

CRIMINAL PRACTICE AND PROCEDURE
PROFESSOR HEERY, SPRING 2023

TENTATIVE READINGS LIST

****PLEASE NOTE: These readings are tentative and may change throughout the semester. You must check our CANVAS site regularly to stay current on the assignments for each week.***

****Discussion of readings may continue to subsequent classes, but you will not be responsible for readings before the day indicated in the reading schedule below.***

*All “CB” page numbers refer to our casebook: Lee, Richardson & Lawson, *Criminal Procedure Cases and Materials*, third edition.

*All “NITA” page numbers refer to our manual: Brent Newton, Criminal Litigation & Legal Issues in Criminal Procedure (NITA 4th ed. 2014). (Listed below as “NITA”)

*****MAJOR DATES: *****

- 1. Suppression Motion Assignment Given – 2/16**
- 2. Suppression Motion Argument Outline Due – 3/19 at 6 PM**
- 3. Suppression Motion Hearing Argument – WEEK of April 3rd**
- 4. Final Exam: TBD**

WEEK 1:

**INTRODUCTION, THE EXCLUSIONARY RULE & EXCEPTIONS, FRUIT OF THE POISONOUS TREE
OVERVIEW OF A CRIMINAL CASE: PROCESS THROUGH COURT**

Tuesday, January 17:

- Bureau of Justice Statistics, *Jail Inmates in 2020* (Canvas)
- The Sentencing Project, *Americans with Criminal Records* (Canvas)
- NAACP Criminal Justice Fact Sheet (Canvas)
- Chapter 1, Sections A-M, CB 1-8
- Devon W. Carbado excerpt, CB 256-261
- The Fourth Amendment, CB 1051
- Introduction to Chapter 16, CB 421
- Mapp v. Ohio*, CB 425-431 (just skim the dissent CB 429-431)
- Stewart excerpt, CB 432-433

Thursday, January 19:

- United States v. Leon* + Note, CB 436-443
- Herring v. United States* + Note, CB 443-449
- Wong Sun v. United States* + CB 449-453
- Power point How to Argue a Motion (Canvas)

WEEK 2:

FRUIT OF THE POISONOUS TREE (CONT.) & WHAT CONSTITUTES A SEARCH? POLICING & BEGIN BAIL

Tuesday, January 24:

- Nix v. Williams*, CB 453-457
- Utah v. Strieff*, CB 457-465
- Chapter 2 Introduction and *Katz v. United States*, CB 9-14 (omit the Black dissent so stop at top of p. 14 after Harlan concurrence)
- Section A. “The Open Fields Doctrine” and *Florida v. Riley*, CB 17-24
- Podcast: Throughline: Policing in America (Required) (Note: Transcript also provided if preferred) (Canvas)
- Article: California Sheriff’s Office Stops Black Drivers Five Times More Often Than White People, Data Shows (Canvas)

Thursday, January 26:

- Section B. “The Third Party Doctrine” and *Smith v. Maryland*, CB 26-32
- Sherry Colb excerpt, CB 38-40
- Section C. “Electronic Surveillance,” CB 43-44
- Kyllo v. United States* + Note, CB 48-54
- CB 747-748 (Intro to Bail)
- CB 758-762 (Note, Jones Article)
- Article: Is it Safe to Ride the NYC Subway After a Surge of More Police? (Canvas)
- NYCLU Facts on Bail Reform (Canvas)

WEEK 3:

WHAT CONSTITUTES A SEARCH? (CONT.) & PROBABLE CAUSE BAIL (CONT.) & PROBABLE CAUSE FINDINGS – PRELIMINARY HEARINGS AND GRAND JURY

Tuesday, January 31:

- United States v. Jones* + Note, CB 54-63
- Carpenter*, CB, 63-70 (omit dissent)
- Section D. “Dog Sniffs” and *Florida v. Jardines*, CB 74–82
- William Stuntz excerpt, CB 85-88

Thursday, February 2:

- Introduction to Chapter 3, CB 89-90
- Spinelli v. United States*, CB 90-92
- Illinois v. Gates* + Note, CB 92-99
- Maryland v. Pringle*, CB 99-101
- Intro to Grand Jury, CB 731-732

**WEEK 4:
SEARCH WARRANTS, ARRESTS, AND SEARCHES INCIDENT TO ARREST
PROBABLE CAUSE FINDINGS – PRELIMINARY HEARINGS AND GRAND JURY (CONT.) &
DISCOVERY**

Tuesday, February 7:

- Introduction to Chapter 4 + *Maryland v. Garrison* + Note, CB 103-112
- Richards v. Wisconsin* + Note, CB 112-116
- United States v. Watson*, CB 117-120
- Payton v. New York*, CB 120-123

Thursday, February 9:

- Steagald v. United States*, CB 123-128
- Chimel v. California*, CB 133-136
- United States v. Robinson* + Note, CB 136-141
- Intro to discovery, *Brady* + Note, *Bagley* + Note, Rule 3.8 + Note, CB 779-792
- Note only, CB 801
- Giglio v. US*, 405 US 150 (1972) (PDF in Canvas)

**WEEK 5:
SEARCHES INCIDENT TO ARREST (CONT.) & TERRY STOPS AND FRISKS
DISCOVERY (CONT.)**

Tuesday, February 14:

- Arizona v. Gant*, CB 153-160
- Riley v. California*, CB 161 -167
- Terry v. Ohio* + Note, CB 201-211
- Song Richardson excerpt, CB 220-222

Thursday, February 16:

- Florida v. J.L.*, CB 222-225
- Illinois v. Wardlow* + Note, CB 225-231
- Tracey L. Meares and Bernard E. Harcourt excerpt + Note, CB 232-235

*****SUPPRESSION MOTION ASSIGNMENT GIVEN*****

**WEEK 6:
THE AUTOMOBILE EXCEPTION & THE PLAIN VIEW DOCTRINE
PLEA BARGAINING AND SENTENCING**

Tuesday, February 21:

- California v. Carney*, CB 169-174
- California v. Acevedo*, CB 175-183
- Wyoming v. Houghton*, CB 183-189

- Michigan v. Long*, CB 235-239
- Intro to plea bargaining, CB 803-804
- Keker and Harawa articles, CB 828-834
- Serial Season 3, Episode 5, Pleas Baby Pleas (Canvas) (Transcript available in Canvas as well)

Thursday, February 23:

- Chapter 9 Introduction, CB 241
- Arizona v. Hicks*, CB 241 – 248
- Minnesota v. Dickerson*, CB 249-254
- NITA, Class 12 (only 12.1, stop before 12.2)

WEEK 7:

**RACIAL PROFILING, CONSENT SEARCHES, & ADMINISTRATIVE SEARCHES
MOTIONS**

Tuesday, February 28:

- United States v. Brignoni-Ponce*, CB 261-265
- César Cuauhtémoc García Hernández excerpt, CB 265-267
- Kevin R. Johnson excerpt + Note, CB 267-269
- Whren v. United States*, CB 270-274
- Paul Butler excerpt, CB 278-284
- Schneekloth v. Bustamonte* + Note, CB 351-358
- NITA – Class 4, Pretrial Motions, 4.1
- NITA – Class 5, Pretrial Suppression Motions 5.1, 5.2

Thursday, March 2:

- Fourteenth Amendment, CB 1051-1052
- Inventory Searches Intro and *Colorado v. Bertine*, CB 372-377
- Vehicle Checkpoint Searches Intro, CB 377
- City of Indianapolis v. Edmond*, CB 383 – 388
- Maryland v. King*, 569 U.S. 435 (2013) (Canvas)

**MARCH 7 and 9: SPRING BREAK
ENJOY YOUR BREAK!!**

WEEK 8:

**EXIGENT CIRCUMSTANCES & SEIZURES
PROSECUTORIAL DISCRETION**

Tuesday, March 14:

- Introduction to Chapter 15, *Welsh v. Wisconsin* + Note, CB 405-412
- Brigham City, Utah v. Stuart*, CB 412-415
- Kentucky v. King*, CB 415-420
- Intro Prosecutor's Charging Discretion, CB 703-704

-Davis Article + Note, CB 712-717

Thursday, March 16:

- INS v. Delgado* + Note, CB 288-294
- Florida v. Bostick*, CB 294-299
- Note (*United States v. Drayton*), 303
- Tracey Maclin excerpt + Note, CB 308-313
- Florida v. Royer* + Note, CB 313-320
- Torres v. Madrid*, CB 320-327

*****OUTLINE OF MOTION TO SUPPRESS ARGUMENT DUE 3/19 AT 6 PM*****

WEEK 9:

**POLICE USE OF FORCE & INTERROGATIONS – THE DUE PROCESS VOLUNTARINESS TEST
RIGHT TO A SPEEDY TRIAL, RIGHT TO TRIAL BY JURY, TRIAL RIGHTS**

Tuesday, March 21:

- Tennessee v. Garner*, CB 330-335
- Graham v. Conner*, CB 335-339
- Scott v. Harris*, CB 339-346
- Dan M. Kahan et al. excerpt, CB 346-349
- Chap 25, CB 763 + Note, CB 778 bottom
- Chap. 28, CB 835 + Note (only), CB 838 + Note, CB 845-847

Thursday, March 23:

- Intro to Interrogations – Due Process Voluntariness Test + *Ashcraft v. TN*, CB 487-492
- Spano v. NY* + Note, CB 493-498
- Lisenba v. California*, CB 498-502
- Right of Presence, CB 931
- Confrontation Clause, CB 941-942 + Note, 949 (Omit *Crawford* case)

WEEK 10:

**INTERROGATIONS – THE SIXTH AMENDMENT RIGHT TO COUNSEL & THE *MIRANDA* RULE
VOIR DIRE**

Tuesday, March 28:

- Sixth Amendment, CB 1051
- Gideon v. Wainwright*, CB 473-478
- Massiah v. United States*, CB 503-507
- United States v. Henry*, CB 521-525
- Kuhlmann v. Wilson*, CB 525-529
- NITA, Class 7 Chapter, Voir Dire, Stop at 7.2
- Batson v. KY*, CB 868-875

Thursday, March 30:

- Fifth Amendment*, CB 1051
- Miranda v. Arizona* + Note, CB 531-547
- Berkemer v. McCarty*, CB 548-554
- J.D.B. v. North Carolina* + Note, CB 554-559
- Rhode Island v. Innis* + Note, CB 559-568

WEEK 11: CATCH UP AND ARGUMENTS

*****MOTIONS TO SUPPRESS ARGUED THIS WEEK*****

Tuesday, April 4:

Thursday, April 6:

WEEK 12:

**INTERROGATIONS – THE *MIRANDA* RULE (CONT.)
TRIAL PROCESS, LEGAL OBJECTIONS DURING TRIAL, MJOA'S, JURY INSTRUCTIONS**

Tuesday, April 11:

- Illinois v. Perkins*, CB 568-573
- Michigan v. Mosley*, CB 574-579
- Edwards v. Arizona* + Note, CB 579-583
- Davis v. United States*, CB 583-597
- NITA, Class 8 (stop before hypothetical 1)
- NITA, Class 9 (stop after 9.2, before hypothetical 1)
- NITA, Class 10 (stop before hypothetical 1)

Thursday, April 13:

- Maryland v. Shatzer*, CB 590-596
- North Carolina v. Butler*, CB 596-600
- Moran v. Burbine*, CB 601-609
- Berghuis v. Thompkins*, CB 609-615

WEEK 13:

**INTERROGATIONS – THE *MIRANDA* RULE (CONT.)
APPEALS AND POST-CONVICTION**

Tuesday, April 18:

- Section D. + *New York v. Quarles*, CB 618-626
- Dickerson v. United States* + Note, CB 626-632
- United States v. Patane*, CB 632-635

Thursday, April 20:

- Oregon v. Elstad*, CB 636-642
- Missouri v. Siebert*, CB 642-650
- Andrew E. Taslitz excerpt, CB 658-660
- NITA, Class 13 and 14 (post-conviction)

WEEK 14:

**LINEUPS AND OTHER PRETRIAL IDENTIFICATION PROCEDURES
REVIEW!**

Tuesday, April 25:

- Intro Lineups and Other Pretrial Identification Procedures + *US v. Wade*, CB 673-679
- Manson v. Brathwaite* + Note, CB 683-691
- Sandra Guerra Thompson excerpt, CB 692-693
- Perry v. New Hampshire*, CB 696-702

Thursday, April 27:

REVIEW

FINAL EXAM: TBD