

Syllabus

Course Overview



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The focus of this course is on the development of an understanding of the history and evolution of the U.S. Constitution. Emphasis is placed on the foundation of our nation, the three branches of government, checks and balances, and the connection of these areas to the criminal justice field. Political and legal foundations for constitutional law will be connected to lawmaking and law interpretation, in the context of criminal justice connections and impacts. This course is designed to enable learners to explore criminal justice areas within a constitutional framework.

Course Competencies

(Read Only)

To successfully complete this course, you will be expected to:

- 1 Describe how historical problems were managed in the evolution of the U.S. Constitution.
- 2 Correlate the role of each branch of government with Bill of Rights interpretation.
- 3 Explain the substantive and procedural interpretation of individual freedoms based on case analysis.
- 4 Document philosophical underpinnings and public policy influences associated with U.S. Supreme Court decisions.
- 5 Communicate effectively in writing.

Course Prerequisites

There are no prerequisites for this course.

Syllabus >> Course Materials

Required

The materials listed below are required to complete the learning activities in this course.

Integrated Materials

Many of your required books are available via the VitalSource Bookshelf link in the courseroom, located in your Course Tools. Registered learners in a Resource Kit program can access these materials using the courseroom link on the Friday before the course start date. Some materials are available only in hard-copy format or by using an access code. For these materials, you will receive an email with further instructions for access. Visit the [Course Materials](#) page on Campus for more information.

Book

Harr, J. S., Hess, K. M., Orthmann, C. H., & Kingsbury, J. (2018). *Constitutional law and the criminal justice system* (7th ed.). Boston, MA: Cengage. ISBN: 9781305966468.

Library

The following required readings are provided in the Capella University Library or linked directly in this course. To find specific readings by journal or book title, use [Journal and Book Locator](#). Refer to the [Journal and Book Locator library guide](#) to learn how to use this tool.

- Amar, A. R. (1994). Fourth amendment first principles. *Harvard Law Review*, 107(4), 757–819.
- Balkin, J. M., & Levinson, S. (2012). Panel I: Thirteenth Amendment in context. *Columbia Law Review*, 112(7), 1459–1499.
- Barnett, R. E. (2006). The Ninth Amendment: It means what it says. *Texas Law Review*, 85(1), 1–82.
- Berman, M. (2014). American support for the death penalty hasn't budged since botched executions. *Washington Post*.
- Bravin, J. (2014, June 25). Supreme Court: Police need warrants to search cellphone data. *Wall Street Journal (Online)*.
- Cambridge Educational (Producer). (1998). Amendment 4: Unreasonable search and seizure [Video]. Films on Demand.
- Constitutional law—Fourth Amendment—Ninth Circuit holds forensic search of laptop seized at border requires showing of reasonable suspicion—United States v. Cotterman. (2014). *Harvard Law Review*, 127(3), 1041–1048.
- Cyrułnik, J. C. (2005). Overlooking a Sixth Amendment framework. *Yale Law Journal*, 114(4), 905–912.

- Davies, T. Y. (1999). Recovering the original Fourth Amendment. *Michigan Law Review*, 98(3), 547–750.
- Eckholm, E. (2015). Supreme Court justices hear Oklahoma inmates' lethal injection case. *New York Times (Online)*.
- Epstein, R. A. (2015). Entick v. Carrington and Boyd v. United States: Keeping the Fourth and Fifth Amendments on track. *University of Chicago Law Review*, 82(1), 27–50.
- Foley, B. J. (2012). Reframing the debate over excessive sentences to move beyond the Eighth Amendment. *New England Journal on Criminal and Civil Confinement*, 38(1), 3–55.
- Fourth Amendment—Search and Seizure—Conflicted Consent When The Objecting Tenant is Absent— Fernandez v. California. (2014). *Harvard Law Review*, 128(1), 241–250.
- Fourth Amendment—Warrantless searches—New Jersey Supreme Court holds that state constitution requires police to obtain warrant before accessing cell site location information. (2014). *Harvard Law Review*, 127(7), 2164–2171.
- Garvin, M. (2013). Victims and the Supreme Court's Eighth Amendment jurisprudence in Miller v. Alabama: A tale of a constitutive paradox for victims. *New England Journal on Criminal and Civil Confinement*, 39(2), 303–317.
- Gostin, L. O. (2010). The right to bear arms: A uniquely American entitlement. *Journal of the American Medical Association*, 304(13), 1485–1486.
- Hoekstra supports Supreme Court decision concerning gun rights. (2010, June 28). *Targeted News Service*.
- Jones, R. A. (2012). U.S. Supreme Court justices and press access. *Brigham Young University Law Review*, 2012(6), 1791–1817.
- Junger, P. D. (2012). The original plain meaning of the right to bear arms. *Case Western Reserve Law Review*, 63(1), 141–145.
- Kilgore, M. A. (2014). United States v. Richardson: When custody and interrogation require a Miranda warning under the Fifth Amendment. *American Journal of Trial Advocacy*, 38(2), 391–405.
- Korpi, T. (2006). Queries from Quirin: Guantanamo tribunals and the separation of powers doctrine. *The William and Mary Bill of Rights Journal*, 14(4), 1629–1655.
- Long, C. (2013, August 13). NYPD stop-frisk effort ruled illegal. *Pittsburgh Post-Gazette*, A3.
- Maclin, T. (2017). The prophylactic Fifth Amendment. *Boston University Law Review*, 97(3), 1047–1084.
- McCarthy, M. (2006). Lethal injection challenged as "cruel and unusual" fate. *Lancet*, 367(9512), 717.
- Media Rich Learning (Producer). (2000). The almost painless guide to the U.S. Constitution [Video]. Films on Demand.
- Miller, L. S. (2010). Theorizing religion. constitutionalizing religion: Taylor, Connolly, Habermas, and the U.S. Supreme Court (Doctoral dissertation). Available from ProQuest Dissertations and Theses Global. (Order No. 3396676)
- Open University (Producer). (2010). Death sentence: The story of capital punishment [Video]. Films on Demand.
- Raphael, A. (2013). Does the Fifth Amendment forbid testimony about a defendant's pre-arrest silence when questioned by police? Preview of United States Supreme Court Cases, 40(7), 279–282.
- Sixth Amendment—Ineffective assistance of counsel—Sixth Circuit holds that defense counsel's nap during the defendant's cross-examination does not clearly violate the Sixth Amendment— Muniz v. Smith. (2012). *Harvard Law Review*, 125(6), 1498–1505.
- Sixth Amendment—Right to jury trial—Mandatory minimum sentences— Alleyne v. United States. (2013). *Harvard Law Review*, 127(1), 248–257.
- Stinneford, J. F. (2011). Rethinking proportionality under the cruel and unusual punishment clause. *Virginia Law Review*, 97(4), 899–978.
- Stolberg, S. G. (2005). Senator will not ask Roberts to take a stand on abortion. *New York Times*, 1.21.
- Sullivan, J. (2003). The Tenth Amendment and local government. *Yale Law Journal*, 112(7), 1935–1942.
- Troutman, B. (2018). A more just system of juvenile justice. *Journal of Criminal Law and Criminology*, (108)1, 197–221.
- Winkler, A. (2019, December 2). The Supreme Court could undo local gun laws—in a case it shouldn't be hearing. *The Washington Post (Online)*.
- Winkler, A. T. (2013). Password protection and self-incrimination: Applying the Fifth Amendment privilege in the technological era. *Rutgers Computer and Technology Law Journal*, 39(2), 194–215.

External Resource

Please note that URLs change frequently. While the URLs were current when this course was designed, some may no longer be valid. If you cannot access a specific link, contact your instructor for an alternative URL. Permissions for the following links have been either granted or deemed appropriate for educational use at the time of course publication.

- American Civil Liberties Union. (2013). Second Amendment: Gun control. Retrieved from https://www.aclu.org/second-amendment-0?redirect=racial-justice_prisoners-rights_drug-law-reform_immigrants-rights/second-amendment
- American Library Association. (n.d.). Notable First Amendment court cases. Retrieved from <http://www.ala.org/advocacy/intfreedom/censorshipfirstamendmentissues/courtcases>
- Brady Campaign to Prevent Gun Violence. (n.d.). Retrieved from <http://www.bradycampaign.org/>
- Dilanian, K. (2013). U.S. delays Miranda rights for captured Al Qaeda operative. *Los Angeles Times*. Retrieved from <https://www.latimes.com/world/la-xpm-2013-oct-09-la-fg-terror-suspect-20131010-story.html>
- Federal Law Enforcement Training Center. (n.d.). 4th Amendment road map [Audio podcasts]. Retrieved from <https://www.fletc.gov//4th-amendment-roadmap>
- Government Publishing Office, Federal Digital System. (n.d.). Tenth Amendment: Reserved powers. Retrieved from <http://www.gpo.gov/fdsys/pkg/GPO-CONAN-1992/pdf/GPO-CONAN-1992-10-11.pdf>
- Greenburg, J. C., & de Vogue, A. (2009). Court: School strip search violated teen's rights. ABC News. Retrieved from <https://abcnews.go.com/Politics/SCOTUS/story?id=7782080>
- Justia US Law. (n.d.). Georgia supreme court: S12A1981. The State v. Buckner. Retrieved from <http://cases.justia.com/georgia/supreme-court/s12a1981.pdf?ts=1396119920>
- Keenan, D., & Thomas, T. M. (2014). An offense-severity model for stop-and-frisks. *Yale Law Journal*, 123(5), 1118–1625.

- Legal Information Institute (LII). (n.d.). [Carroll v. Carman](https://www.law.cornell.edu/supremecourt/text/14-212). Cornell Law School. Retrieved from <https://www.law.cornell.edu/supremecourt/text/14-212>
- [National Rifle Association, Institute for Legislative Action](https://www.nrila.org/). (n.d.). Retrieved from <https://www.nrila.org/>
- Office of Justice Programs, Bureau of Justice Statistics. (n.d.). [Indigent defense services](http://www.bjs.gov/content/pub/pdf/idsus0812.pdf). Retrieved from <http://www.bjs.gov/content/pub/pdf/idsus0812.pdf>
- Oyez. (1988). [Texas v. Johnson](http://www.oyez.org/cases/1980-1989/1988/1988_88_155). Retrieved from http://www.oyez.org/cases/1980-1989/1988/1988_88_155
- Reporters Committee for Freedom of the Press. (2011). [The First Amendment handbook, 7th edition](http://www.rcfp.org/first-amendment-handbook). Retrieved from <http://www.rcfp.org/first-amendment-handbook>
- VLex. (n.d.). [Seventh Amendment: Civil Trials](http://constitutions.vlex.com/vid/seventh-amendment-civil-trials-295135). Retrieved from <http://constitutions.vlex.com/vid/seventh-amendment-civil-trials-295135>
- WTOC. (2013). [Ga. high court upholds Bobby Buckner ruling](http://www.wtoc.com/story/20957381/court-upholds-sixth-amendment-violation-in-bobby-buckner-case). Retrieved from <http://www.wtoc.com/story/20957381/court-upholds-sixth-amendment-violation-in-bobby-buckner-case>

Suggested

The following materials are recommended to provide you with a better understanding of the topics in this course. These materials are not required to complete the course, but they are aligned to course activities and assessments and are highly recommended for your use.

External Resource

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- [Death Penalty Information Center](http://www.deathpenaltyinfo.org/). (n.d.). Retrieved from <http://www.deathpenaltyinfo.org/>

Optional

The following optional materials are offered to provide you with a better understanding of the topics in this course. These materials are not required to complete the course.

Integrated Materials

Book

Berlin, M. M. (2013). Courts. In J. I. Ross (Ed.), *Encyclopedia of street crime in America* (pp. 92–97). Thousand Oaks, CA: Sage.

Library

The following optional readings may be available in the Capella University Library. To find specific readings by journal or book title, use [Journal and Book Locator](#). Refer to the [Journal and Book Locator library guide](#) to learn how to use this tool. If the full text is not available, you may be able to request a copy through the [Interlibrary Loan](#) service.

- Barkow, R. E. (2006). Separation of powers and the criminal law. *Stanford Law Review*, 58(4), 989–1054.
- Coenen, M. (2010). The significance of signatures: Why the framers signed the Constitution and what they meant by doing so. *Yale Law Journal*, 119(5), 966–1010.
- Haslanger, P. (2003). A fresh look at the framers. *The Masthead*, 55(4), 27.
- Segal, J. A., Westerland, C., & Lindquist, S. A. (2011). Congress, the Supreme Court, and judicial review: Testing a constitutional separation of powers model. *American Journal of Political Science*, 55(1), 89–104.
- Stone, H. F. (1936). The common law in the United States. *Harvard Law Review*, 50(1), 4–26.

External Resource

Please note that URLs change frequently. While the URLs were current when this course was designed, some may no longer be valid. If you cannot access a specific link, contact your instructor for an alternative URL. Permissions for the following links have been either granted or deemed appropriate for educational use at the time of course publication.

- American Civil Liberties Union. (2012). [The case against the death penalty](https://www.aclu.org/case-against-death-penalty). Retrieved from <https://www.aclu.org/case-against-death-penalty>
- Bikel, O. (Producer). (2010). [The confessions](http://video.pbs.org/video/1637166286/) [Video]. Available from <http://video.pbs.org/video/1637166286/>
- Case Law 4 Cops. (n.d.). [Exigent circumstances](http://www.caselaw4cops.net/searchandseizure/exigent.htm). Retrieved from <http://www.caselaw4cops.net/searchandseizure/exigent.htm>
- Deeter, J. (Producer). (2010). [Death by fire](http://video.pbs.org/video/1618590505/) [Video]. Available from <http://video.pbs.org/video/1618590505/>

- Federal Judicial Center. (n.d.). [The U.S. legal system: A short description](http://www.fjc.gov/public/pdf.nsf/lookup/U.S._Legal_System_English07.pdf/$file/U.S._Legal_System_English07.pdf). Retrieved from [http://www.fjc.gov/public/pdf.nsf/lookup/U.S._Legal_System_English07.pdf/\\$file/U.S._Legal_System_English07.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/U.S._Legal_System_English07.pdf/$file/U.S._Legal_System_English07.pdf)
- FindLaw. (n.d.). [Annotation 4 – Sixth Amendment: Right to trial by impartial jury](http://constitution.findlaw.com/amendment6/annotation04.html#1). Retrieved from <http://constitution.findlaw.com/amendment6/annotation04.html#1>
- FindLaw. (n.d.). [Prisoners' rights](http://civilrights.findlaw.com/other-constitutional-rights/prisoners-rights.html). Retrieved from <http://civilrights.findlaw.com/other-constitutional-rights/prisoners-rights.html>
- FoxNews.com. (2014). [Why did ex-IRS official Lerner invoke Fifth Amendment again?](http://video.foxnews.com/v/3297159380001/why-did-ex-irs-official-lerner-invoke-fifth-amendment-again/?#sp=show-clips) [Video]. Available at <http://video.foxnews.com/v/3297159380001/why-did-ex-irs-official-lerner-invoke-fifth-amendment-again/?#sp=show-clips>
- Library of Congress. (n.d.). [14th Amendment to the U.S. Constitution](https://www.loc.gov/rr/program/bib/ourdocs/14thamendment.html). Retrieved from <https://www.loc.gov/rr/program/bib/ourdocs/14thamendment.html>
- National Archives and Records Administration. (n.d.). [Constitution of the United States](http://www.archives.gov/exhibits/charters/constitution_history.html). Retrieved from http://www.archives.gov/exhibits/charters/constitution_history.html
- Office of Justice Programs, Bureau of Justice Statistics. (2011). [Contacts between the police and the public, 2008](http://www.bjs.gov/index.cfm?ty=pbdetail&iid=2229). Retrieved from <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=2229>
- Oyez. (1999). [Dickerson v. United States](http://www.oyez.org/cases/1990-1999/1999/1999_99_5525). Retrieved from http://www.oyez.org/cases/1990-1999/1999/1999_99_5525
- Oyez. (2006). [Scott v. Harris](http://www.oyez.org/cases/2000-2009/2006/2006_05_1631). Retrieved from http://www.oyez.org/cases/2000-2009/2006/2006_05_1631
- PBS.org. (n.d.). [Equality and the Fourteenth Amendment: A new constitution](http://www.pbs.org/tpt/constitution-usa-peter-sagal/equality/#.Vd3mr03bL5q). Retrieved from <http://www.pbs.org/tpt/constitution-usa-peter-sagal/equality/#.Vd3mr03bL5q>
- Supreme Court of the United States. (n.d.). [A brief overview of the Supreme Court](http://www.supremecourt.gov/about/briefoverview.aspx). Retrieved from <http://www.supremecourt.gov/about/briefoverview.aspx>
- U.S. Department of Education. (n.d.). [Family Educational Rights and Privacy Act \(FERPA\)](https://www.ed.gov/policy/gen/guid/fpco/ferpa/index.html) <https://www.ed.gov/policy/gen/guid/fpco/ferpa/index.html>
- U.S. Department of Health & Human Services. (n.d.). [Summary of the HIPAA privacy rule](https://www.hhs.gov/hipaa/for-professionals/privacy/laws-regulations/index.html) <https://www.hhs.gov/hipaa/for-professionals/privacy/laws-regulations/index.html>
- United States Courts. (n.d.). [Educational resources](http://www.uscourts.gov/about-federal-courts/educational-resources). Retrieved from <http://www.uscourts.gov/about-federal-courts/educational-resources>

Unit 1 >> The History of the U.S. Constitution and the Legal System

Introduction



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Competencies Addressed in This Unit

- **Competency 1:** Describe how historical problems were managed in the evolution of the U.S. Constitution.
- **Competency 2:** Correlate the role of each branch of government with Bill of Rights interpretation.
- **Competency 5:** Communicate effectively in writing.

Historical Overview of the U.S. Constitution and the Legal System

Law is a body of rules established and promulgated to support the norms of that society, enforced through legal means (that is, punishment). A constitution is a system of basic laws and principles that establish the nature, functions, and limits of a government or other institution. Constitutional law deals with the fundamental principles by which the government exercises its authority. The starting point for developing application-based knowledge requires exploring the past, when the United States was just a vision and we were known as colonists rather than American citizens. When you approach learning about the U.S. Constitution, keep in mind that the scope of authority is broad and the fundamental purpose is important.

Understanding history provides us with the foundation for understanding the purpose of the U.S. Constitution. The Constitution's history is important for enhancing students' understanding of the importance of this document, its impact on our system of government, and the flexibility of the document, which is one of its greatest strengths. When reviewing the historical evolution, emphasis should be placed on the famous American leaders, including George Washington, John Adams, and Thomas Jefferson, and the practical concerns they had in creating a separate country through the law. Just as is the case today, the framers of the Constitution were confronted with contentious issues. The journey involved the 1st Continental Congress, the 2nd Continental Congress, the Declaration of Independence, the Articles of Confederation, and the Magna Carta, which served as a solid starting point for the

Constitutional Convention called for in 1787 by Congress to revise the Articles (Harr, Hess, Orthmann, & Kingsbury, 2018). These significant historical events and social stories provide the foundation for understanding the U.S. Constitution as a long-standing document.

Focusing on the creation of the U.S. legal system, the government was divided horizontally and vertically. Some reasons for dividing the government include a fear of concentration of power and the desire to ensure that the system of government would prevent consolidation of power. Separation of powers is the division of government in the United States among the branches of the federal government, which constitutes horizontal division.

Federalism is the division between the federal and state governments, which constitutes vertical division. The legislative branch makes laws and is made up of Congress. The executive branch enforces the laws and is made up of the president and other executive officers. The judicial branch interprets the law and is made up of the U.S. Supreme Court (the only court officially created in the U.S. Constitution) and the lower federal courts. The U.S. Constitution outlines the powers for each branch in Article I (legislative), Article II (executive), and Article III (judicial).

In translating the U.S. Constitution into action in our legal system, there is a consistent balancing of individual rights and societal needs. Different theories have been set forth to explain the structure.

Under the consensus theory, individuals in a society agree on basic values, on what is inherently right and wrong, and the laws that express these values (Harr et al., 2018). A social contract exists in which individuals agree to give up a portion of their individual freedom to benefit the security of the group.

Under conflict theory, laws are established to keep the dominant class in power. This theory explains how laws protect the interests and values of the dominant groups in society (Harr et al., 2018).

There are also two main models. The crime control model emphasizes the repression of criminal conduct and asserts that the criminal justice system must bring criminal behavior under tight control. The due process model emphasizes the rights of the individual and rests on the presumption of innocence. Under the due process model, individual rights are not to be sacrificed for the sake of efficiency.

Only the basic format of government is controlled by the U.S. Constitution. This is intentional, as it prevents the central government from amassing excessive power. As such, the citizens of the various states are free to exercise their own jurisdictional imperatives. The basic purpose of the U.S. legal system is to ensure fairness in balancing individual and societal rights and needs.

Reference

Harr, J. S., Hess, K. M., Orthmann, C. H., & Kingsbury, J. (2018). *Constitutional law and the criminal justice system* (7th ed.). Boston, MA: Cengage.

Learning Activities

u01s1 - Studies

Readings

In your *Constitutional Law and the Criminal Justice System* text, read the following:

- Chapter 1, "An Historical Overview," pages 3–28.
- In Chapter 2, "An Overview of the U.S. Legal System," pages 29–39.
- Appendix A, "The U.S. Constitution and Amendments," pages 476–488.

Library Articles

Use the Capella library to read the following:

- Korpi, T. (2006). Queries from Quirin: Guantanamo tribunals and the separation of powers doctrine. *The William and Mary Bill of Rights Journal*, 14(4), 1629–1655.

FMG Video

- Media Rich Learning (Producer). (2000). The almost painless guide to the U.S. Constitution [Video]. Films on Demand.

Optional Readings

You may choose to read the following articles addressing the Unit 1 topics. Familiarizing yourself with these resources will provide you with additional insight and perspective about the U.S. Constitution and the history of our legal system.

- Haslanger, P. (2003). A fresh look at the framers. *The Masthead*, 55(4), 27.
- Coenen, M. (2010). The significance of signatures: Why the framers signed the Constitution and what they meant by doing so. *Yale Law Journal*, 119(5), 966–1010.

Optional Internet Resources

- [Introduction to the American Legal System](#) from Nexis Uni.
- [Constitution of the United States](#) from the National Archives and Records Administration.

Suggested Resources

Join a highly committed community of learners, faculty, and coaches in the [Community of Excellence](#). On the COE page, explore resources such as the Writing Studio and Community Conversations.

u01s2 - Your Online ePortfolio

Online ePortfolios serve two key purposes: 1) to support learning and reflection, and 2) to be used as a showcase tool. Your learning journey can be documented, and ePortfolios contribute to lifelong learning and growth through reflection and sharing. Online ePortfolios can also be shared with employers and peers to present artifacts that demonstrate your accomplishments at Capella.

Using ePortfolio to Prepare for Your Capstone

Your program may culminate in a capstone course. At that time you may be required to show evidence of your learning throughout the program by referring to multiple assessments that you have created. You will be telling a story about your learning throughout the program using artifacts you have collected during many of these courses.

Using ePortfolio to Build Your Career

As you are preparing to tell your story in the professional world, leverage your ePortfolio artifacts to demonstrate the knowledge and competencies you have gained through your program in professional conversations, performance reviews, and interviews.

To do that, reflect on the knowledge and skills you have gained from your courses and the elements you have put in your portfolio, along with how you have already applied these things to your professional life or how you might apply them in the future.

Next, create your story or talking points to tell your professional story.

Saving Your Documents to ePortfolio

You will need a place to store your documents in an organized fashion so that you can access them at a later date. Do not rely on the courseroom for storage, as you will lose access to the courseroom after you have completed the course. Capella uses a cloud-based portfolio platform to facilitate your organization of the artifacts you create throughout your program.

To make an online portfolio useful, it is essential that it is organized clearly and that important files of any format are accessible. Read the [Online ePortfolio Guidelines \[PDF\]](#) to ensure you set up your online portfolio correctly. For more information on ePortfolio visit the Campus [ePortfolio](#) page.

Privacy Statement

Capella complies with privacy laws designed to protect the privacy of personal information. While you may voluntarily share your own information publicly, you are obligated to protect the personal information of others that may be associated with your academic or professional development. Before sharing information and material in any ePortfolio that is set up to be shared externally to your program at Capella, please consider privacy obligations in relation to protected populations who may be included or referenced in your academic or clinical work. Refer to the [Family Educational Rights and Privacy Act \(FERPA\)](#) and/or the [Health Insurance Portability and Accountability Act \(HIPAA\)](#) if you have specific questions or concerns about your choices.

u01a1 - Connecting the Past and Present and Looking Ahead

Competencies Addressed in This Assignment

- **Competency 2:** Correlate the role of each branch of government with Bill of Rights interpretation.
- **Competency 5:** Communicate effectively in writing.

Throughout the course, we will be looking at historical connections to understand current and future criminal justice system implications. In this unit, you learned about the history of the U.S. Constitution, the structure of the legal system, and implementation in the context of our government. These areas are the foundation for understanding the criminal justice practitioner connection. As the law changes, professionals working in the criminal justice system need to remain aware of what is current. Failure to do so can cause legitimate cases to be dismissed, allow persons who are guilty of crimes to get away, and open up liability at different levels. Likewise, the individual rights of innocent citizens can be affected in our U.S. legal system.

Prepare a three-page paper, citing a minimum of two academically verified references, describing the structure of government, including the three branches, power allocated to each branch, the source of power, and the separation of powers. Explain how each branch has obligations and roles associated with the interpretation of the Bill of Rights. Address why this understanding of the branches of government and the Bill of Rights application is important in a career context.

Be sure to review the Connecting the Past and Present and Looking Ahead Scoring Guide to ensure that you understand the criteria for this assignment.

Use the links provided in the Resources to help you complete the assignment.

Requirements

- **Written communication:** Must be free of errors that detract from the overall message.
- **Resources and citations:** Format according to APA guidelines.
- **Required page count:** Three, not including the title page or the references page.
- **Required number of references:** A minimum of two.
- **Font and font size:** Times New Roman, 12 point.

How to Submit Your Assignment

This is a two-step process.

SafeAssign: Drafts of all assignments must be submitted to SafeAssign.

1. Access SafeAssign through the link in the courseroom.
2. Submit your assignment using the draft folder.
3. Review the returned report and make changes as needed. (You may ignore any template matches.)

Submit Your Assignment for Grading: See Submit an Assignment (linked in the Resources) for more information.

1. Click on the linked assignment heading.
2. Attach your file.
3. Click submit.
4. You will know your submission was successful by viewing the Submitted section of the My Grades area.

Course Resources

[Criminal Justice Undergraduate Research Guide](#)

[APA Style and Format](#)

[SafeAssign](#)

[Submit an Assignment](#)

APA Style Paper Template

Competencies Addressed in This Discussion

- **Competency 1:** Describe how historical problems were managed in the evolution of the U.S. Constitution.
- **Competency 5:** Communicate effectively in writing.

Introduction

The U.S. Constitution has significant and complex history. Each marker that led to the creation of the U.S. Constitution is important in terms of understanding frame, philosophical ideologies, and public policy considerations. American constitutional law has a life of its own. It has expanded, retreated, and changed as the needs of those it serves have changed. In a manner of speaking, it lives out society's ideals.

Let's make some connections. Looking at the history of the U.S. Constitution, identify three areas of significance and how you think those areas impacted the direction of the U.S. Constitution. Do you feel the concerns were adequately addressed for the nation, at that time, and moving forward as a new nation? Fast-forwarding to today, do you feel the key protections in the Bill of Rights provide the foundation to strike a balance between individual rights and societal needs? Use criminal justice examples to support your positions and conclusions.

Discussion Objectives

The competencies addressed in this discussion are supported by discussion objectives.

- Competency 1: Describe how historical problems were managed in the evolution of the U.S. Constitution.
 - Identify three areas of concern in a historical context that were addressed by the U.S. Constitution.
 - Determine how the areas of concern were addressed by the Bill of Rights.
- Competency 5: Communicate effectively in writing.
 - Illustrate the balancing of individual rights and societal needs through the use of criminal justice examples.

Response Guidelines

Respond to the posts of two peers. Interact about the different historical selections and impacts. Discuss the different rights selections, balances, and criminal justice connections. Explain how your opinions are similar to or different from your peers and why. Do you share the same conclusions as other learners? Why or why not? Did the positions of your peers impact your positions on these areas? How?

Course Resources

CJ Discussion Scoring Guide

[Criminal Justice Undergraduate Research Guide](#)

[Nexis Uni Library Guide](#)

Unit 2 >> The U.S. Supreme Court, Power, and Equal Protection

Introduction



Competencies Addressed in This Unit

- **Competency 3:** Explain the substantive and procedural interpretations of individual freedoms based on case analysis.
- **Competency 4:** Document philosophical underpinnings and public policy influences associated with the U.S. Supreme Court decisions.
- **Competency 5:** Communicate effectively in writing.

U.S. Supreme Court Power and Equal Protection

Article III of the U.S. Constitution established the federal judiciary. The only court created in the Constitution is the U.S. Supreme Court. The decisions rendered by the Supreme Court are the supreme law of the land, and all state and federal jurisdictions must follow those decisions. Since many cases pertain to criminal law and criminal procedure, it is very important that criminal justice practitioners understand how those decisions are rendered and how to read and interpret the decisions.

Judicial review is one of the most important powers of the Supreme Court. The U.S. Supreme Court has the power to review the actions of the legislative and executive branches (and state action) for constitutionality and void those actions that are determined to be unconstitutional.

Through *Marbury v. Madison* (1803), the Supreme Court established the power of judicial review. That was the point in time when the judicial branch established a very strong power that remains to date. The Supreme Court has the final say in interpreting the Constitution. Many amendments in the Bill of Rights address criminal procedural areas. The Supreme Court's decision to review a case is almost entirely discretionary.

Jurisdiction has to do with power and authority. The Supreme Court has both original jurisdiction, which means that cases can start in the Supreme Court, and appellate jurisdiction, which means that cases reach the Supreme Court after prior litigation in a lower court. The Supreme Court may review a case if a federal appeals court requests the Court to certify or clarify a legal point. The Supreme Court is obligated to hear certain cases meeting the requirements for an "appeal of right," which occur infrequently. Cases are heard when the Supreme Court grants a writ of certiorari, or "cert." Four of the nine justices must vote in favor of granting certiorari for acceptance of a case for review.

Opinions are written statements by a judge providing a description of the facts; a statement of the legal issues presented for decision; the relevant rules of law; the holding and the policies; and reasons that support the holding. The chief justice assigns the writing of an opinion if voting with the majority. Otherwise, the most senior member of the majority vote assigns the writing. Other than the majority opinion, justices can author concurring (agreeing with the majority) or dissenting (disagreeing with the majority and the reasons underlying the disagreement) opinions. We often look back and examine voting trends, decisions, and impacts. Many driving forces influence these areas, including political ideologies, public policy, political affiliation, and key issue positions. Often, the assessment is conducted by Supreme Court Era, which is grouped based on the presiding chief justice.

Looking back to the evolution of the U.S. Constitution, and the intentions and concerns of the framers, the framers wanted to prevent excessive federal authority. They wanted to give states more authority, but this resulted in problems the national government could not overlook. Equality was a founding theme that was applied differently and evolved over time in our nation's history. One area of evolution was equal protection. When Abraham Lincoln was elected president, he promised to abolish slavery in the territories. However, under the Constitution, slavery was legal in the states where it had been established. In *Dred Scott v. Sandford* (1857), the Supreme Court ruled that even free blacks could not be citizens of the United States and that they "had no rights which a white man was bound to respect" (Harr et al., 2018).

The decision further divided the country, and the Civil War ensued. It pitted American against American and sometimes brother against brother. Hundreds of thousands were wounded and killed. This caused a divide that still affects the country to this day.

In April 1862, slavery was abolished in the District of Columbia and 2 months later in all the territories. On January 1, 1863, Lincoln declared free all the slaves in Southern states in rebellion against the Union. The proclamation set a national tone toward abolishing slavery. In 1865, the Thirteenth Amendment, abolishing slavery in the United States, was ratified.

Although slavery was abolished by the Thirteenth Amendment, states still discriminated based on race. Many Southern states passed Black Codes, which continued to limit the freedoms of black Americans. Subsequently, Congress passed the Fourteenth Amendment in 1868, giving blacks citizenship and granting citizenship to all persons born or naturalized in the United States. The Fourteenth Amendment makes Bill of Rights guarantees applicable to the states by its language. This amendment prevents federal and state governments from abridging the privileges of citizens or denying any citizen equal protection of the law or deprive them of life, liberty, or property without due process of the law.

The Equal Protection Clause restrains government from discriminatory classifications. The interpretation has expanded well beyond the historical roots of slavery. For example, the Fifth Amendment due process is coextensive with Fourteenth Amendment equal protection in restraining the federal government. Courts have interpreted the Fourteenth Amendment as a restraint on the use of classification in government regulation. This applies to substantive and procedural law. Due process provides rules and procedures to ensure fairness and prevent arbitrary government actions. Procedural due process refers to how laws are applied. Substantive due process requires that the laws themselves be fair, not just how the laws are enforced.

Reference

Harr, J. S., Hess, K. M., Orthmann, C. H., & Kingsbury, J. (2018). *Constitutional law and the criminal justice system* (7th ed.). Boston, MA: Cengage.

Learning Activities

u02s1 - Studies

Readings

In your *Constitutional Law and the Criminal Justice System* text, read the following:

- Chapter 3, "The U.S. Supreme Court: The Final Word," pages 58–78.
- Chapter 4, "Equal Protection under the Law: Balancing Individual, State, and Federal Rights," pages 79–125.
- Appendix C, "Briefs of *Marbury* and *Miranda*," pages 490–491.

Optional Articles

Read the following articles addressing the Unit 2 topics. Familiarizing yourself with these resources will provide you with additional insight and perspective about the evolution of the judicial branch, the power of the U.S. Supreme Court and protections derived from the Fourteenth Amendment.

- Segal, J. A., Westerland, C., & Lindquist, S. A. (2011). Congress, the Supreme Court, and judicial review: Testing a constitutional separation of powers model. *American Journal of Political Science*, 55(1), 89–104.
- Barkow, R. E. (2006). Separation of powers and the criminal law. *Stanford Law Review*, 58(4), 989–1054.

Optional Internet Resources

- [14th Amendment to the U.S. Constitution](#) from the Library of Congress.
- [A Brief Overview of the Supreme Court](#) from the Supreme Court of the United States.

Suggested Resources

Join a highly committed community of learners, faculty, and coaches in the [Community of Excellence](#). On the COE page, explore resources such as the Writing Studio and Community Conversations.

u02d1 - Supreme Court: Influences and Interpretations

Competencies Addressed in This Discussion

- **Competency 4:** Document philosophical underpinnings and public policy influences associated with U.S. Supreme Court decisions.
- **Competency 3:** Explain the substantive and procedural interpretations of individual freedoms based on case analysis.

Introduction

The U.S. Supreme Court renders decisions that bind our nation. Many decisions are interpretations of the balance of individual rights and societal needs in the context of the Bill of Rights. The justices have voting tendencies. These tendencies are shaped by philosophical underpinnings, political ideologies, and public policy. Understanding these underlying influences is important when attempting to predict trends of the Court. One decision can have a significant impact on a criminal justice practitioner.

As you learn about the foundation of the power of the Supreme Court, and the different eras of the Court, share your perspective about the importance of understanding these areas specific to your intended career. Select two eras of the Supreme Court, based on the chief justice presiding over the court, and explain some trends of the decisions in the areas of substantive and procedural law. How did philosophical underpinnings and public policy influence decisions in your selected eras? Was the court more liberal or conservative in each era you selected? What differences did you note between the eras? What did you learn in doing this comparison? How can you connect this learning to your career?

Discussion Objectives

The competencies addressed in this discussion are supported by discussion objectives.

- Competency 4: Document philosophical underpinnings and public policy influences associated with U.S. Supreme Court decisions.
 - Compare U.S. Supreme Court decisions by era.
 - Correlate learning about U.S. Supreme Court decision trends and influences to your career.
- Competency 3: Explain the substantive and procedural interpretations of individual freedoms based on case analysis.
 - Identify trends of the U.S. Supreme Court, in two eras, in the areas of substantive and procedural law.

Response Guidelines

Respond to the posts of two peers. Interact with other learners about the power of the Supreme Court, voting tendencies, influences, and the importance of understanding these areas in a practitioner context.

Course Resources

CJ Discussion Scoring Guide

[Criminal Justice Undergraduate Research Guide](#)

u02d2 - Equal Protection - Due Process

Competencies Addressed in This Discussion

- **Competency 3:** Explain the substantive and procedural interpretations of individual freedoms based on case analysis.

Introduction

Equality is a key area of importance with strong historical roots. State and federal laws guarantee equal protection and due process. These laws are interpreted by the courts. Tracking these laws and interpretation changes over time is important to developing an understanding of the evolution and to anticipate the future direction in these areas. Substantive due process, procedural due process, and equal protection impact criminal justice practitioners on a daily basis, in all facets of the system. Looking ahead to your career, make one connection to equal protection, substantive due process, and procedural due process, for a total of three connections. Explain your selections, the requirements to comply with your selections in a career context, and the basis for your selections. Include a minimum of one U.S. Supreme Court case in your explanation. Determine measures you would take, when working in your chosen criminal justice career, to ensure compliance.

Discussion Objectives

The competencies addressed in this discussion are supported by discussion objectives.

- Competency 3: Explain the substantive and procedural interpretations of individual freedoms based on case analysis.
 - Describe equal protection compliance requirements specific to a criminal justice career.
 - Determine substantive due process compliance requirements applicable to a criminal justice career.
 - Explain procedural due process compliance requirements based on a criminal justice career selection.
 - Analyze a U.S. Supreme Court decision based on rights compliance.

Response Guidelines

Respond to the posts of two peers. Interact with other learners about the connections, rationale, and compliance approaches.

Course Resources

CJ Discussion Scoring Guide

[Criminal Justice Undergraduate Research Guide](#)

Unit 3 >> Overview of the Legal System, Legal Research, and Reading Cases

Introduction



Competencies Addressed in This Unit

- **Competency 3:** Explain the substantive and procedural interpretations of individual freedoms based on case analysis.
- **Competency 4:** Document philosophical underpinnings and public policy influences associated with the U.S. Supreme Court decisions.
- **Competency 5:** Communicate effectively in writing.

The Legal System, Legal Research, and Understanding Published Cases

The legal system is made up of the executive branch, tasked with enforcing laws; the legislature, responsible for making laws; and the judicial branch, entrusted with interpretation of laws. Courts set precedent. When the U.S. Supreme Court rules, all other courts at the state and federal levels are bound by those decisions. The U.S. Supreme Court is vested with the ultimate power in the context of interpretation of the U.S. Constitution. The U.S. Constitution is the supreme law of the land.

Cases begin in the trial court. Cases are based on law enacted by Congress. In criminal cases, charges are filed by the prosecution based on state law, in state courts and federal law (United States Code) in federal courts. If an alleged error occurs during trial that could impact the outcome of the case, that constitutes harmful error. Harmful error is the basis for an appeal. When a case is appealed, the appellate court reviews the record from the trial to determine if the law was applied correctly. When an appellate decision is rendered, analysis is included regarding how the court reached the decision. That analysis provides insight into the way the court interpreted the law on point with the issue raised on appeal. This analysis is very important. It is the basis for parameters in terms of what is and is not lawful. In a criminal justice context, this is very important insight for criminal substantive laws and criminal procedure. Because this analysis provides insight into line-drawing, it is important to develop the skillset of reading and understanding cases.

The U.S. legal system has early English roots. Common law English judge made law, based on custom and tradition that was followed throughout the country. The U.S. judicial system is two-tiered, consisting of state and federal court systems. There are three levels at both the state and federal levels: lower court (trial court), appellate court, and the court of last resort (Supreme Court).

Common law is analogous to U.S. case law, which is based on previous cases. Common law depends heavily on precedent and the doctrine of *stare decisis* (Latin for "let the decision stand"), which requires that prior decisions be followed in subsequent cases having the same or similar circumstances. Making those connections and predictions requires understanding legal research for locating cases and how to read cases.

A legal opinion usually contains a description of the facts, a statement of the legal issues presented, relevant rules of law, the holding, and the policies and reasons that support the holding. The holding of the case is the rule of law applied to the particular facts of the case and the actual decision. A court may affirm (support), reverse (overturn), or remand (return the case to the lower court).

The two main categories of law are civil and criminal. Civil law involves disputes between individuals. Criminal law involves a wrong against society. Civil law cases often fall into the categories of tort, contract, or property law, with a proceeding commenced by an individual or an entity seeking legal or equitable remedies. Criminal law cases are based on violations of criminal law statutes and are commenced by the government (prosecutor) against an individual. In a civil case, the most common standard of proof required is preponderance of the evidence. In criminal cases, the standard of proof is "beyond a reasonable doubt."

The basic purpose of the legal system is to ensure fairness in balancing individual rights and societal needs while keeping government power in check. Visually, the scales of justice represent keeping individual and societal needs in balance. The purpose of the criminal justice system is often discussed in the context of the crime control model and the due process model. The crime control model centers on repressing criminal conduct and is based on the assertion that the system must bring criminal behavior under tighter control. The crime control model aligns with conservative views and tips scales more in favor of societal needs. In contrast, the due process model emphasizes individual rights and maintains that individual rights should not be compromised for efficiency purposes. The due process model aligns with liberal views and tips scales more in favor of individual rights (Harr et al., 2018).

Reference

Harr, J. S., Hess, K. M., Orthmann, C. H., & Kingsbury, J. (2018). *Constitutional law and the criminal justice system* (7th ed.). Boston, MA: Cengage.

Learning Activities

u03s1 - Studies

Readings

In your *Constitutional Law and the Criminal Justice System* text, read the following:

- In Chapter 2, "An Overview of the U.S. Legal System," pages 40–57.
- Appendix B, "Reading Legal Opinions," page 489.
- Appendix D, "Shepardizing a Case," page 492.
- Appendix E, "Legal Research," page 493.

Recommended Resources

Check out the resources in the Capella [Legal Research Library Guide](#).

On the Nexis Uni Academic library guide, review:

- [Getting Started](#).
- [How to Write a Case Brief](#).
- [Understanding Shepardizing](#).

Go to the [Nexis Uni database](#). On the tab above the search box, click **Search by Subject or Topic**, and then click **Federal and State Cases**. On that page, the box below the search box includes links to landmark cases by subject and to recent Supreme Court cases.

Optional Resources

You may choose to read the following resources addressing the Unit 3 topics. Familiarizing yourself with these resources will provide you with additional insight and perspective about the U.S. legal system and legal research.

Internet Resources

- [Educational Resources](#) from United States Courts.
- [The U.S. Legal System: A Short Description](#) from the Federal Judicial Center.

Readings

- Berlin, M. M. (2013). Courts. In J. I. Ross (Ed.), *Encyclopedia of street crime in America* (pp. 92–97). Thousand Oaks, CA: Sage.
- Stone, H. F. (1936). The common law in the United States. *Harvard Law Review*, 50(1), 4–26.

Suggested Resources

Join a highly committed community of learners, faculty, and coaches in the [Community of Excellence](#). On the COE page, explore Resources such as the Writing Studio and Community Conversations.

Competencies Addressed in This Assignment

- **Competency 3:** Explain the substantive and procedural interpretation of individual freedoms based on case analysis.
- **Competency 4:** Document philosophical underpinnings and public policy influences associated with U.S. Supreme Court decisions.
- **Competency 5:** Communicate effectively in writing.

Legal research serves as a gateway to locate cases that interpret key areas of substantive and procedural criminal law. From there, understanding how to read the case is integral to using the case for guidance on parameters. The issue is the question presented to the court for review. That question is based on whether what took place at the trial can be challenged as incorrect and impacting the outcome of the case. The appellate court, in reaching the decision, includes the law relied on as support for the decision. That includes statutory law, from legislatures, and other court rulings, where prior courts interpreted the law.

Using Nexis Uni, searching in the U.S. Supreme Court directory, locate one case involving a criminal procedure issue. Searching law in your state, locate one case involving any criminal law issue.

In a 4–5 page paper:

- Identify the key facts from each case and the issues presented to the courts.
- Describe the laws relied on by the courts in reaching the decisions.
- Illustrate the connection between that authority and the way the courts ruled.
- Explain the interpretations of constitutional protections based on the decisions.
- Describe philosophical underpinnings and public policy influences.
- Relate the importance of conducting this case analysis to a criminal justice career.

Be sure to review the Criminal Procedure in Motion Scoring Guide to ensure that you understand the criteria for this assignment.

Use the links provided in the Resources to help you complete the assignment.

Requirements

- **Written communication:** Must be free of errors that detract from the overall message.
- **Resources and citations:** Format according to APA guideline.
- **Required page count:** 4–5, not including the title page or the references page.
- **Required number of references:** A minimum of three.
- **Font and font size:** Times New Roman, 12 point.

You are required to submit a draft of your paper to SafeAssign. Once you review your results and make any needed changes, submit your paper for grading.

Course Resources

[Nexis Uni Library Guide](#)

[Criminal Justice Undergraduate Research Guide](#)

[APA Style and Format](#)

[SafeAssign](#)

[APA Style Paper Template](#)

Competencies Addressed in This Discussion

- **Competency 3:** Explain the substantive and procedural interpretations of individual freedoms based on case analysis.
- **Competency 4:** Document philosophical underpinnings and public policy influences associated with U.S. Supreme Court decisions.
- **Competency 5:** Communicate effectively in writing.

Introduction

The U.S. legal system is based heavily on English common law. Courts interpret law, passed by the legislature, in ways that shift from emphasizing individual rights to emphasizing societal needs.

The individual rights shift aligns with the due process model. The societal needs focus aligns with the crime control model. Public policy and philosophical underpinnings often influence court decisions. Decisions of the U.S. Supreme Court bind everyone in our nation. State rulings bind everyone in the state. This process and its implications are important for those working in the criminal justice field.

For your main post, research one case that tipped the scales in favor of societal needs and one case that tipped the scales in favor of individual rights in criminal law and/or criminal procedure. Choose cases that you deem to a career you are exploring in criminal justice. Include the following:

1. An overview of the cases.
2. The rulings.
3. Rights interpretations.
4. The policy and underpinnings you feel influenced the rulings.
5. Why you interpreted the cases as tipping the scales in each direction.
6. Application to a career you are exploring.

Discussion Objectives

The competencies addressed in this discussion are supported by discussion objectives.

- Competency 3: Explain the substantive and procedural interpretations of individual freedoms based on case analysis.
 - Describe a case decision based on the due process model addressing procedural or substantive rights interpretation.
 - Describe a case decision based on the crime control model addressing procedural or substantive rights interpretation.
- Competency 4: Document philosophical underpinnings and public policy influences associated with the U.S. Supreme Court decisions.
 - Explain philosophical underpinnings and public policy influence of a case that illustrates the due process model.
 - Explain philosophical underpinnings and public policy influence of a case that illustrates the crime control model.
- Competency 5: Communicate effectively in writing.
 - Relate the application that the cases might have in a criminal justice career.

Response Guidelines

Respond to the posts of two peers. Interact with other learners about the case interpretations, influencing factors, and career connections.

Course Resources

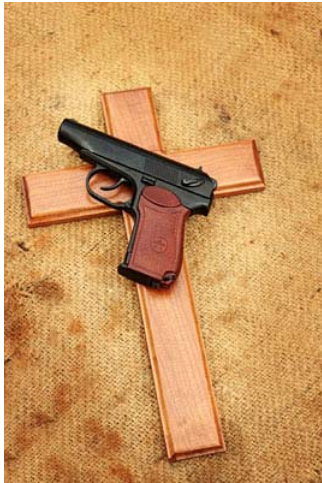
CJ Discussion Scoring Guide

[Nexis Uni Library Guide](#)

[Criminal Justice Undergraduate Research Guide](#)

Unit 4 >> A Look at the First and Second Amendments

Introduction



Competencies Addressed in This Unit

- **Competency 2:** Correlate the role of each branch of government with the Bill of Rights interpretation.
- **Competency 3:** Explain the substantive and procedure interpretations of individual freedoms based on case analysis.
- **Competency 4:** Document philosophical underpinnings and public policy influences associated with U.S. Supreme Court decisions.
- **Competency 5:** Communicate effectively in writing.

Examining the First and Second Amendments

The First Amendment

The First Amendment contains many protections. Specifically, Congress is prohibited by the First Amendment from making any laws that abridge or restrict freedom of religion, freedom of speech, freedom of the press, the right to assemble peaceably, and the right to request the government respond to complaints of its citizens. Reflecting on prior learning, it is important to remember that interpreting these rights and drawing lines involve balancing individual rights and societal needs. No rights are absolute. Understanding the First Amendment requires that you break down the different protections and look closely at the nature and scope of each protection. The main areas of protection include religion, speech and expression, and freedom of the press.

Focusing first on religion and the First Amendment, there is the establishment clause and the free exercise clause. The establishment clause of the First Amendment states, "Congress shall make no law respecting an establishment of religion" (U.S. Const. amend. I). The free exercise clause states, "Congress shall make no law . . . prohibiting the free exercise [of religion]" (U.S. Const. amend. I). Religious freedom includes the right to be free of government interference and control in areas such as the freedom to worship, to print instructional material, and to train teachers and organize schools in which to teach. When challenged, different tests have been used in conjunction with the establishment clause interpretation, including the Lemon test, from the case of *Lemon v. Kurtzman* (1971); the endorsement test, from *Lynch v. Donnelly* (1984); and the coercion test, from *Lee v. Weisman* (1992). Different standards are also used in the assessment of free exercise, including the early standard of strict scrutiny, the rational basis test, and the more contemporary standard of neutrality.

Focusing next on speech and expression, the scope reaches conduct, content, and viewpoint restrictions on speech. Symbolic acts are included within the protection of the First Amendment. Freedom of speech and expression includes the right to speak and the right to be heard. Governmental power can be limited by allowing individuals to critique and otherwise scrutinize their public officials and policies. Recently, we have seen the scales tip in favor of societal needs in interpretations of free speech and expression. For example, Congress passed laws to limit speech that advocates overthrowing the government by force. We also saw some shifts in the use of tests that make the interpretation more restrictive. For example, the "clear and present danger" test was replaced by the "imminent lawless action" test to determine when speech should not be protected by the First Amendment (Harr et al., 2018).

Focusing specifically on criminal justice, the speech of law enforcement officers, as public employees, is protected under the First Amendment only if it is a matter of public concern or unrelated to employment (Harr et al., 2018). Many important factors are associated with line-drawing in this area. For example, the location of the speech, the nature of the conduct, and the type of speech.

Focusing on freedom of the press, First Amendment protection applies to all types of printed and broadcast material, including books, newspapers, magazines, pamphlets, films and radio and television programs (Harr et al., 2018).

Another area of connection between the First Amendment and criminal justice pertains to prisoner rights regarding mail censorship, religious rights in institutions, visitation rights, and rights of expression.

The Second Amendment

The Second Amendment has been front and center in many debates involving the president, our courts, and our legislatures, after a series of high-profile crimes involving firearms. In a historical context, the Second Amendment language guaranteed the right to bear arms to the militia, which was considered to be the entire adult male populace of a state. A key area of debate involves the extent to which that right should apply to individuals, as opposed to militia participants. The two interpretations that conflict involve whether the Second Amendment guarantees the right of an individual to keep and bear arms or whether the Amendment guarantees the states freedom from federal government infringement on this right (Harr et al., 2018).

Over time, we have seen variation in the interpretation of the Second Amendment. Historically, as recently as 1971, the decisions supported significant restriction on individual rights to bear arms. That trend reversed, and, in the landmark case of *District of Columbia v. Heller* (2008), the U.S. Supreme Court ruled that the Second Amendment protects an individual's right to possess a firearm unconnected with service in a militia (Harr et al., 2018).

Another key case interpreting the Second Amendment is *McDonald v. Chicago* (2010), in which the U.S. Supreme Court held that the right to keep and bear arms was among those fundamental rights necessary to our system of ordered liberty, and ruled that the Second Amendment does apply to the states and incorporated it under the Fourteenth Amendment (Harr et al., 2018). From there, the focus shifted to restrictions and related parameters associated with the ability to impose restrictions, such as waiting periods on firearm purchases.

References

National Archives and Records Administration. (n.d.). Constitution of the United States. Retrieved from http://www.archives.gov/exhibits/charters/constitution_history.html

Harr, J. S., Hess, K. M., Orthmann, C. H., & Kingsbury, J. (2018). *Constitutional law and the criminal justice system* (7th ed.). Boston, MA: Cengage.

Learning Activities

u04s1 - Studies

Readings

In your *Constitutional Law and the Criminal Justice System* text, read the following:

- Chapter 5, "The First Amendment: Basic Freedoms," pages 126–173.
- Chapter 6, "The Second Amendment: The Gun Control Controversy," pages 174–202.

Library Articles

The following Capella library articles address the Unit 4 topics. Familiarizing yourself with these resources will provide you with additional insight and perspective about the First and Second Amendment.

For some case interpretation and tracking of decisions, do a quick review of these resources:

- Miller, L. S. (2010). Theorizing religion, constitutionalizing religion: Taylor, Connolly, Habermas, and the U.S. Supreme Court (Doctoral dissertation). Available from ProQuest Dissertations and Theses Global. (Order No. 3396676)
- Jones, R. A. (2012). U.S. Supreme Court justices and press access. *Brigham Young University Law Review*, 2012(6), 1791–1817.
- Gostin, L. O. (2010). The right to bear arms: A uniquely American entitlement. *Journal of the American Medical Association*, 304(13), 1485–1486.
- Junger, P. D. (2012). The original plain meaning of the right to bear arms. *Case Western Reserve Law Review*, 63(1), 141–145.
- Hoekstra supports Supreme Court decision concerning gun rights. (2010, June 28). *Targeted News Service*.
- Winkler, A. (2019, December 2). The Supreme Court could undo local gun laws—in a case it shouldn't be hearing. *The Washington Post (Online)*.

Internet Resources

- Notable First Amendment Court Cases from the American Library Association.
- Supreme Court oral arguments in Texas v. Johnson at the Oyez Project, pertaining to flag burning.
- First Amendment Handbook from the Reporters Committee for Freedom of the Press.
- National Rifle Association, Institute for Legislative Action. The ILA is the lobbying arm of the NRA.
- Brady Campaign to Prevent Gun Violence to see their position on gun laws.
- Second Amendment: Gun Control from the American Civil Liberties Union.

Suggested Resources

Join a highly committed community of learners, faculty, and coaches in the Community of Excellence. On the COE page, explore resources such as the Writing Studio and Community Conversations.

u04d1 - First Amendment Applications

Competencies Addressed in This Discussion

- **Competency 3:** Explain the substantive and procedural interpretations of individual freedoms based on case analysis.
- **Competency 5:** Communicate effectively in writing.

Introduction

The First Amendment has many dimensions, and the way in which each dimension has been interpreted has changed over time, between favoring individual rights to favoring societal needs. There are direct connections between line-drawing in the First Amendment and the criminal justice system. The two do intersect. Let's explore an example.

Mary May, a citizen, living in the jurisdiction where you work as a police chief, posted a sign on her lawn that advocated deporting anyone whose family members had arrived in the United States after 1980, because "they are not real Americans." The sign prompted angry protests in the neighborhood, and the sign was eventually stolen. May made a complaint about the stolen sign. She also informed the department that she will put up a new sign as soon as she finds enough paint to make it even bigger.

There are concerns within the department that the new sign will almost certainly result in a riot. For your main response, address the following:

1. What substantive legal issue is present that connects to the First Amendment?
2. What procedural legal issue is present that connects to the First Amendment?
3. Citing one court case to support your conclusion, how will you address the possibility of the posting of a large sign that will likely result in a riot?
4. What are the possible implications if action is taken?
5. What are the possible implications if action is not taken?

Discussion Objectives

The competencies addressed in this discussion are supported by discussion objectives.

- Competency 3: Explain the substantive and procedural interpretations of individual freedoms based on case analysis.
 - Describe a substantive First Amendment issue based on the scenario.
 - Describe a procedural First Amendment issue based on the scenario.
 - Apply a court case to the scenario to support the scenario decision based on the First Amendment.
 - Evaluate action or inaction implications based on the scenario.
- Competency 5: Communicate effectively in writing.

Response Guidelines

Respond to the posts of two peers. Interact about the conclusions, basis for the conclusions, and possible implications. Explain how your opinions are similar or different from those of your peers and why. Did you reach the same conclusion as other learners? Was your rationale the same? If not, how did it vary? Did the positions of other learners affect your positions on these areas? How?

Course Resources

[CJ Discussion Scoring Guide](#)

[Nexis Uni Library Guide](#)

[Criminal Justice Undergraduate Research Guide](#)

u04d2 - Second Amendment Applications

Competencies Addressed in This Discussion

- **Competency 4:** Document philosophical underpinnings and public policy influences associated with the U.S. Supreme Court decisions.

- **Competency 5:** Communicate effectively in writing.

Introduction

The debate surrounding the Second Amendment right to bear arms has manifested in all branches of our government. After the recent school and movie theater shootings, U.S. President Barack Obama spoke on the Second Amendment. We also saw bills proposed by legislatures associated with Second Amendment interpretations. Courts have been line-drawing through law interpretation as well.

Let's bring the debate into our class by exploring the following:

You are the sheriff of a county in a mountainous area. Local people have told you that a group of aspiring militia members are setting up a compound in the mountains, within your jurisdiction. Locals report that the militia's stated purpose is to "keep America strong." You also have intelligence indicating that there are firearms on the premises, including an unknown number of machine guns and handguns. To date, the militia members have not caused any problems for neighbors, although many of them are nervous. You are also aware of social media efforts to recruit participants with shared beliefs about keeping America strong, and you have seen an increase in traffic in the area.

For your main response, address the following:

1. How might statements by the president on gun control influence your approach, if at all?
2. What law or laws, enacted by the legislature, will you refer to in determining whether to take action and, if so, what action to take?
3. What case or cases interpreting the law will you refer to in determining whether to take action and, if so, what action to take?
4. What public policy influences do you think are in force to impact interpretation of the Second Amendment?
5. What is your final decision based on the analysis of the branches of government and public policy?

Discussion Objectives

The competencies addressed in this discussion are supported by discussion objectives.

- Competency 4: Document philosophical underpinnings and public policy influences associated with the U.S. Supreme Court decisions.
 - Evaluate the possible impact of public policy on Second Amendment interpretation.
 - Correlate the role of each branch of government with Bill of Rights interpretation.
 - Describe the impact of the president, if any, on your approach to the scenario.
 - Articulate the impact of the law on your approach to the scenario.
 - Explain the impact of court interpretation of the law on your approach to the scenario.
- Competency 5: Communicate effectively in writing.

Response Guidelines

Respond to the posts of two peers. Interact about the different interpretations of the executive, judicial, and legislative branches on the Second Amendment, application of interpretations to the scenario, conclusions, and rationale. Do you share the same conclusions as other learners? Why or why not? Did the positions of learners impact your positions on these areas? How?

Course Resources

CJ Discussion Scoring Guide

[Nexis Uni Library Guide](#)

[Criminal Justice Undergraduate Research Guide](#)

Unit 5 >> Constitutional Amendment Exploration: The Fourth Amendment

Introduction



Competencies Addressed in This Unit

- **Competency 3:** Explain the substantive and procedural interpretations of individual freedoms based on case analysis.
- **Competency 4:** Document philosophical underpinnings and public policy influences associated with the U.S. Supreme Court decisions.
- **Competency 5:** Communicate effectively in writing.

Introduction to the Fourth Amendment

The Fourth Amendment contains two basic clauses: the reasonableness clause, which makes warrantless searches and seizures lawful when conducted within procedural parameters, followed by the warrant clause, which says that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized" (U.S. Const. amend. IV). The Fourth Amendment protects persons, houses, papers, and effects from unreasonable searches and seizures and requires probable cause. The Fourth Amendment is binding on employees of any governmental agency and agents of the government in any capacity. The Fourth Amendment does not apply to private parties.

Justification requires that police have cause before they can conduct a search or a seizure. The three standards of justification are probable cause, reasonable suspicion, and administrative justification. As Harr et al. (2018) explain, probable cause is the standard used to determine when officers may execute lawful searches and arrests, with or without a warrant. Probable cause to search equates to the reasonable belief that evidence, contraband, or other items sought are where police believe these items to be. Probable cause to arrest means officers reasonably believe that a crime has been committed by the person they seek to arrest.

Understanding the legal requirements and application of the different Fourth Amendment standards is very important. The law of stop-and-frisk addresses the time frame during which officers follow up on their suspicions but before the time that the requisite probable cause is established to justify an arrest, as established in *Terry v. Ohio* (1968) (Harr et al., 2018). A stop is the brief detention of a person by the police for questioning. A stop requires reasonable suspicion based on specific and articulable facts for the purpose of investigating suspicious activity. A frisk is a patdown or minimal search conducted by police to discover weapons. A frisk protects the officer when he or she suspects a person is armed and dangerous. Reasonable suspicion, on the continuum between no suspicion and probable cause, is an experienced police officer's hunch or intuition that criminal activity may be taking place (Harr et al., 2018).

When comparing probable cause and reasonable suspicion, probable cause is stronger, is based on facts or observation, may lead a reasonable person to believe a crime is being or has been committed, and may justify more invasive action by officers. Probable cause can be developed in different ways and from different sources. Observational probable cause comes from the officer's personal experiences. Physical evidence can serve as the basis to establish probable cause. Informational probable cause is information provided by official and unofficial sources. When probable cause develops through the legal acquisition of evidence to justify the arrest and search, a stop-and-frisk can transition into a search and seizure.

Serious implications may arise if a search or seizure is unlawful. The evidence may be excluded from court and internal sanctions as well as civil and criminal liability may be imposed (Harr et al., 2018). The exclusionary rule, enacted by the Court in the context of interpreting the Fourth Amendment to deter government misconduct, prohibits evidence obtained in violation of a person's constitutional rights from being admissible in court. There are exceptions to the exclusionary rule.

References

National Archives and Records Administration. (n.d.). Constitution of the United States. Retrieved from http://www.archives.gov/exhibits/charters/constitution_history.html

Harr, J. S., Hess, K. M., Orthmann, C. H., & Kingsbury, J. (2018). *Constitutional law and the criminal justice system* (7th ed.). Boston, MA: Cengage.

Learning Activities

u05s1 - Studies

Readings

In your *Constitutional Law and the Criminal Justice System* text, read the following:

- Chapter 7, "The Fourth Amendment: An Overview of Constitutional Searches and Seizures," pages 203–245.

Library Articles

Use the Capella library to read the following articles addressing the Unit 5 topics. Familiarizing yourself with these resources will provide you with additional insight and perspective about the evolution of the Fourth Amendment.

- Davies, T. Y. (1999). [Recovering the original Fourth Amendment](#). *Michigan Law Review*, 98(3), 547–750.
- Amar, A. R. (1994). [Fourth amendment first principles](#). *Harvard Law Review*, 107(4), 757–819.

Internet Resources

- At the Federal Law Enforcement Training Center's [4th Amendment Road Map](#), listen to podcasts on:
 - Probable Cause (I and II).
 - Terry Stop and Frisk.
- [An Offense-Severity Model for Stop-and-Frisks](#) from the *Yale Law Journal*.

FMG Video

- Cambridge Educational (Producer). (1998). [Amendment 4: Unreasonable search and seizure \[Video\]](#). Films on Demand.

Suggested Resources

Join a highly committed community of learners, faculty, and coaches in the [Community of Excellence](#). On the COE page, explore resources such as the Writing Studio and Community Conversations.

u05a1 - The Exclusionary Rule

Competencies Addressed in This Assignment

- **Competency 3:** Explain the substantive and procedural interpretation of individual freedoms based on case analysis.
- **Competency 4:** Document philosophical underpinnings and public policy influences associated with U.S. Supreme Court decisions.
- **Competency 5:** Communicate effectively in writing.

The exclusionary rule was created by judges, through case law, to prevent police misconduct. It prohibits the use of evidence obtained in violation of a person's constitutional rights. The exclusionary rule was established in the case of *Weeks v. United States* (1914) for federal application and was subsequently applied to the states in the 1961 case of *Mapp v. Ohio*.

You have been tasked with putting together a training presentation for a new class in the academy. The presentation will address the exclusionary rule, the impacts of the exclusionary rule, and exceptions to the exclusionary rule. In PowerPoint format, address the following:

1. The circumstances that gave rise to the creation of the exclusionary rule, citing the *Weeks* case.
2. The circumstances that gave rise to the extension of the exclusionary rule to the states, citing the *Mapp* case.
3. How public policy impacts the balancing of individual rights and societal needs in a Fourth Amendment interpretation.
4. How the courts have interpreted the exclusionary rule since its creation in your specific jurisdiction, using two court cases as examples.
5. How one possible exception to the exclusionary rule works, using the following scenario for analysis: You are a supervising police officer and one of your rookie patrol officers, Patrolman Mark, asks you a question about something that happened on his shift. Along with Officer Kennedy, Mark tells you he was executing a search warrant issued for 221B Elm Street. Unfortunately, they went to 212B Elm Street instead and entered the home of Ms. Cook, finding a stack of laptops that turned out to be stolen property. Cook thought she had been caught and did not complain about the search warrant issue. Mark says he is glad they caught Cook but does not want to get in trouble. Is Mark in trouble for the search?

6. The impact of the court decisions on police procedure.

Be sure to review the Exclusionary Rule Scoring Guide to ensure that you understand the criteria for this assignment.

Use the links provided in the Resources to help you complete the assignment.

Requirements

- **Written communication:** Must be free of errors that detract from the overall message.
- **Resources and citations:** Format according to APA guideline.
- **Required slide count:** 12–14, not including the title slide or the references slide.
- **Required number of references:** A minimum of four.

You are required to submit a draft of your paper to SafeAssign. Once you review your results and make any needed changes, submit your paper for grading.

Course Resources

[Nexis Uni Library Guide](#)

[Criminal Justice Undergraduate Research Guide](#)

[APA Style and Format](#)

[SafeAssign](#)

APA Style Paper Template

[Guidelines for Effective PowerPoint Presentations \[PPTX\]](#)

u05d1 - Fourth Amendment in Motion

Competencies Addressed in This Discussion

- **Competency 3:** Explain the substantive and procedural interpretations of individual freedoms based on case analysis.
- **Competency 4:** Document philosophical underpinnings and public policy influences associated with U.S. Supreme Court decisions.
- **Competency 5:** Communicate effectively in writing.

Introduction

Officer Tyler is standing close to a high school watching the foot traffic. Mike is walking to school, minding his own business. Mike appears older than he is, often being mistaken for someone in college. Officer Tyler is standing in Mike's path, looking directly at Mike. Mike needs to walk around the officer to continue on his way. Mike is nervous, since the officer is staring at him as he approaches. When Mike is a few feet away, Officer Tyler says, "Let me see some ID." Mike forgot his identification and tells the officer that he has no ID. The officer directs Mike to empty his pockets. Mike initially starts to do so, but then refuses.

For your main response, address the following:

1. At that juncture, did Officer Tyler have the right to make the request?
2. Did Mike have the right to refuse?
3. What can Officer Tyler do, if anything, after the refusal?
4. What if Mike then turned and ran from the officer after yelling, "You have no right to ask me to do anything, I was just walking to school and I am scared of you"?
5. What if, when running, Mike pulled from his pocket and threw away what appeared to be a small bag of cocaine?

Discussion Objectives

The competencies addressed in this discussion are supported by discussion objectives.

- Competency 3: Explain the substantive and procedural interpretations of individual freedoms based on case analysis.

- Apply the Fourth Amendment to the scenario by analyzing the exclusionary rule and identifying exceptions to it.
- Evaluate action/inaction implications based on the scenario.
- Competency 4: Document philosophical underpinnings and public policy influences associated with U.S. Supreme Court decisions.
 - Recognize how court decisions addressing the exclusionary rule impact police procedures.
- Competency 5: Communicate effectively in writing.

Response Guidelines

Respond to the posts of two peers. Interact about the conclusions, basis for the conclusions, and possible implications. Did you reach the same conclusion as other learners? Was your rationale the same? If not, how did it vary? Did the positions of other learners impact your positions on these areas? How? Explain how your opinions are similar or different from your peers and why.

Course Resources

CJ Discussion Scoring Guide

[Nexis Uni Library Guide](#)

[Criminal Justice Undergraduate Research Guide](#)

Unit 6 >> The Foundation, Meaning, and Parameters of Search and Seizure

Introduction



Competencies Addressed in This Unit

- **Competency 1:** Describe how historical problems were managed in the evolution of the U.S. Constitution.
- **Competency 2:** Correlate the role of each branch of government with the Bill of Rights interpretation.
- **Competency 3:** Explain the substantive and procedural interpretations of individual freedoms based on case analysis.
- **Competency 5:** Communicate effectively in writing.

Exploring Search and Seizure

The Fourth Amendment protects against unreasonable searches and seizures. When there is a Fourth Amendment challenge, the evaluation encompasses confirming that there was government action, that the person raising the challenge has standing to do so based on a violation of the reasonable expectation of privacy, and that the search was not a general search, which is unlawful if it goes beyond what was necessary (Harr et al., 2018). It is required that the scope of searches is limited.

To understand Fourth Amendment protections, we look to the courts for interpretation and parameters. One key fact can impact interpretation and parameters (Harr et al., 2018). Searches are deemed unreasonable if they unduly interfere with an individual's privacy expectation. From the standpoint of scope of protection, it is people, not places that are protected from unreasonable searches and seizures.

Through case law, it has been established that individuals have an expectation of privacy in their own homes. Therefore, it is required that law enforcement have a legally valid warrant, or that a warrant exception must be present, in order to be able to search a home.

Probable cause is a key legal standard associated with Fourth Amendment interpretation. Probable cause is the level of proof required before an officer can secure a search warrant, stop a suspect, or effectuate an arrest. Probable cause requires sufficient evidence for a reasonable person to conclude that the alleged facts are probably true.

As you read in Unit 5, a stop is the brief detention of a person for questioning by law enforcement. It requires reasonable suspicion. A frisk is a minimal search, or patdown, by police to discover weapons. Its purpose is officer protection. A stop-and-frisk, or *Terry* search, is a patdown search conducted during an officer's investigatory detention of an individual. Its primary purpose is to ensure the officer's safety by allowing the officer to search a person's outer clothing for weapons. The court in the *Terry* case ruled that the authority to stop and frisk is independent of the power to make an arrest (Harr et al., 2018). It is important to distinguish a stop from an arrest. It is also important to understand that a stop, within the meaning of the Fourth Amendment, is a seizure. Because a stop is a seizure, it requires reasonableness. Parameters for a stop, such as length, depend on factors. The suspect cannot be detained for an unreasonable length of time. The purpose of the stop will also be examined.

Without a warrant, police may make an arrest for any crime committed in their presence. Additionally, police can make an arrest without a warrant for an unwitnessed felony based on probable cause. A warrantless arrest can be made by police based on probable cause in a public place or in a private place if a suspect goes to that place from a public place. Police cannot make a warrantless arrest inside a person's home if that person refuses to allow the police to enter. It is also impermissible for police to arrest a guest within a home absent an exigent circumstance.

Focusing on the use of force in an arrest, law enforcement officers can only use the amount of force reasonably necessary to overcome resistance and to gain compliance. The only justification for use of deadly force is self-defense or the protection of the lives of others.

Searches conducted with a warrant are subject to several of the same restrictions as arrest warrants. For a legally valid warrant, there must be judicial neutrality and detachment, probable cause, and particularity. The courts have placed significant restrictions on what law enforcement can do when searching for evidence with warrants, because the purpose of securing a search warrant is to search for something and not for someone (Harr et al., 2018). There are parameters. Just because a warrant is secured does not mean that law enforcement can look anywhere for an unlimited amount of time to find the items delineated in the warrant.

Four categories of items can be seized using a search warrant:

- Items that resulted from a crime.
- Items that are inherently illegal for anyone to possess.
- Items that can be called evidence of a crime.
- Items used in the commission of the crime.

Three major issues are associated with evidentiary searches and seizures: governmental conduct, the presence of a search warrant, or the lack of a search warrant. As a general rule, warrantless searches are deemed unreasonable. However, there are many exceptions to this general rule. The exceptions include, but are not limited to, consent searches, search incident to a lawful arrest, plain view doctrine, stop-and-frisk exception, exigent circumstances exception, plain-feel exception, and the automobile exception (Harr et al., 2018).

The exclusionary rule is a court-created rule that excludes items from being admitted as evidence because the items have been unconstitutionally obtained. If the rule is successfully applied, it bars illegally or unconstitutionally secured evidence from being used by the government against the accused. Under the fruit of the poisonous tree doctrine, additional evidence can be excluded if it derived from the initial piece of evidence (Harr et al., 2018). The exceptions to the exclusionary rule include the intervening circumstances rule, the independent source rule, the inevitable discovery rule, and the good faith exception or *Leon* rule.

Reference

Harr, J. S., Hess, K. M., Orthmann, C. H., & Kingsbury, J. (2018). *Constitutional law and the criminal justice system* (7th ed.). Boston, MA: Cengage.

Learning Activities

u06s1 - Studies

Readings

In your *Constitutional Law and the Criminal Justice System* text, read the following:

- Chapter 8, "Conducting Constitutional Seizures," pages 246–285.
- Chapter 9, "Conducting Constitutional Searches," pages 286–344.

Library Articles

Use the Capella library to read the following articles addressing the Unit 6 topics. Familiarizing yourself with these resources will provide you with additional insight and perspective about the Fourth Amendment pertaining to search and seizure:

- Fourth Amendment—Search and seizure—Conflicted consent when the objecting tenant is absent—*Fernandez v. California*. (2014). *Harvard Law Review*, 128(1), 241–250.
- Fourth Amendment—Warrantless searches—New Jersey Supreme Court holds that state constitution requires police to obtain warrant before accessing cell site location information. (2014). *Harvard Law Review*, 127(7), 2164–2171.
- Constitutional law—Fourth Amendment—Ninth Circuit holds forensic search of laptop seized at border requires showing of reasonable suspicion—*United States v. Cotterman*. (2014). *Harvard Law Review*, 127(3), 1041–1048.
- Epstein, R. A. (2015). *Entick v. Carrington* and *Boyd v. United States*: Keeping the Fourth and Fifth Amendments on track. *University of Chicago Law Review*, 82(1), 27–50.
- Long, C. (2013, August 13). NYPD stop-frisk effort ruled illegal. *Pittsburgh Post-Gazette*, A3.
- Bravin, J. (2014, June 25). Supreme Court: Police need warrants to search cellphone data. *Wall Street Journal (Online)*.

Internet Articles

- Legal Information Institute (LII). (n.d.). Carroll v. Carman. Cornell Law School. Retrieved from <https://www.law.cornell.edu/supremecourt/text/14-212>
- Greenburg, J. C., & de Vogue, A. (2009). Court: School strip search violated teen's rights. ABC News. Retrieved from <https://abcnews.go.com/Politics/SCOTUS/story?id=7782080>

Optional Internet Resources

- Bureau of Justice Statistics data on Contacts Between the Police and the Public.
- Supreme Court oral arguments on Scott v. Harris from the Oyez Project.
- Exigent Circumstances, a list of key cases, at Case Law 4 Cops.

Suggested Resources

Join a highly committed community of learners, faculty, and coaches in the Community of Excellence. On the COE page, explore resources such as the Writing Studio and Community Conversations.

u06a1 - Fourth Amendment, Policies, and Society

Competencies Addressed in This Assignment

- **Competency 1:** Describe how historical problems were managed in the evolution of the U.S. Constitution.
- **Competency 3:** Explain the substantive and procedural interpretations of individual freedoms based on case analysis.
- **Competency 5:** Communicate effectively in writing.

Assignment Description

Understanding the foundation of Fourth Amendment protections will help you understand how the interpretation and line-drawing has changed over time to reflect public policy and changes in society. Prepare a 3-page paper, citing a minimum of three academically verified references and addressing the following points:

1. Describe the type of search the framers of the Constitution prohibited through the Fourth Amendment.
2. Explain how prohibiting that type of search would address historical problems.
3. Fast-forwarding to today, you are a police officer getting ready to request a search warrant for an apartment suspected to contain illegal drugs. You know that warrants are generally issued with a knock-and-announce requirement. You are concerned that the occupants will destroy the evidence, and you have heard that some judges will give police a no-knock warrant authorizing officers to enter certain premises without first knocking and announcing their presence or purpose. Using Nexis Uni research for your state, locate one case that provides insight into whether this type of warrant should be requested, and apply the case to the determination by reaching a supported conclusion.
4. Assume the warrant was requested. Upon arrival you look in the window and see that the drugs are in plain view near the front door, out of reach of any of the occupants. Determine whether you should ignore this new information and enter without announcing. Cite one case from your state to support your position.

Be sure to review the Fourth Amendment, Policies, and Society Scoring Guide to ensure that you understand the criteria for this assignment.

Use the links provided in the Resources to help you complete the assignment.

Requirements

- **Written communication:** Must be free of errors that detract from the overall message.
- **Resources and citations:** Format according to APA guidelines.
- **Required page count:** Three, not including the title page or the references page.
- **Required number of references:** A minimum of three.
- **Font and font size:** Times New Roman, 12 point.

You are required to submit a draft of your paper to SafeAssign. Once you review your results and make any needed changes, submit your paper for grading.

Course Resources

[Nexis Uni Library Guide](#)

[Criminal Justice Undergraduate Research Guide](#)

[APA Style and Format](#)

[SafeAssign](#)

APA Style Paper Template

u06d1 - Ensuring Fourth Amendment Compliance in Arrests

Competencies Addressed in This Discussion

- **Competency 2:** Correlate the role of each branch of government with Bill of Rights interpretation
- **Competency 3:** Explain the substantive and procedural interpretations of individual freedoms based on case analysis.
- **Competency 5:** Communicate effectively in writing

Introduction

The Fourth Amendment provides baseline protections that impact procedures for arrests. Understanding how the amendment has been interpreted by courts is integral to ensuring procedural compliance. If there are procedural errors, the case can be significantly impacted. Let's explore. Some police officers are fond of saying that if they watched any car drive for five minutes, they could find an infraction that would justify pulling the vehicle over. Many DUI detentions occur after 11 p.m. on citations that would not be considered worthy of action in the daytime. At night, an officer will stop a vehicle on the premise of a traffic infraction when the real purpose is to check for alcohol consumption and make a DUI arrest. Your police department is going to initiate this practice starting tonight on your shift, due to several DUIs with fatalities over the last week.

1. Describe how you would look to the legislative branch and how you would look to the judicial branch for guidance to determine if there are any problems with the arrests you have been making.
2. Using Nexis Uni to research for your state, locate two cases that provide insight into the legality of the arrests based on Fourth Amendment interpretation.
3. Summarize the holdings from the cases and how you think the holdings apply to the scenario.
4. Explain the adjustments you would make, if any, based on your research. If you would not make any adjustments, explain your rationale.

Discussion Objectives

The competencies addressed in this discussion are supported by discussion objectives.

- Competency 2: Correlate the role of each branch of government with the Bill of Rights interpretation
 - Describe how you would look to the legislative branch and how you would look to the judicial branch for Fourth Amendment interpretation guidance to evaluate the arrest based on the scenario.
- Competency 3: Explain the substantive and procedural interpretations of individual freedoms based on case analysis.
 - Summarize the holdings from the cases and how the cases provide insight about Fourth Amendment interpretation specific to the scenario
 - Explain the adjustments you would make, if any, based on case interpretation of the Fourth Amendment. If you would not make any adjustments, explain your rationale.

- Competency 5: Communicate effectively in writing

Response Guidelines

Respond to the posts of two peers. Interact about the conclusions, basis for the conclusions, and possible implications. Did you reach the same conclusion as other learners? Was your rationale the same? If not, how did it vary? Did the positions of other learners impact your positions on these areas? How? Explain how your opinions are similar or different from your peers and why.

Course Resources

CJ Discussion Scoring Guide

[Nexis Uni Library Guide](#)

[Criminal Justice Undergraduate Research Guide](#)

Unit 7 >> The Components of the Fifth Amendment

Introduction



Competencies Addressed in This Unit

- **Competency 3:** Explain the substantive and procedural interpretations of individual freedoms based on case analysis.
- **Competency 4:** Document philosophical underpinnings and public policy influences associated with the U.S. Supreme Court decisions.
- **Competency 5:** Communicate effectively in writing.

A Closer Look at the Fifth Amendment

The Fifth Amendment provides for the right not to be forced to testify against oneself, the right not to be subject to double jeopardy, the right to a grand jury hearing, and a general right of due process.

On the right not to be forced to testify against oneself, *Miranda v. Arizona* (1966) is the precedent-setting case. In *Miranda*, the Supreme Court released a convicted rapist to impose a requirement that police advise suspects of their constitutional rights before conducting interrogations (Harr et al., 2018).

The *Miranda* warning was established by the U.S. Supreme Court in 1966 to protect suspects from psychological interrogation that could cause a suspect, even if innocent, to confess to a crime. According to the *Miranda* warning, a suspect may waive the right to an attorney and may decide to speak or be silent. It is only applicable in a custodial interrogation; police are free to ask questions without the required warning when there is no custody involved.

When conducting a custodial interrogation of a suspect, per *Miranda*, police are required to advise the suspect that he or she has the right to remain silent and the right to an attorney. The *Miranda* warning allows suspects to make an informed decision about whether to talk to the police while in custody. For *Miranda* purposes, custody exists where a person's movement has been restricted so that a reasonable person would not feel free to depart from police questioning. In determining whether a person is in custody, courts consider probable cause to arrest, the focus of the investigation, where the interrogation takes place, the intent of the police, and the subjective belief of the person. Roadside questioning by police is not generally regarded as custodial.

Police must comply with the *Miranda* requirements before a custodial confession is admissible in evidence. In addition, courts consider the totality of circumstances surrounding a confession in determining whether it is voluntary. This includes a consideration of such factors as the time and place of the confession, length of interrogation, the physical and mental condition of the suspect, and any pressures or deceptive practices applied by the police. Exceptions to the *Miranda* warnings include the public safety exception (in limited circumstances) and the harmless error exception.

The Supreme Court's 1966 decision in *Miranda* created considerable hostility to the requirement that police advise suspects of their constitutional rights before conducting interrogations. Over the years, the Court ameliorated some of the strictures of its decision and police became better trained. In 2000, the Court reaffirmed the core principles of *Miranda*. The *Miranda* requirements have become an accepted part of the culture in law enforcement.

In addition to the right not to incriminate oneself, the Fifth Amendment also guarantees the right to a grand jury indictment, the prohibition against double jeopardy and the right to receive just compensation when government takes private property. The right to a grand jury is the only unincorporated clause of the Fifth Amendment (*Hurtado v. California*, 1884) (Harr et al., 2018).

The Fifth Amendment right against double jeopardy generally bars the government from trying or punishing a person a second time when the government already has placed an individual in criminal (as opposed to civil) jeopardy but seeks to do it again for the same offense. Once jeopardy attaches for a particular offense, it also attaches for all lesser-included offenses and most higher-level offenses that could be charged for the same act (Harr et al., 2018). The principle underlying this rule is that the prosecution should not be able to get a second third attempt to convict a person by merely adjusting the level of charge in order to gain another trial. Exceptions to this rule include the dual sovereignty doctrine, the manifest necessity rule, and appellate reversal rule.

The USA PATRIOT Act strengthened the ability of the Justice Department and the FBI to monitor suspected terrorists or their associates and significantly improves the nation's counterterrorism efforts.

References

National Archives and Records Administration. (n.d.). Constitution of the United States. Retrieved from http://www.archives.gov/exhibits/charters/constitution_history.html

Harr, J. S., Hess, K. M., Orthmann, C. H., & Kingsbury, J. (2018). *Constitutional law and the criminal justice system* (7th ed.). Boston, MA: Cengage.

Learning Activities

u07s1 - Studies

Readings

In your *Constitutional Law and the Criminal Justice System* text, read the following:

- Chapter 10, "The Fifth Amendment: Obtaining Information Legally," pages 345–391.

Library Articles

Use the Capella library to complete the following articles addressing the Unit 7 topics. Familiarizing yourself with these resources will provide you with additional insight and perspective about the Fifth Amendment.

- Read Kilgore, M. A. (2014). *United States v. Richardson: When custody and interrogation require a Miranda warning under the Fifth Amendment*. *American Journal of Trial Advocacy*, 38(2), 391–405.
- Review Epstein, R. A. (2015). *Entick v. Carrington and Boyd v. United States: Keeping the Fourth and Fifth Amendments on track*. *University of Chicago Law Review*, 82(1), 27-50.
- Read Winkler, A. T. (2013). *Password protection and self-incrimination: Applying the Fifth Amendment privilege in the technological era*. *Rutgers Computer and Technology Law Journal*, 39(2), 194–215.
- Read Raphael, A. (2013). *Does the Fifth Amendment forbid testimony about a defendant's pre-arrest silence when questioned by police? Preview of United States Supreme Court Cases*, 40(7), 279–282.
- Maclin, T. (2017). *The prophylactic Fifth Amendment*. *Boston University Law Review*, 97(3), 1047–1084.
- Troutman, B. (2018). *A more just system of juvenile justice*. *Journal of Criminal Law and Criminology*, (108)1, 197–221.

Internet Articles

Use the Internet to read the following:

- Dilanian, K. (2013). *U.S. delays Miranda rights for captured Al Qaeda operative*. *Los Angeles Times*. Retrieved from <https://www.latimes.com/world/la-xpm-2013-oct-09-la-fg-terror-suspect-20131010-story.html>

Optional Resources

- [*The Confessions*](#), a Frontline documentary video on four innocent men who confessed to a crime they did not commit.
- Oral arguments for [*Dickerson v. United States*](#) from the Oyez Project.
- [Why Did Ex-IRS Official Lerner Invoke Fifth Amendment Again?](#) from Fox News Video.

Suggested Resources

Join a highly committed community of learners, faculty, and coaches in the [Community of Excellence](#). On the COE page, explore resources such as the Writing Studio and Community Conversations.

u07d1 - Police Interrogation

Competencies Addressed in This Discussion

- **Competency 3:** Explain the substantive and procedural interpretations of individual freedoms based on case analysis.
- **Competency 5:** Communicate effectively in writing.

Introduction

Because police interrogation of a suspect has the potential for compulsory self-incrimination, it is subject to limitations imposed by the Fifth Amendment. Determining what constitutes an interrogation and whether the individual was in custody are key inquiries that impact procedural parameters.

Let's put this into action. Police received a phone call from someone who claimed he had just planted a bomb in a nearby high school and that it would go off in forty-five minutes. Police officers, including the bomb squad, rushed to the scene as the school was being evacuated. While surveying the area outside the school, an officer came upon a young man perched in a tree who appeared to be observing the scene with a pair of binoculars. The officer demanded that the man come down from the tree. As he was climbing down, a cell phone fell from his pocket. The officer picked up the phone and pushed the button to display the call history, which showed that the last number called was the police station. The officer, with three other officers, surrounded the man and asked, "Where's the bomb?" The man replied that there was no bomb and that the whole thing had been a prank. The man was arrested on a charge of making a false bomb threat. In a pretrial motion, his attorney moved to suppress the statements made by the suspect in response to the officer's questions.

For your main response, address the following:

1. Explain how *Miranda* requirements apply, if at all, to the scenario based on Fifth Amendment rights as interpreted by the U.S. Supreme Court.
2. Determine whether you think the pretrial motion will be granted based on the application of *Miranda*.
3. Evaluate the voluntariness of, or lack thereof, the statement made by the defendant based on court interpretation of the Fifth Amendment.
4. Propose best practices that should be implemented by the police department to ensure Fifth Amendment procedural and substantive compliance.

Discussion Objectives

The competencies addressed in this discussion are supported by discussion objectives.

- Competency 3: Explain the substantive and procedural interpretations of individual freedoms based on case analysis.
 - Explain how the court's ruling in *Miranda* applies to the scenario.
 - Determine whether a motion to suppress should be granted based on court interpretation of the Fifth Amendment
 - Evaluate voluntariness in the context of the confession based on court interpretation of the Fifth Amendment.
 - Propose departmental best practices to ensure Fifth Amendment compliance.
- Competency 5: Communicate effectively in writing.

Response Guidelines

Respond to the posts of two peers. Interact about the conclusions, basis for the conclusions, and best practice suggestions. Did you reach the same conclusion as other learners? Was your rationale the same? If not, how did it vary? Did the positions of learners impact your perspective or rationale? How?

Course Resources

u07d2 - Identifications in Lineups

Competencies Addressed in This Discussion

- **Competency 4:** Document philosophical underpinnings and public policy influences associated with the U.S. Supreme Court decisions.
- **Competency 3:** Explain the substantive and procedural interpretations of individual freedoms based on case analysis.
- **Competency 5:** Communicate effectively in writing.

Introduction

Identification methods are subject to constitutional constraints under the Fifth Amendment. It is important that the identification, by a victim or witness, withstand constitutional scrutiny. That requires conducting the lineup in alignment with court interpretation of Fifth Amendment requirements.

Let's explore. Police arrested Seth Slim for an alleged rape. Police initially set up the lineup with Seth Slim, who was a white male and unusually tall and lean, and four other men, one white, one black, and one Hispanic, of average height and weight. Before the victim made the identification, the officer asked you, the sergeant, whether it was okay to proceed with the lineup.

For your main response, address the following:

1. Using one case from Nexis Uni research, explain the requirements for a lineup for Fifth Amendment compliance.
2. Based on your research, determine whether this lineup, as currently organized, is likely to withstand challenge by the defense if the victim immediately identifies Seth Slim. If the lineup will not withstand challenge, explain the adjustments that should be made.
3. Using examples as your basis, discuss the public policy and philosophical underpinnings of the U.S. Supreme Court's decisions on lineup requirements.

Discussion Objectives

The competencies addressed in this discussion are supported by discussion objectives.

- Competency 4: Document philosophical underpinnings and public policy influences associated with the U.S. Supreme Court decisions.
 - Discuss the public policy and philosophical underpinnings of the U.S. Supreme Court's decisions on lineup requirements.
- Competency 3: Explain the substantive and procedural interpretations of individual freedoms based on case analysis.
 - Explain the requirements for a lineup for Fifth Amendment compliance.
 - Determine whether the lineup, as currently organized, is likely to withstand challenge by the defense if the victim immediately identifies a suspect and include rationale.
- Competency 5: Communicate effectively in writing.

Response Guidelines

Respond to the posts of two peers. Interact about lineup requirements, Fifth Amendment parameters, conclusions about the proposed lineup, rationales, public policy, and philosophical underpinnings. Do you share the same conclusions as other learners? What, if any, differences were there in rationale? Did the positions of learners impact your perspective? How?

Course Resources

[CJ Discussion Scoring Guide](#)

[Criminal Justice Undergraduate Research Guide](#)

[Nexis Uni Library Guide](#)

Unit 8 >> The Different Facets of the Sixth Amendment

Introduction



Competencies Addressed in This Unit

- **Competency 3:** Explain the substantive and procedural interpretations of individual freedoms based on case analysis.
- **Competency 4:** Document philosophical underpinnings and public policy influences associated with the U.S. Supreme Court decisions.
- **Competency 5:** Communicate effectively in writing.

A Look at the Sixth Amendment

The Sixth Amendment provides several rights dealing with a fair trial. These rights include the right to counsel, right to a speedy and public trial, right to an impartial jury in the district where the crime was committed, right to confront witnesses, and right to compulsory process to obtain witnesses.

The right to counsel is one of the defendant's most important rights. The right to counsel articulated in the Sixth Amendment to the United States Constitution has been deemed "fundamental" by the U.S. Supreme Court and was applied to state criminal proceedings in *Gideon v. Wainwright* (1963) (Harr et al., 2018). While indigent defendants have a right to appointed counsel, the right is to the assistance of counsel, and defendants still possess a right to represent themselves.

Other cases followed this landmark decision and have helped flesh out more specifically the types of cases it applies to and the stage in the process at which it attaches. The right applies at all critical stages in the judicial process where substantial rights may be affected and attaches to any charge that could result in imprisonment. These stages include all felony trials, misdemeanor cases where imprisonment is actually imposed (as opposed to cases where jail time is a possibility), arraignments, post-charge lineups, post-charge interrogations (regardless of whether they are custodial), and appeals as a matter of right.

The right to counsel is the only Sixth Amendment guarantee that extends beyond the trial. Denying legal counsel for a defendant at trial is clearly a denial of due process (*Powell v. Alabama*, 1932) (Harr et al., 2018). Indigents are provided with counsel in one of three main systems: a public defender system, assigned counsel system, or a contract system. These systems all present challenges for the attorneys who work within them.

The right to counsel has been extended to apply in mandatory appeals for adults and applies to juveniles as well. The right is to effective assistance of counsel. Proof that counsel was ineffective must demonstrate that the trial was fundamentally unfair and that the outcome of the defendant's trial would have been different as a result. This rigorous test makes ineffective assistance claims very difficult to prove.

The primary factors used to assess whether a person received the effective assistance of counsel include whether the attorney's representation fell below objective standards of reasonableness (that is, it was deficient) and whether there is a reasonable probability that the outcome of the criminal proceedings would have been different but for counsel's deficient performance (Harr et al., 2018). The Court has also suggested that a defendant, in some cases, may also be required to prove that counsel's deficiency caused the result to be fundamentally unfair or unreliable.

In the Sixth Amendment, the right to a speedy trial provides for an indictment or charge to be filed within a prescribed period from the date of the arrest of a suspect. A speedy trial timeline may differ from state to state depending on the circumstances and charges being filed. Whether a trial is sufficiently speedy is determined by the length of the delay, the reason for the delay, the defendant's assertion of this right and the harm caused (*Barker v. Wingo*, 1972) (Harr et al., 2018).

The Sixth Amendment also guarantees the right to a public trial. If the defendant cannot get a fair trial because of media publicity, provisions for the trial to move to a different jurisdiction are explored. This is referred to as a *change in venue*.

References

National Archives and Records Administration. (n.d.). Constitution of the United States. Retrieved from http://www.archives.gov/exhibits/charters/constitution_history.html

Harr, J. S., Hess, K. M., Orthmann, C. H., & Kingsbury, J. (2018). *Constitutional law and the criminal justice system* (7th ed.). Boston, MA: Cengage.

Learning Activities

u08s1 - Studies

Readings

In your *Constitutional Law and the Criminal Justice System* text, read the following:

- Chapter 11, "The Sixth Amendment: Right to Counsel and a Fair Trial," pages 392–426.

Articles

Use the Capella library and the Internet to read the following articles addressing the Unit 8 topics. Familiarizing yourself with these resources will provide you with additional insight and perspective about the Sixth Amendment.

- Sixth Amendment—Right to jury trial—Mandatory minimum sentences— *Alleyne v. United States*. (2013). *Harvard Law Review*, 127(1), 248–257.
- Cyrulnik, J. C. (2005). Overlooking a Sixth Amendment framework. *Yale Law Journal*, 114(4), 905–912.
- Sixth Amendment—Ineffective assistance of counsel—Sixth Circuit holds that defense counsel's nap during the defendant's cross-examination does not clearly violate the Sixth Amendment— *Muniz v. Smith*. *Harvard Law Review*, 125(6), 1498–1505.
- Justia US Law. (n.d.). Georgia supreme court: S12A1981. *The State v. Buckner*. Retrieved from <http://cases.justia.com/georgia/supreme-court/s12a1981.pdf?ts=1396119920>
- WTOC. (2013). Ga. high court upholds Bobby Buckner ruling. Retrieved from <http://www.wtoc.com/story/20957381/court-upholds-sixth-amendment-violation-in-bobby-buckner-case>

Internet Resources

Use the Internet to review the following:

- Bureau of Justice Statistics on Indigent Defense Services.

Optional Internet Resources

- Annotation 4 – Sixth Amendment: Right to Trial by Impartial Jury.
- The Case Against the Death Penalty.

Suggested Resources

Join a highly committed community of learners, faculty, and coaches in the Community of Excellence. On the COE page, explore resources such as the Writing Studio and Community Conversations.

u08a1 - Speedy Trial

Competencies Addressed in This Assignment

- **Competency 3:** Explain the substantive and procedural interpretations of individual freedoms based on case analysis.
- **Competency 5:** Communicate effectively in writing.

Assignment Description

The right to a speedy trial is a right protected under the Sixth Amendment. Often, that right is waived by the defendant to enable the attorney to fully prepare for the trial. However, there are instances where speedy trial is not waived, and the case is not brought within court-interpreted parameters. Let's explore this facet of the Sixth Amendment.

You are the district attorney in the *State v. Buckner* case. You have a press conference scheduled after the announcement of the state supreme court's decision in the case. Read the information on the case linked in the Resources.

Construct a statement explaining the decision to the public that balances respect for the court with the concerns of the victim's family.

Be sure to review the Speedy Trial Scoring Guide to ensure that you understand the criteria for this assignment.

Use the links provided in the Resources to help you complete the assignment.

Requirements

- **Written communication:** Must be free of errors that detract from the overall message.
- **Resources and citations:** Format according to APA guidelines.
- **Required page count:** 2–3, not including the title page or the references page.
- **Required number of references:** A minimum of two.
- **Font and font size:** Times New Roman, 12 point.

You are required to submit a draft of your paper to SafeAssign. Once you review your results and make any needed changes, submit your paper for grading.

Course Resources

[Georgia Supreme Court: S12A1981, The State v. Buckner](#)

[Ga. High Court Upholds Bobby Buckner Ruling](#)

[Nexis Uni Library Guide](#)

[Criminal Justice Undergraduate Research Guide](#)

[APA Style and Format](#)

[SafeAssign](#)

APA Style Paper Template

u08d1 - Right to Counsel

Competencies Addressed in This Discussion

- **Competency 3:** Explain the substantive and procedural interpretations of individual freedoms based on case analysis.
- **Competency 4:** Document philosophical underpinnings and public policy influences associated with the U.S. Supreme Court decisions.
- **Competency 5:** Communicate effectively in writing.

Introduction

The right to counsel exists under the Sixth Amendment. The way in which that right applies to indigent defendants has been the subject of extensive litigation. Roots of the modern right to counsel for indigent defendants date back more than a century. Understanding line-drawing is very important. The line-drawing has evolved over time. A key starting point in determining when the right attaches is understanding what constitutes a critical stage. From there, an indigency determination must be made by the court within Sixth Amendment parameters.

In your main response, address the following:

1. Summarize how the right to counsel has evolved at the state and federal levels through court interpretation of the Sixth Amendment.
2. Explain the implications of failing to comply with the Sixth Amendment during a critical stage of the case process.
3. Illustrate how philosophical underpinnings and public policy influenced the U.S. Supreme Court in key Sixth Amendment right-to-counsel decisions.

Discussion Objectives

The competencies addressed in this discussion are supported by discussion objectives.

- Competency 3: Explain the substantive and procedural interpretations of individual freedoms based on case analysis.
 - Summarize how the right to counsel has evolved at the state and federal levels through court interpretation of the Sixth Amendment.

- Explain the implications for failing to comply with the Sixth Amendment during a critical stage of the case process.
- Competency 4: Document philosophical underpinnings and public policy influences associated with U.S. Supreme Court decisions.
 - Illustrate how philosophical underpinnings and public policy influenced the U.S. Supreme Court in key Sixth Amendment right-to-counsel decisions.
- Competency 5: Communicate effectively in writing.

Response Guidelines

Respond to the posts of two peers. Interact about the evolution of the right to counsel, public policy, and philosophical undertones, and possible implications for noncompliance. Did you focus on the same cases as other learners in tracking the evolution? Was your public policy interpretation the same? If not, how did it vary? Did you reach the same conclusion as other learners about implications for noncompliance? Did the positions of learners impact your positions on these areas? How?

Course Resources

CJ Discussion Scoring Guide

[Nexis Uni Library Guide](#)

[Criminal Justice Undergraduate Research Guide](#)

Unit 9 >> The Meaning and Interpretation of the Eighth Amendment

Introduction



Competencies Addressed in This Unit

- **Competency 3:** Explain the substantive and procedural interpretations of individual freedoms based on case analysis.
- **Competency 5:** Communicate effectively in writing

A Closer Look at the Eighth Amendment

The Eighth Amendment prohibits excessive bail and cruel and unusual punishment. Most rights apply to juvenile proceedings with the exception of the right to a jury trial and bail. Capital punishment and preventing cruel and unusual punishment are some of the most divisive aspects of due process. The continuous debate centers on whether the death penalty constitutes cruel and unusual punishment. That is twofold. The initial inquiry is whether the death penalty should be imposed at all. The second inquiry pertains to how the death penalty should be effectuated.

"No person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a Grand Jury..." (U.S. Const. amend. VIII). Because the Constitution specifically mentions capital punishment in the text, it has been maintained that the founding fathers intended its use and found it acceptable (Harr et al., 2018). From that standpoint, the death penalty itself is not cruel and unusual. What may be considered cruel and unusual is the actual method used. Many people who support capital punishment have concerns about how it is applied and which crimes are punishable by death. At the federal level, crimes punishable by death include espionage, treason, and the taking of a human life. Through court interpretation of the Eighth Amendment, it was deemed cruel and unusual punishment to execute a juvenile or an individual who is mentally ill.

The death penalty itself is not cruel and unusual punishment, but a capital case proceeding to determine guilt or innocence and a second proceeding to determine the sentence (*Gregg v. Georgia*, 1976). The U.S. Supreme Court banned executions of juveniles for crimes committed before age 18 on

March 2, 2005. The U.S. Supreme Court banned the execution of mentally disabled offenders as a violation of the cruel and unusual punishment provision of the Eighth Amendment on June 9, 2002. There are many areas of debate associated with the death penalty. Defendant victim racial combinations have been the subject of considerable debate. Every phase of a capital crime proceeding has been influenced by court rulings.

The protections pertaining to cruel and unusual punishment are not limited to the death penalty. Focusing on inmates, claims based on cruel and unusual punishment under the Eighth Amendment including, but are not limited to, overcrowding, the use of solitary confinement, the use of corporal punishment, physical abuse, and the use of force (Harr et al., 2018).

The Eighth Amendment also includes protections pertaining to bail. Bail is used to assist in ensuring that the accused appears in court and serves to maintain the innocence presumption by enabling those who have not been convicted to avoid incarceration pending trial. It is important to recognize that the Constitution does not guarantee a right to bail. The Constitution only prohibits excessive bail. Bail that is established by the court at an amount higher than what is reasonably calculated to fulfill its purpose is considered excessive under the Eighth Amendment (*Stack v. Boyle*, 1951) (Harr et al., 2018). From an incorporation standpoint, the excessive bail prohibition and the excessive fines provision have never been formally made applicable to the states under the Fourteenth Amendment (Harr et al., 2018). There is no concrete definition of what constitutes excessive. We look to the courts for interpretation and parameters.

Asset forfeiture is one type of fine. Property associated with an illegal activity may be forfeited when used as a "conveyance" (including aircraft, ships, and motor vehicles) to transport illicit drugs. Real estate used in conjunction with a crime and money or other negotiable instruments obtained through the criminal activity can also be seized. This type of seizure constitutes a civil sanction imposed by the government (Harr et al., 2018).

References

National Archives and Records Administration. (n.d.). Constitution of the United States. Retrieved from http://www.archives.gov/exhibits/charters/constitution_history.html

Harr, J. S., Hess, K. M., Orthmann, C. H., & Kingsbury, J. (2018). *Constitutional law and the criminal justice system* (7th ed.). Boston, MA: Cengage.

Learning Activities

u09s1 - Studies

Readings

In your *Constitutional Law and the Criminal Justice System* text, read the following:

- Chapter 12, "The Eighth Amendment: Bail, Fines, and Punishment," pages 427–454.

Library Articles

Use the Capella library to read the following articles addressing the Unit 9 topics. Familiarizing yourself with these resources will provide you with additional insight and perspective about the Eighth Amendment.

- Garvin, M. (2013). Victims and the Supreme Court's Eighth Amendment jurisprudence in *Miller v. Alabama*: A tale of a constitutive paradox for victims. *New England Journal on Criminal and Civil Confinement*, 39(2), 303–317.
- Foley, B. J. (2012). Reframing the debate over excessive sentences to move beyond the Eighth Amendment. *New England Journal on Criminal and Civil Confinement*, 38(1), 3–55.
- Stinneford, J. F. (2011). Rethinking proportionality under the Cruel and Unusual Punishment Clause. *Virginia Law Review*, 97(4), 899–978.
- McCarthy, M. (2006). Lethal injection challenged as "cruel and unusual" fate. *Lancet*, 367(9512), 717.
- Eckholm, E. (2015). Supreme Court justices hear Oklahoma inmates' lethal injection case. *New York Times (Online)*.
- Berman, M. (2014). American support for the death penalty hasn't budged since botched executions. *Washington Post*.

FMG Video

- Open University (Producer). (2010). Death sentence: The story of capital punishment [Video]. Films on Demand.

Optional Resources

- *Death by Fire*, a *Frontline* documentary video that questions whether Texas executed an innocent man.
- Death Penalty Information Center.
- The "Prisoner Rights" page on Findlaw contains links to a variety of national resources related to corrections and the rights of the incarcerated.

Suggested Resources

Join a highly committed community of learners, faculty, and coaches in the [Community of Excellence](#). On the COE page, explore resources such as the Writing Studio and Community Conversations.

u09d1 - Ensuring Eighth Amendment Compliance Behind Bars

Competency Addressed in This Discussion

- **Competency 3:** Explain the substantive and procedural interpretations of individual freedoms based on case analysis.
- **Competency 5:** Communicate effectively in writing.

Introduction

The Eighth Amendment protects against cruel and unusual punishment. Those protections apply in a corrections setting. You are a warden at a state correctional facility. You were recently assigned to a facility with a history of complaints about abuse that could constitute Eighth Amendment violations. You want to ensure that you are clear on parameters before attempting to develop policy on use of force, confinement, overcrowding, and restraint. You need to do your research.

1. Using research for your state in Nexis Uni, locate two cases that provide insight into parameters of cruel and unusual punishment for those in confinement. Summarize the key takeaways from the selected cases.
2. Explain how you would rely on that information to develop policy and procedure to ensure Eighth Amendment compliance.

Discussion Objectives

The competencies addressed in this discussion are supported by discussion objectives.

- Competency 3: Explain the substantive and procedural interpretations of individual freedoms based on case analysis.
 - Establish parameters for cruel and unusual punishment using case analysis from two cases.
 - Summarize takeaways from two cases.
 - Explain how the two cases would be relied upon to develop policy and procedure to ensure Eighth Amendment compliance.
- Competency 5: Communicate effectively in writing.

Response Guidelines

Respond to the posts of two peers. Interact with other learners about Eighth Amendment parameters, the basis for the parameters, and measures to ensure compliance in a practitioner context.

Course Resources

CJ Discussion Scoring Guide

[Nexis Uni Library Guide](#)

[Criminal Justice Undergraduate Research Guide](#)

u09d2 - Line-Drawing in Forfeitures

Competencies Addressed in This Discussion

- **Competency 3:** Explain the substantive and procedural interpretations of individual freedoms based on case analysis.
- **Competency 5:** Communicate effectively in writing.

Introduction

The Eighth Amendment protections extend to the impositions of fines. That provision of the amendment applies to forfeitures, which is a process utilized frequently in departments. Often, a portion of forfeiture funds are reinvested in the criminal justice system, providing an incentive for departments to focus on securing forfeitures. Understanding substantive and procedural requirements is a must.

For this discussion, assume you are the state attorney general. You are pleased that a county in your state that borders Mexico has been extremely effective in the past year at reducing drug-related violent crime. When you spoke to the sheriff, you discovered that these reductions are because the number of deputies was doubled, electronic surveillance was increased, and the number of patrol cars was increased.

Wondering how this was accomplished without an increase in the budget, you find out that the police are stopping motorists routinely, asking if they are carrying cash, and then ordering them to sign over the cash or face felony charges for money laundering or other serious crimes. It was maintained that this is consistent with state asset forfeiture law, which allows the police to seize the profits of crime without a conviction. You are concerned about the measures taken from a substantive and procedural law standpoint. You decided to do some research to better understand the forfeiture requirements.

1. Using research for your state in Nexis Uni, locate two cases that provide insight into substantive and procedural requirements for asset seizures. Apply the cases to the scenario to reach a conclusion about what has been taking place.
2. Based on your findings, articulate how you would address what has been taking place in that jurisdiction.

Discussion Objectives

The competencies addressed in this discussion are supported by discussion objectives.

- Competency 3: Explain the substantive and procedural interpretations of individual freedoms based on case analysis.
 - Apply substantive and procedural law from two cases to the scenario.
 - Determine whether the approach taken in the jurisdiction for forfeiture is compliant with substantive and procedural requirements.
 - Articulate how you would address what has been taking place in that jurisdiction pertaining to forfeitures based on substantive and procedural requirements.
- Competency 5: Communicate effectively in writing.

Response Guidelines

Respond to the posts of two peers. Interact with other learners about the cited law, analysis of substantive and procedural requirements, conclusions about the scenario, and approaches to address what has been taking place.

Course Resources

CJ Discussion Scoring Guide

[Nexis Uni Library Guide](#)

[Criminal Justice Undergraduate Research Guide](#)

Unit 10 >> Exploring the Final Amendments and Competency Reflection

Introduction



Competencies Addressed in This Unit

- **Competency 1:** Describe how historical problems were managed in the evolution of the U.S. Constitution.
- **Competency 2:** Correlate the role of each branch of government with the Bill of Rights interpretation.
- **Competency 3:** Explain the substantive and procedural interpretations of individual freedoms based on case analysis.
- **Competency 4:** Document philosophical underpinnings and public policy influences associated with U.S. Supreme Court decisions.
- **Competency 5:** Communicate effectively in writing.

Concluding the Amendment Exploration

The Constitution affects every American's life in direct and indirect ways. Understanding these potential areas of impact is important for criminal justice practitioners. Throughout our course, focus has been on key amendments that impact individual rights in a criminal justice context.

In this unit, we will focus on the remaining amendments that impact our nation. Not all amendments and other portions of the Constitution deal directly with specific rights and liberties. Seven amendments deal in detail with numerous matters related to how the federal government is structured and the election of officials. The Supreme Court has selectively applied certain amendments to both federal and state governments through selective incorporation, through the Fourteenth Amendment (Harr et al., 2018). The Fourteenth Amendment ensures equal protection and due process of the law.

The Third Amendment, which has never been subject to U.S. Supreme Court review, prohibits housing soldiers in private homes during peacetime without the owner's consent and during the wartime without legal process. This amendment stands for the general principle that government must leave people alone without compelling cause.

The Seventh Amendment establishes the right to a federal jury trial for all suits at common law if the value is more than \$20. Through the Federal Rules of Civil Procedure, jurisdictional requirements are delineated in a manner consistent with constitutional mandates. Cases involving issues that justify a Seventh Amendment right to a federal jury trial are determined by examining the types of cases heard previously or by a common law analysis.

The Ninth Amendment establishes that the rights of U.S. citizens transcend those listed in the Constitution. The word *privacy* is not in the Constitution, but courts have interpreted the Ninth Amendment as one source of implicit privacy. Examples include abortion and gay marriage. The right to privacy has been referred to by the Supreme Court and has been used to infer such a right, but the Ninth Amendment does not guarantee this right (Harr et al., 2018). Rights not specifically listed in the Bill of Rights are known as *unenumerated rights*.

The Tenth Amendment embodies the principle of federalism, reserving for the states those powers not granted to the federal government or withheld from the states. There has been considerable debate over the reading of the Tenth Amendment as expansive versus constrictive in the context of state versus federal power.

Additional amendments beyond the Bill of Rights have come and gone. For example, the Thirteenth Amendment overturned the Supreme Court's *Dred Scott* decision and abolished slavery. Using an amendment to overturn a specific Supreme Court decision is rare and illustrates checks and balances in the U.S. government (Harr et al., 2018). This supports the ability of the Constitution to respond to the country's needs. Various amendments have been proposed. Congress has considered amendments, including a prohibition against burning the U.S. flag and amendments establishing victims' rights. In 2003, a Senate subcommittee approved a proposal to amend the Constitution to guarantee rights to crime victims. In general, Congress is reluctant to make significant changes by adding amendments.

References

National Archives and Records Administration. (n.d.). Constitution of the United States. Retrieved from http://www.archives.gov/exhibits/charters/constitution_history.html

Harr, J. S., Hess, K. M., Orthmann, C. H., & Kingsbury, J. (2018). *Constitutional law and the criminal justice system* (7th ed.). Boston, MA: Cengage.

Learning Activities

u10s1 - Studies

Readings

In your *Constitutional Law and the Criminal Justice System* text, read the following:

- Chapter 13, "The Remaining Amendments and a Return to the Constitution," pages 455–471.

Library Articles

Use the Capella library to read the following articles addressing the Unit 10 topics. Familiarizing yourself with these resources will provide you with additional insight and perspective about the remaining amendments covered in this unit.

- Sullivan, J. (2003). [The Tenth Amendment and local government](#). *Yale Law Journal*, 112(7), 1935–1942.

- Barnett, R. E. (2006). The Ninth Amendment: It means what it says. *Texas Law Review*, 85(1), 1–82.
- Balkin, J. M., & Levinson, S. (2012). Panel I: Thirteenth Amendment in context. *Columbia Law Review*, 112(7), 1459–1499.
- Stolberg, S. G. (2005). Senator will not ask Roberts to take a stand on abortion. *New York Times*, 1.21.

Internet Resources

- Seventh Amendment: Civil Trials.
- Tenth Amendment: Reserved Powers.

Optional Internet Resource

- Equality and the Fourteenth Amendment: A New Constitution.

Suggested Resources

Join a highly committed community of learners, faculty, and coaches in the Community of Excellence. On the COE page, explore resources such as the Writing Studio and Community Conversations.

u10a1 - Connecting Your Learning

Competencies Addressed in This Assignment

In this assignment, the criteria in your Connect Your Learning Scoring Guide are directly aligned to all the course competencies.

- **Competency 1:** Describe how historical problems were managed in the evolution of the U.S. Constitution.
- **Competency 2:** Correlate the role of each branch of government with Bill of Rights interpretation.
- **Competency 3:** Explain the substantive and procedural interpretations of individual freedoms based on case analysis.
- **Competency 4:** Document philosophical underpinnings and public policy influences associated with the U.S. Supreme Court decisions.
- **Competency 5:** Communicate effectively in writing.

Assignment Description

Throughout the course, you have examined the history and evolution of the U.S. Constitution, the three branches of government, roles and responsibilities, the balance of individual rights versus societal needs in Bill of Rights interpretations, and application based implications. For your final assignment, you will showcase connections between learning and application in a career-specific context.

Focusing on the competencies, and to showcase your learning proficiency, prepare a 6–7 page paper addressing two key areas of learning for each competency:

- The importance of this learning.
- The application of the learning in a career context.

Be sure to review the Connecting Your Learning Scoring Guide to ensure that you understand the criteria for this assignment.

Use the links provided in the Resources to help you complete the assignment.

Requirements

- **Written communication:** Must be free of errors that detract from the overall message.
- **Resources and citations:** Format according to APA guideline.
- **Required page count:** 6–7, not including the title page or the references page.
- **Required number of references:** minimum of 6–7.
- **Font and font size:** Times New Roman, 12 point.

You are required to submit a draft of your paper to SafeAssign. Once you review your results and make any needed changes, submit your paper for grading.

Portfolio Prompt: Save this assignment to your ePortfolio for future reference and to demonstrate your learning connections for future employment purposes.

[Criminal Justice Undergraduate Research Guide](#)

[APA Style and Format](#)

[Nexis Uni Library Guide](#)

[SafeAssign](#)

APA Style Paper Template

[ePortfolio](#)

u10d1 - Balance of Power

Competencies Addressed in This Discussion

- **Competency 3:** Document philosophical underpinnings and public policy influences associated with U.S. Supreme Court decisions.
- **Competency 5:** Communicate effectively in writing.

Introduction

Line-drawing associated with the balance between federal and state power is the source of debate. The debate centers on how the Tenth Amendment is interpreted. Let's explore the line-drawing using handgun ownership as a point of focus.

Printz v. United States (1997) ruled that provisions of the Brady Handgun Violence Prevention Act (1993), requiring local law enforcement to perform background checks on applicants for handgun ownership, was unconstitutional as a violation of state sovereignty under the Tenth Amendment. If you were a federal law enforcement leader and knew that failure of local law enforcement to enforce this rule would undermine any attempt to reduce gun violence such as school shootings, how would you convince a Tenth Amendment states' rights advocate? How would you account for public policy in your argument? What case law would you use to support your approach?

Discussion Objectives

The competencies addressed in this discussion are supported by discussion objectives.

- Competency 3: Document philosophical underpinnings and public policy influences associated with U.S. Supreme Court decisions.
 - Describe public policy influences on Tenth Amendment interpretation based on the scenario.
 - Use case law to support positions on Tenth Amendment interpretation based on the scenario.
- Competency 5: Communicate effectively in writing.

Response Guidelines

Respond to the posts of two peers. Explain how your opinions are similar or different from your peers and why. Interact about the different arguments to convince the states' rights advocate. Discuss the different cases relied upon, the different approaches taken and the different public policy perspectives. Do you share the same conclusions as other learners? Why or why not? Did the positions of learners impact your positions on these areas? How?

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