



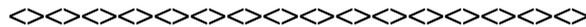
CRIMINAL PROCEDURE 311§A

Professor Elizabeth N. Jones

enjones@wsulaw.edu

Spring 2020

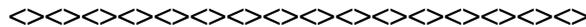
Tuesday 6:40 p.m. – 9:50 p.m.



REQUIRED TEXT

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

Students must enroll in the Lexis Classroom page titled “Criminal Procedure 311A Spr20 JONES” with PassCode: LLEXTT



COURSE DESCRIPTION

Welcome to Criminal Procedure! This course examines the constitutional amendments 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.

More simply, this class will teach you “rules” that affect you and your friends and your family. It is not overly dramatic to say that there are times in which understanding your rights and responsibilities vis a vis the government can mean the difference between life and death. Questions to ponder: When can the police “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? 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? We will analyze and answer these critical questions (and many more) this semester.

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 U.S. 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 two 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%).

PARTICIPATION, PROFESSIONALISM, & PREPARATION

Participation & Professionalism (P&P): Success in law school often involves an active learning environment. Please re-read material you do not fully understand prior to class, listen to everything said in class, and refrain from multi-tasking (checking social media, thinking about other courses, etc) during class. This Crim Pro course only meets one evening a week for three hours; devote yourself fully to this limited class time to derive its maximum benefits.

I utilize various teaching approaches to facilitate class discussions, 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, and conduct during class.

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 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. To reserve an appointment, please sign up in the Faculty Appointments Book located in the second-floor faculty suites.

Spr20 Office Hours TBA



THE FOURTH AMENDMENT

WEEK 1: Tuesday January 21

Warrants & Probable Cause; Detention Hearings; Reasonable Expectations of Privacy
pp. 71-76; 177-178; 188-195; 199 (n.1)-202 (thru n.7); 224-227; 213 (n.1)-214; 95-104

WEEK 2: Tuesday January 28

REP continued; Home, Curtilage, & Open Fields
pp. 112 (n.1)-120; 123 (n.4)-140; 144 (n.5)-155; 162-168

WEEK 3: Tuesday February 4

Serving the Warrant; Exigent Circumstances; Plain View
pp. 216-217 (n.7); 228-244; 346-349; 351 (n.3)

WEEK 4: Tuesday February 11

Search Incident to Arrest (SITA); Arrest Inventories; Protective Sweeps
pp. 251-256; 259 (n.6)-272; 281 (n.4)-284; 286-291; 454-457

WEEK 5: NO CLASS (“Legislative Day” Monday classes meet on Tuesday 2/18/20)

WEEK 6: Tuesday February 25

99 Problems: Cars, Containers in Cars, & Pretextual Stops
pp. 297-319; 331-339; 414 (n.4)

WEEK 7: Tuesday March 3

Stop & Frisk; Plain Touch; “Consensual” Encounters
pp. 389-400; 403 (n.4)-409; 351 (n.2); 417-424 (thru n.3); 427-430; 433-440; 443-452

WEEK 8: Tuesday March 10

Consent; Special Needs Searches
pp. 352-357; 359-368; 376-379; 381 (n.2)-384; 469-477; 481-486

WEEK 9: NO CLASS (SPRING BREAK) (!)

WEEK 10: Tuesday March 24

MIDTERM

JUDICIALLY CREATED REMEDIES

WEEK 11: Tuesday March 31

Concepts of Standing in Crim Pro; The Exclusionary Rule
pp. 493-494; 497-509; 520-525; 528 (n.4)-545; 553-559; 568-572

THE FIFTH AMENDMENT

WEEK 12: Tuesday April 7

Miranda v Arizona; The Right to not Self-Incriminate
pp. 625-638; 644 (n.6)-646; 691-698 (thru n.3); 701-706

WEEK 13: Tuesday April 14

Continuing to Define & Limit Miranda; Non-Testimonial Evidence
pp. 714-717 (thru n.5); 733-736; 739 (n.2); 652-659; 678-690; 710-711 (n.6 & n.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 14: Tuesday April 21

The Right to Appointed Counsel; Jailhouse Informants

pp. 1043-1046; 1050-1052; 1070-1077; 755-770; 775 (n.1); 777 (n.6)

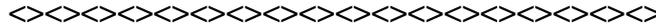
WEEK 15: Tuesday April 28

Eyewitness Identification

pp. 827-857

LAST DAY OF INSTRUCTION: Tuesday May 5

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, 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.”



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.