



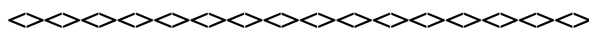
CRIMINAL PROCEDURE 311§A

Professor Elizabeth N. Jones

enjones@wsulaw.edu

Fall 2020

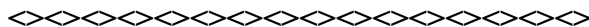
M & W 10:45 am – 12:15 pm



REQUIRED TEXT

Dressler, Thomas, & Medwed, *Criminal Procedure: Investigating Crime* (7th ed., West Publ.)

Students must enroll in the Lexis Classroom page titled “Crim Pro 311A F20 JONES” with PassCode: BJTY3X



ONLINE EXPECTATIONS & REQUIREMENTS

This semester WSCL courses will be held entirely online. The COVID-19 pandemic is a health threat such that “on ground” classes cannot be accomplished safely. Thus, you will learn Crim Pro through both synchronous (Zoom sessions) and asynchronous (multiple-choice questions, PowerPoint slides, policy reflection paragraphs, quizzes, multimedia) techniques.

Zoom should be treated like an “in-person” class. Please come prepared, pay attention, take notes, and engage in the material. With that said, it merits acknowledgment that an online learning format necessitates some different rules and requirements than traditional classes:

- ◆ Sign into Zoom with your name used to register for class. If you prefer to be called by a different name you may rename yourself in Zoom using the following format: “PreferredName (FirstName) LastName”
- ◆ Arrive to class early. Be prepared and dressed as you would for an in-person class.
- ◆ Your camera must be turned on and must remain on for the duration of the class. Your microphone must be muted and remain muted unless otherwise directed.
- ◆ Do not post screenshots or recordings from any Zoom classes on social media. Our screen time together will be awkward enough without memorializing it forever in time. And even more importantly, such actions would constitute a violation of the Student Honor Code.

- ◆ If you have to miss a Zoom session, or arrive late or leave early, please email me in advance as you would for an in-person class. Keep in mind that it may be hard for me to see if students are in the Zoom “waiting room” while I am teaching, so your timely arrival is much appreciated.
- ◆ If you have connectivity issues, whether long-term or short-term, that impact your ability to participate (e.g., if you are limited to dial-in without video) let me know so we can explore other accommodations if necessary.

COURSE DESCRIPTION

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

Simply put, 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. For example: 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? We will analyze and answer these questions (and many more) this semester.

ATTENDANCE, EXAMINATIONS, & GRADES

Class attendance is important, and it is mandatory. Students who miss more than four (4) 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 and a three-hour final examination. Final grades will be based on the midterm (15%), the final exam (70%), and P&P (participation & professionalism) (15%).

PARTICIPATION, PROFESSIONALISM, & PREPARATION

Participation & Professionalism (P&P): Success in law school often involves an active learning environment. While learning exclusively online may not allow for the most effective engagement, Zoom classes should not be considered the same as passively watching YouTube or Netflix. Please re-read material you do not fully understand prior to class, and refrain from multi-tasking (checking social media, thinking about other courses, etc) during class.

For volunteer participation, quality is valued over quantity, and 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, 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 (6) or more hours outside of class to complete.

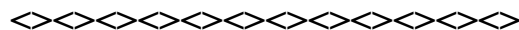
LEARNING GOALS

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.

OFFICE HOURS

F20 Office Hours TBA



SYLLABUS

THE FOURTH AMENDMENT

WEEK 1: Monday August 24 & Wednesday August 26

Warrants & Probable Cause; Detention Hearings; Reasonable Expectations of Privacy
pp. 68-72; 189-190; 199-206; 210 (n1)-213(thru n6); 233-236; 223 (n1)-224(thru n4); 91-100

WEEK 2: Monday August 31 & Wednesday September 2

REP continued; Home, Curtilage, & Open Fields
pp. 100-104; 111-115; 118-129; 138(n5)-148; 154-166; 174-178

WEEK 3: Wednesday September 9 (no class Labor Day M 9/7)

Serving the Warrant; Exigent Circumstances; Plain View
pp. 225(n7)-226; 237-251; 254(n7)-255; 347-350

WEEK 4: Monday September 14 & Wednesday September 16

Search Incident to Arrest (SITA); Arrest Inventories; Protective Sweeps
pp. 256-261; 264(n6)-276; 284(n4)-286; 289-294; 450-453

WEEK 5: Monday September 21 & Wednesday September 23

99 Problems: Cars, Containers in Cars, & Pretextual Stops
pp. 301-322; 333-341; 412(n4)-413

WEEK 6: Monday September 28 & Wednesday September 30

Stop & Frisk; Plain Touch; “Consensual” Encounters
pp. 387-398; 403(n6)-407; 352(n2); 415-422(thru n3); 425-448

WEEK 7: Monday October 5 & Wednesday October 7

Consent; Special Needs Searches
pp. 353-358; 360-368; 375-378; 380(n2)-383; 462-471; 474-479

WEEK 8: Monday October 12 & Wednesday October 14

Review (Monday) & MIDTERM (Wednesday)

JUDICIALLY CREATED REMEDIES

WEEK 9: Monday October 19 & Wednesday October 21

Concepts of Standing in Crim Pro; The Exclusionary Rule
pp. 487-488; 490-503; 512-518; 520(n4)-536; 542-548; 556-560

THE FIFTH AMENDMENT

WEEK 10: Monday October 26 & Wednesday October 28

Miranda v Arizona; “Custody” & “Interrogation” per Miranda
pp. 613-625; 630(n5)-632; 675-689

WEEK 11: Monday November 2 & Wednesday November 4

Continuing to Define & Limit Miranda; Non-Testimonial Evidence
pp. 697-699; 715-718; 720(n2); 638-644; 663-668; 673-674; 693-694(n6 & n7); 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 12: Monday November 9 & Wednesday November 11

The Right to Appointed Counsel; Jailhouse Informants
pp. 1018-1021; 1024-1027; 1045-1052; 735-748; 754(n6)

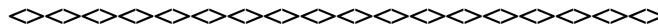
WEEK 13: Monday November 16 & Wednesday November 18

Eyewitness Identification
pp. 793-824

WEEK 14: No Classes Thanksgiving Week

WEEK 15: Monday November 30

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 #111. 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.

Requirements for Students in Zoom Sessions:

- Find a dedicated quiet space to attend Zoom sessions, to minimize the chances that you will be disrupted during the session.
- Arrive to class early and dressed as you would to attend an in-person class.
- Your camera must be turned on for the duration of the class. If desired, you can use the background settings in Zoom to create an artificial background that blocks the view of your space while still allowing you to be seen on camera.
- Come prepared, as you would for an in-person class. Participation in Zoom classes is as important as it is during an in-person class session.
- Do not multitask – stay focused on the class discussion – do not wander in and out of the Zoom session.
- If you have to miss a Zoom session, or arrive late or leave early, notify the professor in advance, as you would for an in-person class.
- If you have connectivity issues, whether it be long-term or short-term, that impact your ability to participate (e.g., if you are limited to dial-in without video), notify your professor so other accommodations can be explored.
- Do not post screenshots or recordings of any Zoom classes on social media. Such actions would constitute a violation of the Student Honor Code. If you need access to a recording of the Zoom session, please contact your professor.