

CRIMINAL PROCEDURE AND PRACTICE Fall 2021 SYLLABUS

Professor Anna Saxman pronouns: she/her

***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: In Waterman 106 A -before or after class on Tuesdays or Thursdays or by appointment.

Teaching Assistant: Daniel Cho is available at DanielCho@vermontlaw.edu

Cell phone: 516-313-4989 (after 6PM M-F and weekends)- Also available on TEAMS.

Grading: You will be graded on several written assignments: one motion to suppress physical evidence and statements; one draft judicial decision on a motion for judgment of acquittal; and a sentencing memorandum. You will also be graded on your two oral arguments, and two or more judging of student arguments. One quiz will be optional. Class participation is expected and adds to your grade. 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) and 2020 update available at: <https://cap-press.com/pdf/DresslerUndCrimProv.1&22020SUPPWM.pdf>

Learning objectives:

- Students will learn, analyze, and evaluate 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 be able to analyze and discuss many of the current issues in the justice system in an open and respectful manner, recognizing that we may have disagreements.
- We will be exploring the issues of race and ethnicity in the justice system. As your professor I will try to be informative, candid, and respectful in these discussions, but if I make mistakes or say something you think is misguided or offensive, please email me or meet with me.
- Students will identify areas of the criminal justice system where reform is needed.

FIRST HALF OF THE FALL 2021 SEMESTER SYLLABUS

1. Tuesday August 31 Team assignments/ Intro to class assignments/ Intro to arguing motions in a trial court

ASSIGNMENT: Read Dressler §1.01-§1.04 pages 3-to top of page14 and pages 30-33.

2. Thursday September 2nd Intro to Fourth Amendment -What is protected

ASSIGNMENT: Read Dressler § 4.02-§ 4.05 (pages 48-59), Chapter 5 (pages 61-63) and § 6.01- §6.03 (pages 65- 76).

All TEAMS should be prepared to discuss these specific questions:

Who is covered by the Fourth Amendment?

What are “effects” in the Fourth Amendment?

Who can violate the Fourth Amendment?

How did the USSCT originally define “search” for Fourth Amendment purposes? Is there another test?

3. Tuesday September 7th SEARCHES Exceptions to the Warrant Clause/ What’s covered or not by the 4th Amendment

ASSIGNMENT: Read Dressler, § 6.05 -§ 6.10 pages 80- 108 and Search & Seizure outline on TWEN. Read the Hypo below and the cases assigned and be prepared to argue, discuss and judge the hypo

TEAM A *NITA v. Michael Reynolds* posted on TWEN. Read *Florida v. Jardines*, 569 U.S. 1(2013); *State v. Vagel*, 2019 WL 1758004 (Ct. App.Minn. 2019) and *State v. Kono*, 152 A.3d 1 (Conn. 2016).

4. Thursday September 9th 4TH AMENDMENT Seizures: the Road to Terry

ASSIGNMENT: Read Dressler Chapter § 7.01-7.03 pages 109-118, *Terry v. Ohio*, 392 U.S. 1 (1967) (majority opinion and J. Harlan’s concurrence). Read the fact patterns and cases assigned and be prepared to discuss and judge them.

TEAM B *State v. Haddon* posted on TWEN (cases assigned are listed on the fact pattern)

TEAM C State v. Constanza posted on TWEN (ditto)

5. Tuesday September 14th 4TH AMENDMENT Seizures: Terry applied

ASSIGNMENT: Read the Hypo below and the cases assigned and be prepared to argue, discuss and judge the hypo.

TEAM D HYPO # 1 *United States v. Gonzalez* p. 59. Read *Illinois v. Wardlow*, 528 U.S. 119 (2000) and *Commonwealth v. Warren*, 58 N.E.3d 333 (Mass. 2016). But NOT *Consuello*.

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

Rest of class be prepared to argue pro and con - does the good-faith exception to the warrant requirement apply here? Read NITA text pages 55-58 and *United States v. Herring*, 555 U.S. 135 (2009).

6. September 16th Thursday REASONABLE SUSPICION to STOP

ASSIGNMENT: Read Dressler, Chapter 17 § 17.01-17.04 pages 263- to the top of 282. Read the Hypo below and the cases assigned and be prepared to argue, discuss and judge the hypo.

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

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

7. September 21st Tuesday Reasonable Suspicion- Expansion of the stop

ASSIGNMENT: Read Dressler, Chapter 7 and Chapter 17 § 17.01-17 and *Rodriguez v. United States*, 135 S. Ct. 1609 (2015).

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 *State v. Carlson* handout on TWEN

8. September 23rd Thursday Searches SILA & Automobile searches/ consent searches

ASSIGNMENT: Read Dressler Chapter §12.01- 12.02 pages 189-198 and § 12.05 & 12.06 and Chapter 13 Read the Hypo below and the cases assigned and be prepared to argue, discuss and judge the hypo

TEAM H: *State v. Jeanie Mills* posted on TWEN

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

9. September 28th Tuesday EMERGENCY EXCEPTION/ EXCLUSIONARY RULE/FRUITS

ASSIGNMENT: Read Dressler Chapter 11 § 11.01 and § 11.04 (pages181-top of 183 and pages 185-187 and Chapter 12 § 12.01- §12.02

Read the hypo listed below, plus *Brigham City v. Stuart*, 547 U.S. 398 (2006) a *United States v. Huffman*, 461 F.3d 777 (6th Cir. 2006) and *Canigla v. Strom*, 141 S.Ct. 1596(2021) and be prepared to discuss and judge it.

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

Take away: still need proof that a person in the home is imminently in danger of harm...

10. September 30th Thursday *4th Amendment review PRACTICE quiz!!**

& Arrest vs Terry stop

ASSIGNMENT: Re-read Search and Seizure handout on 4th Amendment and review major points & cases of last 9 classes. Also read Dressler, Chapter 21 pages 385-390. Read the Hypo below and the cases assigned and be prepared to argue, discuss and judge the hypo

TEAM J *State v. Sawyer* posted on TWEN

11. October 5th 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 K *United States v. Carroll* posted on TWEN

TEAM L *State v. Park* posted on TWEN

12. October 7th Thursday CONFESSIONS/MIRANDA

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

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

TEAM N *State v. Romano* posted on TWEN

*****NO CLASS ON OCTOBER 12TH*** FALL BREAK AND INDIGENOUS PEOPLE'S DAY**

*****TEAMS Switch- prosecutors are now defense attorneys and vice versa**