



WESTERN STATE COLLEGE OF LAW
AT ARGOSY UNIVERSITY

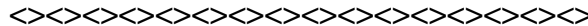
CRIMINAL PROCEDURE 311 § A

Professor Elizabeth N. Jones

enjones@wsulaw.edu

Fall 2016

Tuesdays & Thursdays 11:30 a.m. – 1 p.m.



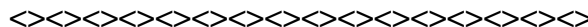
REQUIRED TEXT

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

Students must enroll in the Lexis Blackboard course titled “Criminal Procedure 311A JONES Fall 2016” prior to the first day of class.

RECOMMENDED READING

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>



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 societal tension between the government and its people. This course focuses on the role of the 4th, 5th, and 6th Amendments (as interpreted by the judiciary) in balancing two fundamental interests: individual rights and freedoms and the need for law enforcement to operate effectively and efficiently.

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 system of investigative criminal procedure.
- ◆ Apply and distinguish cases, with the ability to identify the salient features of an appropriate precedent case and to identify and explain legally significant similarities and differences between the precedent case and a fact pattern.
- ◆ Apply rules to facts, with the ability to 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 by identifying 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.

ATTENDANCE, EXAMINATIONS, & GRADES

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

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 (participation & professionalism) (15%).

PREPARATION, PARTICIPATION, & PROFESSIONALISM

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

Cell phones must be silenced, and you may not access the internet or any form of social media during class unless I specifically request that you do so. You may not record the class without prior approval. Students in violation of these policies may forfeit the privilege of using a computer in class and may be referred to the Associate Dean of Students.

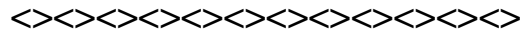
Outside Preparation: Law school is a cooperative venture. I will commit to being prepared for class and to have thoroughly read and reflected upon the assigned readings, notes and problems; I expect the same of you. Criminal Procedure is a bar-tested topic and a graduation requirement. You should anticipate that preparation of your weekly case reading and brief writing assignments will take you a minimum of two hours for every one hour of class time to complete.

This course works best if our time together 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.

OFFICE HOURS

Students are encouraged to take advantage of office hours. To reserve an appointment, please sign up in the appointment book located with the faculty secretaries on the second floor. You must sign up at least 24-hours in advance for an appointment, and email me directly if you need to cancel. You may sign up individually or as a group of students, but you may only block off one time slot per individual or group. As a courtesy to others, you may not sign up for multiple and/or 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 appointments for the rest of the semester.

F2016 Office Hours will be announced during the first class session.



SYLLABUS

THE FOURTH AMENDMENT

WEEK 1: Thursday August 18

4 A Overview; Reasonable Expectation of Privacy (REP)

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

WEEK 2: Tuesday August 23

No Class Thursday August 25

“Dog Sniffs”; Cell Phone Pings; Curtilage & Open Fields

pp. 111-121

WEEK 3: Tuesday August 30 & Thursday September 1

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 4: Tuesday September 6 & Thursday September 8

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

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

WEEK 5: Tuesday September 13 & Thursday September 15

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

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

WEEK 6: Tuesday September 20 & Thursday September 22

99 Problems: Cars, Containers, & Pretextual Stops

pp. 260-281; 292-299; 372 (note 4)

WEEK 7: Tuesday September 27 & Thursday September 29

Consent; 'Stop & Frisk'

pp. 311-316; 319-322; 336-343; 349-358; 363 (note 7)-366; 375-383; 396-409

WEEK 8: Tuesday October 4 & Thursday October 6

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

pp. 421-426; 432-438; 445-460

JUDICIALLY CREATED REMEDIES

WEEK 9: Tuesday October 11 & Thursday October 13

The Exclusionary Rule

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

Take-Home Midterm Distributed on Thursday October 13, Due on Tuesday October 18

THE FIFTH AMENDMENT

WEEK 10: Tuesday October 18 & Thursday October 20

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

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

WEEK 11: Tuesday October 25 & Thursday October 27

Defining & Limiting *Miranda*

pp. 632-638; 641-646; 658-661; 663 (note 2); 596-603; 620-632; 649 (note 6); 652 (note 1)

WEEK 12: Tuesday November 1 & Thursday November 3

Non-Testimonial Evidence; Community-Police Relations; Skills & Review

pp. 649 (note 6)-650 (through note 7); 565-566; Jones, Elizabeth N. and Wade, Wallace, ‘*Spit and Acquit*’: *Legal and Practical Ramifications of the DA’s DNA Gathering Program*. Orange County Lawyer Magazine, Vol. 51, No. 9, September 2009. Available on SSRN: <http://ssrn.com/abstract=1809997>

THE SIXTH AMENDMENT

WEEK 13: Tuesday November 8 & Thursday November 10

6 A Overview; The Right to Counsel; Jailhouse Informants

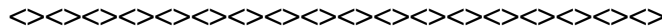
pp. 958-961; 692-711; 721-731

WEEK 14: Tuesday November 15 & Thursday November 17

Eyewitness Identification

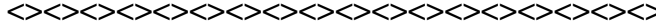
pp. 764-794

WEEK 15: Tuesday November 22



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. 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 cshppard@wsulaw.edu or (714) 459-1152. Complaints will be handled in accordance with the College of Law’s “Policy against Discrimination and Harassment.”



Western State College of Law's curriculum is designed so that every student achieves a level of competency prior to graduation in each of the eight Programmatic Learning Outcomes listed below:

(1) Doctrinal Knowledge

Students will demonstrate knowledge of substantive and procedural law in the core curriculum subjects, including Contracts, Criminal Law, Criminal Procedure, Torts, Real Property, Business Association, Evidence, Civil Procedures, Constitutional Law, Estates, Community Property, Remedies, and Professional Responsibility.

(2) Practice Skills

Students will demonstrate the development of other law practice skills. Each student's chosen outcomes within this category will be varied based on the student's particular interests, coursework and work experiences. They may include, but are not limited to, the following topics: oral presentation and advocacy; interviewing; counseling; client service and business development; negotiations, mediation, arbitration, or other alternate dispute resolution methods; advanced legal research and writing (excluding purely academic papers and the first four units earned in introductory first-year legal research and writing class); applied legal writing such as drafting contracts, pleadings, other legal instruments; law practice management or the use of technology in law practice; cultural competency; collaboration or project management; financial analysis, such as accounting, budgeting project management, and valuation; cost benefit analysis in administrative agencies; use of technology, data analyses, or predictive coding; business strategy and behavior; pre-trial preparation, fact investigation, such as discovery, e-discovery, motion practice, assessing evidence, or utilizing experts; trial practice; professional civility and applied ethics; a law clinic that includes a classroom component; or a legal externship that includes a classroom component.

(3) Legal Analysis

Students will demonstrate the ability to identify the factual and legal issues implicated by a fact pattern and to appropriately use cases (including identifying the salient features of an appropriate precedent case, identifying legally significant similarities or differences between the precedent case and a fact pattern and explaining why those are legally significant) and rules (including the ability to connect legally significant facts in a fact pattern to the rule) to predict how a court would decide the issue. Students will also demonstrate the ability to identify and evaluate the public policies of a precedent case or rule, and be able to evaluate how public policy can impact the application of a rule to the legal issue.

(4) Legal Research

Students will demonstrate the ability to locate relevant legal authority using a variety of book and electronic resources, and to properly cite to such legal authority.

(5) Communication

Students will demonstrate the ability to communicate both orally and in writing in a manner appropriate to a particular task to effectively convey the author or speaker's ideas. This includes audience sensitivity in written and oral communication (the ability to adopt a tone, style and level of detail appropriate to the needs, knowledge and expertise of the audience); and written communication basic proficiency (the ability to use the conventions of grammar, spelling, punctuation, diction and usage appropriate to the task and sufficient to convey effectively the author's ideas).

(6) Advocacy of Legal Argument

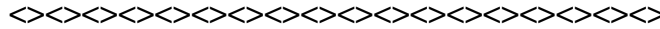
Students will demonstrate the ability, in both oral and written formats, to evaluate the legal, economic and social strengths and weaknesses of a case and use case and statutory authority as well as public policy to persuade others. Making policy-based arguments includes the ability to identify and evaluate the public policies of a precedent case or rule and their implications, and be able to assert such appropriate arguments to support a particular application or distinction of a precedent case to a legal controversy or a particular resolution of the application of a rule to the legal controversy.

(7) Client Sensitivity and Cultural Competency

Students will demonstrate an awareness of clients' needs and goals, including a sensitivity to clients' background and circumstances (including, but not limited to, socio-economic, gender, race, ethnicity, educational, disability and/or religious background(s)), the ability to make decisions that reflect an appropriate focus on those needs and goals, and awareness that cultural issues may affect the relevance of facts and application of the law.

(8) Legal Ethics

Students will demonstrate the ability to identify ethical issues in law practice contexts and make appropriate decisions to resolve such issues.



Argosy University

Institutional Learning Outcomes:

1. Analytical Reasoning

Analyze issues objectively, interpret and synthesize data and ideas, and develop feasible, flexible, and creative solutions to real world problems.

2. Effective Communication

Identify audiences, assess information provided, interpret needs, and present relevant information using appropriate written, oral, and listening skills and media to meet the needs of the situation.

3. Information Competency

Gather, evaluate, and ethically use information from a variety of relevant technological and library resources to make decisions and take action.

4. Interpersonal Effectiveness

Develop individual and group interpersonal skills to improve and foster participation and interaction critical for achieving individual and group goals.

5. Personal and Professional Integrity and Ethical Behavior

Demonstrate a multi dimensional awareness of individual and social responsibility to act ethically and with integrity in a diverse, global society.

6. Professional Competence

Apply skills appropriate to program objectives and employ critical reasoning to contribute to one's field and profession.