GENERAL POLICIES AND INFORMATION

ATTENDANCE POLICY. The Academic Rules "allow" each student to be absent only a limited number of times. As our course is structured, that number is four. I will not enforce this number rigidly, but I will take attendance, beginning in the second week of classes. If you will be (or were) absent with a reasonable excuse (illness; you are getting married the next day; etc.), let me know. In a case of excessive absences, I reserve the right to reduce a student’s grade one “bump”; and in a truly extreme case, I reserve the right to exclude a student from taking the final exam. In more than thirty years of teaching I have only had to do so once, and hope not ever to have to do so again.

FINAL EXAM. The examination will be an in-school, open book exam. Students will have 4 hours to take the exam, and will be permitted to consult their own notes (whether written on or on your hard drive), the case book, any materials I have distributed, and any course outlines prepared individually or in cooperation with other students, etc. The exam, however, will not be a research project: I will ignore references to any cases or materials not included within the casebook or materials I distribute. Explicit word limits will be placed on the length of each answer. You'll wind up writing about as much on my exam as you would on a three-hour exam, but you'll have time to think about, and review, your answers.

CLASSROOM PARTICIPATION; PREPAREDNESS. To the extent possible, our classes will be a dialogue; this works only if you have read and studied the assignment and are prepared to discuss it, including the questions on the syllabus. I realize, however, that life has a nasty habit of occasionally interfering with law school. If you have not been able to prepare for class, come anyway, but e-mail me no later than 5 p.m. before the class in question, stating that you are unprepared, and I won't call on you that class.¹ (I much prefer this to having students waste class time trying to bluff their way through class discussions without having read the material.)

MATERIAL YOU CANNOT USE in preparing for class. From time to time, students who have taken my course in previous years have in one way or another made available their class notes – including answers to the problems on the syllabus. I firmly believe this interferes with the educational process in a variety of ways. It tends to dissuade the student who possesses the answers from doing his or her own work, and detracts from my ability to teach the material to the entire class through discussion of the problems. Therefore: in case such materials are currently “out there,” I want to make it clear: possession of notes for my evidence class from a previous semester, particularly if they

¹ Don’t be surprised if you are called on during the next class.
include answers to the problems in the casebook, constitutes “unauthorized assistance” and therefore a violation of the Honor Code.

I encourage students who are taking the course this semester to study together, go over the problems together, and try to develop answers to them, prior to class.

**QUizzes.** I will distribute a number of *mandatory* quizzes (probably at least 3 and no more than 5 or 6). They will count in total for somewhere between 15% and 30% of your final grade, depending on how many and how extensive they are. After I grade them I will distribute model answers.

I give quizzes in each of my courses for three reasons: first, to help you learn the material; second, to familiarize you with my style of exam questions and how to answer them; third, to get feedback as to how you, and I, are doing.

The quizzes will be open-book take home quizzes. I will distribute a quiz at the end of class on a Wednesday; your answer (via hard copy or e-mail) will be due at the law school no later than 3 p.m. the following Monday. The first order of business in that Monday class will be to go over the answers, so I trust you understand why I’m unwilling to accept answers after that.

To assure anonymity, you will each need to get an examination number during the second week of the semester in room 343, the office of the Associate Dean for Academic Affairs.

**Contacting Me Outside of Class.** I will have office hours on Monday and Wednesday from 4:30-6 p.m. I add to those hours if necessary to accommodate students who cannot come see me during that time slot. I’ll have an open-door policy during these hours – feel to drop in unannounced. (But students who make appointments in advance will be given priority over drop-ins.)

To make an appointment in advance, contact my assistant, Ms Kendrick – Kendrick@law.edu – because she remembers to write them down, and then reminds me of them, whereas I tend to forget. (My union contract requires me to personify the absent-minded professor in certain ways, and this is one of mine.)

Please also feel free to call me at home if the need arises. My number is 301-871-6162. I ask only that, barring an emergency, you do not call me on my Sabbath, which begins roughly an hour before sundown on Friday and ends an hour after sundown on Saturday.

All reading assignments are to Kamisar, Israel, LaFave, King and Kerr, *Basic Criminal Procedure* or *Modern Criminal Procedure* (12th ed.) and its supplement, and additional materials
I will distribute to the class. In case a page reference is inaccurate on the syllabus, use the casebook’s table of cases to look up the case referred to on the syllabus.

The "black letter law" of the course consists of decisions by the Supreme Court and any federal statutes covered in class. You should be prepared to discuss the facts, holding and rationale of all Supreme Court cases covered in assigned readings, as well as the problems on the syllabus.

**Introduction:** 1-23; 60-64. This is assigned as background material and will not be discussed in class.

### I. THE FOURTH AMENDMENT

#### A. Protected areas and interests.

1. In general. 254-264. (11)

(1) What is the "formula" that is used to determine whether a defendant can seek to invoke the Fourth Amendment exclusionary rule, i.e. which defines the interests protected by the Fourth Amendment?

(2) Police suspect that D uses a particular pay telephone to discuss continuing narcotics transactions. (The phone is one of several pay phones against a wall in a bus terminal; the phones are not in individual booths, but are separated by minipartitions.) Which if any of the following situations implicates a Fourth Amendment-protected interest, i.e. which if any constitutes a "search"?

To discover what D is saying when he uses the phone,

(a) A plainclothes officer pretends to use the next telephone, but actually is listening to what D is saying.

(b) A specially trained police officer watches intently from several feet away, and is able to read D's lips.

(c*) An officer places an electronic transmitter beneath the telephone, and uses it to monitor what D is saying whenever D uses the telephone.

(3) Did the Court decide Greenwood correctly?.

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2 This is the number of pages of reading in this assignment.
2. "Private" searches: 251 n. 4 (McDowell, Jacobsen, Burdeau) (1)

(4) What is the basic rule; what is the justification?

(5) D invites X, his friend, over to watch the World Series. During a break in the action D leaves the room. X, who is rather nosy, starts searching drawers and cabinets. Discovering a bag of marijuana, he pockets it and after the game, goes to the police, turns in the marijuana, and explains where and how he obtained it. At D's trial for possession of the marijuana, the prosecutor plans to have X testify, and also plans to offer the marijuana in evidence against D. D argues that X’s search violated his Fourth Amendment rights. Is this a valid claim?

3. Surveillance technology and the law (part 1)


b. Kyllo, Place, Caballes, Jacobsen, etc. 265-276. (13)

Regarding Kyllo:

(6) a. What is the Court’s holding and rationale? What is the “one-sentence summary” of Justice Scalia’s approach (i.e. pick out one sentence in the opinion that summarizes it); what is Justice Stevens’ response? What different result and rationale were urged by the dissent; what is the “one-sentence summary” of Justice Stevens’ approach; what is Justice Scalia’s response? What is (are) the main point(s) of disagreement between their approaches majority and the dissent? Which approach do you find more desirable; which opinion do you find more persuasive?

b. What Fourth Amendment concept, apparently discarded (or at least disparaged) in Justice Stewart’s majority opinion in Katz, explicitly underlies Justice Scalia’s opinion?

c. Suppose instead of using the thermal imager, police issued subpoenas to the electric company requesting the utility bills for the Kyllo triplex – and every other similar triplex on that block, which thereby disclosed that Kyllo used a remarkably greater amount of electricity than anyone else. Would it constitute a search to have obtained this information about Kyllo and his neighbors?

(7) Which of the following situations constitutes a "search" or a "seizure" entitling D to challenge the lawfulness of the police officer's conduct?
a. Officer Z pulls a motorist over at 10:30 p.m. for running a red light. As she approaches the car, she shines her flashlight into the passenger compartment to see who and what is inside.

b. Officer Z, cruising her sector on a midnight-to-eight a.m. tour, sees a car parked in front of a home that she has not seen in the neighborhood before. Curious, she stops, gets out of her RMP, and shines her flashlight into the interior of the car.

c. Walking her beat at 2 a.m., Officer W uses her flashlight to illuminate the otherwise dark living room of a street-level apartment.

d. Detective N positions himself on the roof top of a building. Using high-powered binoculars, he is able to watch while D, standing in front of the building across the street, sells narcotics to several individuals. At D's subsequent trial for sale of drugs, the prosecutor plans to have N testify as to what he saw.

e. In problem d., suppose instead that N uses the binoculars to look into the living room window of D's apartment in the building across the street, thereby observing several sales of drugs.

f. In problem e., suppose instead N uses the binoculars to observe D's conduct in an apartment in an abandoned building.