Advanced Criminal Procedure

**Spring 2020 Syllabus**

# Professor: Lauren McLane

# Course: Advanced Crim Pro—CRIMJ 4140

# Course Meetings—

**Tuesdays & Thursdays:**

2:45-4:00 p.m., **Classroom Bldg:** 103

**Offices:** Law Bldg in RM110 AND A&S Bldg in RM 402

**Phone:** 766-3118

**E-mail:** lmclane@uwyo.edu

**Office Hours:**

Attend office hours during “set hours” listed below OR email me for an appointment.

**Set Office Hours in the Law Bldg:** Mondays & Wednesdays 3:00-4:00 p.m., RM 110

**Set Office Hours in the A&S Bldg:** Tuesday & Thursdays 4:00pm-5:00pm, RM 402

**Teacher’s Assistant (TA):**

Thomas Garvie, 3L Law Student

**Set Office Hours for Thomas:** To Be Announced at First Class

**WyoCourses:**

As a resource for this class, a WyoCourses site is available to you. This site provides the opportunity to have all course materials in one place that is accessible to everyone. Assignments and announcements will be posted to this site. As part of the requirements for this class, you are expected to check and use this site regularly. **Make sure to check your UW email as this is the address that will be utilized for any posted announcements.**

**Course Description, Objectives, and Structure:**

This course is designed to be an advanced exploration into both investigative and adjudicative criminal legal procedure. At the end of the course, students will be comfortable with the language, meaning, and application of the Fourth, Fifth, Sixth, and Eighth Amendments to the United States Constitution. In addition, it is intended to cover the course in such a manner that those seeking careers as law enforcement professionals, investigators, probation officers, correctional officers, social workers, lawyers, etc. will be provided a strong foundation for practical application in their careers.

**Texts:**

Ohlin, Criminal Procedure: Doctrine, Application, and Practice (Wolters

Kluwer 2019).

Other frequently assigned readings posted on WyoCourses throughout the semester.

**Class Attendance:**

You are expected to attend class every session. Attendance will be taken. Failure to

attend at least 75% of the classes (i.e., 21 of 28 listed classes) will result in an F. There is

extra credit opportunity related to your attendance listed below.

**Course meetings/classes:**

Unless otherwise noted, we will meet in Room 103 in the **Class Room Building** on **Tuesdays & Thursdays 2:45-4:00 p.m.**

**Partnerships/Teams:**

You will work in teams of 3-4 for your final class presentations (assigned on 4/23 and set to take place on 5/5 and 5/7). You may choose your teams later in the semester after you have the opportunity to get to know one another.

**Assessment & Grading:**

As part of your participation/preparedness/collaboration/attendance grade, you will be assessed throughout the semester for development of creative and critical thinking, cultivation of problem-solving skills, iterative and incremental development, participation and collaboration in the classroom. **Effort and commitment are key**.

Grades are assigned as follows: **A, B, C, D, and F**. This course is NOT graded on a curve; I want you to come out of this course knowing what your personal level of competence is in criminal procedure. For instance, if you get a B you will know where you personally are since there will be no curve. However, there are rubrics I will utilize for assessment and grading purposes and those are outlined for you below or throughout the semester where relevant**.**

**Grade percentage ranges:**

90-100 = A 0-59 = F

80-89 = B

70-79 = C

60-69 = D

**What you are graded on and weight toward final, overall grade:**

**1) Attendance, Preparedness, Participation, & Collaboration—20% of final grade for course**

* This 20% of your final grade is focused on your attendance, preparedness, participation, and collaboration in the course. In order for this course to work well, it is essential that you attend the course, come prepared, and participate fully in the course (participation includes, but is not limited to, reading assignments and class discussion) and collaborate with your team for assignments when appropriate.
  + You are permitted 1 “pass” during the semester if you are called upon and not prepared to engage in relevant discussion
* Please note that if you do not abide by the 75% attendance policy as outlined above, you will be given an F for the course.
* 8 assessments—you will be given problems similar to that which will appear on the midterm or final exam to help prepare you for such exams
  + These assessments will count toward your participation grade only.
  + You will be given these assessments throughout the semester.
  + The assessments are primarily designed to help you gauge where you are at any given time during the course.
  + I will provide feedback for your first assessment; thereafter, you will either assess yourself, be assessed by a partner, or be assessed by TA Thomas Garvie.
* 8 one-pagers—you will be asked to submit a total of 8 “one-pagers” displaying the “IRAC” method for 8 different cases throughout the semester.
  + These “one-pagers” only count toward your participation grade.
  + You will be provided feedback by TA Thomas Garvie.
  + These “one-pagers” serve as a check on how you are digesting and distilling the material throughout the course.
  + The “one-pagers” will either be focused on a case or a specific topic and they will be assigned throughout the semester 8 different times.
* **RUBRIC for Participation:**
  + 3 points = student met all expectations
  + 2 points = student met majority of expectations, but not all
  + 1 point = student met minority of expectations
  + 0 points = student met none of the expectations

1. **Midterm Exam—20% of final course grade (to occur during normal class time on 3/26/20)**

* Total of 15 points
  + 10 multi-choice (1 point each)
  + 5 short answer (1 point each)
* **RUBRIC for Midterm:**
  + Multi-choice—1 point each question, you either got it right or you did not
  + Short answer—1 point each: .5 point for getting correct answer and .5 point for supporting the answer adequately
    - Total of 15 points

1. **End-of-Class Team Presentations—30% of final course grade (teams of 3**-4)
   1. Topics will be drawn during class on 4/23
   2. You may choose your teammates
   3. Your presentation on your drawn topic should include the following:
      1. Introduction
      2. Roadmap
      3. 3 “Chapters” of your Topic (one assigned to each student team member)
      4. Concluding remarks
      5. Time for Q&A
   4. Further directions will be provided to you, including time limits, expectations as to use of visuals, etc…
   5. **Rubric for Presentations**
      1. 7 total points
         1. Creative, Engaging, and Interesting
         2. Well-researched
         3. Well-prepared/planned
         4. Presented clearly
         5. Accurately presented
         6. Q&A was effective and answers were accurate
         7. Balanced effort among team members
2. **Final Exam – 30% of final course grade**
   1. Two fact patterns with issues already identified for you to address (thus, the “I” of “IRAC” will not be tested)
   2. Emphasis will be on the “R” and “A” of the “IRAC” method—rules and analysis. Show me that you learned the rules throughout the semester and you know how to apply them to the facts now before you.
   3. Each fact pattern is worth 60 points, total of 120 points for the Final Exam
   4. Further instruction will be given along with the date and time for your exam later in the semester

**Extra Credit**—**Your final course grade will see the applicable % point increases if you do the following…**

[] Participate in Q&A for at least TWO of the Team Presentations—1% increase

[] Attend 95% or more of the classes (university-approved excuses not accepted for this)—2% increase

**Academic Honesty:**

Please be advised that the College of Law Honor Code applies to this course. You are expected to be familiar with the requirements of the Code and to adhere to them at all times. Failure to do so may subject you to severe sanctions, including but not limited to possibly failing this course. A copy of the honor code can be found at <http://www.uwyo.edu/law/current/resources/forms.html>. Additional information regarding academic honesty is described in University Regulation: UW Regulation 2-114 “Procedures and Authorized University Actions in Cases of Student Academic Dishonesty.”

**Disability Accommodation:**

If you have a physical, learning, sensory or psychological disability and require accommodations, please let me know as soon as possible. If you have not already done so you will need to register with, and provide documentation of your disability to, the Law School Administration office and University Disability Support Services (UDSS) in Student Education Opportunities (SEO), room 330 Knight Hall. For more information please see <http://www.uwyo.edu/udss/>.

**Diversity Statement:**

The University of Wyoming values an educational environment that is diverse, equitable, and inclusive. The diversity that students and faculty bring to class, including age, country of origin, culture, disability, economic class, ethnicity, gender identity, immigration status, linguist, political affiliation, race, religion, sexual orientation, veteran status, worldview, and other social and cultural diversity is valued, respected, and considered a source for learning.

**Title IX Statement:**

The University of Wyoming is committed to maintaining a respectful, safe, and non-threatening environment for its faculty, staff, students, contractors, and visitors and will address and resolve all complaints of sexual misconduct. *See* UW Regulation 4-3 at <http://www.uwyo.edu/regs-policies/_files/docs/regulations-july-2018/uw_reg_4-3_effective_7-1-18.pdf>. Students can find more information about Title IX and reporting violations or potential misconduct at <http://www.uwyo.edu/reportit/>.

**Syllabus is Subject to Change:**

The information and schedule contained in the course syllabus, other than the grade and absence policies, may be subject to change with reasonable advanced notice, as deemed appropriate by the professor. Substantive changes made to the syllabus by the professor during the semester shall be communicated in the learning management system, other electronic means, or in class to students with reasonable notice.

**Class Schedule and Assignments:**

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| --- | --- |
| **Class #1:**  1/28/20 | **Intro: “This Class 101”**   * **Readings:**   + Other than review the syllabus, no other reading, but starting in on 1/30/20 assigned reading is suggested * **Class:**   + Intros   + “Obstacle is the Way”   + “Moonwalking with Einstein” |
| **Class #2:**  1/30/20 | **“This Class 102”**   * **Readings:**   + Read *Powell* case (posted to WyoCourses in Class 2 folder)   + Review “IRAC” method (posted as above) * **Class:**   + The “IRAC” method   + Case one-pagers   + *Powell*   + Overview of criminal justice ystem |
| **Class #3:**  2/4/20 | **The Fourth Amendment Begins**   * **Readings:**   + Ohlin, p. 16   + Ohlin, pp. 54-60   + Ohlin, pp. 315-324 * **Class:**   + What are the “categories” for application of the Fourth Amendment?   + “Search”?   + “Seizure”? |
| **Class #4:**  2/6/2- | **4th Amendment—Seizure…its application to “Person”**   * **Readings:**   + Ohlin, pp. 324-331   + Ohlin, pp. 358-366   + Ohlin, pp. 186-200 * **Class:**   + Intro: “The seizure spectrum”   + Probable Cause   + Arrest/arrestable crimes/arrest warrants   + Social contacts   + ID requests   + Community caretaking, Emergency Aid, hot pursuit, etc… |
| **Class #5:**  2/11/20 | **4th Amendment—application to the Person: *Terry* and Reasonable Suspicion**   * **Readings:**   + Ohlin, pp. 346-357   + Ohlin, pp. 366-392 * **Class:**   + “The seizure spectrum” continued…   + *Terry* stops/seizures   + Reasonable suspicion   + Flight   + High-crime areas   + Profiling   + Blink case reference |
| **Class #6:**  2/13/20 | **The 4th Amendment—seizure of the Person, completion of “the seizure spectrum”**   * **Readings:**   + *Sharpe* case (posted on WyoCourses in Class 6 folder)   + *Dunaway* case (posted as above)   + *Royer* case (ditto-on WyoCourses)   + Ohlin, pp. 412-419 * **Class:**   + Scope of *Terry*   + “De facto arrest”   + Police misconduct |
| **Class #7:**  2/18/20 | **4th Amendment—search of the Person**   * **Readings:**   + Ohlin, pp. 230-239   + *Dickerson* case (posted to WyoCourses in Class 7 folder)   + *Robinson* case (posted as above)   + *McNeely* case (ditto) * **Class:**   + *Terry* “hards and sharps” search/frisk   + Search Incident to Arrest   + Booking searches   + Blood Draws   + Arrested Persons/DNA swabs |
| **Class #8:**  2/20/20 | **4th Amendment searches of the Person’s Stuff**   * **Readings:**   + *Vale* case (posted on WyoCourses in Class 8 folder)   + *David Leon Riley* case (posted as above)   + *Chadwick* case (ditto) * **Class:**   + Searches of a person’s stuff, like backpacks, suitcases, cell phones… |
| **Class #9:**  2/25/20 | **The 4th Amendment and the Home**   * **Readings:**   + Ohlin, pp. 330-337, 152-159, 204-245, 200-205 * **Class:**   + Searching a home |
| **Class #10:**  2/27/20 | **The 4th Amendment and the Home’s “Lawn”**   * **Readings:**   + Ohlin, pp. 108-113   + *Oliver* case (posted on WyoCourses in Class 10 folder)   + *Dunn* case (posted as above) * **Class:**   + Garbage   + Curtilage   + Open fields |
| **Class #11:**  3/3/20 | **The 4th Amendment and its application to Cars**   * **Readings:**   + *Whren* case (posted on WyoCourses in Class 11 folder)   + Ohlin, pp. 274-280   + *Long* case (posted on WyoCourses)   + *Mims* case (ditto) * **Class:**   + Pretextual stops   + Roadblocks   + Terry “pat downs” of cars   + Passengers |
| **Class #12:**  3/5/20 | **The 4th Amendment and more about Cars**   * **Readings:**   + Ohlin, pp. 206-213, 217-222, 224-229 * **Class:**   + The Car Exception to the 4th Amendment   + Inventory searches   + Recent Occupants and cars   + Containers in cars |
| **Class #13:**  3/10/20 | **The 4th Amendment and Consent**   * **Readings:**   + Ohlin, pp. 247-254   + *Bustamonte* case (posted on WyoCourses in Class 13 folder)   + (interesting article mentioned on Ohlin’s page 254, optional reading, posted on WyoCourses) * **Class:**   + Consent to search in shared living spaces   + Consent factors |
| **Class # 14**  3/12/20 | **The 4th Amendment and Technology**   * **Readings:**   + Ohlin, pp. 114-123   + Ohlin, pp. 90-98   + Ohlin, pp. 82-88   + Ohlin, pp. 124-129   + Ohlin, pp. 71-78 * **Class:**   + GPS   + Thermal imaging   + Aerial surveillance   + Cell phones   + Phone bulk data |
| **Class #15:**  3/24/20 | **The Exclusionary Rule—the remedy when police violate the 4th Amendment (or lack thereof)**   * **Readings:**   + Ohlin, pp. 404-410   + Ohlin, pp. 433-470 * **Class:**   + The Exclusionary Rule   + The Exceptions to it |
| **Class #16:**  3/26/20 | **MIDTERM EXAM (during normal class time in normal classroom)** |
| **Class #17:**  3/31/20 | **The 5th Amendment—*Miranda* and its attachment**   * **Readings:**   + 5th Amendment—Ohlin, p16   + Ohlin, pp. 517-532, 533-547, and 549-556 * **Class:**   + Intro to 5th Amendment   + The *Miranda* rights and attachment thereof     - *Miranda*     - “custody”     - “interrogation” |
| **Class #18:**  4/2/20 | **The 5th Amendment—*Miranda* invocation and waiver**   * **Readings:**   + Ohlin, pp. 562-575   + *Shatz* case (posted on WyoCourses in Class 18 folder) * **Class:**   + Invoking the right to remain silent and right to attorney   + Waiver of *Miranda* rights |
| **Class #19:**  4/7/20 | **The conclusion of the 5th Amendment—finish waiver, then exceptions**   * **Readings:**   + Ohlin, pp. 576-586 * **Class:**   + Finish *Miranda* waiver discussion   + Then on to *Miranda* exceptions |
| **Class #20:**  4/9/20 | **Identifications**   * **Readings:**   + Ohlin, pp. 673-697, 708-730 * **Class:**   + Right to counsel before/after formal charges at lineups   + Reliability of identification procedures   + Police suggestibility during identifications |
| **Class #21:**  4/14/20 | **The 6th Amendment begins—Right to Counsel and Right to Jury Trial**   * **Readings:**   + The 6th Amendment, Ohlin, p. 16   + Ohlin, pp. 1019-1034 * **Class:**   + The Right to appointed Counsel   + The Right to Jury Trial when… |
| **Class #22:**  4/16/20 | **The 6th Amendment’s guarantee of an Impartial Jury**   * **Readings:**   + Ohlin, pp. 1091-1096   + Ohlin, pp. 1119-1137   + *Jefferson* case (posted on WyoCourses in Class 22 folder) * **Class:**   + Right to due process, fair cross-section   + *Batson* challenges during voir dire |
| **Class #23:**  4/21/20 | **The Right to Effective Assistance of Counsel**   * **Readings:**   + Ohlin, pp. 1037-1047   + Ohlin, pp. 1058-1063   + *Cooper v. State* (posted on WyoCourses in Class 23 folder) * **Class:**   + What is effective assistance of counsel? More the minimal competence or not? |
| **Class #24:**  4/23/20 | **The Right to Confrontation**   * **Readings:**   + Ohlin, pp. 1173-1192 * **Class:**   + The Right to Confront “witnesses against” you as the accused   + \*\*Presentation Topics are assigned today! |
| **Class #25:**  4/28/20 | **The 8th Amendment—Cruel and Unusual Punishment, sometimes of the innocent**   * **Readings:**   + 8th Amendment, Ohlin at p. 16   + Ohlin, pp. 1238-1266   + Convicting the Innocentexcerpt (posted on WyoCourses in Class 25 folder) * **Class:**   + The Death Penalty   + Wrongful Convictions |
| **Class #26:**  4/30/20 | **The 8th Amendment—Bail and Mass Incarceration (a brief cite to 13th Amendment)**   * **Readings:**   + Ohlin, pp. 797-806   + The New Jim Crow excerpt (posted on WyoCourses in Class 26 folder) * **Class:**   + Bail   + Mass Incarceration |
| **Class #27:**  5/5/20 | **Presentations (day 1)**   * All student must attend |
| **Class #28:**  5/7/20 | **Presentations (last day!)**   * All students must attend |