

CRIMINAL PROCEDURE I FALL 2007

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Primary Reading Materials:

Required:

1. Frank W. Miller et. al., CRIMINAL JUSTICE ADMINISTRATION (5th ed. 2000 Foundation Press) [hereinafter CB], pp. 1-601.
2. 2007 SUPPLEMENT to CB (2007 West Group) [hereinafter SUPP]. Note: References in syllabus are to 2006 Supplement; revisions will be made when 2007 Supplement arrives.
3. Handouts and copies of additional cases will be available electronically on TWEN

Recommended:

1. LaFave, Israel, and King, CRIMINAL PROCEDURE (4th ed. 2004 West Group).
2. 2007 Supplement to CRIMINAL PROCEDURE (2007 West Group).

Memorandum assignment: A five page memorandum concerning the privacy and property protection under the Fourth Amendment will be assigned. The memo will take the place of one major essay on the final exam. This assignment responds to the *ABA Report of the Task Force on Law Schools and the Profession: Narrowing the Gap*, 1992 A.B.A. Sec. Leg. Ed. and Prof. Dev. Rep. (Robert MacCrate, chair), [hereinafter the *MacCrate Report*]. Recommendation C of the MacCrate Report called for increased emphasis on lawyering skills in the law school curriculum. I will be happy to discuss your memorandum to assist you in its preparation, however the memorandum will be graded anonymously. Toni McGuire will set up a ticket system. Your memorandum must be turned in to Toni McGuire on or before 1600, Thursday, November 08, 2007. Plagiarism is prohibited.

Course Objective: In this course students are expected to develop an understanding of the constitutional restraints imposed on the investigation of suspected criminal activity. The pertinent constitutional clauses are found in the Fourth, Fifth and Sixth Amendments to the U.S. Constitution as made applicable to state actors in state courts through the due process clause of the Fourteenth Amendment. The primary purpose of this course is to enable students to master (*i.e.*, to answer

questions concerning) the limits of police activity constituting search and seizure, police interrogation and continuing investigatory steps taken during critical stages of prosecution in advance of trial. Students are invited to initiate class room discussion on matters of interest.

Teaching Methodology: The teaching methodology for this course is lecture to be supplemented by the discussion method for major cases. The discussion methodology is a continuation of the Socratic method with greater time for side issues and other details. Critical thinking is a cornerstone of legal analysis. Legal analysis means the ability to recognize legal questions and to construct answers. The background of legal analysis in the area of criminal procedure spans broad themes of liberty, government authority, community values, individual rights, and federalism.

Place: Rm 114 Time: TR 1500-1615.

Class attendance and participation: Prompt class attendance is mandatory. Students seeking an excused absence from class or from being called upon may do so by submitting a signed, typewritten or e-mail request to me in advance of class, circumstances permitting, or after class otherwise. The sanction for absences, tardiness, and lack of preparation not otherwise excused range from grade reduction to exam disqualification. Hand written notes may compromise anonymity in exam grading and therefore will not be accepted.

Exam Objective: The exam will be closed book. The exam will consist of no more than three traditional essay questions requiring issue spotting, application and analysis of existing law, and no more than three short answer questions requiring persuasive reasoning to discuss extending or rolling back existing law. The pedagogical aim of the examination will be to generate a dialogue between student and teacher on questions of criminal procedure. To the extent that student answers reflect an appreciation of the law of criminal procedure as well as developing issues and how to address them using an acceptable level of American legal analysis will score points. Exam performance will be measured by demonstrated analytical beyond that of a hypothetical reasonable person positioned to sit for the exam without benefit of this course, namely a future client.

Grades: Grades will be based upon the five page written memorandum assignment (33%) and the final examination (67%). Outstanding class participation and attendance may be taken into account to raise scores falling significantly below demonstrated performance in class. I expect to submit grades to the Registrar by 30 December 2007. I will prepare a comprehensive diagnostic analysis of the exam, which will be available at Toni's desk at the time I submit grades. The exam memorandum will contain a statistical analysis of the class scoring and a discussion of general flaws in examsmanship. A model answer and the best student answers may be included.

CLASS ASSIGNMENTS

1. 21 Aug **PART ONE-A: THE CRIMINAL PROCESS** (on your own)
 - I. Domestic Law
CB at 1-14; Handout #1: Stages in Criminal Procedure.
 - II. Treaties
Supp at 1-4.

PART TWO: CONSTITUTIONAL RULE MAKING

 - I. Paradigms of Criminal Procedure
 - A. Crime Control.
 - B. Due Process.
 - II. Goals and Approaches
 - A. Truth v. Justice in the Criminal Justice System.
 - B. Accusatorial v. Inquisitorial Systems of Justice.
Recommended LAFAVE & SCOTT at 2-35.
 - III. Constitutional Rule Making: Theories of Interpretation
 - A. Judicial Restraint.
 - B. Textualism.
 - C. Original Intent.
Handout #2: Selected Constitutional Provisions.
2. 23 Aug III. Criminal Investigation--A Problem of Constitutional Dimension
Question: Why are criminal investigations of state crimes largely governed by the U. S. Constitution rather than state statutory law?

Question: What is the basis for using the federal constitution to overturn state court decisions applying state law?

CB at 15-22 through n1-4: *Mapp v. Ohio*, 367 U.S. 643 (1961). Note the excerpt of *Mapp* in the casebook will prove inadequate for classroom discussion. Therefore students should download, read, and bring to class the entire decision. Handout #3: Federal Initiatives.

IV. Underpinnings of *Mapp*: Fundamental Rights and the Theory of Incorporation

A. Bill of Rights and the Fourteenth Amendment

B. Fundamental Rights.

Read *Rochin v. California*, 342 U.S. 165 (1952) (fundamental rights approach) ; *Breithaupt v. Abraham*, 352 U.S. 432 (1954).

C. Incorporation.

CB at 1019-1024. *Duncan v. Louisiana*, 391 U.S. 145 (1968)(reviewing the debate on incorporation and fundamental rights); The excerpt in the casebook is inadequate for class discussion especially as it omits Justice Black's concurring opinion. Therefore students should download, read, and bring to class the entire decision. Review Handout #4: List of incorporated rights.

3. 28 Aug

V. New Federalism

A. Article I, §14 of the Ohio Constitution.

Supp 8: *Arkansas v. Sullivan*, 532 U.S. 769 (2001); *Ohio v. Robinette III*, 73 Ohio St. 3d 650, 653 N.E.2d 695; 1995 Ohio LEXIS 1872 (1995)(using state constitutions as a source of liberty from oppressive state government).

B. Memo Assignment.

VI. Alternatives to the Exclusionary Rule

A. Judicial Relief from Police Misconduct.

- B. Legislative Relief from Police Misconduct.
- C. Executive Relief from Police Misconduct.

Review *Mapp v. Ohio*, 367 U.S. 643 (1961). Supp at 5-6 n8: *Town of Castle Rock v. Gonzales*, 545 U.S. 748 (2005).

- D. Alternatives to the Exclusionary Rule.

Handout: Civil Relief Under 42 U.S.C.A. §1983.

4. 30 Aug

PART THREE: THE EXCLUSIONARY RULE: THE CONSTITUTIONAL REMEDY IN CRIMINAL PROCEDURE

I. Scope of the Fourth Amendment Exclusionary Rule

- A. Class of Violations That Trigger the Fourth Amendment Exclusionary Rule--Proximate Cause.

1. Fruit of the poisonous tree. CB 26-36: *Wong Sun v. United States*, 371 U.S. 471 (1963).
2. Attenuation. CB 36-37 n7: *Silverthorne Lumber Co. v. United States*, 251 U.S. 385 (1920); *Rawlings v. Kentucky*, 448 U.S. 98 (1980); *Hudson v. Michigan*, 126 S.Ct. 2159 (2006).
3. The inevitable discovery exception. CB 55-56 n5: *Nix v. Williams (Williams II)*, 467 U.S. 431 (1984).
4. Independent source doctrine. CB 35-36 n5: *Silverthorne Lumber Co v. United States*, 251 U.S. 385, 392 (1920). *Murray v. U.S.*, 487 U.S. 533 (1988).

- B. Class of Violatees--Standing/Personal Scope..

1. Standing. Review CB 26-36: *Wong Sun v. United States*, 371 U.S. 471 (1963).
2. Personal scope. CB at 32-33 n2 and 105-111: *Rakas v. Illinois*, 439 U.S. 128 (1978).

5. 04 Sep

C. Class of Violators.

1. Good faith exception. CB at 40-56. *United States v. Leon*, 468 U.S. 897 (1984); Handout: The Good Faith Exception to the Exclusionary Rule.
2. State action requirement. CB at 68-69; 71: Editor's Note. *Burdeau v. McDowell*, 256 U.S. 465 (1921).
 - a. Distinguishing Private Searches from State Searches. *United States v. Jacobsen*, 466 U.S. 109, 113 (1984).
 - b. Duplication of Wrongful Actions by Private Individuals. *Walter v. United States*, 447 U.S. 649 (1980); *Coolidge v. New Hampshire*, 403 U.S. 443 (1971).

Handout: Private Security.

D. Forum and Use Exceptions.

1. Impeachment. CB 39-40 Editor's note. *Walder v. United States*, 347 U.S. 62 (1954) (specific impeachment); *James v. Illinois*, 110 S.Ct. 648 (1990)(general impeachment).
2. Live witnesses. CB at 37 n8. *United States v. Ceccolini*, 445 U.S. 268 (1978).
3. Personal jurisdiction. CB at 36 n6. *United States v. Alvarez-Machain*, 504 U.S. 655 (1992).
4. Forum. CB at 22-24 n5: *Pennsylvania Bd. Of Probation and Parole v. Scott*, 524 v. 357 (1998).

6. 06 Sep

PART FOUR: FOURTH AMENDMENT PROTECTION

I. Fourth Amendment Privacy and Analysis

II. Searches

A. Right of Privacy.

1. Spiritual nature of man.
2. Personal liberty.
3. Unreasonable actions.

CB at 69-70. *Katz v. United States*, 389 U.S. 347 (1967) and *Kyllo v. U.S.*, 533 U.S. 27 (2001). Note: The excerpt of *Katz* in the casebook will be inadequate for classroom discussion. Therefore students should download, read, and bring to class the entire decision in *Katz*.

B. Non-Invasions of Privacy.

1. Open fields. CB 75-84: *Oliver v. United States*, 466 U.S. 170 (1984).
2. Curtilage. CB 85-86: *United States v. Dunn*, 480 U.S. 294 (1987).
3. Trash--property exposed to third parties. *California v. Greenwood*, 486 U.S. 35 (1988). CB at 73-75; Supp at 9-12 ns 1-4: *Bond v. United States*, 529 U.S. 334 (2000).
4. Canine sniff--contraband specific. *United States v. Place*, 462 U.S. 696 (1983). CB at 73; Supp 13-14 n5: *State v. Rabb*, 881 So.2d 587 (Fla.App. 2004). Supp at 90-97: *Illinois v. Caballes*, 543 U.S. 405 (2005)
5. Electronic surveillance--pen registers. *Smith v. Maryland*, 442 U.S. 735 (1979)(pen registers) CB at 73.
6. Electronic surveillance--beepers. *United States v. Knotts*, 460 U.S. 276 (1983); *United States v. Karo*, 468 U.S. 705 (1984). CB 93-94 n3.
7. Aerial and other observations. CB 86-92: *California v. Ciraolo*, 476 U.S. 207, *reh'g denied*, 478 U.S. 1014 (1986); *Florida v. Riley*, 488 U.S. 445 (1989).
8. Technological enhancement in aerial surveillance: CB

92-93 n1: *Dow Chemical Co. v. United States*, 476 U.S. 227 (1986).

9. Thermal imaging. *Kyllo v. United States*, 533 U.S. 27 (2001) Is a search because it detects lawful activity.

Handout: Nonsearches.

7. 11 Sep

III. Seizures of Property

A. The Right of Property and Possession.

1. Property interests. CB at 94-95. *Soldal v. Cook County, Illinois*, 506 U.S. 56 (1992).
2. Seizures defined. *Texas v. Brown*, 460 U.S. 730, 747 (1983); *United States v. Jacobsen*, 466 U.S. 109, 113 (1984); *see also Hale v. Henkel*, 201 U.S. 43, 76 (1906).

B. Rules Constituting Seizures.

1. Items subject to seizure.
2. Mere evidence rule abolished. CB at 96-97: *Warden v. Hayden*, 387 U.S. 294 (1967); *Coolidge v. New Hampshire*, 403 U.S. 443 (1971).

C. Rules Constituting Nonseizures.

1. Tracking devices. CB at 93-103. (*United States v. Knotts*, 460 U.S. 276 (1983) and *United States v. Karo*, 468 U.S. 705 (1984).

IV. Arrests: Seizures of Persons

A. Constitutional Meaning of Arrest.

B. Types of Arrests and Non Arrests.

1. Arrest or formal arrest.
2. Custodial arrest.

3. Noncustodial arrest.

CB at 171-172; 179-180.

4. Investigatory stops or Field detentions.

5. Traffic stops.

C. Types of Police Encounters: What Constitutes an Arrest.

1. Seizure by questioning. CB at 178-9. *Immigration and Naturalization Service v. Delgado*, 466 U.S. 210, 216 (1984); *Florida v. Bostick*, 501 U.S. 429 (1991).

2. Seizure by searching. Supp at 35-38. *United States v. Drayton*, 536 U.S. 194 (2002).

3. Seizure by pursuit. CB at 172-78. *Michigan v. Chesternut*, 486 U.S. 567 (1988); *California v. Hodari*, 499 U.S. 621 (1991).

4. Police movement. CB at 214-219 n1; Supp 53 n2. *Florida v. Royer*, 460 U.S. 491 (1983); *Dunaway v. New York*, 442 U.S. 200 (1979).

5. Police force. CB at 186-187; Supp at 27-30 Sub Ch. B. *Tennessee v. Garner*, 471 U.S. 1 (1985); *Graham v. Connor*, 490 U.S. 386 (1989);. *Scott v. Harris*, 127 S.Ct. 1769 (2007).

6. Traffic stops. Seizure of passengers. *Brendlin v. California*, 127 S.Ct. 2400 (2007).

7. Limits on offenses for which custodial arrests may be made. Supp at 39-50. *Atwater v. City of Lago Vista*, 532 U.S. 318 (2001).

8. 13 Sep **PART FIVE: GOVERNMENTAL INTRUSION INTO FOURTH AMENDMENT PROTECTED AREAS**
- PART FIVE-A: PROBABLE CAUSE BASED SEARCHES AND**

SEIZURES

- I. Probable Cause
 - A. The Constitutional Role of Probable Cause.
 - B. Probable Cause: Definition.
- II. How Probable is Probable Cause?
 - A. The Quantum of Evidence Sufficient to Constitute Probable Cause.
 - B. Should Probable Cause be Less Than a Preponderance of the Evidence? Read *Maryland v. Pringle* 540 U.S. 366 (2003).
- III. Probable Cause Based Searches-- With or Without Warrants
 - A. Plain View.
 - 1. Exigent Circumstances. CB at 96-98: *Arizona v. Hicks*, 480 U.S. 321 (1987).
 - 2. Warrant. CB at 98-105: *United States v. Horton*, 496 U.S. 128 (1990).
 - B. Search Incident to Arrest. CB 189-99: *Chimel v. California*, 395 U.S. 752 (1969) (*New York v. Belton*, 453 U.S. 454 (1981)). Supp at 42-50: *Thornton v. United States*, 541 U.S. 615 (2004).
 - C. Exigency Searches. CB 261-66: *Warden v. Hayden*, 387 U.S. 294 (1967) *Vale v. Louisiana*, 399 U.S. 30 (1970); *Minnesota v. Olson*, 495 U.S. 91 (1990). Supp at 112-121: *Illinois v. McArthur*, 531 U.S. 326 (2001); *Brigham City, Utah v. Stuart*, 126 U.S. 1943 (2006).
 - D. Compact Searches--Not. CB at 168 n1. *Ybarro v. Illinois*, 444 U.S. 85 (1979); *Michigan v. Summers*, 452 U.S. 692 (1981).
 - E. Crime Scenes--Not. CB at 266 n4. *Mincey v. Arizona*, 437 U.S. 385 (1978).
 - F. Protective Sweeps. CB at 195 n4; 226. *Maryland v. Buie*, 494

U.S. 325 (1990) *Michigan v. Long*, 463 U.S. 1032 (1983).

9. 18 Sep

III. Warrant Application

A. Probable Cause.

CB 120-132: *Illinois v. Gates*, 462 U.S. 213 (1983); Supp at 14-17; Handout: Gates and Probable Cause; *Florida v. J.L.*, 529 U.S. 266 (2000).

1. Neutral and detached magistrate.
2. Initial showing before the magistrate.

CB at 115-120; Supp at 12-13.

B. Credibility Challenges.

1. Challenging factual assertions in a warrant. CB at 132-143: *Franks v. Delaware*, 438 U.S. 154 (1978).
2. Disclosure of informant's identity. CB at 142 n2: *McCray v. Illinois*, 386 U.S. 300 (1967).

10. 20 Sep

IV. Warrant Execution

A. Limits on Execution.

1. Promptness.
2. No-knock entries.
3. Daytime v. night time.

CB at 144-158: *Richards v. Wisconsin*, 520 U.S. 385 (1997); 180-4; Supp at 17-30 Sub Ch. B: *United States v. Banks*, 540 U.S. 31 (2003); *Hudson v. Michigan*, 126 S.Ct. 2159 (2006).

B. Particularity. CB at 158-170. *Maryland v. Garrison*, 480 U.S. 79 (1987). Supp at 30-34: *Groh v. Ramirez*, 540 U.S. 551 (2004).

V. Warrant Based Searches

- A. Arrest in Home. CB at 181-184; 112. *Payton v. New York*, 445 U.S. 573 (1980); *Steagald v. U.S.*, 451 U.S. 204 (1981); and (*Minnesota v. Carter*, 525 U.S. 83 (1998)). Supp at 38-42: *Kirk v. Louisiana*, 536 U.S. 635 (2002).
- B. Arrest in Public. CB at 180-1. *United States v. Watson*, 423 U.S. 411 (1976).
- C. Traffic Stops. Supp at 50-61: *Atwater v. City of Lago Vista*, 532 U.S. 318 (2001).
- 11. 25 Sep D. Electronic Surveillance.
 - 1. Search of oral communications.
 - 2. Seizure by electronic devices.
 - 3. Technological information-gathering.

CB at 356-378; Supp at 136.

12. 27 Sep **(CLASS CANCELED THIS DATE; MAKE-UP TBA)**

PART FIVE-B: REASONABLE INTRUSIONS

- I. The Reasonableness Clause
- II. Consent Searches
 - A. Relinquishing Fourth Amendment Protection. *Schneckloth v. Bustamontes*, 412 U.S. 218 (1973); review *Ohio v. Robinette III*, 73 Ohio St. 3d 650, 653 N.E.2d 695; 1995 Ohio LEXIS 1872 (1995).
 - B. Apparent Authority. *Illinois v. Rodriguez*, 497 U.S. 177 (1990).
 - C. Co-tenants
 - 1. Absent non-consenting tenant. *U.S. v. Matlock*, 415 U.S. 164 (1974).

2.. Present non-consenting tenant. *Georgia v. Randolph*, 547 U.S. 103 (2006).

D. Scope of Consent. *Florida v. Jimeno*, 500 U.S. 248 (1991).

CB at 279-302 and Supp 127 -131.

III. International Borders

A. At the Border. *United States v. Montoya de Hernandez*, 473 U.S. 531 (1985).

B. Border Related. *United States v. Martinez-Fuertes*, 428 U.S. 543 (1976).

CB at 327-355; Supp 131-1135.

13. 02 Oct

PART FIVE-C: REASONABLE SUSPICION BASES FOR GOVERNMENT INTRUSIONS

I. Field Detentions

A. Reasonable Suspicion.

1. Terry. CB at 199-213. *Terry v. Ohio*, 392 U.S. 1 (1968). Note: the casebook excerpt of *Terry* will prove inadequate for classroom discussion. Therefore students should download, read, and bring to class the full decision *United States v. Drayton*, 536 U.S. 194 (2002).

2. Anonymous tips: Supp at 81-88: *Florida v. J.L.*, 529 U.S. 266 (2000).

14. 04 Oct

B. Evolving Standards of Reasonable Suspicion.

Supp 61-74: *United States v. Wardlow*, 528 U.S. 119 (2000); *United States v. Arvizu*, 534 U.S. 266 (2002). Handout: Reasonable Suspicion: The Use and Abuse of *Terry*.

C. Scope of *Terry* Stop.

Supp at 74-81: *Hiibel v. Sixth Judicial District of Nevada*,

Humboldt County, et. al., 542 U.S. 177 (2004).

15. 09 Oct I. Automobile Searches
- A. Searches of Vehicles. CB at 302-310. *Chambers v. Maroney*, 399 U.S. 42 (1970).
 - B. Searches of Containers in Vehicles. CB at 310-18. *California v. Acevado*, 500 U.S. 565 (1991).
 - C. Seizures and Inventory of Vehicles. CB 318-327: *Colorado v. Bertine*, 479 U.S. 367 (1987) CB at 318-326; *Florida v. Wells*, 495 U.S. 1 (1990) CB at 326-7 n; *Florida v. White*, 526 U.S. 559 (1999); *Thornton v. United States*, 541 U.S. 615 (2004).
- II. Traffic Stops
- B. Detentions Short of Arrest.
 - 1. Search authority. CB 230-36: *Knowles v. Iowa*, 525 U.S. 113 (1998) ; Supp 90-98: *Illinois v. Caballes*, 543 U.S. 405 (2005).
 - 2. Search authority after stop. CB 236-238 n2: *Ohio v. Robinette*, 519 U.S. 33 (1996).
 - 3. Protective sweeps during traffic stop. CB 238-9 n3: *Michigan v. Long*, 463 U.S. 1032 (1983).
 - 4. Removal of passengers. CB 239-40: *Pennsylvania v. Mimms*, 434 U.S. 106 (1977); CB 240-45: *State v. Soto*, 324 N.J.Super 66 (1996).
 - C. Seizures.
 - 1. Seizure of driver.
 - 2. Seizure of passengers. *Brendlin v. California*, 127 S.Ct. 2400 (2007).

16. 11 Oct **PART FIVE-D: ADMINISTRATIVE INSPECTIONS; REGULATORY**

SEARCHES AND SPECIAL GOVERNMENT NEEDS SEARCHES.

I. Property

III. Administrative Searches

A. Inspections.

1. Building codes. CB at 266: *Camara v. Municipal Court*, 387 U.S. 523 (1967); *See v. City of Seattle*, 387 U.S. 541 (1967).

2. Fire scene. CB 279: *Michigan v. Tyler*, 436 U.S. 499 (1978); *Michigan v. Clifford*, 464 U.S. 287 (1984).

Supp at 121-127: *United States v. Knights*, 534 U.S. 112 (2001).

B. Sobriety Checkpoints

CB at 245-52: *Michigan v. Sitz*, 496 U.S. 444 (1990). Supp 98-107: *City of Indianapolis v. Edmond*, 531 U.S. 32 (2000).

IV. Pretextual Stops

CB at 252-8; Supp 107-111: *Whren v. United States*, 517 U.S. 806 (1996).

V. Extraordinarily Intrusive Searches

1. Bullet inside body.

CB 348-354: *Winston v. Lee*, 470 U.S. 753 (1985).

2. Drugs coarsing through the veins. *Veronia School District 47J v. Wayne Acton, Et Ux., Etc.*, 515 U.S. 646 (1995).

15-19 Oct **FALL BREAK**

17. 23 Oct **PART SIX: INTERROGATIONS AND CONFESSIONS**

PART SIX-A: THE FIFTH AMENDMENT PRIVILEGE AGAINST COMPELLED SELF-INCRIMINATION

I. Issues

II. Due Process--Voluntariness

CB at 380-400; Supp 137-145: *Colorado v. Connelly*, 479 U.S. 157 (1986).

III. Fifth Amendment Privilege Against Self-Incrimination

A. *Miranda* Warnings.

CB at 400-415: *Miranda v. Arizona*, 384 U.S. 436 (1966).

B. Modification of the Warnings.

CB at 413-414 n.1; Supp at 145-46 n2a: *Duckworth v. Eagan*, 492 U.S. 195 (1989); *California v. Prysock*, 453 U.S. 355 (1981).

18. 25 Oct

IV. Application of *Miranda*

A. Interrogation. CB at 416-28. *Rhode Island v. Innis*, 446 U.S. 291 (1980).

B. Custody. CB at 428-34; Supp 146-149. *Berkemer v. McCarty*, 486 U.S. 420 (1984) and *Yarborough v. Alvarado*, 541 U.S. 652 (2004).

19. 30 Oct

(ALUMNI TEACH-IN DAY)

C. Invoking *Miranda* Rights

1. Right to silence. CB 438-439: *Michigan v. Mosley*, 423 U.S. 96 (1975).

2. Right to remain counsel. CB 434-38 *Edwards v. Arizona*, 451 U.S. 477 (1981).

3. At the start and during the middle of an interrogation. CB 439-448: *Davis v. United States*, 512 U.S. 452 (1994)); *Yarborough v. Alvarado*, 541 U.S. 652 (2004). Supp 149-50.

20. 01 Nov

D. Waiving *Miranda* Rights

1. Right to remain silent. CB 438-39 *Michigan v. Mosley*, 423 U.S. 96 (1975).
2. Right to Fifth Amendment counsel. CB 434-38: *Edwards v. Arizona*, 451 U.S. 477 (1981).
3. Waiving , not invoking and deception: CB at 448-66. *Moran v. Burbine*, 475 U.S. 412 (1986); *Fare v. Michael C.*, 442 U.S. 707 (1979).

E. Scope of Fifth Amendment Exclusionary Rule.

1. Exceptions. CB at 416-18. *New York v. Quarles*, 467 U.S. 649 (1984) and *Pennsylvania v. Munoz*, 496 U.S. 582 (1990).
2. Fruits of an inadmissible confession. CB at 466-475; Supp at 150-162. *Oregon v. Elstad*, 470 U.S. 298 (1985); *Missouri v. Seibert*, 542 U.S. 600 (2004).
3. Attenuation.
4. Impeachment. *Walder v. United States*, 347 U.S. 62 (1954) and *Harris v. New York*, 401 U.S. 222 (1971).

V. Legislative Modification of *Miranda*

CB 476-489; Supp 162-175. *Dickerson v. United States*, 530 U.S. 428 (2000).

21. 06 Nov

PART SIX-B: THE SIXTH AMENDMENT PRIVILEGE AGAINST SELF-INCRIMINATION

VI. Sixth Amendment Right to Counsel During Police Questioning

A. Right to Counsel Clause.

CB at 400; 490-95; Supp 175-179. Review *Escobedo v. Illinois*, 378 U.S. 478 (1964) and *Massiah v. United States*, 377 U.S. 201 (1964).

- B. Sixth Amendment Trigger.
CB 491-93: *Michigan v. Jackson*, 475 U.S. 625 (1986).
- C. Waiver of Sixth Amendment.
CB at 495-503: *Patterson v. Illinois*, 487 U.S. 285 (1988).

22. 08 Nov (CLASS CANCELED THIS DATE; MAKE-UP TBA)

PART SEVEN: UNDERCOVER INVESTIGATIONS

I. Entrapment Analysis

- A. Issues.
CB at 504-6.
- B. Objective Approach: Limits on Outrageous Government Conduct. CB at 506-14. *United States v. Russell*, 411 U.S. 423 (1973).
- C. Subjective Approach: Predisposition. CB at 514-518. *Jacobsen v. United States*, 503 U.S. 540 (1992).

23. 13 Nov II. Elicitation of Self-Incriminating Statements

- A. Fourth Amendment, Fifth Amendment, Sixth Amendment.
CB 519-21.
 - 1. Cell mate. CB 521-29: *United States v. Henry*, 447 U.S. 264 (1980).
 - 2. Pending trial. CB at 528-29: *Kuhlmann v. Wilson*, 477 U.S. 436 (1986).
 - 3. Undercover surveillance as a search. CB 530-35: *Hoffa v. United States*, 385 U.S. 293 (1966); *United States v. White*, 401 U.S. 745 (1971).

24. 15 Nov **(PROFESSOR JESSE CHOPER VISIT; CLASS MAKE-UP TBA)**
- IV. Interrelationship Between the Fourth Amendment and Fifth Amendment
- CB at 58-68: *Schmerber v. California*, 384 U.S. 757 (1966). Note: the excerpt in the casebook will be inadequate for classroom discussion. Therefore students should download, read, and bring to class the full opinion.
25. 20 Nov **PART EIGHT: GRAND JURY INVESTIGATIVE FUNCTION**
- I. Subpoena Power
- CB at 536-555: *United States v. Dioniso*, 410 U.S. 1 (1973); *United States v. Mara*, 410 U.S. 19 (1973). Supp at 180-82.
- 23-24 Nov **THANKSGIVING BREAK**
26. 27 Nov II. Fifth Amendment: Testimony and Immunity
- CB at 549-554 ns 1-4; *Kastiger v. United States*, 406 U.S. 441 (1972).
- III. Collective Entity Doctrine
- CB at 554-5 n5. *Fisher v. United States*, 425 U.S. 391 (1976) and *Braswell v. United States*, 487 U.S. 99 (1988).
- IV. Fifth Amendment: Documents and Tangible Objects
- CB at 549-555.
- V. Questioning and Privilege Against Compelled Self-Incrimination
- CB at 555-565: *United States v. Washington*, 431 U.S. 181 (1977); Supp 163-165.
27. 04 Dec **PART SEVEN: SIXTH AMENDMENT RIGHT TO COUNSEL AT CRITICAL STAGES**
- I. Sixth Amendment Trigger

II. Eyewitness Identification

A. Sixth Amendment.

B. Fourteenth Amendment.

CB 566-588; Supp 183-188.

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C. Evidentiary Safeguards Against Unreliable Identification

CB 566-604; Supp at 166.