



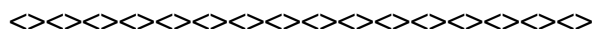
## **CRIMINAL PROCEDURE 311§A**

**Professor Elizabeth N. Jones**

enjones@wsulaw.edu

**Fall 2023**

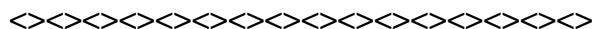
**M & W 10:30 am – 12 pm**



### **REQUIRED TEXT**

Dressler, Thomas, & Medwed, *Criminal Procedure: Investigating Crime* (8th ed., West Publ.)

Students must enroll in the Lexis Classroom page titled “CrimPro-F23-311A-Jones” with PassCode: **FEC4R3**



### **COURSE DESCRIPTION**

This course examines three constitutional amendments governing criminal investigations. In doing so, 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 and everyone you know. 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 we will critically analyze: 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? Does the bulk collection of cell phone location data require a warrant? 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 are you entitled to a lawyer?

### **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). Please note: just because you can miss four classes without being dismissed does not mean that you should miss four classes.

Students earn a numeric grade for this course. The final course grade will consist of two “closed book” examinations: a midterm (during a regularly scheduled class) and a three-hour final exam. 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 involves active learning. You should read the assigned material prior to class, listen to what is said in class (including what is said in response to other students), and refrain from multi-tasking (checking social media, thinking about other courses, etc) during class. This Crim Pro class only meets twice a week for 180 total minutes; if you devote yourself to this class time you will derive its maximum benefits.

For volunteer participation, quality is valued over quantity, but being an engaged participant is important. All views are welcome.

Your “P&P” grade will be based on the quality & 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 for class 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 will require six 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, concepts 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 appropriate precedent cases 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.

- ◆ Identify issues related to ethics and the professional responsibility required of those practicing within the criminal justice system.
- ◆ Understand, and think critically about, to what extent themes of race, inequity, and bias exist in the criminal justice system.

## **OFFICE HOURS**

F23 Office Hours TBA



# SYLLABUS

## THE FOURTH AMENDMENT (4A)

### WEEK 1: Wednesday August 23

#### Words of the 4A; Warrants; Probable Cause

pp. 69-74; 193-196; 206-213; 217(n1)-219; 240-243; 230-231(thru n4)

### WEEK 2: NO CLASS (Monday August 28 & Wednesday August 30)

### WEEK 3: Wednesday September 6

#### Challenges of Ever-Evolving Technology

Download & Read: Jones, Elizabeth N., *Crim Pro Rewired: Why Current Police Practices Require Candor in the Classroom*. 21 Seattle J. Soc. Just. 541 (2023),

[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4408884](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4408884)

### WEEK 4: Monday September 11 & Wednesday September 13

#### 4A → Privacy; K9s; Home, Curtilage, & Open Fields; Serving the Warrant

pp. 93-97; 120-131; 204(n8)-205; 408(n11)-410; 177-182; 232(n7)-233; 244-253

### WEEK 5: Monday September 18 & Wednesday September 20

#### Exigent Circumstances; Plain View; Search Incident to Arrest; Arrest Inventories; Protective Sweeps

pp. 254-262; 352-355; 264-268; 271(n5)-283; 292(n5&n6); 449-452; 295-300

### WEEK 6: Monday September 25 & Wednesday September 27

#### Cars, Pretextual Car Stops, Containers in Cars, ...

pp. 339-342; 306-316; 321-328; 346(n5); 414(n3)-415

### WEEK 7: Monday October 2 & Wednesday October 4

#### Stop & Frisk; Plain Touch; “Consensual” Encounters

pp. 390-401; 405(n6)-407; 357(n2); 417-424(thru n3); 413(n2)-414; 426-446

### WEEK 8: Monday October 9 & Wednesday October 11

#### Consent; Special Needs Searches

pp. 358-372; 379-382; 384(n2)-386; 461-468; 472-476

**WEEK 9: Monday October 16 & Wednesday October 18**

Review (Monday) & MIDTERM (Wednesday)

**JUDICIALLY CREATED REMEDIES**

**WEEK 10: Monday October 23 & Wednesday October 25**

Concepts of Standing in Crim Pro; The Exclusionary Rule  
pp. 481; 483(n3)-497; 507-512; 514(n4)-529; 535-541

**THE FIFTH AMENDMENT (5A)**

**WEEK 11: Monday October 30 & Wednesday November 1**

Miranda v Arizona; “Custody” & “Interrogation” per Miranda  
pp. 620-633; 637(n6)-639; 685-691; 695-699

**WEEK 12: Monday November 6 & Wednesday November 8**

Continuing to Define & Limit Miranda; Non-Testimonial Evidence  
pp. 692-693(thru n3); 707-712; 718(n5)-720; 645-650; 683(n5)-684; 704(n6 & n7)

**THE SIXTH AMENDMENT (6A)**

**WEEK 13: Monday November 13 & Wednesday November 15**

The Right to Appointed Counsel; Jailhouse Informants  
pp. 1032-1035; 1039-1041; 1053-1060; 745-758; 763(n1); 764(n5 & n6)

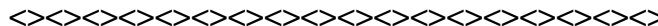
**WEEK 14: NO CLASS Thanksgiving Week**

**WEEK 15: Monday November 27 & Wednesday November 29**

Eyewitness (Mis)Identification Issues  
pp. 805-834

**Monday December 4**

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](mailto: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 Marisa Cianciarulo at [mcianciarulo@wsulaw.edu](mailto:mcianciarulo@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.