

CRIMINAL PROCEDURE I – SPRING 2011

PATRICK J. HANLEY
214 E. Fourth Street
Covington, Kentucky 41011
859-431-7077 (office)
859-240-5080 (cell)

Required reading-

Joshua Dressler and George C. Thomas, III, CRIMINAL PROCEDURE: Investigating Crime, (Hereinafter CB), and 2010 Supplement.

Optional reading-

Wayne R. LaFave, et al., CRIMINAL PROCEDURE (4th Edition 2004-West Publishing-Hornbook Series).

CLASS ASSIGNMENTS

INTRODUCTION-THE CRIMINAL PROCESS.

1. 20 Jan **Introduction to the Criminal Procedure I**

Read- CB pp. 1-8

The Criminal Process: Failures, Choices, and Legitimacy

Failures

Read – CB pp. 9-34

The Norms of the Criminal Process

Read- CB pp. 49-57

Does the Process Protect the Innocent?

Read- CB pp. 57-61

2. 24 Jan **Seeking Legitimacy in the Fourteenth Amendment-
The Constitutionalization of Criminal Procedure**

Read- CB pp. 35-49; Hurtado v. California, handout;
Read Black's dissent without appendix in Adamson v. California,
332 U.S. 46 (1947); Palko v. Connecticut, 302 U.S. 319 (1937).

FOURTH AND FIFTH AMENDMENTS

Starting Point

Read- Boyd v. United States handout.

FOURTH AMENDMENT

Fourth Amendment: An Overview

3. 27 Jan **The Text and Its Mysteries**

Read- CB pp. 62-63

The Reach of the Fourth Amendment

Read- CB pp. 63-65

The Birth of the Exclusionary Rule

Read- CB pp. 65-83

Passing the Threshold of the Fourth Amendment

What is a Search?

General Principles

Read- CB pp. 84-92

4. 31 Jan **The Katz Doctrine In Application**

Read- CB pp. 92-115

5. 3 Feb **“Open Fields,” “Curtilages,” Beyond: When is the Fourth
Amendment Implicated?**

Read - CB pp. 115-138

What is a Seizure?

Read- CB pp. 138-140

6. 10 Feb **The Substance of the Fourth Amendment**

Probable Cause

Read- CB pp. 141-171

Arrest Warrants

Read- CB pp. 171-183

7. 14 Feb **Search Warrants**

The Constitutional Debate

Introductory Overview

Read- CB pp. 184-195

Elements of a Valid Search Warrant

Read- CB pp. 195-199

Execution of a Search Warrant

Read- CB pp. 199-211

8. 17 Feb **Warrant Clause: When are Warrants Required?**

Exigent Circumstances

Read-CB pp. 211-217

Searches Incident to an Arrest

General Principles

Read- CB pp. 218-235

Arrests of Automobile Occupants

- Read- CB pp. 235-258
9. 21 Feb **Pretextual Stops and Arrests (Particularly in Automobiles)**
- Read- CB pp. 258-266
- Cars and Containers**
- Read- CB pp. 266-298
10. 24 Feb **Plain View (and Touch) Doctrines**
- Read- CB pp. 298-310
- Consent**
- Read- CB pp. 310-344
11. 28 Feb **Reasonableness Clause: The Diminishing Roles of Warrants and Probable Cause**
- The Terry Doctrine**
- Terry v. Ohio**
- Read- CB pp. 344-367
- Drawing Lines: “Terry Seizures” versus De Facto Arrests**
- Read- CB pp. 367-376
12. 3 Mar **Drawing Lines: Seizure versus Non-Seizure Encounters**
- Read- CB pp. 376-397
- “Reasonable Suspicion”**
- Read- CB pp. 397-411
13. 7 Mar **Extending the Terry Doctrine**
- Read- CB pp. 411-422
- Reasonableness in a “Special Needs” (And Non-Criminal?)**

Context

Read- CB pp. 422-445

14. 10 Mar

Remedies for Fourth Amendment Violations

Standing

Read- CB pp. 446-468

Exclusionary Rule

The Nature of the Rule

Read- CB p. 468

Should the Rule Be Abolished?

Read- CB pp. 468-475

15. 14 Mar

When the Exclusionary Rule Does Not Apply?

In General

Read- CB pp. 476-477

Faulty Search warrants Obtained in “Good Faith”

Read- CB pp. 477-493

Knock-and-Announce Rule

Read- CB pp. 494

Scope of the Exclusionary Rule

In General

Read- CB pp. 494-495

“Independent Source” and “Inevitable Discovery” Doctrines

Read- CB pp. 496-503

“Attenuation” (or “Dissipation of Taint”) Doctrine

Read- CB pp. 503-509

The Exclusionary Rule: Undergoing Change

Read- CB pp. 509-533

THE FIFTH AMENDMENT

16. 17 Mar **Confessions: The Voluntariness Requirement**

Torture and Confessions

Read- CB pp. 534-543

Police Interrogation Without Torture

Read- CB pp. 543-565

SPRING BREAK-MARCH 21-25

17. 28 Mar **The Self-Incrimination Clause**

Theory and elements

Read- Murphy v. Waterfront Comm'n, 378 U.S. 52-57 (1964)

Police Interrogation: The Self-Incrimination Clause

The Text and the Road to Miranda

Read- CB pp. 566-581

18. 31 Mar **Miranda Spawns a New Law of Confessions**

Read- CB pp. 581-602

19. 4 Apr **Stormy Seas for Miranda**

The Political Reaction to Miranda: Nixon, George Wallace,

and the Omnibus Crime Control Act

Read- CB pp. 602-605

**The Doctrinal Reaction to Miranda:
Clarifying Miranda's Status**

Read- CB pp. 605-644

20. 7 Apr

Miranda Custody

Read- CB pp. 645-656

Miranda Interrogation

Read- CB pp. 656-665

21. 11 Apr

Waiver and Invocation of the Miranda Rights

Read- CB pp. 666-685

A Year on the Killing Street: The Bitter Fruit of Waiver

Read- CB pp. 685-695

THE SIXTH AMENDMENT RIGHT TO COUNSEL

22. 14 Apr

Introduction

Police Interrogation: The Sixth Amendment Right to Counsel

Eliciting Statement in the Absence of Counsel

Read- CB pp. 696-702

Massiah Waiver

Read- CB pp. 703-727

23. 18 Apr

Massiah and Miranda: A Divergence

Read- CB pp. 727-735

Shedding Light on Massiah's Analytical Core

Read- CB pp. 735-742

Entrapment

Read- CB pp. 743-759

24. 21 Apr

Eyewitness Identification Procedures

Introduction: The Problem

Read- CB pp. 760-761

Right to Counsel

Read- CB pp. 761-775

Due Process of Law

Read- CB pp. 775-785

25. 25 Apr

The Role of Defense Counsel

The Ethics of Defending “Those” People

Read- CB pp. 934-940

Ethics and Duties of Defense Counsel

Read- CB pp. 940-949

The Right to Have Appointed Counsel

Read- CB pp. 949-971

The Right to Effective Assistance of Counsel

Read- CB pp. 988-1005