

**Criminal Procedure—Investigative**  
**Spring 2008**  
**Version 1.0 FINAL**

**Associate Professor Paul Ohm**

**Syllabus**

**Course Description**

This course surveys the Constitutional rules that govern police investigations of crime. In particular, we will study the Fourth Amendment's restrictions on search and seizure, the Fifth Amendment's guarantee against compelled self-incrimination, and the Sixth Amendment's right to counsel. We will also study remedies for Constitutional violations, some statutory restrictions on police investigations, and National Security investigations.

**Class Times and Office Hours**

The class will meet every Tuesday and Thursday from 9:00 am – 10:15 am in Room 301. I generally will be available for office hours on Tuesdays and Thursdays from 2:30pm – 3:30pm in Room 433 or at any other time by appointment. I can also be reached via e-mail at paul.ohm@colorado.edu.

**Course Expectations**

Grading. Grades for the course will be based on (1) a final exam and (2) class participation. I value class participation highly and will count it toward your final grade. What matters is quality not quantity. Grades can be increased or decreased up to five points to reflect participation.

Participation. I expect you to be prepared to participate every class and will call on you without prior notice. If, however, you are unable to prepare for class on a particular day for whatever reason, please attend anyway. Send me an e-mail at least one hour before we begin, or leave me a note on the podium at the front of the room before class starts and I will not call on you that day. You may not use this "pass" more than three times during the semester unless you come talk to me about your situation. If you do not leave me a note but are completely unprepared when I call on you, your grade will be negatively affected.

In addition to the call system, voluntary participation is encouraged. Your grade will be positively affected by consistent, insightful contributions.

**Course Methodology**

Although this class is taught in a fairly traditional manner, be aware that I do not use chalk and chalkboard. Instead, I use a technology known as mind mapping software and in particular, I

use a product called MindManager made by a company called MindJet. This product provides many of the advantages of PowerPoint with few of PowerPoint's weaknesses. For each class, I will start with a skeleton mindmap which I will fill in during the class with student contributions. At the end of each class (usually on the same day), I will upload a pdf version of the mindmap to the course website.

I will pass around a seating chart on Tuesday, January 22nd. Please choose a seat in the classroom that allows you to see the computer images projected on the screen.

## **Course Materials**

Required Texts. Our casebook comes in two forms, either one acceptable for this course. There is a blue, paperback version: Dressler and Thomas, *Criminal Procedure: Investigating Crime* (Third Edition) (Thomson/West ISBN 978-0-314-16664-7). This is the preferred text for the class.

Alternatively, you can buy the expanded version of our casebook, the brown, hardback Dressler and Thomas, *Criminal Procedure: Principles, Policies, and Perspectives* (Third Edition) (Thomson/West ISBN 978-0-314-16665-4) instead. It includes the same material as our casebook, with the exact same page numbering. This book is sometimes also used for the Adjudicative Criminal Procedure course, so you might want to use this book if you are thinking of taking or have taken that course.

Whichever you choose, you also need the 2007 Supplement (ISBN 0314179798).

A note on casebook notes: Assume that all "Notes and Questions" that fall within the assigned pages listed below are to be read and considered, unless the assignment specifically instructs skipping the Notes.

Course Website. Our course website is at <http://paulohm.com/classes/crimpro08>. Here, you will find class mind maps, important announcements, supplemental readings (most of which are mentioned in the day-by-day syllabus, below), changes to the reading, and links to other resources. Supplemental readings will be made available at least two classes prior to the assigned date. The top part of the website lists "Latest Changes to the Site" which can be scanned to see what is important and new. Students are advised to consult the website before every class, particularly when a class is missed. There is no TWEN site for this course.

## Assigned Topics and Reading

### Chapter 1: The Criminal Process: Failure, Choices and Legitimacy Chapter 2: Fourth Amendment: An Overview

1: T 1/15 pp. 41-49; 53-74. [31]

The Norms of the Criminal Process; The Fourth Amendment: An Overview  
*Wolf, Weeks, and Mapp*

### Chapter 3: Passing the Threshold of the Fourth Amendment

2: R 1/17 75-93. [19]

What is a “Search”? (Part One)  
*Katz and White*

3: T 1/22 105-27 (stop after Note 6). [23]

What is a “Search”? (Part Two) Does the Fourth Amendment protect places?  
*Oliver, Dunn, Ciraolo, Greenwood, and Kyllo*

4: R 1/24 pp. 93-105; 127-28 (Notes 7, 8, and 9); 128-31; Handout (at paulohm.com). [19+]

Communications, Technology, and Search and Seizure; Excerpt from draft Stanford  
Technology Law Review article.  
*Smith v. Maryland and Karo*

### Chapter 4: The Substance of the Fourth Amendment

5: T 1/29 pp. 132-62. [31]

What is Probable Cause?  
*Spinelli and Gates*

6: R 1/31 pp. 187-202; Supplemental Reading TBA. [16+]

Search Warrants.  
*Lo-Ji Sales, Richards, Hudson v. Michigan*

7: T 2/5 pp. 162-74; Supplemental Reading TBA. [14+]

Arrest Warrants.  
*Payton and Scott v. Harris*

8: R 2/7 pp. 203-26. [24]

Exceptions to the Warrant requirement: Exigent Circumstances and Incident to Arrest (part one).

*Warden v. Hayden, Chimel, Robinson*

9: T 2/12 pp. 226-53. [28]

Exceptions to the Warrant requirement: Incident to Arrest (part two, autos and pretext).

*Belton, Thornton, and Whren*

10: R 2/14 pp. 253-86. [34]

Exceptions to the Warrant requirement: Cars and Containers.

*Chambers, Carney, Chadwick, and Acevedo.*

11: T 2/19 pp. 286-97. [12]

Exceptions to the Warrant requirement: Plain view (and Touch).

*Horton and Hicks*

12: R 2/21 pp. 297-332. [36]

Exceptions to the Warrant requirement: Consent.

*Schneekloth, Randolph, and Rodriguez.*

13: T 2/26 pp. 338-55. [18]

Reasonableness: Terry.

*Terry*

14: R 2/28 pp. 355-83. [29]

Stops versus Arrests.

*Dunaway, Mendenhall, Drayton, and Hodari D.*

15: T 3/4 pp. 383-99. [17]

Reasonable suspicion.

*White and Wardlow*

16: R 3/6 pp. 411-33; handout (paulohm.com). [23+]

Special Needs; Administrative Searches; Roadblocks.

*Sitz, Edmond, and T.L.O.*

## Chapter 5: Remedies for Fourth Amendment Violations

17: T 3/11 pp. 434-56. [23]

Standing.  
*Rakas and Carter.*

18: R 3/13 pp. 464-86. (Review *Mapp*, 63-72) [23]

Exclusionary Rule: Good-Faith Exception.  
*Mapp and Leon.*

19: T 3/18 pp. 486-504. [19]

Exclusionary Rule: Fruit of the Poisonous Tree, Attenuation, Independent Source.  
*Silverthorne Lumber, Wong Sun, and Murray*

## Chapter 6: Confessions: The Voluntariness Requirement

20: R 3/20 pp. 505-16. [12]

Torture and Confessions.

*Spring Break: No Class T 3/25 and R 3/27.*

21: T 4/1 pp. 516-43. [28]

Interrogation without Torture.

## Chapter 7: Police Interrogation: The Self-Incrimination Clause

22: R 4/3 pp. 544-77. [34]

*Martinez* and *Miranda*.

23: T 4/8 pp. 629-49. [21]

*Miranda* and Custodial Interrogation.

24: R 4/10 pp. 649-69. [21]

*Miranda* Invocation and Waiver.

25: T 4/15 pp. 587-629. [43]

The Limitations of *Miranda*. (Will cover some of this on Thursday, 4/17.)

26: R 4/17 pp. 669-79. [11]

Catch-Up Class (if needed). Excerpt from David Simon/Killing Streets.

### **Chapter 8: Police Interrogation: The Sixth Amendment Right to Counsel**

27: T 4/22 pp. 680-710. [31]

Sixth Amendment: *Massiah*, *Brewer*, and *Jackson*.

### **Review Sessions**

Review sessions are **tentatively** scheduled for:

Thursday, 4/24, 1pm (during our last scheduled class).

Friday, 4/25, 10 am.

Final is Monday, 4/28, 8:15 am (Don't take my word for it! Double check!).