



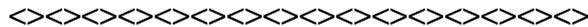
**CRIMINAL PROCEDURE 311 § A**

**Professor Elizabeth N. Jones**

enjones@wsulaw.edu

Fall 2015

Tuesdays & Thursdays 10:45 a.m. – 12:15 p.m.



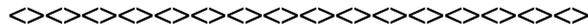
**REQUIRED TEXT**

Dressler & Thomas, *Criminal Procedure: Investigating Crime* (5th ed., West Publishing) &

Jones, Elizabeth N., *The Good and (Breaking) Bad of Deceptive Police Practices*, 45 N. M. L. Rev. 523 (2015), available on SSRN:

<http://papers.ssrn.com/abstract=2593951>

Students MUST enroll in the Lexis Blackboard page titled “Criminal Procedure 311 A JONES Fall 2015” prior to the first day of class (and in any event no later than the second class session)



**COURSE DESCRIPTION**

Welcome to Criminal Procedure! This course is a practical, sometimes perplexing, yet always exciting consideration of the constitutional rules governing criminal investigations and prosecutions. It inspires passionate debate about how to reconcile tension between two fundamental interests of society: individual privacy and freedoms, and the need for law enforcement to operate efficiently and effectively. This course focuses on the role of the 4th, 5th, and 6th Amendments (as interpreted by the judiciary) in balancing individuals' rights and governmental interests.

## **LEARNING GOALS**

After completion of this course, students should be able to:

- ◆ Understand, and be able to apply, general concepts of criminal procedure relating to the investigation of crime derived from the Fourth, Fifth, and Sixth Amendments to the United States Constitution.
- ◆ Understand, and think critically about, the principles and policies behind our current and past system of investigative criminal procedure.
- ◆ Apply and distinguish cases, including the ability to identify the salient features of an appropriate precedent case and to identify and explain the legally significant similarities and differences between the precedent case and a fact pattern.
- ◆ Apply rules to facts including the ability to correctly articulate a rule implicated by the issue, to identify legally significant facts in a fact pattern, and to explain why the facts are significant by connecting the facts to the requirement(s) of the rule.
- ◆ Evaluate legal arguments, and identify the strengths and weaknesses of the argument.
- ◆ Identify issues related to ethics and the professional responsibility required of those practicing within the criminal justice system.

## **EXAMINATIONS AND GRADES**

Each student will receive a numeric grade for the course. The final course grade will consist of two examinations administered during the semester: a “take home” midterm, and a three-hour, closed book final examination. Final grades will be based on the midterm (15%), the final examination (70%), and P&P (professionalism & participation) (15%).

Professionalism & Participation (P&P): 15% of your final grade will be based on your preparation for class, contribution to class discussions (quality & amount), attendance & punctuality, conduct during class time, and any extra-curricular attendance/participation in CLPC-sponsored events (to be announced throughout the semester).

## **CLASS ATTENDANCE AND PARTICIPATION**

Law school is a cooperative venture. I will commit to being prepared for class and to have thoroughly read and reflected upon the assigned readings, notes and problems. I expect the same of you. This course works best if our examination of the materials includes a considerable amount of lively and thoughtful class discussion. I will use a variety of teaching methods including cold-calling, and highly encourage volunteers. For volunteer participation, I value quality over quantity, but being an active participant is important. All views are welcome.

Class attendance is mandatory. Students may be absent no more than four (4) class periods. Students who miss more than four (4) classes may be dismissed from the class, thus receiving a “0” for the course. See the WSCL Attendance Policy, reprinted in the Student Handbook.

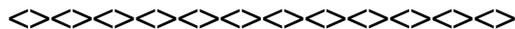
Cell phones must be turned off during class, and you may not access the internet or any form of social media during class unless I specifically request that you do so. Students who violate this policy may forfeit the privilege of using a computer in class and may be referred to the Associate Dean of Students.

## **OFFICE HOURS**

Students are encouraged to take advantage of office hours. To reserve an appointment, you must personally sign up at least 24-hours in advance in the faculty appointment book located at the third floor reception window. Please notify the faculty secretaries if you must cancel, and e-mail me directly. You may sign up individually or as a group of two, three, or four students, but you may only block off one conference time slot per individual and/or group. As a courtesy to others, you may not sign up for multiple consecutive weekly appointments all at once. A student who fails to keep an appointment without timely and proper cancellation may not be allowed to reserve future appointments.

F2015 Office Hours: to be announced in the first week of class

## **SYLLABUS**



### **THE FOURTH AMENDMENT**

#### **WEEK 1: Tuesday August 18 & Thursday August 20**

4 A Overview; Reasonable Expectation of Privacy (REP); Curtilage & Open Fields

pp. 64-68; 86-94; 102-105; 111-121

#### **WEEK 2: Tuesday August 25 & Thursday August 27**

Electronic Surveillance; Probable Cause (PC); Anonymous Informants; Arrest Warrants & Search Warrants

pp. 121-126; 133-141; 151-152; 160-167; 171-173 (through note 5); 186-199

#### **WEEK 3: Tuesday September 1 & Thursday September 3**

Executing the Warrant; Exigent Circumstances; Plain View (& Plain Touch)

pp. 199-204; 498-504; 204-221; 305-311

**WEEK 4: Tuesday September 8 & Thursday September 10**

Search Incident to Arrest (SITA); Arrest Inventories; Protective Sweeps

pp. 221-238; 248-259; 410-416 (through note 3)

**WEEK 5: Tuesday September 15 & Thursday September 17**

99 Problems: Cars, Containers, & Pretextual Stops

pp. 260-299

**WEEK 6: Tuesday September 22 & Thursday September 24**

Consent; 'Stop & Frisk'; Reasonable Suspicion; Racial Profiling

pp. 311-316; 319-322; 336-343; 349-358; 363 (begin at note 7)-366; 396-409

**WEEK 7: Tuesday September 29 & Thursday October 1**

'Special Needs' & Other Warrantless Searches without Individualized Suspicion; Concepts of 'Standing' in Criminal Procedure

pp. 421-426; 432-457 (through note 5)

**JUDICIALLY CREATED REMEDIES FOR FOURTH AMENDMENT VIOLATIONS**

**WEEK 8: Tuesday October 6 & Thursday October 8**

The Exclusionary Rule

pp. 469-475; 477 (begin at note 4)-491; 513-519

**Take-Home Midterm Distributed on Thursday October 8, Due on Tuesday October 13**

**THE FIFTH AMENDMENT**

**WEEK 9: Tuesday October 13 & Thursday October 15**

Torture & Terrorism Discussion (Tuesday); 5 A Overview; Confessions; *Miranda v. Arizona* (Thursday)

Tuesday: pp. 531-536 Thursday: 12-17; 570-585; 588 (begin at note 6)-590

**WEEK 10: Tuesday October 20 & Thursday October 22**

Defining & Limiting *Miranda*

pp. 632-638; 641-646; 658-661; 663-667; 596-603; 620-632; 649 (note 6); 652 (note 1)

**WEEK 11: Tuesday October 27 & Thursday October 29**

Non-Testimonial Evidence; Skills & Review

pp. 650 (note 7); 565-566; Jones, Elizabeth N. and Wade, Wallace, ‘*Spit and Acquit*’: *Legal and Practical Ramifications of the DA’s DNA Gathering Program* (2009). Orange County Lawyer Magazine, Vol. 51, No. 9. Available on SSRN: <http://ssrn.com/abstract=1809997>

**THE SIXTH AMENDMENT**

**WEEK 12: Tuesday November 3 & Thursday November 5**

6 A Overview; The Right to Counsel; Jailhouse Informants

pp. 692-711; 721-731; 741-747

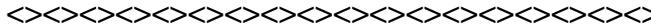
**WEEK 13: Tuesday November 10 & Thursday November 12**

Eyewitness Identification

pp. 764-794

**WEEK 14: Tuesday November 17 & Thursday November 19**

Catch-Up/Review



Western State College of Law provides accommodations to qualified students with disabilities. The Disabilities Services Office assists qualified students with disabilities in acquiring reasonable and appropriate accommodations and in supporting equal access to services, programs, and activities at Western State College of Law.

To seek reasonable accommodations, a student must contact Senior Assistant Dean Donna Espinoza, Student Services Director and Disabilities Services Coordinator, whose office is in the Second Floor Students Services Suite. Dean Espinoza’s phone number and email address are: (714) 459-1117; [despinoza@wsulaw.edu](mailto:despinoza@wsulaw.edu). When seeking accommodations, a student should notify Dean Espinoza of her or his specific limitations and, if known, her or his specific requested accommodations. Students who seek accommodations will be asked to supply medical documentation of the need for accommodation. Classroom accommodations are not retroactive, but are effective only upon the student sharing approved accommodations with the instructor or professor. Therefore, students are encouraged to request accommodations as early as feasible with Dean Espinoza to allow for time to gather necessary documentation. If you have a concern or complaint in this regard, please notify Dean Espinoza; or please notify Associate Dean of Students Charles Sheppard at [csheppard@wsulaw.edu](mailto:csheppard@wsulaw.edu) or (714) 459-1152. Complaints will be handled in accordance with the College of Law’s “Policy against Discrimination and Harassment.”