

WESTERN STATE UNIVERSITY COLLEGE OF LAW

CRIMINAL PROCEDURE – SPRING 2023

LAW 311 B – Room TBD

Professor: Cassandra Mellas, Esq.

Email: cmellas@wsulaw.edu

Class Time: Thursdays, 6:40 – 9:50 PM

Office Hours: TBD – *on campus & telephonic/zoom options will be available*

Required Text

1- Dressler, Thomas, & Medwed, *Criminal Procedure: Investigating Crime, 7th Edition*

ISBN: 9781647081997 /// **Publication Date:** 03/09/2020

COURSE DESCRIPTION

This course primarily explores the 4th, 5th, and 6th amendments including their underlying principles and policies. These procedures, policies, and rules are intended (*in part*) to further evenhanded enforcement and promote fairness in government conduct. By its nature, there is tremendous tension present in most criminal procedure cases; how does the government protect the rights of individual citizens while still providing a pathway for adequate investigation of criminal cases the government? Society has a vested interest in the governmental investigation of crimes. Where the government is conducting a criminal investigation, there are both rigid *and* flexible Constitutional limits to its power during the investigation. A knowledge of individual rights in comparison to governmental power is quickly becoming more serious than “*the framers*” could imagine. Especially, considering recent immense technological advancements. Picture Thomas Jefferson or James Madison (*both critical to the drafting of “The Bill of Rights”*) trying to comprehend the warrantless collection of digital cellphone/geo-fence information.

COURSE METHODOLOGY

There are three learning opportunities in preparing for and attending a Criminal Procedure class: (1) cases, (2) problems, and (3) legislative policy. Please be purposeful in your class preparation.

Criminal Procedure is a tremendously complex class, invoking Constitutional law questions at every turn. Similarly, to Constitutional law, the rights of individual citizens *MUST* be balanced against the interests of the government and at times, sometimes even society at large. A nuanced discussion attempting to balance the interests of the individual and the government, requires both a robust knowledge of the rules (*case law*) themselves *and* their underlying policies.

COURSE OBJECTIVES

- Understanding the laws and policies driving the 4th, 5th, and 6th amendments,
- Further developing legal & constitutional analysis skills,
- Expanding legal analysis and oral communication skills during class debates,
- Articulate understanding of the legal (& *cultural*) importance of these rules,
- Utilizing critical thinking skills to explore the nuance of human bias within the law, &
- An understanding of “Crim Pro” sufficient to prepare you for the California Bar Exam.

COURSE POLICIES

Class Preparation - You are expected to spend, at minimum, 2 hours of preparation for every one hour of official class time. For our purposes, this means you should expect to spend a minimum of 6 hours per week preparing for class. This may include briefing, reading official comments, taking notes, writing flashcards, outlining, reading supplements, listening to audio lectures, watching educational videos, or anything else needed in preparation of class.

In Class Expectations – You are expected to brief each case – *in your own words* – and be prepared to explain each case to the class. ***DO NOT recite from any brief, outline, resource, brief bank, or any other materials besides your own thoughts.*** You are expected to have a prepared answer to each question assigned in *Dressler*. I strongly caution against letting work pile up in a course such as Criminal Procedure, as it is voluminous and easy to fall behind.

Participation - Participation, is defined as meaningful contributions to class time, discussions, office hours, thoughtful questions, and the like. Participation is not, asking an abundance of questions attempting to get participation points. Participation is expected to be robust, meaningful, and qualitative. All views are encouraged and respected in this classroom.

Professionalism – Professionalism includes being respectful to your peers, attending class on time, and communicating in a respectful manner. Under no circumstances will any unprofessional conduct be tolerated. Everyone will be respectful, courteous, and professional. *(Part of being professional is giving class the respect it deserves, individuals using computers for non-notetaking purposes will risk losing participation and professionalism points.)*

Attendance - No more than **2 (two) absences** are permitted without being withdrawn from the course and receiving a failing grade, under the guiding policies of Western State College of Law.

Missing 2 (two) night classes is the equivalent of missing about 14-16% of class, amounting to a substantial amount of instruction. Best practices recommend attending every class, if possible.

Assignments – Assignments are expected to be completed, in full. Example: In *Dressler*, you will need to prepare answers to the “questions” in the book, as you read each chapter.

ELECTRONICS POLICIES

Computer Use – While you are strongly discouraged from any computer use during class, it is permissible to use your computer for note taking or briefing purposes **only**. Tasks including Discord, iMessage, WhatsApp, email, games, texting, sharing briefs, social media, or any non-class related activities, are **prohibited**. You will have approximately 40 hours of in-class time in this course, make it count! ****If this policy is broken, it may become a computer free classroom.*

Cell Phones – Cell phones, will not be permitted during class time. If there is a family emergency or other reason to be “on call” during class, please reach out before class time starts.

Audio/Video Recording – No audio, video, photographic, or other recording or any kind shall take place without prior express permission of the Professor. *CA is a 2-party consent state.*

PLAGIARISM

There is a zero-tolerance plagiarism policy in coursework, exams, briefs (*book, written, digital, audio, or otherwise*), assignments, “group-work”, or **any** other type of verbal or written work.

Basic definition - Plagiarize: to steal and pass off (the ideas or words of another) as one's own: use (another's production) without crediting the source. (*Webster's, 2022*)

Nuanced definition - “Plagiarism is the act of taking a person’s original work and presenting it as if it was one’s own. Plagiarism is not illegal in the United States in most situations. Instead, it is considered a violation of honor or ethics codes and can result in disciplinary action from a person’s school or workplace. However, plagiarism can warrant legal action if it infringes upon the original author’s copyright, patent, or trademark. Plagiarism can also result in a lawsuit if it breaches a contract with terms that only original work is acceptable. Email, “I read it all!” to cmellas@wsulaw.edu for bonus points by 6:40 PM the first day of class. But, shh! To avoid plagiarism, a person should always properly attribute any information they use to the original author through quotes or citations. Further, there are free online plagiarism checkers to ensure that a person’s work is free of plagiarism such as Grammarly, Duplichecker, or Quetext.” (*Updated in November of 2021, Wex Definitions Team for Legal Information Institute.*)

For more information on plagiarism, please see: [https://www---staging-mp6ykpk7cbbg.us.platform.sh/sites/default/files/policy%20\(1\).pdf](https://www---staging-mp6ykpk7cbbg.us.platform.sh/sites/default/files/policy%20(1).pdf)

Any violation of standards set forth may result in the following: being removed from the class session, being marked absent, losing participation points, and penalties available in the WSCL Student Handbook.

GRADING

Participation & Professionalism – 15%

Midterm Examination – 15%

Final Exam – 70%

COURSE ASSIGNMENTS

<u>Class</u>	<u>Reading Assignment</u>	<u>Activity</u>
<u>Class 1</u> 1/19/23	63-72 // 91-104 // 108 n10-129 // 189-190 // 198 n7-206 210n11-213n6 // 233-236	
<u>Class 2</u> 1/26/23	130-164 // 173 n1-178 // 223 n1-226	
<u>Class 3</u> 2/2/23	237-276	<i>Activity A Due</i>
<u>Class 4</u> 2/9/23	284 n4-286 // 289-294 // 347-350 // 450-453	
<u>Class 5</u> 2/16/23	301-322 // 333-341 // 412 n4-413 // 405 n11- 407 n11	<i>Activity B Due</i>
<u>Class 6</u> 2/23/23	387-398 // 352 n4 // 403 n6-404n7 // 415-448	
<u>Class 7</u> 3/2/23	353-368 // 375-383 // 462-480	<i>Activity C Due</i>
<u>Class 8</u> 3/9/23	MIDTERM EXAMINATION & In-Class Activity	
<u>Class 9</u> 3/23/23	487-503 // 512-536 // 542-548	
<u>Class 10</u> 3/30/23	613-625 // 630 n5-632 // 675-689	<i>Activity D Due</i>
<u>Class 11</u> 4/6/23	697-699 // 715-719 // 720 n2 // 638-645 // 663-668 673-674 // 693-694 // 692 n4-694 n7	
<u>Class 12</u> 4/13/23	1017-1022 // 1024-1027 // 1044-1054 // 735-748 // 754 n6	<i>Activity E Due</i>
<u>Class 13</u> 4/20/23	793-824 // 1001-1002 // 1007-1010 n5 // 1062	
<u>Class 14</u> 4/27/23	TBD Reading Assignment & Final Review Session	<i>Activity F Due</i>

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.

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."