

**LAW OF SEARCHING & SEIZING DIGITAL EVIDENCE (CRJ-225)**  
**SYLLABUS**  
**Fall 2008**

**CONTACT INFORMATION**

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**COURSE INFORMATION**

**Course Title** Law of Searching, Seizing and Admitting Digital Evidence

**Course Number** CRJ225-01

**Discipline** Criminal Justice

**Class Meets** Mondays, Thursdays (9:30 a.m.-10:45 a.m.) – Joyce 212

**Text Book** – The text is the Department of Justice Manual for “Searching and Seizing Computers and Obtaining Electronic Evidence in Criminal Investigations” (“DOJ Manual”) (2002) which is available [online](#). The readings in the DOJ Manual will be supplemented by readings from appellate cases. These cases will also be available either through the Champlain College Library’s access to Westlaw or through CRJ225-01 on Web Ct.

**COURSE DESCRIPTION AND OBJECTIVES**

Digital evidence has become vitally important in investigating and winning convictions in crimes ranging from murder and identity theft to child luring and possession of child pornography. In 2008, judges, prosecutors and defense attorneys are still scrambling to understand how this vitally important, often voluminous, evidence can be presented lawfully, and effectively, in criminal prosecutions.

The primary goal of the course is to enable students to identify, and solve, common legal problems that 21<sup>st</sup> Century law enforcement officers face regularly in obtaining, and using, digital evidence to “make cases.” Consequently, students will be

asked repeatedly to engage in *practical exercises* that challenge their ability to apply basic legal principles to “real” problems based on actual investigations.

The course has four parts. In Part 1, students will learn how traditional 4<sup>th</sup> Amendment principles apply when law enforcement officers and prosecutors plan, draft and execute search warrants for home and workplace computers as well as common, more mobile, computer devices like phones and laptops. The goal of Part II is to teach students when (and whether) common *exceptions* to the 4<sup>th</sup> Amendment’s “search warrant requirement” such as search-incident-to-arrest, consent and “exigent circumstances” may be used by police officers to do prompt searches of cell phones and PDAs. Part III focuses on the Electronic Communications Privacy Act (ECPA) and rules that govern law enforcement efforts to seize and search digital evidence held by Internet Service Providers. Finally, after completing Part IV, students will understand how evidentiary rules such as “authentication” and “hearsay” govern whether the jury will ever learn of the digital evidence that officers have worked so hard to gather.

## COURSE CALENDAR

### September

**9/4** – No assignment - review DOJ Manual, access to Westlaw and CRJ 225-01 Web Ct.

**9/8 – Basic 4<sup>th</sup> Amendment Principles** - - Read: DOJ Manual – “Introduction,” “Jacques Affidavit” (Web Ct) and *U.S. v. Ivanov*, 175 F. Supp. 2d 367 (D. Conn. 2001).

**9/11 - Private Party Searches** – Read: DOJ Manual - I, B. 4 – “Private Searches,” *U.S. v. Hall*, 142 F3d 988 (7<sup>th</sup> Cir. 1998) and *U.S. v. Jarrett*, 338 F3d 339 (4<sup>th</sup> Cir. 2003).

**9/15 - Private Party Searches and Reasonable Expectation of Privacy** – Read: DOJ Manual – I, B. 1 and 2.

**9/18 - Reasonable Expectation of Privacy** – Read: DOJ Manual – I, B, 3 and *Smith v. Maryland*, 442 U.S. 735 (1979) and *U.S. v. Hambrick*, 55 F. Supp. 2d 504 (W.D. Va. 1999).

**9/22 - Reasonable Expectation of Privacy and Private Workplace Searches** - Read: *U.S. v. Ziegler*, 473 F3d 1184 (9<sup>th</sup> Cir. 2007) and DOJ Manual – I, D, 1.

**9/25 – Reasonable Expectation of Privacy and Public Workplace Searches** – Read: DOJ-Manual I, D, 2 and *Quon v. Arch Wireless*, 529 F3d 892 (9<sup>th</sup> Cir. 2008).

**9/29 – Search Warrants** - Read: DOJ Manual –II, A (1-4) and B, 1 and DOJ Manual: Appendix F (sample language for search warrants and affidavits in support of search warrants)

## October

**10/2 – Search Warrants** - Read: DOJ Manual –II, B, 2-7 and *U.S. v. Hunter*, 13 F. Supp. 2d 574 (D. Vt. 1998).

**10/6 – Search Warrants** - Read: DOJ Manual – II, C. 1, 2 and 3.

**10/9 – Mid-Term Exam**

**10/16 - Search Warrants and Plain View Exception to the Warrant Requirement** - Read: DOJ Manual – I, C. and *U.S. v. Campos*, 221 F3d 1143 (10<sup>th</sup> Cir. 2000).

**10/20 – Review Search Warrants- Executing Search Warrants** – Read: Orin S. Kerr, *Searches and Seizures In A Digital World*, 119 Harv. L. Rev. 531 (2005) \*\* read pp. 1-13.

**10/23 - Review Search Warrants- Executing Search Warrants** – Read: Orin S. Kerr, *Searches and Seizures In A Digital World*, 119 Harv. L. Rev. 531 (2005) \*\* read pp. 14-26.

**10/27 - Exceptions to the Warrant Requirement (Consent)** - Read: DOJ Manual – I, C., 1 and *U.S. v. Buckner*, 473 F3d 551 (4<sup>th</sup> Cir. 2007).

**10/30 - Exceptions to the Warrant Requirement (Search-Incident –to – Arrest, Exigent Circumstances, Border Searches and Inventory Searches)** – Read: DOJ Manual – I, C. 3-7 and *U.S. v. Gorshkov*, 2001WL1024026 (W.D. Wash.).

## November

**11/3 - Exceptions to the Warrant Requirement (cell phone searches)** – Read: *U.S. v. Valdez*, 2008WL360548 (W.D. Wis.) and *U.S. v. Park*, 2007WL1521573 (N.D. Cal.).

**11/6 - Encryption** - Read: *U.S. v. Scarfo*, 180 F. Supp. 2d 572 (D. New Jersey 2001) and *U.S. v. Boucher*, 2007WL4246473 (D. Vt. 2007).

**11/10 – Electronic Communications Privacy Act (ECPA) and Wiretap Act** – Read: DOJ Manual –IV, A, B, D, 1 and 2.

**11/13 - Wiretap Act** - Read DOJ Manual: IV, D, 3 (a, b, c and d).

**11/17 - Stored Communications Act (“SCA”)** - Read DOJ Manual: III, A, B and C and *U.S. v. Councilman*, 418 F3d 67 (1<sup>st</sup> Cir. 2005).

**11/20 - Stored Communications Act** - Read: DOJ Manual III, D.

**11/24 - Stored Communications Act** – Read: DOJ Manual III, E-H.

**11/26-28 - Thanksgiving Recess**

## December

**12/1 - Pen Register Act** - Read: DOJ Manual IV, C and E.

**12/4 - Admitting Digital Evidence** - Read: DOJ Manual V, A and F.R.E. 401, 403 as well as Slides- “Admissibility I.”

**12/8 - Admitting Digital Evidence** - Read DOJ Manual: V, B, C; F.R.E. 801 and 901; Slides: Admissibility II and *State v. Voorheis*, 176 Vt. 265 (2004).

**12/11 – Admitting Digital Evidence** – Read: F.R.E. 702, *State v. Taylor*, 93 SW3d 487 (Tex. App. 2003) and Slides “Expert Testimony.”

**12/15-18 - Final Examination** (cumulative) - date and time to be determined.

### Participation and Attendance

Students will be required to complete assignments as set out in the syllabus.

Students must attend every class. Students will be allowed three unexcused absences. From the fourth absence on, students will lose a grade each time they miss a class. E.g. B to B-.

### Methods of Evaluation

- Grades: The final exam will count for 40% of the total grade.
- The Mid-Term exam will count for 30% of your total grade.
- Quizzes: Quizzes and class participation will count for 30% of the total grade.

### Grade Calculation

The following scale will be used to determine letter grades:

Grade	Range
A	93+
A-	90-92
B+	87-89
B	83-86
B-	80-82
C+	77-79
C	73-76

C-	70-72
D+	67-69
D	63-66
D-	60-62
F	Below 60

## Students With Disabilities

If you believe that you have a disability requiring accommodations in this class, please contact Janine Allo in the Counseling Department, Office of Disability Services, as soon as possible. After you receive your accommodation form, please contact the instructor ASAP to insure all accommodations are implemented in a timely fashion. It is the student's responsibility to seek and secure accommodations prior to the start of a test or project. Accommodations cannot be provided until you supply the instructor with a form from Janine

Contact: Janine Allo  
Counseling Department, Office of Disability Services  
Office: Hauke 007  
Phone: 802-865-5484  
Email: [jallo@champlain.edu](mailto:jallo@champlain.edu)

## Academic Honesty

If a student is found to have cheated, the student will be given a "0" for that assignment. A student found cheating a second time is subject to a harsher penalty, including dismissal from school.

Champlain College Policy:

"In the preparation and presentation of any assigned work-including examinations, tests, quizzes, term papers, reports, themes and other written or oral exercises-every student shall conform to a strict standard of academic honesty. Any attempt to deceive a faculty member or to help another student to do so will be considered a violation of this standard. In all assignments, students must acknowledge the words and/or ideas of others taken from print or electronic media, whether a direct quotation or a paraphrase; any omission of this is dishonest. Cheating on examinations or tests consists of knowingly giving, receiving or using-or attempting to give, receive or use-unauthorized assistance during an examination

or test. A faculty member may record a grade of "zero" for any assignment on which a student has plagiarized or cheated. For repeat offenses within a single course, the faculty member may record a grade of "F" for the course. Violations of this policy in multiple courses may result in dismissal from the College. A student may appeal these decisions according to the Academic Grievance Procedure."