In this course we will explore the constitutional limits of police practices at the pretrial stage of a criminal investigation. Our central texts will be the Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and the Supreme Court’s interpretation of these Amendments. This course involves constitutional interpretation and analysis of Supreme Court jurisprudence, rather than simple memorization of rules and statutory provisions. While the 50 states have their own case law, constitutions, and statutes, the states cannot be less protective of defendants’ rights than the United States Supreme Court; they can only offer greater protections than the Supreme Court requires. Thus, the Supreme Court sets the floor, or minimum requirements, of freedom, privacy, and fair process for suspects investigated by the police. These minimum requirements are the subject of Criminal Procedure—Investigative Phase.

Required reading assignments:

Our casebook is ISRAEL, KAMISAR, & LAFAVE, CRIMINAL PROCEDURE AND THE CONSTITUTION (2003 ed.). Page numbers below refer to the casebook, unless otherwise indicated. Please note that for several class sessions, I have assigned cases that are available on Westlaw. The Westlaw cases are not edited, which will give you some practice at identifying the relevant issues in a full-text case (the kind you’ll encounter in the real world!).

Unless otherwise indicated, each numbered sub-heading in the syllabus below corresponds to approximately one day’s reading. However, we may go faster or more slowly than this estimated pace. It is more important for you to grasp the material that we cover than to race through concepts with the goal of finishing every item in the initial course syllabus. If I change an assignment, I will let you know by sending out an email, making a posting to TWEN, and/or announcing it in class (see “TWEN” below).

Final examination:

You will be required to take a three-hour in-class exam. This exam will be open book, which means that you may consult your casebook and any outlines that you have prepared, borrowed, or purchased. If you plan to buy commercial outlines, please remember that they are not synchronized with the course I teach, and they are a very poor substitute for your own thinking. The exam will be time-pressured. Hence, although you may bring outlines and other materials into the exam room, you may not have time to consult them.

Class participation points:

In a large, upper-division course like this one, I use a “panel system.” You will be grouped in panels that correspond with the dates for our class meetings. When you are
on panel, you will be responsible for answering questions about that day’s reading, plus any relevant material from previous classes. It is your responsibility to keep up with the reading and to be aware of what will be covered on your panel day. The best way to do this is to come to class regularly!

Class participation will be worth between 1 and 5 points, which will be added to your final exam score. **Your class participation score will be based on two things:**

1. **Your level of performance and preparedness on your panel day(s):** Your panel scores are individual; other students’ preparation (or lack thereof) does not affect you. You will get credit for being on panel, even if I don’t call on you. But if I forget or run out of time to call on you, please volunteer some comments or questions on other days.

2. **Your willingness to volunteer thoughtful comments and questions when you are not on panel:** Please remember that you won’t get the most points by dominating the discussion, but by waiting until you have a pertinent question to ask or an insightful comment to make.

I will deduct points from a student’s grade for failure to attend class on his or her panel day(s), excessive absences, and/or lack of preparation. In other words, adequate panel participation is a minimum requirement to get class participation points. Through absences or lack of preparation, it is possible for a student either to receive zero class participation points, or to have points subtracted from the final exam grade. Please come to class regularly; do the assigned reading; and be prepared to participate both when you are on panel and as a volunteer.

**Getting in touch with me outside of class:**

I will hold office hours on Monday and Tuesday from 3 PM to 4 PM in Office #407. If you can’t come to my office hours, you can make an appointment to meet me at another time.

Email: carolyn.ramsey@colorado.edu
Phone: (303) 735-5028

**TWEN**

Please sign up for the class on TWEN. I often communicate with students via email and may make important postings to the class website.

**TENTATIVE SCHEDULE**

**INTRODUCTION**

1. **Overview of the Criminal Justice Process and Relevant Parts of the United States Constitution**
   CB 1-31, 914-15 (Amendments IV, V, VI, and XIV)
INCORPORATION DOCTRINE
1. Fundamental Rights Approach vs. Total Incorporation Approach
   CB 33-44 (Palko, Adamson)

2. Selective Incorporation Approach
   CB 44-54 (Duncan)

SEARCH AND SEIZURE
1. Introduction to the Exclusionary Rule
   CB 55-63 (Wolf, Mapp)

2. Applicability of/Limits to the Exclusionary Rule
   CB 63-81 (Leon, Scott)

3. Protected Areas and Interests: What is a “Search”? (probably 3 classes)
   (a) CB 81-92 (Katz, Greenwood, Riley)
   (b) CB 93-105 (Karlo, Kyllo, White)
   (c) Horton v. California, 496 U.S. 128 (1990) (plain view doctrine) (on Westlaw)

4. Probable Cause
   CB 109-127 (Spinelli, Gates)

5. Search Warants
   CB 127-135 (Garrison, Richards)

6. Warrantless Seizure and Search of Persons (probably 2 to 3 classes)
   (a) CB 135-149 (Watson, Robinson) (warrantless arrests; SILA)
   (b) CB 149-154 (Whren) (pretextual stops)
   (c) CB 154-163 (Atwater, Garner) (misdemeanor arrests; deadly force)

7. Warrantless Seizure and Search of Premises
   CB 165-179 (Payton, Chimel, Vale)

8. Warrantless Seizure and Search of Vehicles (probably 3 classes)
   (a) CB 179-189 (Carney, Belton) (warrantless car search; car SILA)
   (b) CB 189-199 (Knowles, Acevedo) (car sweep/frisk; search of containers in cars)
   (c) CB 199-210 (Houghton, Bertine) (passengers’ belongings; inventory searches)

9. Lesser Intrusions I: Stop & Frisk (probably 2 to 3 classes)
   (a) CB 210-224 (Terry, J.L., Wardlow)
   (b) CB 224-241 (Royer, Drayton, Place)

10. Lesser Intrusions II: Regulatory Searches
    CB 241-252 (Earls)
11. Consent Searches
CB 252-263 (Bustamonte, Rodriguez)

INTRODUCTION TO THE RIGHT TO COUNSEL

1. Historical Development of the Right to Appointed Counsel
CB 283-297 (Betts, Gideon, Shelton)

POLICE INTERROGATION AND CONFESSIONS

1. The Due Process “Voluntariness” Approach
CB 307-321 (Ashcraft, Watts)

2. The “Right to Counsel” Approach
CB 321-331 (Massiah, Escobedo)

3. Miranda v. Arizona
CB 331-355 (Miranda)

4. The Meaning of “Custody” and “Interrogation”
CB 355-369 (McCarty, Innis, Perkins)

5. The Public Safety Exception
CB 377-383 (Quarles)

6. The Miranda (Fifth Amendment) Right to Counsel
CB 369-377 (Minnick)
Davis v. United States, 512 U.S. 452 (1994) (on Westlaw)

7. Waiver
CB 389-398 (Burbine)

8. Recent Supreme Court Interpretations of Miranda (probably 2 classes)
   (a) The Court Reaffirms Miranda: CB 402-413 (Dickerson)
   (b) Miranda, the Privilege Against Compelled Self-Incrimination, and 14th Amendment Due Process: CB 414-425 (Martinez)

9. Comparing and Contrasting the Fifth and Sixth Amendment Rights to Counsel
   (probably 2 classes)
CB 425-438 (Brewer, Kuhlmann)
IMPACT OF THE EXCLUSIONARY RULE ON DERIVATIVE EVIDENCE

1. Fruit of the Poisonous Tree: The Doctrine and Its Limits
   

2. Confessions and the Poisonous Tree
   
   CB 383-389 (*Elstad*)

LINEUPS, SHOW UPS, AND OTHER PROCEDURES

1. Constitutional Concern About Eyewitness Identifications
   
   CB 439-450 (*Wade, Gilbert, Kirby*)

2. Due Process and Other Limitations
   
   CB 451-458 (*Brathwaite*)