity of the criminal offense.

Of these four (4) considerations, the ones most applicable under present law include:

- 1. (a) and (d) only
- 2. (d) only
- 3. (a) and (c) only
- 4. None of the alternatives as presented in 1-3 above.

PART II - SHORT ANSWER QUERY

What case or cases best inform Judge Storey about whether he should permit the Wal-Mart employee to make an in-court identification? Explain.

TWO TEENS CHARGED IN MULTIPLE SLAYINGS

Police: Case Involves Sex, Drugs,
Money, Decapitation, Dog Bite

by Cassandra Smalls - Reporter at Large
Arkansas Democrat-Gazette
Wednesday, December 6, 2007

FAYETTEVILLE: Authorities on Tuesday charged a man and a woman, both 19, in a multiple slaying that involved money, gambling, sex, and gang activity in late November of 2007 in Fayetteville, officials said.

Prosecutors likely will seek the death penalty for Carla W. Webb and James A. Brock, who lived in Fayetteville at the time of the November 25 slayings, Deputy Prosecuting Attorney Jim Strickman of Fayetteville said.

Deputies arrested Brock and Webb nearly two weeks after lawmen found the bodies of Lola Brown, 63, and her son, Charles Brown, 46, both of Fayetteville, and his girlfriend, Susan Green, 42, of Tulsa, Oklahoma, and three unidentified white males.

Authorities have said that they believe Brock was angry after finding out about a sexual relationship between Webb and Charles Brown and that that played a role in the deaths.

Police also reportedly believe that Webb and Brock are members of a Northwest Arkansas gang.

Police say they believe Charles Brown was killed at a house he rented and used for gambling and possible drug sales at 1644 Maple. It was common knowledge that Charles Brown often carried large amounts of cash, authorities reported. Also found dead at that location were three unidentified white males.

Webb and Brock were charged with six counts each of being accomplices to capital murder. They are being held in the Washington County Jail without bond, Strickman said. They are scheduled to be arraigned December 16 in Washington County Circuit Court.

Strickman said the investigation, which included officers of the Washington County Sheriff's Office and the Arkansas State Police, may result in more arrests.

Investigators found Lola Brown and Charles Brown's girlfriend, Susan Green, dead in Ms. Brown's backyard. Both had been shot twice in the head and burned beyond recognition, authorities said.

On the morning of November 25, 2007, an anonymous person called the Fayetteville Police Department at approximately 8:30 a.m. and told Sergeant Harold Turner that a man was knocking at the front door of the home of Lola Brown at 1244 Maple Street and that he had a gun and a knife. The caller hung up when the police asked the person for a name and an address. The police department's Enhanced Caller Identification revealed that the person was calling from a public telephone a block away from 1244 Maple.

Based on the information from the anonymous caller, two squad cars went to 1244 Maple. Officer Tim Hoover was the first to arrive at the scene where he found the front door of the house standing open. After searching the rooms, he went to the back door and saw the bodies of Lola Brown and Susan Green lying side by side in the backyard. He further observed severe cut wounds on the victims' heads and bodies. The family dog, Scooter, was found between the bodies, whimpering. Scooter had parts of a light green short sleeve sweater in his mouth.

A neighbor, Brad Bruns, smelled what seemed to him to be burning flesh. He had smelled this odor before when he served in Desert Storm. He directed the second squad car of police to 1250 Maple where he was certain he smelled burning flesh. Sheriff Kearns, from the "second" squad car, went to the house next door, 1250 Maple, pursuant to the information from neighbor Bruns. Officer Kearns pushed open this door and immediately smelled marijuana smoke. He then found the two occupants smoking marijuana. Both were arrested. Kearns was suspended with pay for three days after the arrest at 1250 Maple. The department found that he violated police policy by failing to knock and announce himself.

Charles Brown's burned Chevrolet Blazer was found near Springdale and within three miles of where some of Brock's relatives live, Strickman said. "The vehicle was burned to keep law enforcement officers from getting additional evidence in relation to this murder," he said.

Hours later, investigators found Charles' decapitated body at a house, 1644 Maple, a few blocks from where he lived with his aunt, Lola Brown, at 1244 Maple, authorities said. Someone had shot and stabbed him numerous times, then cut off his head. The head could not be found. The police also found the dead bodies of three unidentified white males. Each had been shot and stabbed several times.

A prime possible motive for the slayings was robbery, Strickman said.

Authorities believe that Charles Brown was killed at the house he rented to Brock and Webb at 1644 Maple Street, down the street from where he lived with his aunt (Lola). Brock and Webb lived at the 1644 Maple Street house that was used for gambling and possibly drug sales, authorities said.

Brock and Webb had a long and colorful juvenile history. Brock had been charged and convicted of burglary, rape, indecent exposure, assault, and disorderly conduct. Webb had been convicted of theft of property, prostitution, disorderly conduct, and receipt of stolen property. Both are on probation for recent October 2007 violations of the Arkansas Hot Check Law (\$3,000 each), authorities said.

In the bedroom of the house shared by Brock and Webb, 1644 Maple, investigators found "one pair of blue-and-white tennis shoes, which appeared to have blood spatters on them" and in a trash can "one pair of white leather gloves with blood stains, a light green long sleeved shirt with blood stains and a ripped hole in the left sleeve," according to a police affidavit. Brock claimed to own the shoes and the gloves but not the shirt. He could not explain how blood got on them, the affidavit stated.

The affidavit by Washington County investigator Ray Coffman states that he found "a towel that also appeared to have blood stains on it."

Investigators learned about the relationship between Webb and Charles Brown after interviewing two witnesses in the case, the affidavit stated. One witness told officers that "Brock knew Charles Brown was having a sexual relationship with Carla Webb," according to the affidavit.

Another witness told authorities that she "had seen James Brock two days prior to Charles Brown's death in Fayetteville near the U. of A. Administration Building and that he (Brock) was carrying a pistol at that time." The affidavit stated, "She also heard him say that he was going to kill someone."

Another woman told investigators that about three weeks before Charles Brown's death, Brock told her he was going to get even with Charles Brown. At the time, he was wearing a light green long sleeved shirt with no blood stains. "She stated that she thought James Brock had found out about Charles Brown having sex with Carla Webb," the affidavit stated, "She also advised that her daughter told her that Brock was mad at Charles Brown for telling him to keep the grass cut and clean things up" around the house.

A witness told authorities that Brown always kept \$7,000 to \$13,000 in a zippered bag "either on his person or at his house at all times," the affidavit stated.

One witness, Buster "Little Pookey" Jimerson, a known gangster who frequented Charles Brown's gambling house for over two years, told investigators that he usually sees Webb "counting Charles Brown's money at the gambling house. Each time she finished counting the money she and Charles Brown always went to a back bedroom to play "tie me," "whip me," "do me!" "till I holler!" for a few hours. Webb and Brown repeated this routine at least three times a week for over a year. Pookey went on to say that Brown would always send Webb's stupid boyfriend, Brock, off on some kind of errand during that time.

Brock and Webb have juvenile records and are believed to be members of the Folks Disciples, a gang that operates out of West Fork and Fayetteville, Coffman said.

Investigators arrested Brock at a house in Elkins. He had several cuts and deep scratches on both arms. He wore a white t-shirt and a cashmere V-neck. Webb was arrested at a residence in Madison County, Chief Deputy Mark Flowers said. Webb had \$10 in her pocket.

After he was arrested, the police searched Brock and found \$3,000 in cash in a money belt he was wearing. The \$3,000 was later transferred to a large plastic bag in Officer Duncan's locker. Brock did not speak to the police during the ride from Elkins to the Washington County Jail. However, the two arresting officers, Duncan and Pierce, talked about how the Brown family could not have an open casket for Charles because it would be too gruesome. They both wondered aloud how a person could decapitate someone and hide the head. Pierce said, "If Jeffrey Dahmer can eat people, I guess this could happen!" Brock told the police that he had heard gangsters from Tulsa used to hide dead bodies in Tyson's chicken refuse area in Springdale. Two hours later the state police found Charles Brown's decomposed head at that site.

Brock and Webb said they left Fayetteville about 11 p.m. November 25, went to Eureka Springs and didn't return to Fayetteville until after 3 a.m. November 26, the affidavit stated.

"The statements were contradicted by phone records, which were obtained from the 1644 Maple Street residence which showed collect phone calls being made from Ohio to that residence at a time after 11 p.m. This is also contradicted by the fact that Brock's vehicle was seen in the Fayetteville area between 1:30 a.m. and 2 a.m. in the early morning hours of November 26, 2007."

Authorities allege that Brock and Webb killed Charles Brown and the three unidentified white males at the Maple Street residence and then went to his house four blocks away to find more money. While ransacking the residence, they killed Lola Brown and Susan Green (Charles Brown's girlfriend), the affidavit stated.

"Honey Drop" (born Sarah Mullins), a prostitute who worked off and on for Charles Brown at his gambling house, will testify that Carla Webb told Charles Brown two weeks before her death that they had to stop doing it so much at the house because Big "B" will find out. Honey quoted Carla to say, "If he does, he'll cancel both our tickets." Honey Drop will admit that she had a two year sexual relationship with Carla.

Two members of "The Heavy Hitters" (Snake Eye and "Little Puke" or "Pukey") are prepared to testify that they overheard Brock telling Charles Brown that he would "cancel his ticket" if he found out that Brown was messing with Carla.

Bruce Strong, a salesman at Wal-Mart's Super Center on Highway 62, is prepared to testify that Brock and Webb stole a machete and a large kitchen knife from that store on November 23, 2007.

Carla Webb attended John Brown University for a year. Her reputation at John Brown was that of a hard working, dependable, smart student. No one there knew of her criminal record.

Brock lived in the Willow Heights Federal Housing Project for two years prior to living at 1644 Maple. His neighbors say that he was quiet, non-violent, soft-spoken, and honest. No one there knew of his criminal record.

Upon arriving at the Washington County Jail, both Brock and Webb were placed in a lineup in Sheriff Whitmill's office. They were placed in a lineup with one other couple of similar height, etc. The clerk from the Wal-Mart store and Scooter were allowed to identify them. After Scooter began barking loudly and attacked Brock, the store clerk said, "Yes, that's them," pointing to Brock and Webb. At this point Brock was asked if he had anything to say. He said, "Yeah, Carla Webb gave me that \$3,000!"

TRIAL IS SET FOR WEDNESDAY, September 17, 2008 at 9:00 a.m.

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. 3, Sec. 2--later strengthened by the 6th Amendment);
- (5) the power of Congress to punish treason and the evidentiary requirements (Art. 3, Sec. 3);
- (6) the requirement that citizens of each state be afforded all the privileges and immunities by the other states (Art. 4, Sec. 2); and
- (7) the extradition provision (Art. 4, 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]."

CRIMINAL PROCEDURE

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)

NO INCORPORATION

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)

CRIMINAL PROCEDURE

TOTAL

SELECTIVE

NEO



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:

"The 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.

FOURTH AMENDMENT

A. What is a "Search"?

1. Katz v. U.S. p. 349 cb
2. U.S. v. White p. 368 cb
3. Oliver v. United States **(on the web)**
4. **(Footnotes from Oliver)** **(on the web)**
5. U.S. v. Dunn **(on the web)**
6. Hester v. United States **(on the web)**
7. California v. Ciraolo **(on the web)**
8. Florida v. Riley **(on the web and p. 361 cb)**
9. California v. Greenwood **(on the web and p. 374 cb)**
10. Smith v. Maryland p. 387 cb **Note #1**
11. Dow Chemical Co. v. United States **(on the web)**
12. Kyllo v. United States **(on the web and p. 387 cb)**
13. United States v. Karo p. 379 cb
14. United States v. Bond **(on the web)**
15. Illinois v. Cabellas **(on the web)**

B. Probable Cause

16.	<u>Probable Cause and the Warrant Process</u>	pp. 420-21 cb
17.	<u>Draper v. United States</u>	(on the web)
18.	<u>Aguilar v. Texas</u>	(on the web)
19.	<u>Spinelli v. United States</u>	(on the web)
20.	<u>Illinois v. Gates</u>	p. 426 cb
21.	<u>Maryland v. Pringle</u>	p. 442 cb
22.	<u>Massachusetts v. Upton</u>	(on the web)
23.	<u>The Warrant Process</u>	p. 377-78 cb
24.	<u>Wilson v. Arkansas</u>	p. 452 cb & (on the web)
25.	<u>United States v. Banks</u>	p. 453 cb
26.	<u>Hudson v. Michigan</u>	(on the web*)
27.	<u>Wilson v. Layne</u>	p. 458 cb

C. The Exclusionary Rule — (What happens if the Fourth Amendment is violated?)

28.	<u>General Considerations</u>	p. 334 cb
29.	<u>Weeks v. United States</u>	(on the web)
30.	<u>Wolf v. Colorado</u>	(on the web)
31.	<u>Mapp v. Ohio</u>	p. 326 cb
32.	<u>United States v. Leon</u>	p. 683 cb
33.	<u>Franks v. Delaware</u>	(on the web)
34.	<u>Hill v. California</u>	(on the web)

D. Exceptions to the Warrant Requirement - ("Exigent Circumstances")

35.	<u>Maryland Penitentiary v. Hayden</u>	p. 299 cb & (on the web)
36.	<u>Mincey v. Arizona</u>	p. 463 cb & (on the web)
37.	<u>Vale v. Louisiana</u>	(on the web)
38.	<u>Seura v. U.S.</u>	(on the web)
39.	<u>Notes on exigent circumstances</u>	pp. 404-413 cb & (on the web)
40.	<u>Welsh v. Wisconsin</u>	p. 470 cb
41.	<u>Illinois v. McArthur</u>	p. 475 cb

E. Exigent Circumstances and the Automobile

42.	<u>Carroll v. United States</u>	(on the web)
43.	<u>Cardwell v. Lewis</u>	(on the web)
44.	<u>California v. Carney</u>	(on the web)

- F. Containers
45. U.S. v. Chadwick (on the web)
46. Arkansas v. Sanders (on the web)
47. U.S. v. Ross (on the web)
48. Wyoming v. Houghton p. 503 cb & (on the web)
49. California v. Acevedo p. 493 cb & (on the web)
50. U.S. v. Johns (on the web)
- G. Police discretion and Profiling
51. Text - “Pre-textual” Search Whren v. United States p. 597 cb & (on the web)
52. Chicago v. Morales p. 609 cb
53. State v. Sullivan (I) (on the web)
54. Explanation of Sullivan I and Sullivan II (on the web)
- H. “Plainview” Exception
55. Horton v. California p. 485 cb
56. Arizona v. Hicks p. 480 cb & (on the web)
- I. Public Arrest and Arrest in Suspect’s Own or 3rd Party’s Home . pp. 509-15 cb
57. U.S. v. Watson p. 511 cb & (on the web)
58. Atwater v. Lago Vista et al p. 518 cb & (on the web)
59. Gerstein v. Pugh (on the web)
60. County of Riverside v. McLaughlin p. 515 cb & (on the web)
61. Payton v. New York p. 516 cb & (on the web)
62. United States v. Santana (on the web)
63. Steagald v. U.S. p. 517 cb
64. Washington v. Chrisman (on the web)
- J. Standing p. 697-98 cb
65. Minnesota v. Olson p. 698 cb & (on the web)
66. Minnesota v. Carter p. 698 cb
67. Rakas v. Illinois p. 698 cb & (on the web)
68. Simmons v. United States (on the web)
69. Rawlings v. Kentucky (on the web)
- K. Search Incident to Arrest
70. Chimel v. California p. 532 cb & (on the web)
71. Maryland v. Buie (on the web)
72. U.S. v. Robinson p. 538 cb
73. Knowles v. Iowa p. 550 cb & (on the web)
74. Gustafson v. Florida (on the web)
75. New York v. Belton p. 541 cb & (on the web)

76. Thornton v. United States p. 541 cb & **(on the web)**
- L. Consent Searches
77. Bumper v. North Carolina **(on the web)**
78. Schneekloth v. Bustamonte p. 668 cb
79. Ohio v. Robinette p. 678 cb
80. Florida v. Jimeno p. 678 cb
81. United States v. Matlock **(on the web)**
82. George v. Randolph **(on the web)**
83. Illinois v. Rodriguez p. 676 cb & **(on the web)**
84. Ornelas v. U.S. p. 437 cb
- M “Reasonableness” — less than Probable Cause to “Stop”
85. Camara v. Municipal Court **(on the web)**
86. Terry v. Ohio p. 557 cb
87. Hiibel v. Sixth Judicial District Court of Nev., Humboldt City ... **(on the web - as “Larry Hiibel”)**
88. Illinois v. Wardlow p. 583 cb
89. Adams v. Williams **(on the web)**
90. Florida v. JL p. 578 cb
91. Pennsylvania v. Mimms p. 575 cb & **(on the web)**
92. United States v. Sharpe p. 574 cb & **(on the web)**
93. Michigan v. Long p. 576 cb & **(on the web)**
94. Minnesota v. Dickerson p. 577 cb & **(on the web)**
95. New York v. Burger p. 656 cb
96. Dunaway v. New York p. 570 cb
97. Hayes v. Florida **(on the web)**
- N. Test for “Articulable Suspicion”
98. United States v. Cortez **(on the web)**
99. Alabama v. White p. 578 cb & **(on the web)**
- O. Profiles, Consensual or “Terry” Stops (“Seizure”)
100. U.S. v. Mendenhall **(on the web)**
101. U.S. v. Place p. 366 cb & **(on the web)**
102. Illinois v. Caballes **(on the web)**
103. Florida v. Royer p. 571 cb
104. INS v. Delgado p. 401 cb & **(on the web)**
105. United States v. Sokolow p. 590 cb

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

- 106. Brower v. County of Inyo p. 405 cb
- 107. Michigan v. Chesternut (on the web)
- 108. Florida v. Bostick p. 394 cb & (on the web)
- 109. United States v. Drayton p. 399 cb & (on the web)
- 110. California v. Hodari D (on the web)
- 111. Tennessee v. Garner p. 658 cb

Q. Search and Seizure of Persons – Special Conditions

- 112. Ybarra v. Illinois (on the web)
- 113. Michigan v. Summers (on the web)
- 114. New Jersey v. T.L.O. p. 624 cb & (on the web)
- 115. Vernonia School District v. Acton p. 641 cb
- 116. Ferguson v. Charleston p. 643 cb
- 117. Text cb (Other “**Special Needs**” Cases) pp. 612-615 cb

R. Inventory Searches

- 118. Cady v. Dombrowski p. 468 cb & (on the web)
- 119. South Dakota v. Opperman p. 550 cb & (on the web)
- 120. Illinois v. Lafayette (on the web)
- 121. Colorado v. Bertine (on the web)
- 122. Florida v. Wells (on the web)
- 123. Welch v. State (on the web)

S. Road Blocks

- 124. Border and Highway Safety Regulation p. 804-13 cb
- 125. Delaware v. Prouse p. 625 cb & (on the web)
- 126. Michigan v. Sitz (on the web)
- 127. City of Indianapolis v. Edmond p. 626 cb

T. Fruit of Poisonous Tree

- 128. Wong Sun v. United States p. 709 cb
- 129. Brown v. Illinois (on the web)
- 130. United States v. Ceccolini p. 718 cb & (on the web)

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.

[MAKE SURE YOU READ THE **WEB** VERSION OF THESE CASES!]

II. FIFTH AMENDMENT

A. Scope of the Fifth Amendment

1. Brown v. Walker (dissent) p. 753-54 cb
 2. Counselman v. Hitchcock p. 754 cb
 3. Brown v. Walker p. 757 cb
 4. Kastigar v. United States p. 762 cb
 5. Schmerber v. California p. 291 cb & **(on the web)**
 6. New Jersey v. Portash p. 786 cb
 7. United States v. Afflebaum p. 787 cb
 8. California v. Byers p. 789 cb
 9. Baltimore City Department of Social Services v. Bouknight p. 791 cb
-

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

10. Bram v. United States p. 806 cb
11. Brown v. Mississippi p. 807 cb
12. Massiah v. United States p. 813 cb
13. Escobedo v. Illinois p. 817 cb

C. Massiah in "Custody" or in Jail

14. U.S. v. Henry **(on the web)**
15. Maine v. Moulton p. 931 cb
16. Kuhlman v. Wilson p. 930 cb & **(on the web)**

D. The Rule and the Familiar Warnings

- 17. Miranda v. Arizona p. 819 cb
- 18. Missouri v. Seibert p. 906 cb & **(on the web)**
- 19. Chavez v. Martinez **(on the web)**
- 20. California v. Prysock p. 859 cb & **(on the web)**
- 21. Duckworth v. Eagan p. 859 cb

E. What is “Interrogation”

- 22. Rhode Island v. Innis p. 845 cb
- 23. Illinois v. Perkins p. 851 cb
- 24. Pennsylvania v. Muniz p. 756 cb

F. What is Custody?

- 25. Orozoco v. Texas p. 841 cb & **(on the web)**
- 26. Berkemer v. McCarty p. 842 cb & **(on the web)**
- 27. Minnesota v. Murphy p. 843 cb & **(on the web)**

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

- 29. Michigan v. Mosley p. 861 cb
- 30. Edwards v. Arizona p. 863 cb
- 31. Minnick v. Mississippi p. 870 cb
- 32. Fare v. Michael C. p. 870 cb & **(on the web)**
- 33. Oregon v. Bradshaw p. 866 cb
- 34. Wyrick v. Fields **(on the web)**
- 35. Davis v. United States p. 868 cb
- 36. Michigan v. Jackson p. 932 cb
- 37. Patterson v. Illinois p. 937 cb
- 38. McNiel v. Wisconsin p. 937 cb & **(on the web)**
- 39. Texas v. Cobb p. 941 cb & **(on the web)**

H. Waiving Miranda Rights

- 40. North Carolina v. Butler p. 872 cb & **(on the web)**
- 41. Moran v. Burbine p. 874 cb
- 42. Colorado v. Spring p. 873 cb

I. Waiving Massiah Rights

- 43. Brewer v. Williams p. 920 cb

J. Inevitable Discovery

	44.	<u>Nix v. Williams</u>	(on the web)
	45.	<u>Murray v. United States</u>	p. 719 cb
K. <u>"Public Safety" Exception to Miranda</u>			
	46.	<u>New York v. Quarles</u>	p. 891 cb (on the web)
	47.	<u>United States v. Patane,</u>	p. 915 cb & (on the web)
L. <u>Fruit of the Poisonous Tree and Miranda</u>			
	48.	<u>Oregon v. Elstad</u>	p. 892 cb & (on the web)
M. <u>"Free Will" and Waiver of Miranda Rights</u>			
	49.	<u>Colorado v. Connelly</u>	(on the web)
N. <u>"Harmless" Constitutional Error</u>			
	50.	<u>Arizona v. Fulminante</u>	(on the web)
O. <u>Impeachment With a Product of a Miranda Violation</u>			
	51.	<u>Walder v. United States</u>	(on the web)
	52.	<u>Harris v. New York</u>	(on the web)
	53.	<u>Doyle v. Ohio</u>	p. 905 cb Note #7
	54.	<u>Jenkins v. Anderson</u>	p. 905 cb Note #7
	55.	<u>U.S. v. Havens</u>	(on the web)
P. <u>Miranda Revisited</u>			
	59.	<u>Dickerson v. United States</u>	p. 893 cb & (on the web)

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
4. Unived States v. Gonzales-Lopes (on the web)
5. Argensinger v. Hamlin p. 125 cb

6. Scott v. Illinois p. 129 cb
7. Baldasar v. Illinois p. 131 cb Note #10
8. Alabama v. Shelton p. 133 cb
9. Nichols v. United States p. 132 cb Note #10
10. Coleman v. Ala. p. 167 cb
11. Mempa v. Rhay p. 167 cb
12. Hamilton v. Ala. p. 168 cb
13. Morrissey v. Brewer p. 168 cb
14. Gagnon v. Scarpelli p. 168 cb

B. **Right to Counsel on Appeal – Appeal of Right**

15. Griffin v. Illinois p. 139 cb
16. Douglass v. California p. 139 cb
17. Ross v. Moffitt (Discretionary Appeal) p. 140 cb

C.	<u>Right to Counsel - Where the Penalty Is Only A Fine</u>	
18.	<u>Mayer v. City of Chicago</u>	p. 158 cb
19.	<u>United States v. MacCollom</u>	p. 159 cb
20.	<u>Williams v. Illinois</u>	p. 161 cb
21.	<u>Tate v. Short</u>	p. 161 cb
22.	<u>Bearden v. Georgia</u>	p. 162 cb
D.	<u>Indigent Defendant's Right to An Expert</u>	
23.	<u>Ake v. Oklahoma</u>	p. 166 cb
E.	<u>Effective Assistance of Counsel</u>	
24.	<u>Strickland v. Washington</u>	p. 170 cb
25.	<u>Wiggins v. Smith</u>	p. 186 cb & (on the web)
26.	<u>Crawford v. Washington</u>	(on the web)
27.	<u>Nix v. Whitside</u>	p. 188 cb
F.	<u>Multiple Representation</u>	
28.	<u>Text</u>	pp. 196-99 cb
29.	<u>Cuyler v. Sullivan</u>	p 200 cb
G.	<u>Pro Se Representation</u>	
30.	<u>Faretta v. California</u>	p. 215 cb
31.	<u>McKaskle v. Wiggins</u>	p. 231 cb
32.	<u>Morris v. Slappy</u>	p. 238 cb
33.	<u>Anders v. California</u>	p. 238 cb
34.	<u>McCoy v. Court of Appeals of Wisconsin</u>	p. 238 cb
35.	<u>Pennsylvania v. Finley</u>	p. 239 cb
36.	<u>Penson v. Ohio</u>	p. 238 cb
H.	<u>Implications of Forfeiture Statutes</u>	
37.	<u>Caplin & Drysdale Chartered v. United States</u>	p. 241 cb

I. The Right to Counsel at Lineups, Showups, and
Photographic Arrays

- 38. Critical Stage Proceedings pp. 239-240 cb
- 39. Stovall v. Denno (on the web)
- 40. United States v. Wade (on the web)
- 41. Kirby v. Illinois (on the web)
- 42. United States v. Ash (on the web)

J. The Due Process Approach - Revisited

- 43. Manson v. Brathwaite (on the web)

IV. ENTRAPMENT

A. Scope of the Rule

- 1. Jacobson v. United States p. 972 cb
- 2. United States v. Russell pp. 983 cb