



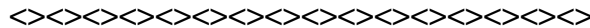
CRIMINAL PROCEDURE 311§A

Professor Elizabeth N. Jones

enjones@wsulaw.edu

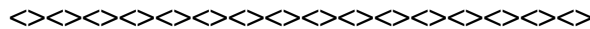
Spring 2022

Monday & Wednesday 1 p.m. – 2:30 p.m.



REQUIRED TEXT

Dressler, Thomas, & Medwed, *Criminal Procedure: Investigating Crime* (7th ed., West Publ.)
Students must enroll in the Lexis Classroom page titled “CrimPro-311A-Spr22-Jones” with
PassCode: 8LE6D7



ONLINE EXPECTATIONS

WSCL courses will begin this semester online and transition back to campus when in-person learning can be accomplished safely. Thus, the following faculty-approved procedures will govern our time together on Zoom:

- ◆ 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. And even more importantly, such actions would constitute a violation of the Student Honor Code and the WSCL Principles of Community.
- ◆ 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.

COURSE DESCRIPTION

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

Simply put, this class will teach you “rules” that affect you, 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. Some questions: When can the police “detain” you? Can an officer look inside your backpack? Does it matter if you are 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 answer these 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 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%).

PARTICIPATION, PROFESSIONALISM, & PREPARATION

Participation & Professionalism (P&P): Law school success often involves an active learning environment. Please do the assigned reading (and 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, etc) during class. This Criminal Procedure course only meets twice a week for 180 total minutes; devote yourself fully to this class time to derive its maximum benefits.

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, punctuality, and conduct during class time.

You may not record this class without my prior approval. Students in violation of course 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

Spr22 Office Hours TBA



SYLLABUS

THE FOURTH AMENDMENT

WEEK 1: Wednesday January 19

Warrants & Probable Cause

pp. 68-72; 189-190; 199-206; 210 (n1)-213(thru n6); 233-236

WEEK 2: Monday January 24 & Wednesday January 26

Reasonable Expectation of Privacy; Detention Hearings; K9s; Home, Curtilage, & Open Fields

pp. 223(n1)-224(thru n4); 91-104; 111-115; 118-129; 138(n5)-148; 154-164; 174-178

WEEK 3: Monday January 31 & Wednesday February 2

Serving the Warrant; Exigent Circumstances; Plain View

pp. 225(n7)-226; 237-251; 254(n7)-255; 347-350

WEEK 4: Monday February 7 & Wednesday February 9

Search Incident to Arrest (SITA); Arrest Inventories; Protective Sweeps

pp. 256-261; 264(n6)-276; 284(n4)-286; 450-453; 289-294

WEEK 5: Monday February 14 & Wednesday February 16

99 Problems: Cars, Containers in Cars, & Pretextual Stops

pp. 301-322; 333-341; 412(n4)-413

WEEK 6: Tuesday February 22 (“Legislative Day”) & Wednesday February 23

Stop & Frisk; Plain Touch; “Consensual” Encounters

pp. 387-398; 403(n6)-407; 352(n2); 415-422(thru n3); 425-448

WEEK 7: Monday February 28 & Wednesday March 2

Consent; Special Needs Searches

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

JUDICIALLY CREATED REMEDIES

WEEK 8: Monday March 7 & Wednesday March 9

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

WEEK 9: SPRING BREAK

WEEK 10: Monday March 21 & Wednesday March 23

Review (Monday) & MIDTERM (Wednesday)

THE FIFTH AMENDMENT

WEEK 11: Monday March 28 & Wednesday March 30

Miranda v Arizona; “Custody” & “Interrogation” per Miranda
pp. 613-625; 630(n5)-632; 697(n1); 675-689

WEEK 12: Monday April 4 & Wednesday April 6

Continuing to Define & Limit Miranda; Non-Testimonial Evidence
pp. 698-699; 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 13: Monday April 11 & Wednesday April 13

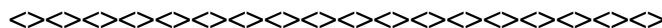
The Right to Appointed Counsel; Jailhouse Informants
pp. 1018-1021; 1024-1027; 1045-1052; 735-748; 754(n6)

WEEK 14: Monday April 18 & Wednesday April 20

Eyewitness Identification
pp. 793-824

WEEK 15: Monday April 25 & Wednesday April 27

Catch-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. 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.