

CRIMINAL PROCEDURE
Spring 2018 SYLLABUS
Tuesdays and Thursdays 10:45 AM-12:15 PM

Professor Robert Molko
Office: Second Floor, Room 201K
Phone: 714-459-1149
rmolko@wsulaw.edu

1. Course Materials

- The following book is **required**:
 1. Dressler & Thomas III: **Criminal Procedure, Investigating Crime** Sixth Edition 2017

- The following materials are **recommended** for reference or purchase
 1. John Cornwell: **Glannon Guide to Criminal Procedure** 3d edition 2014 (Wolters Kluwer)
Good for Multiple choice questions practice
 2. Dressler and Michaels: **Understanding Criminal Procedure: Volume One-Investigation**,
7th Edition 2017 (Lexis Nexis)

- The following article is an **optional** suggestion for someone interested in an overview of the future of the Fourth Amendment and technology: *The Drones are coming! Will the Fourth Amendment Stop Their Threat To Our Privacy?* Robert Molko, 78 Brook. L. Rev. 1279 (2013) available at SSRN Author page: <http://ssrn.com/author=2037983>

2. “In-Class” Methodology:

Criminal procedure is one of the most exciting and dynamic subject in law school and in criminal justice practice. It is constantly evolving with new decisions every year from the United States Supreme Court and the lower courts. It is particularly important to look at the history of Criminal Procedure in order to understand its present status and its future. For this reason, it is critical that you read all the assigned reading, brief all the assigned reading cases AND also read and be prepared to discuss any of the assigned “Notes and Questions” of the casebook. Bring the casebook to *each* class session.

We will be using the **Clicker** system during the class. The clicker is the QT by Turning Technology. It will be available for leasing at the bookstore or directly from the company. You can also buy it from a student who used it in the past semester in my evidence class. Either way, you will need to register the clicker for the class at turningtechnologies.com. I will provide you with that information on the first day of class. You must bring your clicker with you for *every* class. A clicker is a **mandatory** requirement for this course.

3. Exams and Grading

- a. There will be a “take home” mid-term exam which will count as 15% of your final grade.
- b. There will also be a three-hour, “closed-book,” final examination which will comprise 70% of your final grade. The final examination may test you on any material assigned in the casebook, as well as any material covered in any of the additional readings and assigned exercises.
- c. 15% of your semester grade will be based on your preparation for class, your class attendance, your class participation, your professionalism and your completion of any assigned exercises (e.g. CALI; assigned case briefing). In addition, exemplary presentation of cases and class discussion may result in a grade increase of .1 (e.g. from 3.0 to 3.1)

The final examination will be 3 hours in length and will be a combination of multiple-choice questions and essay questions.

As the semester progresses, I may indicate in class and/or the webcourse any additional required assignments. It is your responsibility to be aware of any such assignments and their due dates. You should check the webcourse site regularly for any changes in the syllabus and/or any assignments.

4. Attendance & Decorum:

Successful completion of this course is dependent upon satisfaction of the W.S.C.L. Attendance Policy, which is reprinted in the Student Handbook. IF YOU MISS MORE THAN FOUR (4) CLASSES, YOU WILL RECEIVE A GRADE OF "0" AND WILL NOT BE PERMITTED TO ATTEND SUBSEQUENT CLASSES. Students leaving and returning to their seats, while class is in session, disrupt the concentration of students and, therefore, the learning environment. Please refrain from walking in and out during the class unless it is absolutely necessary. Cell phones must be turned off during class and you must not access the internet during class unless specifically requested to by me. No Texting/Tweeting or equivalent is allowed. You will be asked to leave the classroom for any violation of these rules and you will be deemed absent for that day also.

You may use your computer but it should be open to course related materials and not to your email, eBay etc. However, the use of computers in the classroom should not interfere with your ability to pay attention (**actively listening** v. just hearing the words spoken) to what is going on. I have observed that students who are too intent on recording every word spoken often will have little understanding of what those words mean.

You should be in your seat at the commencement of class. It is fairly inconsiderate (not to mention unprofessional) to walk in late. Similarly, you should not leave until the end of class. If you have an emergency that causes you to have to leave during the class, please do so unobtrusively. If you have a disability which prevents you from remaining in your seat during the class, please contact the Dean of Students.

5. Seating Chart:

A seating chart will be distributed at the beginning of the second class session. Please print your name legibly in the seat you choose for your permanent seat. If you wish to change your seat at a later date, please notify me so that I can make the appropriate changes on the chart.

6. Office Hours: Tuesdays and Thursdays 9:30-10:30 AM & 12:30-2:00 PM

A word from the experience of the past: many students who should have seen me during office hours did not. If you feel lost or confused, you should do everything you can to get yourself to where you understand the material. That includes getting help from me during office hours. Please make appointments (at least one day in advance) through the Faculty Appointment Book located at the front desk in the Faculty Office Suite on the second floor. My office hours will be contained in the Appointment Book. As a courtesy to other students, do not sign up for a "block" of consecutive appointments, or sign up for multiple consecutive weekly appointments all at once. If needed, I will always find time to meet with you. Please put your email address and your telephone number on the appointment list, so that I may contact you if I have to reschedule your appointment. If you are running late for an appointment or if you cannot keep a scheduled appointment, please email me AND call the faculty support assistant (Sierra Douglas 714-459-1128) and advise her as soon as possible.

7. Preparation for Class and Classroom Participation:

A student whom I deem unprepared will be treated as absent for that day. You are expected to stay sufficiently ahead of the class in your preparation to insure your readiness to participate for each class. Neither the assertion that you did not anticipate the class getting so far, nor that you read the assignment too long ago to remember it will excuse a failure to be prepared for class.

Preparation is a component of the grade in this course. Students are expected to have carefully read and briefed all cases (including dissenting/concurring opinions) and to have read and analyzed each of the casebook "*Notes and Questions*" scheduled for discussion in class. You are expected to spend **at least 6 hours a week** (i.e. 2 hours for each unit) in your preparation for this course.

Each student should be prepared to be called upon in class to summarize the **pertinent facts**, issues, law and court findings and rulings of a case and/or discuss the resolution of any of the assigned casebook problems. The **quality** of the recitation is more important than the quantity. A concise summary of the **pertinent facts** is far better than a recitation of all the facts (many of those are not relevant to the issues presented) in the case. Merely reading from the casebook is NOT a proper presentation of the case and wastes a lot of time. In order to discuss a case intelligently in the limited time available in class, students should prepare a brief to assist them in recitation and discussion and have it readily available if called upon in class.

I will **randomly** call on students in class to describe cases or rules and to answer questions. **There will be no such thing as a "free pass" day as there is normally no such thing in legal practice. An "I don't know" answer will be unacceptable the entire semester.** Please note, **however, that there is a significant difference between being unprepared and being unable to answer a particular question.** No one knows the answer to every law-related question. You will **not** be down-graded or ridiculed for venturing an incorrect answer. You should, however, be sufficiently familiar with the cases, notes, questions and problems to discuss them when called upon to do so. As you probably observed during other semesters, classroom participation has several benefits. First, if well done, it helps the entire class. Second, it enables you to test your knowledge and understanding. The more you test that the better you will understand the material. Finally, clear oral communication is one of the essentials of a high quality legal work life. Among other reasons for you to be prepared is that it is fairly inconsiderate of the time and efforts of your fellow students and your professor to come to class unprepared.

Class Participation is also a component of the grade in this course. Legal education is a co-operative venture that requires your active engagement in class discussion. Therefore, class participation is a **mandatory** part of this course. Students are encouraged to ask questions. All views are welcome. A common maxim in law is that "reasonable minds may differ". You are expected to respect others who disagree with you.

Vocabulary is important. Effective lawyers talk and write like lawyers. Use of the correct word(s) and complete, coherent sentences is not a sinister requirement of overly picayune law professors. It is essential to the effective study and practice of law. You may find a word or expression in your reading for which you just don't know the meaning. Rather than meandering "in a fog", try to find or ask about the meaning.

CALI exercises are designed to supplement and test your understanding of a subject that has been covered in the casebook and/or class. They are also good tools to practice answering multiple choice questions. You will first need to register for this class on the CALI website at cali.org. In order to access the proper CALI exercise and get credit for completing it, you **MUST** use the URL link provided on the webcourse for each particular assignment <https://www.cali.org/courses/5117> . If you do not use this URL link, you will not get credit for

the assignment. You must complete each exercise by the date indicated on the syllabus. They are due by the class immediately AFTER the particular syllabus section discussion is completed in class. Other exercises may be assigned during the semester.

8. Quizzes, Briefing, CALIs and other Assigned Exercises:

In order to discuss a case intelligently in the limited time available in class, students should prepare a brief in written form to assist them in recitation and discussion and have it readily available if called upon in class. In other words, students should not be fumbling through their textbooks or computer screens to find their “brief”. Book briefing is a poor idea and is discouraged; it is not an effective and acceptable sole method of briefing; it also often causes delays in the presentation of cases in class. **CALI** exercises are designed to supplement and test your understanding of a subject that has been covered in the Casebook and/or class. They are also good tools to practice answering multiple choice questions. Quizzes and other exercises may be assigned during the semester.

9. Ethics:

Ethics is of paramount importance in the study and practice of law and particularly so in criminal prosecution and defense where the safety of society and the liberty of the accused are always at issue. Students should be familiar with the Honor Code of Western State College of Law, which may be found at Chapter IX of the Student Handbook. Any violation of law school rules and regulations relating to cheating, plagiarism, or other ethical matters addressed in the Honor Code will be vigorously enforced. A breach of ethics could also prevent you from being admitted to any state bar.

10. Practice Exams:

Students are encouraged to take practice exams. After the first weeks of class, some past essay examinations will be placed on the webcourse site; you can use those as practice exams. As the semester progresses, if you would like feedback on your answers to some of these exam questions, please make an appointment (reserve time in the Appointment Book at the Reception Desk on the second floor). You must email me your practice exam question and answer at least 2 days before your consultation so that I can review them beforehand.

Writing is important. Most lawyers write more than they talk. Practice good writing as much as you can. Write in short complete sentences and short paragraphs using proper grammar, spelling, punctuation, capitalization and syntax. Every single written opinion in our text is the product of someone’s attempt to do some very careful, lawyerly writing.

11. Website:

LexisNexis Web course: Criminal Procedure Spring 2018

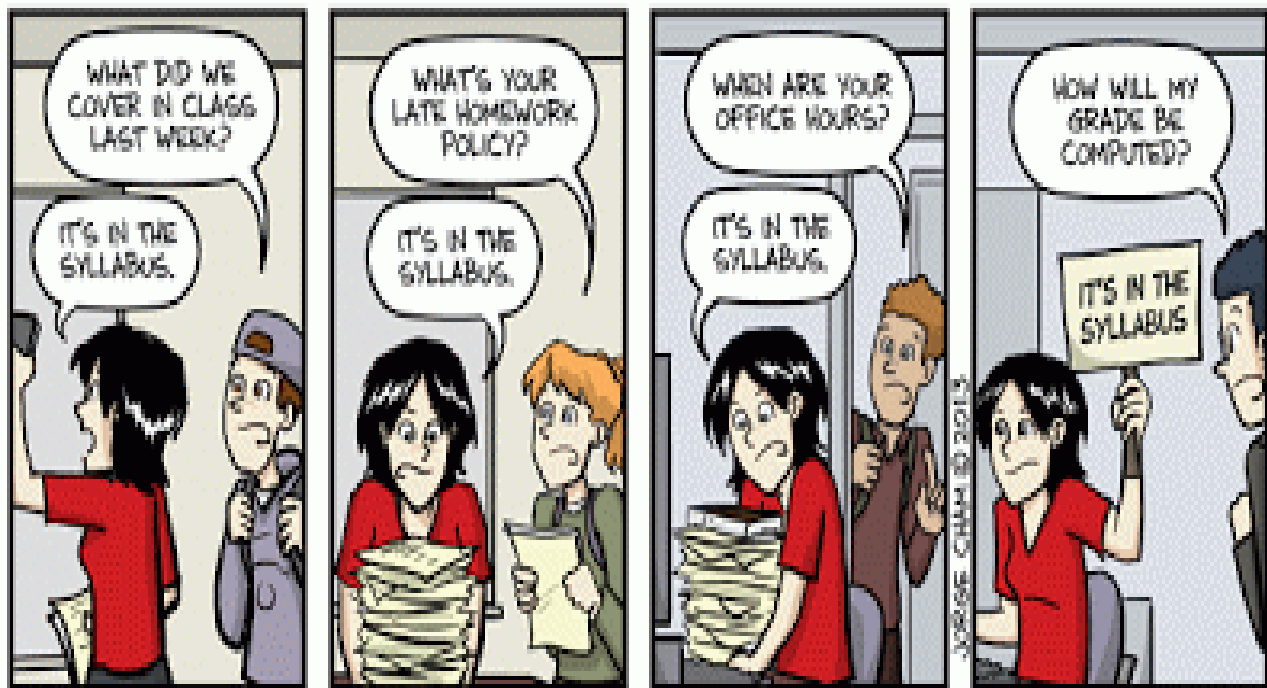
You MUST also register on the webcourse for this class. The webcourse will provide me with a method to communicate with you by posting assignments, syllabus modifications, announcements, etc... and by mass emailing you, if necessary. I will also use the Discussion Forum on the webcourse to share my answers to students’ relevant questions. This webcourse will also provide you with the URL link that you MUST use for each assigned CALI exercise. There are computers in the library if you need to use one.

12. Criminal Procedure Spring 2018 Syllabus

<i>Class date</i>	<i>Subject</i>	<i>Reading Assignment</i> Dressler & Thomas III Casebook Sixth Edition 2017	<i>CALI</i> Exercises You MUST use the URL Link provided on the webcourse
January 16	<ul style="list-style-type: none"> • Introduction to the Course • Selective Incorporation • Fourth Amendment Introduction 	Preface v-vii 71-76, 83-94	
January 18	<ul style="list-style-type: none"> • The “<i>Reasonable</i>” clause • Reasonable Expectation of Privacy (REP) and <i>Katz</i> 	95-104, 112 (note1)-115 122 (n.2) -134	
January 23 & 25	<ul style="list-style-type: none"> • <i>Katz</i> and Technology 	135-176 <i>Carpenter v. United States</i> (2018)	4 th Amend. Overview
January 30	<ul style="list-style-type: none"> • The <i>Warrant</i> Clause • <i>Probable Cause</i> (PC)-Totality of Circumstances Test 	177-78, 188-205 (n.13)	Defining the term “search”
February 1	<ul style="list-style-type: none"> • Arrest Warrants & Search Warrants • Executing the Warrant 	213-227 228-238	Probable cause to search/seize
February 6	<ul style="list-style-type: none"> • Warrantless Arrests • Exception: Exigent circumstances • Exceptions: Plain View & Plain Feel 	238-251 346-352	
February 8	<ul style="list-style-type: none"> • Exception: Search Incident to arrest • Exception: Inventory search • Exception: Protective sweep 	251-275, 286-297 454-459 (n.2)	Plain View doctrine Exigent circumstances
February 13 & 15	<ul style="list-style-type: none"> • Exception: Automobile & Moveable Containers • Pretextual stops 	297-339 413-414 (n.3&4)	Search incident to arrest
February 22	<ul style="list-style-type: none"> • Exception: Consent Searches 	352-384	Automobile Searches
February 27 & March 1	<ul style="list-style-type: none"> • Exception: Stop and Frisk (<i>Terry</i> Stop) • <i>Reasonable Suspicion</i> 	389-401 (n.2) 403 (n.4)-409, 417-430 433-453	

March 6 & 8	<ul style="list-style-type: none"> • DNA bucal samples • Exception: Special Needs searches • Suspicionless searches • “Standing”: 4th A = a Personal right • Sample warrant • Take-home midterm distributed due 3/20 	<p>464 (n.5)-468 469-474, 481-492</p> <p>493-515</p>	Stop & Frisk
March 12-16	Spring Break		Spring Break
March 20	<ul style="list-style-type: none"> • Remedies for 4th Amendment violations: The Exclusionary Rule <ul style="list-style-type: none"> ○ Causation and Attenuation ○ “Fruit of the Poisonous tree” 	<p>Turn in Take-home midterm on March 20</p> <p>520-527</p>	
March 22	<ul style="list-style-type: none"> • Independent source • Inevitable Discovery doctrine • The Good Faith Exception 	<p>528 (n.4)-538 538-551, 553-566, 568-576</p>	<p>Administrative searches</p> <p>The Exclusionary Rule</p>
March 27	<ul style="list-style-type: none"> • Confessions: Voluntariness requirement • Torture & Terrorism • Confessions and Due Process • The Fifth Amendment Privilege • 	<p>14-20 587 (n.4)-589(through n.7) 603-612</p>	Fruit of the Poisonous Tree doctrine
March 29	<ul style="list-style-type: none"> • Self-Incrimination and Confessions • <i>Miranda v. Arizona</i> • Proper advisement of <i>Miranda</i> Rights 	<p>625-640, 644(n.6)-646</p> <p><i>Florida v. Powell</i> (2010) 559 U.S. 50</p>	
April 3	<ul style="list-style-type: none"> • Defining & Limiting <i>Miranda</i> <ul style="list-style-type: none"> ○ “Custody” ○ “Interrogation” 	<p>691-700 701-711</p>	Miranda I
April 5	<ul style="list-style-type: none"> • Waiver & Invocation of <i>Miranda</i> rights • Silence and Invocation • Question-first tactic 	<p>711-718, 720-741 (n.2), 739 (n.2)-743,</p> <p><i>Salinas v. Texas</i> (2013) 570 U.S. 178</p> <p>678-690</p>	Miranda II
April 10	<ul style="list-style-type: none"> • Exceptions to <i>Miranda</i> exclusions • Public Safety exception • Impeachment of Defendant • The 2013 Boston marathon Defendant 	<p>652-660</p> <p><i>Harris v. New York</i> (1971) 401 U.S. 222</p>	

April 12	<ul style="list-style-type: none"> • Non-testimonial Evidence • The <i>Griffin</i> rule • 5th Amendment = a Personal right 	710-711 (n.6 &7) <i>Griffin v. Ca.</i> (1965) 380 U.S. 609	
April 17	TBD		
April 19 & 24	<ul style="list-style-type: none"> • The 6th Amendment Right to Counsel • <i>Massiah v. U.S.</i> • Jailhouse Informants 	1042-1047, 1070-1079, 755-777, 788-800	Other Constitutional limits to Interrogation
April 26 & May 1	<ul style="list-style-type: none"> • Identifications • Catch-up 	827-858 Last day of class	
TBD	<ul style="list-style-type: none"> • Review session 		
May ?	Final Exam		



IT'S IN THE SYLLABUS

This message brought to you by every instructor that ever lived.

WWW.PHDCOMICS.COM

13. 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, whose office is in the Students Services Suite 119. 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 Dean Allen Easley at aeasley@wsulaw.edu or (714) 459-1168. Complaints will be handled in accordance with the College of Law's "Policy against Discrimination and Harassment."

14. 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, 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.

15. 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