

SYLLABUS

CRIMINAL PROCEDURE AND PRACTICE SPRING 2017

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

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Office hours (first floor in Waterman): before class on Wednesdays or before or after class on Mondays or by appointment.

Grading: You will be graded on 2 written assignments: 1 motion to suppress physical evidence and a motion to suppress statements (combined) and 1 decision on a motion for judgment of acquittal. You will also be graded on your 2 oral presentations, 2 judging of student arguments. In addition, there will be 3-4 review quizzes which will be graded. 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).

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. January 8th MONDAY Intro to Class/ Stages of Criminal Prosecution

ASSIGNMENT: read Dressler Chapter 1 § 1.03 & § 2.07-Stages of a Criminal Prosecution and pages 1-6 in Newton.

2. January 10th WEDNESDAY Bail

ASSIGNMENT: Read Newton text entitled Bail Hearings; 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.

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

January 15th Martin Luther King, Jr. Day – NO CLASS

3. January 17th Wednesday 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. January 22 MONDAY Intro to the 4th Amendment Search & Seizure

Read Dressler pages 47-65 and begin Chapter 6.

5. January 22 WEDNESDAY WHAT IS A SEARCH?

ASSIGNMENT: Read Dressler, Chapter 6 and *Terry v. Ohio*, 392 U.S. 1 (1967) (majority opinion and J. Harlan's concurrence).

6. January 29 MONDAY Reasonable suspicion

ASSIGNMENT: Read Newton Pretrial Suppression Motions pgs. 55-58 and *Alabama v. White*, 496 U.S. 325 (1990). Begin Dressler, Chapter 7.

Read the hypos 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

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

7. January 31 WEDNESDAY Terry Stops

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 # 4 *United States v. DeBeer* p. 65– **NOTE:** Assume that the sentence at the bottom of page 65 to top of page 66 has been omitted and Replace the cases listed at the end of this hypo with Rodriguez v. United States, 135 S. Ct. 1609.

Suppression motion given

8. February 5 MONDAY Exceptions to the Warrant Requirement

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

9. February 7 WEDNESDAY EMERGENCY EXCEPTION/ EXCLUSIONARY RULE/FRUITS

ASSIGNMENT: Read the hypo *United States v. Shaeffer* 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 I HYPO # 5 *United States v. Shaeffer* p.67

10. February 12 Monday CONFESSIONS-5TH AMENDMENT AND VOLUNTARINESS

ASSIGNMENT: Read Dressler Chapter 21 § 21.01- §21.03 . Read the hypos listed below and the cases cited in preparation and be prepared to discuss and judge them.

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

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

11. February 14 WEDNESDAY CONFESSIONS

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

TEAM L HYPO #3 *State v. Tindall* p. 79

TEAM M HYPO # 4 *United States v. Porto* p. 81

12. February 19 MONDAY MIRANDA

ASSIGNMENT: Read Dressler, Chapter 24-§ 24.01- §24.07

13. February 21 WEDNESDAY 5 & 6TH Amendment right to counsel

ASSIGNMENT: Read Dressler Chapter 24 § 24.11- §24.12 and Chapter 25 § 25.02

**** quiz on 4th and 5th amendment****

14. February 26 MONDAY 6TH AMENDMENT / EYEWITNESS ID

Suppression motion due

15. February 28 WEDNESDAY DOUBLE JEOPARDY/COMPULSORY PROCESS

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

TEAM N HYPO Double Jeopardy fact pattern handout

TEAM O HYPO # 3 *United States v. Rodriguez-Hernandez* p. 51

NO CLASSES MARCH 5TH OR 7TH SPRING BREAK!!

16. March 12 MONDAY 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 P 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). **Team P only argue only Part A**-Rest of class be prepared to argue to discuss Part B

TEAM Q Hypo #2 *State v. Herman* p.101

17 MARCH 14 WEDNESDAY OBJECTIONS/ JUDGMENT OF ACQUITTAL

ASSIGNMENT: Read F.R.Cr.P. 29; Read Newton 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.

TEAMS SWITCH! Prosecutors are now defense attorneys

TEAM A Hypo # 1 *United States v. Doggett* p. 117

TEAM B *United States v. Willie*, p.121

JOA assignment given

18, MARCH 19 MONDAY 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 C Hypo # 4 *United States v. Nixon* p.125

Team D Hypo # 5 *United States v. Watkins* p. 127

19 MARCH 21 WEDNESDAY. JURY INSTRUCTIONS

ASSIGNMENT: Read F.R.Cr.P. 29.1, 30 & 31; Read Newton 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 E Hypo #2 *United States v. Fernandez-Ochoa* P. 141 **NOTE:**

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

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

20 MARCH 26 MONDAY 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 G Hypo # 4 *United States v. Montcrief* p.149

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

21.MARCH 28 WEDNESDAY MOTIONS FOR NEW TRIAL

ASSIGNMENT: and F.R.Cr.P. 16, 16.1,33 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 I HYPO # 1 *United States v. Nguyen* p. 183 **NOTE-** TEAM J just argue exercise 1 & rest of class be prepared to argue exercise 2.

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

22. APRIL 2 MONDAY MOTIONS FOR NEW TRIAL

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 # 3 *State v. Sanchez* p. 197

TEAM L Hypo # 4 *United States v. Fullwood* P. 199

23. APRIL 4 WEDNESDAY GUEST PRESENTATION

JOA assignment due by 2:10 in class

24. APRIL 9 MONDAY SENTENCING

ASSIGNMENT: Read Newton on Sentencing Hearings pgs.159-163 and F.R.Cr.P. 32 Read the hypos listed below and the cases cited in preparation. Be prepared to discuss and judge the hypothetical exercises listed below.

TEAM M HYPO# 1 *United States v. Waller* p.165

TEAM N HYPO # 2 *United States v. Reed* p. 169

25 APRIL 11 WEDNESDAY SENTENCING/ PLEAS

ASSIGNMENTS: Read the decision in *Class v. United States* (if decided- otherwise read the Innocence Project's amicus brief <http://www.scotusblog.com/wp-content/uploads/2017/05/16-424-tsac-Innocence-Project.pdf>)

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

TEAM O Hypo # 3 *United States v. Iverson* p. 171

26 APRIL 16 MONDAY INEFFECTIVE ASSISTANCE OF COUNSEL

ASSIGNMENT: Read Newton pages 177-182 in Newton, the hypos listed below and the cases cited in preparation. Be prepared to discuss and judge the hypothetical exercises listed below.

TEAM P HYPO # 2 *State v. Monroe* p.217

TEAM Q HYPO 3 *State v. Haney* p. 223

Written quiz given

27 APRIL 18 WEDNESDAY VOIR DIRE

ASSIGNMENT: Read Newton pgs.85-88; Read *Batson v. Kentucky*, 476 U.S. 79 (1986) and *J.E.B. v. Alabama*, 511 U.S. 127 (1994).

*****Extra credit opportunity: Volunteer to argue or judge *State v. Gerger* on page 89 or *State v. Edwards* on page 90 or 91.**

28. APRIL 23 MONDAY COMPETENCY/SANITY/ DIMINISHED CAPACITY

ASSIGNMENT: Read Handouts. Guest Presenter

written quiz due in class!