**Crim Pro (Daily?) Outline – August 31, 2015**

**1. Last word (for now) on Traffic Stops**

-- *Pa. v. Mimms* (1977); *Md. v. Wilson* (1997): Cops can order driver and passengers to do virtually anything that might reasonably relate to safety: get out of the car, stay in the car, move to the shoulder, etc.

-- From Kennedy dissent in *Wilson*: “The practical effect of our holding in

*Whren,* of course, is to allow the police to stop vehicles in almost

countless circumstances. When *Whren* is coupled with today's holding,

the Court puts tens of millions of passengers at risk of arbitrary control by

the police. …. Most officers, it might be said, will exercise their new

power with discretion and restraint; and no doubt this often will be the

case. ….[But this] miss[es] the point. Liberty comes not from officials by

grace but from the Constitution by right.”

**2. The Fourteenth Amendment’s Due Process Clause, the 20th century doctrine of “incorporation,” and *Winship* (1970).**

***[-- Brief Outline of pages 1-63 in the Textbook]***

-- Text (and context) of the Fourteenth Amendment (1968).

-- Prior Law: *Baron v. Baltimore* (1833): the Fifth Amendment’s “due

process” protection applies only against the federal government,

not against States.

-- Quick description of the 35-year process of “incorporating” the Bill of Rights (the first ten amendments to the Constitution) into the 14th Amendment’s definition of “due process,” thereby applying those Amendments against the States: 1932 (*Powell*) through 1968 (*Duncan*) (and more recently, *McDonald*, 2010, Second Amendment).

-- ***Winship*** (1970): Start with the facts: what are they (simple)? Where did they come from? How were they determined?

-- Law: what substantive right does it recognize?

-- And why? What does the majority (Brennan) SAY?

-- What does Harlan ADD in his concurrence?

-- What is Black’s theory for dissenting?

-- What does *Winship* tell us about the American criminal justice system?

-- What goals would YOU want for the process of investigating and prosecuting crime? That is, “what are the goals of criminal procedure?”

-- More history, quick survey of the 14th Amendment Due Process Clause as applied to criminal justice issues, 1868-1930……