



# WESTERN STATE COLLEGE OF LAW

AT ARGOSY UNIVERSITY

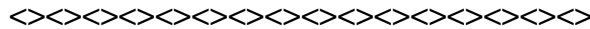
## **CRIMINAL PROCEDURE 311 § A**

**Professor Elizabeth N. Jones**

enjones@wsulaw.edu

**Fall 2018**

**M & W 1:30 p.m. – 3:00 p.m.**



### **REQUIRED TEXT**

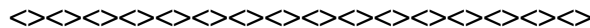
Dressler & Thomas, *Criminal Procedure: Investigating Crime* (6th ed., West Publ.)

Students must self-enroll in Lexis Classroom “Criminal Procedure 311A JONES F18” prior to the first day of class. Passcode: BTRN4J

### **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 examines the constitutional rules governing criminal investigations. It explores tensions between the government’s need for efficient and effective law enforcement and the privacy and individual liberty interests of its people.

In perhaps more relatable terms, the doctrine covered in this class affects every single person in our country. It is not overly dramatic to assert that understanding your rights and responsibilities vis a vis the government can literally mean the difference between life and death. Questions we will ponder and debate: Under what circumstances can the police legally detain you? Can an officer look inside your backpack? Does it matter if you are on a sidewalk, or in a car, or in a house? What can the police take (“seize”) from you? Why must the police inform you of your Fifth Amendment right to remain silent, but not of your Fourth Amendment right to not consent to a search? When must the state provide you with an attorney?

## 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 who miss more than four class sessions are subject to administrative dismissal from the course per the WSCL Attendance Policy (reprinted in the Student Handbook).

Students earn a numeric grade for the course. The final course grade will consist of two “closed book” examinations: a midterm (during a regularly scheduled class) and a three-hour 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):** Law school is a cooperative venture. I will commit to being prepared for class, and I expect the same of you. Success in law school requires active learning, which includes re-reading material you do not fully understand prior to class, listening to everything said in class, and refraining from multi-tasking (checking social media, thinking about other courses, etc) during class. You are only in Crim Pro for 90 minutes, twice a week; devote yourself fully to this limited class time to derive its maximum benefits.

This course works best if our time together includes a considerable amount of class discussion. To that end I utilize various teaching approaches including the Socratic method. For volunteer

participation, quality is valued over quantity, but being an active and engaged participant is important. All views are welcome.

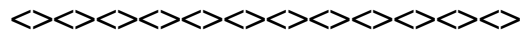
15% of your final course grade will be based on the quality and quantity of your contributions to class discussions, preparation for class, attendance and punctuality, conduct during class time, and any attendance in CLPC-sponsored events (to be announced throughout the semester).

Cell phones and the internet may not be accessed during class unless upon my specific request. You may not record this class without my prior approval. Students in violation of these policies may be referred to the Associate Dean for Academic Affairs.

**Outside Preparation:** Criminal Procedure is a bar-tested topic and a graduation requirement. You should anticipate that, on average, preparing your weekly case reading and brief writing assignments will take you a minimum of two hours for every one hour of class time. To repeat with specificity and at risk of redundancy: because Criminal Procedure is a three-unit class, you should estimate your preparation for class to require six or more hours outside of class to complete.

## **OFFICE HOURS**

Students are encouraged to take advantage of office hours. You may sign up using the Faculty Appointments book maintained by the second-floor faculty support staff. You may sign up individually or as a group, but you may only block off one time slot per individual or group. As a courtesy to your fellow classmates, do not sign up for more than one appointment at a time. F18 Office Hours will be announced during the first week of class.



## **READING ASSIGNMENTS**

### **THE FOURTH AMENDMENT**

#### **WEEK 1: Monday August 20 & Wednesday August 22**

Reasonable Expectations of Privacy (REP); Electronic Surveillance  
pp. 71-76; 95-104; 112 (note 1)-120; 135-140; 144 (note 5)-155

#### **WEEK 2: Monday August 27 & Wednesday August 29**

Home, Curtilage, & Open Fields; Probable Cause (PC); Anonymous Informants; “PC Hearings”  
pp. 123 (note 4)-134; 162-168; 177-178; 188-195; 199 (note 1)-201; 213 (note 1)-214

**WEEK 3: Wednesday September 5  
(NO CLASS LABOR DAY MONDAY)**

Warrants; Exigent Circumstances; Plain View & Plain Touch  
pp. 216 (note 7); 224-244; 346-349; 351 (notes 2 & 3)

**WEEK 4: Monday September 10 & Wednesday September 12**

Search Incident to Arrest (SITA); Arrest Inventories; Protective Sweeps  
pp. 251-256; 260 (note 8)-272; 286-291; 454-457

**WEEK 5: Monday September 17 & Wednesday September 19**

99 Problems: Cars, Containers in Cars, & Pretextual Stops  
pp. 297-317; 331-339

**WEEK 6: Monday September 24 & Wednesday September 26**

Consent; “Stop & Frisk”  
pp. 352-357; 359-368; 376-379; 381 (note 2)-384; 389-400; 403 (note 4)-409

**WEEK 7: Monday October 1 & Wednesday October 3**

“Special Needs” & Other Suspicionless Searches; “Consensual Encounters”  
pp. 469-474; 417-424 (through note 3); 427-430; 438-439; 443-452; Jones, Elizabeth N.,  
*Possible Problems at the San Clemente Checkpoint*, 6 Va. J. Crim. L. 43 (2018), available on  
SSRN:  
<https://ssrn.com/abstract=3119310>

**CONCEPTS OF “STANDING” IN CRIM PRO + MIDTERM EXAMINATION**

**WEEK 8: Monday October 8 & Wednesday October 10**

pp. 493-509 (Monday) & Midterm (Wednesday)

**JUDICIALLY CREATED REMEDIES**

**WEEK 9: Monday October 15 & Wednesday October 17**

The Exclusionary Rule  
pp. 520-525; 528 (note 4)-546; 553-559; 568-572

## THE FIFTH AMENDMENT

### WEEK 10: Monday October 22 & Wednesday October 24

The Right to not Self-Incriminate; *Miranda v Arizona*  
pp. 625-638; 644 (note 6)-646; 691-697; 701-706

### WEEK 11: Monday October 29 & Wednesday October 31

Continuing to Define & Limit *Miranda*  
pp. 733-736; 739 (note 2); 652-659; 678-687

### WEEK 12: Monday November 5 & Wednesday November 7

Defining & Limiting *Miranda* Even Further; Non-Testimonial Evidence  
pp. 687-690; 714-717 (through note 5); 710-711 (notes 6 & 7); Jones, Elizabeth N. & Wade, Wallace, '*Spit and Acquit*': *Legal and Practical Ramifications of the DA's DNA Gathering Program*, 51 O.C. Lawyer Magazine 9 (2009). Available on SSRN:  
<https://ssrn.com/abstract=1809997>

## THE SIXTH AMENDMENT

### WEEK 13: Monday November 12 & Wednesday November 14

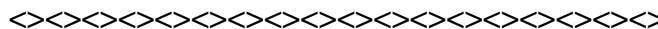
The Right to Appointed Counsel; Jailhouse Informants  
pp. 1043-1046; 1050-1052; 1070-1077; 755-770

### WEEK 14: Monday November 19 (NO CLASS WEDNESDAY November 21)

Eyewitness Identification  
pp. 827-857

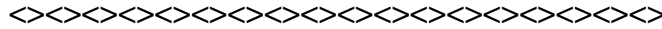
### WEEK 15: Monday November 26

Wrap-Up & Review



**Disability Services Statement:** 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. Dean Espinoza's contact information: (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 Dean Allen Easley at (714) 459-1168. Complaints will be handled in accordance with the College of Law's "Policy against Discrimination and Harassment."



**Western State College of Law Programmatic Learning Outcomes:** 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:

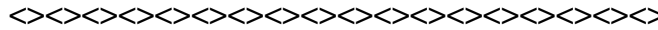
- (1) **Doctrinal Knowledge**  
Students will demonstrate knowledge of substantive and procedural law in the core curriculum subjects, including Contracts, Criminal Law, Criminal Procedure, Torts, Property, Business Associations, Evidence, Civil Procedure, Constitutional Law, Estates, Community Property, 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.