

COURSE SYLLABUS

CRIMINAL PROCEDURE AND PRACTICE Fall 2018

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

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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. January 8th Tuesday Intro to Class/ Intro to Bail

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. January 10th Thursday 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 handout.

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. January 15th 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. January 17th 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.

5. January 22nd TUESDAY 4TH AMENDMENT SEARCHES

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

6. January 24th 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

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

7. January 29th 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. Thursday January 31st 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 # Handout

9. Tuesday February 5 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. Thursday February 7th--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. February 12th 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. February 14th 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 #3 *State v. Tindall* p. 79

13. Tuesday February 19th 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 1 EXTRA CREDIT HYPO # 5 *State v. Ross* p. 83

14. Thursday February 21st 6th AMENDMENT RIGHT TO COUNSEL

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

Suppression motion due 2/21 at 2:10 pm in class or by email.

15. Tuesday February 26th GRADED Quiz on 4th, 5th & 6th Amendment Law

16. February 28th Thursday LEGAL OBJECTIONS-COMMENTS ON THE RIGHT TO SILENCE

TEAMS SWITCH! Prosecutors are now defense attorneys

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 A 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 B HYPO #2 *State v. Herman* p.101

NO CLASS ON MARCH 5TH OR 7TH Spring Break

17. Tuesday March 12th 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 C HYPO # 2 *United States v. Willie*, p.121

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

Guest speakers on JOA

18. Thursday March 14th 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 E HYPO # 4 *United States v. Watkins*, p. 127

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

JOA assignment given

19 Tuesday March 19th 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 G Hypo #2 *United States v. Fernandez-Ochoa* P. 141 **NOTE:**

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

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

20 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 I Hypo # 4 *United States v. Montcrief* p.149

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

21. Tuesday March 26th 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 K HYPO # 1 *United States v. Nguyen* p. 183 **NOTE-** TEAM K be prepared to argue both 1st & 2nd issues.

22. Thursday March 28th 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 L HYPO # 2 *State v. Braxton* p. 189

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

23. Tuesday April 2nd GUEST PRESENTATION on Sentencing

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

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

24. Thursday April 4th Tuesday SENTENCING

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 # 1 *United States v. Waller* p. 165

25 Tuesday April 9th SENTENCING/ PLEAS

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 Thursday April 11th INEFFECTIVE ASSISTANCE OF COUNSEL

ASSIGNMENT: Read Newton pages 203-209 in NITA text and outline handout.

GRADED Quiz on JOA, Motions for New trial, Brady, Sentencing

27 Tuesday April 16th WEDNESDAY VOIR DIRE

Extra Credit opportunities: Volunteer to argue or judge one of the hypos below.

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).

**State v. Gerger* on page 89

**State v. Edwards* on page 90

28. Thursday April 18th ALL TEAMS present the rule of law in one of the Hypos they argued.