

COURSE SYLLABUS

CRIMINAL PROCEDURE AND PRACTICE Fall 2019

Professor Anna Saxman ***NOTE- MY E-MAIL ADDRESS:

anna.saxman@gmail.com Use this email if you want a quick answer!

Work phone: 802 598-3593

Office hours (first floor in Waterman): before class on Tuesdays or Thursdays or by appointment.

Grading: You will be graded on 2 written assignments: 1 motion to suppress physical evidence and statements and 1 draft judicial decision on a motion for judgment of acquittal. You will also be graded on your 2 oral presentations, 2 judging of student arguments and 2 quizzes.

Class participation is expected and may add to your grade. Some extra credit opportunities may be available.

TEXTS: Brent Newton, Criminal Litigation & Legal Issues in Criminal Procedure (NITA 4th ed. 2014) Joshua Dressler, Understanding Criminal Procedure, Volume I: Investigation (LexisNexis 7th ed. 2017). OPTIONAL: Dressler, Volume II: Adjudication

Learning objectives:

- Students will analyze, evaluate and learn the substantive law of Criminal Procedure, relevant to each stage of a criminal case, including the applicable law of the Fourth, Fifth, and Sixth Amendments;
- Students will learn advocacy skills by presenting oral arguments and written motions pro and con prosecution and defense.
- Students will identify areas of criminal procedure where reform is currently happening or needed.

1.August 27th Tuesday Intro to Class/ Intro to Bail /Team assignments

ASSIGNMENT: read Dressler Chapter 1 § 1.03 & § 2.07-Stages of a Criminal Prosecution and pages 1-6 in Newton, and pages 4-9 of *Moving Beyond Money: A Primer on Bail Reform* available at <http://cjpp.law.harvard.edu/assets/FINAL-Primer-on-Bail-Reform.pdf>

2. August 29th Thursday *How to argue motions/ Bail**

ASSIGNMENT: Read Newton text entitled Bail Hearings, and 18 U.S.C. § 3142 (Federal Bail Reform Act). Read Hypos and cases cited in preparation at the end of the hypotheticals and be prepared to discuss and judge the hypo. Read Bail outline on TWEN.

TEAM A Hypo# 1 *United States v. Mahmoudi* p. 31 **NOTE:** Don't read *United States v. Byrd*--just the other two cases listed at the end of the HYPO

TEAM B Hypo# 3 *United States v. Johnson* p. 37

3. September 3rd Tuesday BAIL Continued

ASSIGNMENT: read hypos 4 & 5 and the case and statutes cited in preparation. Be prepared to discuss and judge the hypos.

TEAM C Hypo # 4 *United States v. Duff* p.39

TEAM D Hypo #5 *United States v. Marquez* p. 41

4. September 5th Thursday Intro to the 4th Amendment Search & Seizure

Read Dressler § 4.01-§ 4.05 (pages 47-59), § 5.01 (pages 61-63) and § 6.01-§6.03 (pages 65- 76) and be ready to answer the question in the middle of page 50 as to what other evils the Framers may have had in mind and be prepared to discuss what broad values inspired the Framers.

5. September 10th TUESDAY 4TH AMENDMENT SEARCHES

ASSIGNMENT: Read Dressler, § 6.05 -§ 6.10 pages 80- 108 and Search & Seizure outline on TWEN.

6. September 12^h Thursday PROBABLE CAUSE & REASONABLE SUSPICION

ASSIGNMENT: Read Newton (NITA text) on Pretrial Suppression Motions pgs. 55-58 and *Terry v. Ohio*, 392 U.S. 1 (1967) (majority opinion and J. Harlan's concurrence). Read the hypo listed below and the cases cited in preparation. Be prepared to discuss and judge the hypos.

TEAM E HYPO # 1 *United States v. Gonzalez* p. 59

Note: there are 2 parts to this HYPO- TEAM E ONLY argue 1st part --the question is whether the officer had reasonable suspicion: Read Illinois v.

Wardlow, 528 U.S. 119 (2000) and Commonwealth v. Warren, 58 N.E.3d 333 (Mass. 2016). The 2nd part is the good faith exception and all class should be prepared to argue pro or con based upon the cases cited in the NITA text.

TEAM F HYPO # 2 *United States v. Peterson* p.61

7. September 17th Tuesday Reasonable Suspicion

ASSIGNMENT: Read Dressler, Chapter 7 and Chapter 17 § 17.01-17.04

Read the hypos listed below and the cases cited in preparation for the hypo and be prepared to discuss and judge it.

TEAM G HYPO# 3 *State v. Johnson* p.63

TEAM H HYPO # A *State v. Constanza* HANDOUT

8. September 19th Thursday Reasonable Suspicion

Read the hypo listed below and the cases cited in preparation. Be prepared to discuss and judge the hypo.

TEAM I HYPO # 4 *United States v. DeBeer* p. 65. **NOTE:** Assume that the sentence at the bottom of page 65 to top of page 66 (STARTING “At this point...” **has been omitted**. Replace the cases listed at the end of this hypo with *Rodriguez v. United States*, 135 S. Ct. 1609.

TEAM J HYPO # B *State v. Raincourt*-- Handout

9. September 24th Tuesday EMERGENCY EXCEPTION/ EXCLUSIONARY RULE/FRUITS

ASSIGNMENT: Read Dressler Chapter 11 pages 179-184 and Chapter 12 § 12.01- §12.02

Read the hypo listed below, plus *Brigham City v. Stuart*, 547 U.S. 398 (2006) and *United States v. Huffman*, 461 F.3d 777 (6th Cir. 2006) and be prepared to discuss and judge it.

TEAM K HYPO # 5 *United States v. Shaeffer* p.67

******Suppression motion given*******

10. September 26th Thursday *4th Amendment review PRACTICE quiz!!**

& Intro to Confession Law

ASSIGNMENT: Re-read 4th Amendment handout and review major points & cases of last 6 classes. Also read Dressler, Chapter 21 pages 385-390.

11. October 1st Tuesday CONFESSIONS-5TH AMENDMENT AND VOLUNTARINESS

ASSIGNMENT: Read Dressler, § 21.03 pages 384-386 and § 21.04, pages 386-390, and pages § 22.01 pages 393-top of 402. Read the hypos listed below and the cases cited in preparation and be prepared to discuss and judge them.

TEAM L HYPO # 1 *United States v. Liebman*, p. 73

TEAM M HYPO #2 *State v. Davis* p.77

12. October 3rd Thursday CONFESSIONS/MIRANDA

ASSIGNMENT: Dressler Chapter 24 pages 440-445 and 457-477 and Confessions outline. Read the hypo listed below and the case cited in preparation and be prepared to discuss and judge it.

TEAM N HYPO # 5 *State v. Ross* p. 83

TEAM N HYPO # C *State v. Wandrisco* Handout

13. October 8 Tuesday Confessions as Fruit of 4th Amendment violation

ASSIGNMENT: Read the hypos listed below and the cases cited in preparation and be prepared to discuss and judge them.

HYPO O HYPO # 4 *United States v. Porto* p. 81

TEAM Extra Credit # D *State v. Tindall* p. 79

14. October 10th Thursday Sixth AMENDMENT RIGHT TO COUNSEL

ASSIGNMENT: Read Dressler § 25.02 -§ 25.08 (pages 479-503) and Right to Counsel outline handout.

Suppression motion OCTOBER 10th at 2:10 pm in class or by email.

October 15th TUESDAY NO CLASS FALL BREAK!

15. October 17th Thursday GRADED Quiz on 4th, 5th & 6th Amendment Law

TEAMS SWITCH! Prosecutors are now defense attorneys

16. October 22nd, VOIR DIRE

ASSIGNMENT: Read NITA text pages 85-middle of p. 86. Read *Batson v. Kentucky*, 476 U.S. 79 (1986) and *J.E.B. v. Alabama*, 511 U.S. 127 (1994).

TEAM A HYPO *State v. Gerger* p. 89

TEAM B HYPO *State v. Edwards* on page 90

17. October 24th Thursday LEGAL OBJECTIONS-COMMENTS ON THE RIGHT TO SILENCE

ASSIGNMENT: Read Newton p. 95-96 and the hypos listed below and the cases cited in preparation, and Be prepared to discuss and judge the hypothetical exercises listed below.

TEAM C HYPO#1 *State v. Reno* p. 97 **NOTE** read *Salinas v. Texas*, 133 S.Ct. 2174 (2013) and *United States v. Jones*, 2014 WL 950025 (E.D.N.Y.) instead of *Velardez-Gomez*, 269 F.3d 1023 (9th Cir. 2001). **only argue only Part A**-Rest of class be prepared to argue to discuss Part B

TEAM D HYPO #2 *State v. Herman* p.101

18. October 29th Tuesday JUDGMENT OF ACQUITTAL

ASSIGNMENT: Read F.R.Cr.P. 29; Read Newton (NITA text) on Motions for Judgment of Acquittal, (pgs. 113-116) and the hypos listed below and the cases cited in preparation. Be prepared to discuss and judge the hypos listed below.

TEAM E HYPO # 2 *United States v. Willie*, p.121

TEAM F HYPO # 3 *United States v. Nixon* p. 125

19. October 31st Thursday JUDGMENT OF ACQUITTAL

ASSIGNMENT: Read hypos listed below and the cases cited in preparation. Be prepared to discuss and judge the hypos listed below.

Team G HYPO # 4 *United States v. Watkins*, p. 127

Team H Hypo # 5 *United States v. Perry* p. 131

JOA assignment given

20. November 5th Tuesday JURY INSTRUCTIONS

ASSIGNMENT: Read F.R.Cr.P. 29.1, 30 & 31; Read Newton (NITA text) on Jury Instructions p. 133-34. Read the hypos listed below and the cases cited in preparation. Be prepared to discuss and judge the hypos listed below.

TEAM I Hypo #2 *United States v. Fernandez-Ochoa* P. 141 **NOTE:**

Also read: *United States v. Giovannetti*, 919 F.2d 1223 (7th Cir.1990).

TEAM J Hypo # 3 *United States v. Shields* p. 145

21. November 7th Thursday March 21st JURY INSTRUCTIONS continued

ASSIGNMENT: Read the hypos listed below and the cases cited in preparation. Be prepared to discuss and judge the hypothetical exercises listed below.

TEAM K Hypo # 4 *United States v. Montcrief* p.149

TEAM L Hypo# 5 *United States v. Weston* p. 153

22. November 12th Tuesday Discovery/ MOTIONS FOR NEW TRIAL

ASSIGNMENT: Read F.R.Cr.P. 16, 16.1,33, pages 177-182 in the NITA text, outline handout, and *Brady v. Maryland*, 373 U.S. 83 (1963). Read the hypo listed below and the cases cited in preparation. Be prepared to discuss and judge the hypo listed below.

TEAM M HYPO # 1 *United States v. Nguyen* p. 183 **NOTE-** TEAM K be prepared to argue both 1st & 2nd issues.

23. November 14th Thursday MOTIONS FOR NEW TRIAL Prosecutorial/ Jury misconduct

ASSIGNMENT: Read the hypo listed below and the cases cited in preparation. Be prepared to discuss and judge the hypothetical exercise listed below.

TEAM N HYPO # 2 *State v. Braxton* p. 189

TEAM O Hypo # 3 *State v. Sanchez* p. 197

24. November 19th Tuesday GUEST PRESENTATION on Sentencing

ASSIGNMENT: Read Newton on Sentencing Hearings pgs.159-163 and F.R.Cr.P. 32, Outline on Sentencing. Additional reading TBA.

JOA assignment due by 2:10 in class or by email before class.

25. November 21st Thursday SENTENCING

ASSIGNMENT: Read the Hypos listed below and the cases cited in preparation. Be prepared to discuss and judge the hypo.

TEAM Extra Credit 1 HYPO *United States v. Waller* p. 165

TEAM Extra Credit 2 HYPO *United States v. Iverson* p. 171

26 November 26th Tuesday SENTENCING/ PLEAS

ASSIGNMENT: Read Sentencing Handout. Then you must a sentencing memorandum (4-6 pages) and if you are a prosecutor- explain the specific sentence you would like the court to impose and why it is appropriate; if you are a defense attorney explain the specific sentence you would like the court to impose and why it is appropriate. Both sides must address: minimum and maximum sentences; whether any part of the sentence is to be suspended with probation; suggested conditions of probation as applicable; restitution, if any; fine if any; and any restorative justice programs applicable.

Your sentencing memorandum is due_____

November 29th Thursday -NO CLASS --HAPPY THANKSGIVING

27. December 3rd Tuesday GRADED Quiz on JOA, Motions for New trial, Brady, Sentencing

28. December 5th Thursday Competency, Sanity & Diminished Capacity

Assignment read Outline and Handout

OR All Teams present the rule of law in one of the hypos they argued.

