

CRIMINAL PROCEDURE
SECTION 311A

Professor Stacey Sobel
Spring Semester 2021

Course Information

Online Course Materials: TWEN, sign up by January 28
Email: ssobel@wsulaw.edu

Office hours: Office hours will be held on Zoom on Mondays and Thursdays, 5:00-6:30 PM. **The Zoom meeting number is 3444462334.** Once I've completed the previous meeting, you will be admitted from the waiting room. Meetings during office hours should be scheduled via TWEN sign-up sheets. If you cannot make an appointment during regular office hours, please email me to schedule a meeting. Meetings should be scheduled at least 24 hours in advance. If they are made less than 24 hours in advance, I may make alternative plans and might not be available to meet. If you need to cancel a meeting or if you will be late, please remove your name from the sign-up sheet. I may schedule additional office hours at particular times during the semester. You will be notified in class and/or via TWEN of when those hours will occur.

Required Text

Dressler & Thomas, *Criminal Procedure: Investigating Crime* (7th ed., West Publishing)
Online reading material as assigned (via TWEN)

I do not recommend commercial briefs and they are not permitted in class.

Learning Goals – After completion of this course, students should be able to:

- Understand, and apply, general concepts of criminal procedure relating to the investigation of crimes derived from the United States Constitution's Fourth, Fifth, and Sixth Amendments.
- Understand, and think critically about, the principles and policies behind our current and past system of investigative criminal procedure.
- Apply and distinguish cases, including the ability to: identify the salient features of an appropriate precedent case; identify legally significant similarities between the precedent case and a fact pattern, and explain why the similarities are legally significant; and identify legally significant differences between the precedent case and a fact pattern, and explain why the differences are legally significant.
- Apply constitutional standards to facts including the ability to correctly articulate the constitutional analysis 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 Court's analytical requirement(s).
- Evaluate legal arguments, and identify the strengths and weaknesses of the argument.

Ethics – Ethics are an important part of the practice of law. All students should be familiar with WSCL's Honor Code. 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.

Reading and Class Participation – Students are expected to complete the assigned reading prior to class. You should engage in at least six hours of course preparation per week. All students are expected to engage in class discussion. Participation is key to making this class enjoyable, so I expect everyone to be prepared to intelligently discuss and critically evaluate that day's assignment in class. In particular, be prepared to discuss the pertinent facts, issues, law and court findings and rulings of each case. All students are expected to engage in professional and respectful discussion of the case materials and subject matter. All views are welcomed. I use a combination of assigned-calling and volunteers for class discussion. For volunteer participation, I value quality over quantity, but being an active participant is important. A consistent or significant lack of preparation or professionalism may result in a grade reduction of up to .3 (e.g., from 3.3 to 3.0) on a student's course grade. Exemplary performance may result in a grade increase of .1 (e.g., from 3.0 to a 3.1) on a student's course grade. **Students may not record the class discussion without the professor's approval.**

Attendance – The WSU policy on required attendance at all classes will be followed: students may be absent no more than two (2) class periods. Students who miss more than two (2) classes may be dismissed from the class, thus receiving a "0" for the course absent extenuating circumstances. See the WSCL Attendance Policy, reprinted in the Student Handbook. Students are expected to be in class at the time the course begins. Students who are late may be considered absent at the discretion of the professor. Students who know that they will be late or absent should email me prior to class if possible.

Examinations and Grading – The course grade is based on one mid-term and a final exam. The mid-term is comprises 20% of your grade. The mid-term covers the assigned readings from the beginning of the semester until the mid-term. The final examination accounts for 70% of your grade and covers all materials for the semester. The final exam will be a take home project. Due to the increased class participation demands, class participation and professionalism comprises 10% of your grade. There may be occasional on-line quizzes for pass-fail credit. Failure to complete or pass a quiz may result in a grade reduction of up to .3.

Accommodations – 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."

COURSE READING

- Week One (1/21) The 4th Amendment, Searches
67-72; 79-88, 91-100, 117-129
- Week Two (1/28) Searches, Probable Cause
130-137, 141-153, 154-184, 189-190
- Week Three (2/4) Probable Cause, Search Warrants
199-213(n6), 223-241, 542-554
- Week Four (2/11) Warrantless Searches Requiring Probable Cause
242-256, 347-353, 256-279, 289-299
- Week Five (2/18) Warrantless Searches Requiring Probable Cause
450-457(n3), 299-323, 333-341, 353-363
- Week Six (2/25) Warrantless Searches without Probable Cause
375-383, 388-399, 403(n6)-407, 415-424, 429-448
- Week Seven (3/4) Warrantless Searches without Probable Cause, Review
457(n4)-467, 474-485, previous exam review
- Week Eight (3/11) Mid-term
- Week Nine (3/18) Spring Break – No classes
- Week Ten (3/25) 4th Amendment Violation Remedies
487-508, 512-540
- Week Eleven (4/1) Remedies, Interrogation
556-563, 12-17, 575(n4)-577(n6), 613-628, 630(n5)-632, 675-681, 685-695
- Week Twelve (4/8) Interrogation, Right to Counsel
715-719, 721(n3)-725, 638-645, 663-675, 695-697, 607-608, 1017-1022,
1045-1054
- Week Thirteen (4/15) Right to Counsel, Identifications
735-755, 793-824
- Week Fourteen (4/22) Motions to Suppress, Review
Materials via TWEN, previous project review
- Week Fifteen (4/29) Project Assigned

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.
- **Sign into Zoom with your full name. Please use the first name you prefer to be called.** Please notify your professor if you are using a name that is different than the name you are registered under so you are not marked absent.
- Unless your professor instructs you otherwise, mute your microphone when you are not speaking. Unmute to speak or to ask or answer questions.
- Zoom classes are not YouTube or Netflix. You should be actively engaged in answering questions, taking notes, writing down questions you wish to ask later during class or during office hours, etc. This will not only help you stay engaged and participating in class, it will also help your learning in the online format.
- If you are using your computer to take notes and/or using an e-casebook, remember that you may not be able to easily switch between those apps and the Zoom session. This could undermine your ability to pay attention to the class discussion. Figure out how you will resolve that technological issue before your first class session and consider possible modifications to your normal note taking style (e.g., handwritten notes) or using a two-screen set-up.
- Zoom has a number of tools available to you as a student: yes/no symbols, raise hand and thumb icons, share screen (with permission of the professor), chat windows, etc. Please familiarize yourself with those tools before class so that you can use them as requested by the professor. Your professor will inform you about the ways in which you should use these tools in that particular class.
- Professors may use a number of interactive functions in Zoom to engage with students. Like being called on in a live classroom, you are expected to participate fully in these activities and functions, i.e., answer polling questions, speak with your classmates in breakout groups, share your screen as requested, etc.

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.