



# WESTERN STATE COLLEGE OF LAW

AT ARGOSY UNIVERSITY

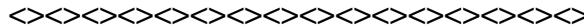
## **CRIMINAL PROCEDURE 311 § A**

**Professor Elizabeth N. Jones**

**enjones@wsulaw.edu**

**Fall Semester 2014**

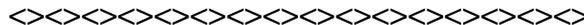
**T / Th 9 a.m.**



### **REQUIRED TEXT**

Saltzburg & Capra, *American Criminal Procedure Investigative: Cases and Commentary* (9th ed., West Publishing) + 2013 Supplement

Students MUST enroll in the Lexis Blackboard page titled “Criminal Procedure 311 A JONES Fall 2014” prior to the first day of class



### **COURSE DESCRIPTION**

Welcome to Criminal Procedure! It has been stated that, “no area of the law evokes more passionate debate about the balance between the prerogatives of government and the liberty of the individual than constitutional criminal procedure.”<sup>1</sup> Indeed, there is frequent tension between 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 in balancing individuals' rights with governmental interests.

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<sup>1</sup> Bloom & Brodin, *Criminal Procedure: Examples & Explanations*, (3d ed., Aspen Publishing).

## 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, to identify legally significant similarities between the precedent case and a fact pattern, and explain why the similarities are legally significant, and also to identify legally significant differences between the precedent case and a fact pattern, and explain why the differences are legally significant.
- ◆ 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.

## EXAMINATIONS AND GRADES

Each student will receive a numeric grade for the course. The final course grade will consist of two closed-book examinations administered during the semester: a midterm (during a regularly scheduled class time) and a three-hour, “closed book” final examination. You may be tested on any material assigned in the casebook, as well as any material covered in class discussions. 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, your class attendance (including timeliness), your class participation, your conduct during class time, and any extra-curricular attendance/participation in CLPC-sponsored events.

## CLASS ATTENDANCE AND PARTICIPATION

Law teaching is a cooperative venture. I will commit to being prepared for class and will expect to have thoroughly read and reflected upon the assigned readings, notes and problems. I expect the same of you. This course will work best if our examination of the materials we will study includes a considerable amount of lively and thoughtful class discussion, in which every student participates. I will call on people in various ways, including cold-calling, and highly encourage volunteers. All views are welcome.

Students may be absent no more than four (4) class periods. Students who miss more than two (2) 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 during class unless I specifically request that you do so. No use of social media during class. Students who violate this policy will forfeit the privilege of using a computer in class and may be referred to the Associate Dean of Students.

You must enroll in the course Lexis Blackboard page. Please check this site often for announcements and/or assignment updates.

## **OFFICE HOURS**

Students are encouraged to take advantage of office hours. To reserve an appointment time, you must personally sign up in the appointment book located at the receptionist’s desk on the third floor. You must sign up at least 24-hours in advance for an appointment. Please notify the faculty secretaries if you need to 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 other students, 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 will not be allowed to reserve appointment times for the rest of the semester.

F2014 Office Hours: to be announced in the first week of class

## **SYLLABUS**



### **THE FOURTH AMENDMENT**

#### **WEEK 1: Thursday August 21**

Introduction to Course; Fourth Amendment Overview; Reasonable Expectation of Privacy (REP)

pp. 30-64; Fell, Michael L. and Jones, Elizabeth N., *Understanding and Utilizing Marsy's Law* (2013). Orange County Lawyer Magazine, Vol. 55, No. 11, November 2013. Available at SSRN: <http://ssrn.com/abstract=2347828>

#### **WEEK 2: Tuesday August 26 & Thursday August 28**

Technology-Enhanced Inspection; Warrant Clause; Probable Cause (PC)

pp. S5 *U.S. v. Jones*; 64-70; 84-108; 129-144

**WEEK 3: Tuesday September 2 & Thursday September 4**

Executing the Warrant; Warrantless Arrests

pp. 150-193

**WEEK 4: Tuesday September 9 & Thursday September 11**

Exception: Stop & Frisk (Terry Stop);

pp. 193-201; 204-225; 232-242; 259-268; 276-278

**WEEK 5: Tuesday September 16 & Thursday September 18**

Exception: Search Incident to Arrest; Pretextual Stops & Arrests

pp. 288-310; 312-331

**WEEK 6: Tuesday September 23 & Thursday September 25**

Exceptions: Plain View & Plain Smell; Exigent Circumstances; Automobiles & Movable Containers

pp. 335-342; 361-372; 377-380; S46 *Michigan v. Fisher*; S53 *Kentucky v. King*;

**WEEK 7: Tuesday September 30 & Thursday October 2**

Exception: Consent Searches; Roadblocks & Checkpoints; Exception: DNA Buccal Samples

pp. 462-482; 428-438; S88 *Maryland v. King*; S50 *Missouri v. McNeeley*; 342-357

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 at SSRN: <http://ssrn.com/abstract=1809997>

**WEEK 8: Tuesday October 7 & Thursday October 9**

Catch-Up/Review (Tuesday) / MIDTERM (Thursday)

REMEDIES FOR FOURTH AMENDMENT VIOLATIONS

**WEEK 9: Tuesday October 14 & Thursday October 16**

The Exclusionary Rule; Exception: Good Faith; The Fourth Amendment as a Personal Right

pp. 494-500; 511-528; 531-533; 541-546; 548-553

**WEEK 10: Tuesday October 21 & Thursday October 23**

Causation & Attenuation ("Fruit of the Poisonous Tree"); Independent Source; Inevitable Discovery; Procedural Aspects of the Exclusionary Rule

pp. 557-582; 591-595

THE FIFTH AMENDMENT

**WEEK 11: Tuesday October 28 & Thursday October 30**

Fifth Amendment Overview; The Griffin Rule; Miranda v. Arizona;

pp. 601-604; 615-628; 670-686

**WEEK 12: Tuesday November 4 & Thursday November 6**

Exceptions to Miranda

pp. 700-725; 729-735; Jones, Elizabeth N., *Questioning a Juvenile's Capacity for Criminal Liability in Street Gangs Post-J.D.B. v. North Carolina*, 32 Child. Legal Rts. J. 1 (2012)

Available at SSRN: <http://ssrn.com/author=1641671>

THE SIXTH AMENDMENT

**WEEK 13: Tuesday November 11 & Thursday November 13**

Confessions & the Sixth Amendment; The Right to Counsel

pp. 767-793; 831-847

**WEEK 14: Tuesday November 18 & Thursday November 20**

Identifications

pp. 796-825

**WEEK 15: Tuesday November 25**

Catch-Up/Review Session