

Syllabus

Course Overview

This course provides you with an understanding of the formal rules for obtaining, qualifying, and admitting evidence for criminal investigation and prosecution. Throughout the course, you will study the rules and procedures of the criminal justice system pertinent to the 4th, 5th, and 6th Amendments of the U.S. Constitution. In addition, you will learn to apply knowledge and skills in the evaluation and application of criminal procedure and evidence as it pertains to law enforcement principles. The process involves gathering information about modern criminal procedures, determining its appropriateness to current professional practice, and speculating how it may be used in the criminal justice field.

This course covers the foundation of federal and state court systems and their evolution to its present structure. It examines the three stages of the criminal justice system, as well as the rights afforded to you during every stage of the process. In addition, the course examines key terms and processes involved in day-to-day law enforcement including:

- Reasonable suspicion.
- Probable cause and reasonable suspicion.
- Stop-and-frisk law.
- Search and seizure.
- Right to privacy.
- Reasonable expectation of privacy.
- *Miranda* warning.
- Constitutional rights of suspects during pretrial, trial, and post-trial stages.
- Law enforcement conduct.

In this course, you examine case studies to analyze and apply the rules of criminal procedure. Case studies are a widely used method to analyze a hypothetical situation that is similar to one that could be encountered.

Course Competencies

(Read Only)

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

- 1 Articulate how the rules of criminal procedure apply to a criminal justice practitioner.
- 2 Illustrate ethical compliance with criminal procedure from a criminal justice practitioner perspective.
- 3 Apply the 4th, 5th and 6th Amendments in a criminal justice context.
- 4 Specify how the procedural rules apply to the admission of evidence in criminal cases.
- 5 Communicate effectively in writing.

Course Prerequisites

CJ1000.

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

del Carmen, R. V., & Hemmens, C. (2017). *Criminal procedure: Law and practice*. (10th ed.). Boston, MA: Cengage. ISBN: 9781305577367.

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.

- Castillo, O. (2018). [Is privacy still possible? The fourth amendment in an age of \(digital\) surveillance](#). *Criminal Justice*, 33(1), 8–13.
- Fallon, R. J., Jr., & Meltzer, D. J. (2007). [Habeas corpus jurisdiction, substantive rights, and the war on terror](#). *Harvard Law Review*, 120(8), 2031–2112.
- Gelman, A., Fagan, J., & Kiss, A. (2007). [An analysis of the New York City police department's "stop-and-frisk" policy in the context of claims of racial bias](#). *Journal of the American Statistical Association*, 102(479), 813.
- Hartley, R. D., Ventura Miller, H., & Spohn, C. (2010). [Do you get what you pay for? Type of counsel and its effect on criminal court outcomes](#). *Journal of Criminal Justice*, 38(5), 1063–1070.
- Kamisar, Y. (1984). [Gates, "probable cause," "good faith," and beyond](#). *Iowa Law Review*, 69, 551–615.
- Lafave, W. R. (2009). [The smell of herring: A critique of the supreme court's latest assault on the exclusionary rule](#). *Journal of Criminal Law & Criminology*, 99(3), 757–787.

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.

- Apodaca v. Oregon, (69-5046) 406 US 404 (1972).
- Barrett, J. Q. (2012). Deciding the stop and frisk cases: A look inside the Supreme Court's conference. *St. John's Law Review*, 72(3). Retrieved from <http://scholarship.law.stjohns.edu/cgi/viewcontent.cgi?article=1532&context=lawreview>
- Board of Education of Independent School District No. 92 of Pottawatomie County et al. v. Earls, (01-332) 536 US 822 (2002).
- Brady v. Maryland, (490) 373 US 83 (1963).
- Brosseau v. Haugen, (03-1261) 543 US 194 (2004).
- Castle Rock v. Gonzales, (04-278) 545 U.S. (2005).
- Duffy, M. (1992). Jacobson v. United States: Do the ends justify the means in government stings? [PDF] *Loyola University Chicago Law Journal*, 24(1), 77–107.
- Duncan v. Louisiana, (410) 391 US 145 (1968).
- Harvard Law School. (n.d.). Frye v. United States. Retrieved from <https://wiki.harvard.edu/confluence/display/GNME/Frye+v.+United+States>
- Harvard Wiki. (n.d.). Frye v. United States. Retrieved from <https://wiki.harvard.edu/confluence/display/GNME/Frye+v.+United+States>
- Israel, J. H., Kamisar, Y., LaFave, W. R., & King, N. J. (2005). Criminal procedure and the constitution: Leading supreme court cases and introductory text. Retrieved from <http://www.wvu.edu/~lawfac/jscully/Race/documents/Whren.pdf>
- Johnson v. Louisiana, (69-5035) 406 US 356 (1972).
- Justia. (n.d.). Detention short of arrest: Stop-and-frisk. Retrieved from <http://law.justia.com/constitution/us/amendment-04/13-stop-and-frisk.html>
- Kyles v. Whitley, (93-7927) 514 US 419 (1995).
- Kyllo v. United States, (99-8508) 533 US 27 (2001).
- Lacy, J. W., & Stark, C. E. (2013). The neuroscience of memory: Implications for the courtroom. *Nature Reviews Neuroscience*, 14, 649–658.
- LexisNexis. (n.d.). Academic search. Retrieved from <http://library.capella.edu/login?url=https://advance.lexis.com/bisacademicresearchhome?crd=b896cbc0-db2d-4717-9798-446cfb52ef37&pdmfid=1516831&pdisurlapi=true>
- Library of Congress. (n.d.). Researching judicial decisions. Retrieved from <http://www.loc.gov/law/help/judicial-decisions.php>
- Lockhart v. McCree, (84-1865) 476 US 162 (1986).
- Miranda v. Arizona, (759) 384 US 436 (1966).
- Missouri v. Seibert, (02-1371) 542 US 600 (2004).
- Neil v. Biggers, (71-586) 409 US 188 (1972).
- Oaks, D. H. (1970). Studying the exclusionary rule in search and seizure. *The University of Chicago Law Review*, 37(4). Retrieved from <https://www.ncjrs.gov/pdffiles1/Digitization/203NCJRS.pdf>
- Oliver v. United States, (82-15) 466 US 170 (1984).
- Oregon v. Elstad, (83-773) 470 US 298 (1985).
- Remsberg, C. (2007). Supreme court says officers can control passengers on traffic stops. *PoliceOne.com*. Retrieved from <http://www.policeone.com/legal/articles/1287043-Supreme-Court-say-officers-can-control-passengers-on-traffic-stops/>
- Street Law. (n.d.). Landmark cases of the U.S. Supreme Court. Retrieved from <http://landmarkcases.org/en/landmark/home>
- Strickler v. Greene, (98-5864) 527 US 263 (1999).
- The Federal Bureau of Investigation. (n.d.). Civil rights – Color of law violations. Retrieved from <https://www.fbi.gov/investigate/civil-rights>
- United States Courts. (2014, August 6). Court shorts: Right to counsel [Video]. Retrieved from <https://youtu.be/CKQM52VAX6w>
- United States v. Agurs, (75-491) 427 US 97 (1976).
- United States v. Bagley, (84-48) 473 US 667 (1985).
- United States v. Leon, (82-1771) 468 US 897 (1984).
- United States v. Place, (81-1617) 462 US 696 (1983).
- United States v. Robinson, (72-936) 414 US 218 (1973).
- United States v. Ross, (80-2209) 456 US 798 (1982).
- Vernonia School District 47J v. Acton, (94-590), 515 US 646 (1995).
- Wallentine, K. (2007). Is a passenger "seized" during a traffic stop: The Supreme Court answers. *PoliceOne.com*. Retrieved from <http://www.policeone.com/legal/articles/1282465-Is-a-passenger-seized-during-a-traffic-stop-The-Supreme-Court-answers/>
- Weisselberg, C. D. (2008). Mourning Miranda. *California Law Review*, 96. Retrieved from http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1095620##
- Williamson, R. A. (1993). Virtues (and limits) of shared values: The Fourth Amendment and Miranda's concept of custody. William & Mary Law School Scholarship Repository. Retrieved from <http://scholarship.law.wm.edu/facpubs/452/>
- Williamson, R. A. (1982). The dimensions of seizure: The concepts of "stop" and "arrest". *Ohio State Law Journal*, 43(4), 771–818. Retrieved from <http://scholarship.law.wm.edu/facpubs/454>
- Witherspoon v. Illinois, (1015) 391 US 510 (1968).

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.

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.

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.

- Berman, S. J. (n.d.). When the police can make an arrest: Probable cause. Nolo. Retrieved from <http://www.nolo.com/legal-encyclopedia/when-police-can-make-arrest-probable-cause.html>
- Broomhall, B. (2000). Towards the development of an effective system of university jurisdiction for crimes under international law. *New England Law Review*, 35(2), 399–420. Retrieved from <http://www.nesl.edu/userfiles/file/lawreview/vol35/2/broomhall.pdf>
- Civil liability for acts of off-duty officers – Part I. (2007). *AELE Monthly Law Journal*, 9, 101–106. Retrieved from <http://www.aele.org/law/2007LRSEP/2007-09MLJ101.pdf>
- Civil liability for law enforcement pursuit driving (I). (2007). *AELE Monthly Law Journal*, 2, 101–109. Retrieved from <http://www.aele.org/law/2007LRFEB/2007-02MLJ101.pdf>
- Cohen, A. (2013). How Americans lost the right to counsel, 50 years after 'Gideon'. Retrieved from <http://www.theatlantic.com/national/archive/2013/03/how-americans-lost-the-right-to-counsel-50-years-after-gideon/273433>
- Colbridge, T. B. (2001). Electronic surveillance a matter of necessity. HighBeam Research. Retrieved from <https://www.highbeam.com/doc/1G1-60472111.html>
- Cornell University Law School: Legal Information Institute. (n.d.). Federal rules of criminal procedure. Retrieved from <https://www.law.cornell.edu/rules/frcrmp>
- Department of Public Safety, State of Vermont. (n.d.). Eyewitness identification: Sample model policy. Retrieved from <http://dps.vermont.gov/sites/psd/files/pdfs/leab/Eyewitness-Identification-Model-Policy.pdf>
- Exploring Constitutional Conflicts. (n.d.). When do searches or drug tests of students in the public school violate the 4th Amendment guarantee against unreasonable searches? Retrieved from <http://law2.umkc.edu/faculty/projects/frtrial/conlaw/searches.htm>
- FindLaw. (n.d.). "Miranda" rights and the Fifth Amendment. Retrieved from <http://criminal.findlaw.com/criminal-rights/miranda-rights-and-the-fifth-amendment.html>
- FindLaw. (n.d.). Individualized suspicion required for student searches. Retrieved from <http://corporate.findlaw.com/law-library/individualized-suspicion-required-for-student-searches.html>
- FindLaw. (n.d.). Typical Section 1983 claims. Retrieved from <http://library.findlaw.com/1999/Jan/1/126485.html>
- Flex Your Rights. (n.d.). What is probable cause? Retrieved from <https://www.flexyourrights.org/faqs/probable-cause/>
- Hampson, R. (2013). You have the right to counsel. Or do you? *USA Today*. Retrieved from <http://www.usatoday.com/story/news/nation/2013/03/12/you-have-the-right-to-counsel-or-do-you/1983199/>
- Harper, R. B. (1988). Has the replacement of "probable cause" with "reasonable suspicion" resulted in the creation of the best of all possible worlds? *Akron Law Review*, 22(1), 13–44. Retrieved from <https://www.uakron.edu/dotAsset/b60c7b18-ebce-434c-9a02-946169a57a1c.pdf>
- Hull Street Law. (2013). Can a police officer order everyone out of the vehicle during a traffic stop? Retrieved from <http://www.hullstreetlaw.com/can-a-police-officer-order-everyone-out-of-the-vehicle-during-a-traffic-stop/>
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- Justia. (n.d.). Vehicular searches. Retrieved from <http://law.justia.com/constitution/us/amendment-04/15-vehicular-searches.html>
- Justia. (n.d.). What does the Sixth Amendment right to jury trial protect?: The Supreme Court decides *Alleyne v. United States*. Retrieved from <https://verdict.justia.com/2013/07/10/what-does-the-sixth-amendment-right-to-jury-trial-protect>
- Kash, D. A., & White, E. (2010). A new law counters the semisubmersible smuggling threat. *FBI Law Enforcement Bulletin*. Retrieved from <https://leb.fbi.gov/2010/march/a-new-law-counters-the-semisubmersible-smuggling-threat>
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- Meyer, R. (2015). U.S. Supreme Court: GPS trackers are a form of search and seizure. *The Atlantic*. Retrieved from <http://www.theatlantic.com/technology/archive/2015/03/supreme-court-if-youre-being-gps-tracked-youre-being-searched/389114/>
- MirandaWarning.Org. (n.d.). What are your Miranda rights? Retrieved from <http://www.mirandawarning.org/whatareyourmirandarights.html>
- Neilson, W. S., & Winter, H. (2005). The elimination of hung juries: Retrials and nonunanimous verdicts. *International Review of Law and Economics*, 25, 1–19. Retrieved from <http://web.utk.edu/~wneilson/IRLE-March-2005.pdf>
- Nolo. (n.d.). Miranda rights: What happens if police don't read you your rights? Retrieved from <http://www.nolo.com/legal-encyclopedia/police-questioning-miranda-warnings-29930.html>
- Nolo. (n.d.). Understanding search-and-seizure law. Retrieved from <http://www.nolo.com/legal-encyclopedia/search-seizure-criminal-law-30183.html>

- Offices of the United States Attorneys. (n.d.). [Power to order lineup-Right to counsel](https://www.justice.gov/usam/criminal-resource-manual-239-power-order-lineup-right-counsel). Retrieved from <https://www.justice.gov/usam/criminal-resource-manual-239-power-order-lineup-right-counsel>
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- Poulin, A. B. (1997). [The plain feel doctrine and the evolution of the Fourth Amendment](http://digitalcommons.law.villanova.edu/cgi/viewcontent.cgi?article=2987&context=vlr). *Villanova Law Review*, 42(3). Retrieved from <http://digitalcommons.law.villanova.edu/cgi/viewcontent.cgi?article=2987&context=vlr>
- ProbableCause.Org. (n.d.). [What is probable cause?](http://www.probablecause.org/index.html) Retrieved from <http://www.probablecause.org/index.html>
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- RBILYEU. (Producer). (2014). [4th Amendment exclusionary rule \[Video\]](http://www.c-span.org/video/?c4504885/4th-amendment-exclusionary-rule). Available from www.c-span.org/video/?c4504885/4th-amendment-exclusionary-rule
- Rutledge, D. (2006). [Seizing evidence in plain view](http://www.policemag.com/channel/patrol/articles/2006/03/point-of-law.aspx). *Police*. Retrieved from <http://www.policemag.com/channel/patrol/articles/2006/03/point-of-law.aspx>
- Ryan, J. (n.d.). [Overview of police liability](http://www.llrmi.com/articles/legal_update/liabilityoverview.shtml). Legal & Liability Risk Management Institute. Retrieved from http://www.llrmi.com/articles/legal_update/liabilityoverview.shtml
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- Schwartzbach, M. (n.d.). [What's the difference between an arrest and a detention or "stop and frisk"?](http://www.nolo.com/legal-encyclopedia/what-s-the-difference-between-arrest-detention-stop-frisk.html) Nolo. Retrieved from <http://www.nolo.com/legal-encyclopedia/what-s-the-difference-between-arrest-detention-stop-frisk.html>
- [Supreme Court of the United States](http://www.supremecourt.gov/). (n.d.). Retrieved from <http://www.supremecourt.gov/>
- [The Federal Bureau of Investigation](https://www.fbi.gov/). (n.d.). Retrieved from <https://www.fbi.gov/>
- Trujillo, J. (2015). [Stop and frisk is alive and well](http://www.huffingtonpost.com/entry/stop-and-frisk-is-alive-a_b_8507588.html?section=india). *The Huffington Post*. Retrieved from http://www.huffingtonpost.com/entry/stop-and-frisk-is-alive-a_b_8507588.html?section=india
- 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.). [Appeals](http://www.uscourts.gov/about-federal-courts/types-cases/appeals). Retrieved from <http://www.uscourts.gov/about-federal-courts/types-cases/appeals>
- Wisconsin Law Journal. (2005). [Accidental ID may be inadmissible](http://wislawjournal.com/2005/10/05/accidental-id-may-be-inadmissible/). Retrieved from <http://wislawjournal.com/2005/10/05/accidental-id-may-be-inadmissible/>
- Zook, L. (n.d.). [Reducing law enforcement liability – Reviewing the high risk critical areas](http://www.icje.org/articles/ReducingLawEnforcementLiability.pdf). Institute for Criminal Justice Education. Retrieved from <http://www.icje.org/articles/ReducingLawEnforcementLiability.pdf>

Unit 1 >> Overview of the Criminal Justice System

Introduction



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Competency Addressed in This Unit

- **Competency 3:** Apply the 4th, 5th, and 6th Amendments in a criminal justice context.

The U.S. Court System

The United States has a dual court system, in that there is one system for federal cases and one system for state cases. Where a criminal case can be tried is determined by what type of law is violated. If a federal law is violated, the case goes to federal court, and if a state law is violated, the case goes to state court. If both state and federal laws are violated, then the case can be tried in both courts. Take for example, the crime of kidnapping. This is both a state and federal offense, depending upon the circumstances of the crime. If a suspect kidnaps a person and they do not leave the state where the crime occurred, they would be charged by the state. However, if the suspect takes the victim across state lines into another state, they can then be charged with federal kidnapping charges as well. Oftentimes, we see tensions arise, generated by the side-by-side existence of federal and state courts. In fact, the U.S. Supreme Court has also referred to "the tensions inherent in a system that contemplates parallel judicial processes" (Miner, 1987). However, the

federal courts only have limited power and are therefore limited to particular kinds of cases. Most of the laws that affect ordinary citizens are passed and enforced by state governments, therefore such cases are handled by state courts.

Judicial precedent, or *stare decisis*, means that decisions of both courts have value as precedent, or as a model, for future cases under similar circumstances. This means that previously tried cases serve as an example for such future cases and decision making. In deciding a case, a judge may set out the facts of the case and state the case law applicable to those circumstances and then provide his or her decision based upon previously held decisions. However, this is not without some conflict. It has been argued that while previous holdings provide judges with wisdom and experience from those who preceded them, they must not insist on a rigid and mechanical adherence to the decisions of the past, as they may disregard the impact of modern-day social, economic, and political changes that may have occurred following the previous decisions (Loughran, 1953).

One of the most important aspects of our court system is *jurisdiction*, which is the power of a court to try a case. In determining jurisdiction, the courts must analyze whether there is jurisdiction over the person, whether there is jurisdiction of the subject matter, and whether there is jurisdiction to render the particular judgment sought. The court's authority to decide the issue in controversy, such as a contract violation or civil rights issue, is known as subject matter jurisdiction. State courts possess general jurisdiction, which means that they can hear any case except those prohibited by state law or those that occurred in a different state. Federal courts have exclusive jurisdiction for such cases as bankruptcy, but have limited jurisdiction in that they can only hear cases that fall both within the scope of the Constitution and Congressional statutes. Issues of jurisdiction can become complicated with cases involving technology and the Internet. This is a result of network boundaries that intersect and transcend national boundaries, therefore it is often difficult to determine whether the case has state or federal authority (Reidenberg, 2005).

References

Loughran, J. (1953). Some reflections on the role of judicial precedent. *Fordham Law Review*, 22(1).

Miner, R. (1987). The tensions of a dual court system and some prescriptions for relief. *Albany Law Review*, 51(2).

Reidenberg, J. (2005). Technology and internet jurisdiction. *University of Pennsylvania Law Review*, 153(6), 1951–1974.

Learning Activities

u01s1 - Studies

Readings

Use your *Criminal Procedure: Law and Practice* text to complete the following:

- Read Chapter 1, "The Court System, Sources of Rights, and Fundamental Principles," pages 1–30. This chapter focuses on the structure of the federal and state court system in United States. Topics presented in the chapter include:
 - The territorial effect of judicial decisions.
 - The principle of judicial precedent based on *stare decisis*.
 - The extent of federal and state jurisdiction.
 - The principle of dual sovereignty.
 - The legal concepts of jurisdiction and venue.
 - The sources of individual rights.
 - The incorporation controversy and the rule of law.
- Read Chapter 2, "Overview of the Criminal Justice Process," pages 32–65. This chapter presents an overview of the criminal justice process from the legal perspective. It describes the three separate time frames of the criminal justice process: before trial, during trial, and after trial.

Use the Capella University Library to read Fallon and Meltzer's 2007 article, "Habeas Corpus Jurisdiction, Substantive Rights, and the War on Terror," *Harvard Law Review*, volume 120, issue 8, pages 2031–2112. This article addresses topics covered in this unit and it will provide you with additional insight and perspective about jurisdiction of courts and types of cases heard.

Use the Capella University Library to read Duffy's 1992 article, "Jacobson v. United States: Do the Ends Justify the Means in Government Stings? [PDF]" *Loyola University Chicago Law Journal*, 24(1), 77–107. As you read this, apply your knowledge of the Bill of Rights from your Chapter 1 readings on the court system and the sources of rights. Consider how this situation applies to the Selective Incorporation discussion in this unit.

Use the Internet to complete the following in preparation for the discussions in this unit:

- Review *Duncan v. Louisiana* (1968).
- Review *Lockhart v. McCree* (1986).
- Review *Witherspoon v. Illinois* (1968).

Optional Internet Resources

Familiarizing yourself with the following materials will provide you with additional insight and perspective about the topics covered in this unit. The Web sites will provide you with resources you may use throughout the course.

- [Supreme Court of the United States](#). (n.d.).
- Offices of the United States Attorneys. (n.d.). [Steps in the federal criminal process](#).
- United States Courts. (n.d.). [Appeals](#).
- Broomhall, B. (2000). [Towards the development of an effective system of university jurisdiction for crimes under international law](#). *New England Law Review*, 35(2), 399–420.
- Library of Congress. (n.d.). [Researching judicial decisions](#).
- Nexis Uni. (n.d.). [Academic search](#).

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.

u01d1 - Selective Incorporation

Competency Addressed in This Discussion

- **Competency 3:** Apply the 4th, 5th, and 6th Amendments in a criminal justice context.

Introduction

In *Duncan v. Louisiana* (1968), the defendant was charged with and found guilty of simple battery without a jury trial, as Louisiana law stated that it was a misdemeanor and punishable by less than 2 years of imprisonment. At issue was whether Duncan's 6th Amendment right to an impartial jury was violated by the state of Louisiana. This case is an example of *selective incorporation*, which is a constitutional doctrine that ensures that states cannot enact laws that take away the constitutional rights of U.S. citizens guaranteed to them by the Bill of Rights.

Instructions

In your main post:

- Summarize the various tests for determining which rights are incorporated and applied to the states.
- Explain whether all content in the Bill of Rights is *fundamental* and should be automatically incorporated.
- Discuss why the Bill of Rights would be drafted as it is, if those rights were not fundamental.

Discussion Objectives

The competency addressed in this discussion is supported by discussion objectives, as follows:

- Competency 3: Apply the 4th, 5th, and 6th Amendments in a criminal justice context.
 - Summarize the various tests for determining which rights are incorporated and applied to the states.
 - Explain whether all content in the Bill of Rights is *fundamental* and should be automatically incorporated.
 - Discuss why the Bill of Rights would be drafted as it is, if those rights were not fundamental.

Response Guidelines

Respond to the posts of two peers. Interact with your colleagues about the how *fundamental* the Bill of Rights is. Explain how your insights are similar to or different from those of your peers and why. Did the insights your peers shared impact you or your positions in any way? If so, how?

APA citations are not required for discussions; however, if outside material is used, you are required to cite references.

Course Resources

[CJ Discussion Scoring Guide](#)

[Criminal Justice Undergraduate Library Research Guide](#)

[G.R.E.A.T. Discussion Guidelines](#)

[Academic Search](#)

[Duncan v. Louisiana](#)

[Researching Judicial Decisions](#)

[Community of Excellence](#)

[Lexis Nexis Library Guide](#)

Competency Addressed in This Discussion

- **Competency 3:** Apply the 4th, 5th, and 6th Amendments in a criminal justice context.

Introduction

In *Witherspoon v. Illinois* (1968), the U.S. Supreme Court held that jurors cannot be removed merely because of general scruples against capital punishment, adding that a juror may be excluded "for cause" if it is "unmistakably clear" that he or she would automatically vote against the death penalty if sought by the prosecutor or if the juror could not be impartial in the determination of the defendant's guilt. This holding was affirmed in *Lockhart v. McCree* (1986).

Instructions

In your main post:

- Compare the similarities and differences between *Witherspoon v. Illinois* and *Lockhart v. McCree* cases.
- Explain the effects of the rulings of *Witherspoon* and *Lockhart* rulings.

Discussion Objectives

The competency addressed in this discussion is supported by discussion objectives, as follows:

- Competency 3: Apply the 4th, 5th, and 6th Amendments in a criminal justice context.
 - Compare the similarities and differences between *Witherspoon v. Illinois* and *Lockhart v. McCree*.
 - Explain the effects of the rulings of *Witherspoon* and *Lockhart*.

Response Guidelines

Respond to the posts of two peers. Interact with your colleagues about the similarities and differences in these two cases. Did you agree with the courts' decisions? Why or why not? Explain how your insights are similar to or different from those of your peers and why. Did the insights your peers shared impact you or your positions in any way? If so, how?

APA citations are not required for discussions, however, if outside material is used, you are required to cite references.

Course Resources

CJ Discussion Scoring Guide

[Criminal Justice Undergraduate Library Research Guide](#)

G.R.E.A.T. Discussion Guidelines

[Lockhart v. McCree](#)

[Witherspoon v. Illinois](#)

[Community of Excellence](#)

Unit 2 >> Probable Cause, Reasonable Suspicion, and the Exclusionary Rule

Introduction



Competencies Addressed in This Unit

- **Competency 1:** Articulate how the rules of criminal procedure apply to a criminal justice practitioner.
- **Competency 4:** Specify how the procedural rules apply to the admission of evidence in criminal cases.

Defining Legal Terms

For those working in the criminal justice system and law enforcement in particular, *probable cause* is likely the most important term to understand. What is equally important to know is that there are both legal and practical definitions of *probable cause*. Legally, probable cause exists when "the facts and circumstances within the officers' knowledge and of which they had reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed" (Shapiro, 1991). For practical purposes, probable cause exists when a law enforcement officer has trustworthy evidence sufficient to make "a reasonable person" think it is more likely than not that the proposed arrest or search is justified. In recent years, there has been a great deal of scrutiny surrounding the definitions of probable cause and the public's need for clarification. However, even the Supreme Court has indicated that "the central teaching of our decisions bearing on the probable cause standard is a practical, non-technical conception" and that "probable cause is a fluid concept" (Shapiro, 1991).

Reasonable suspicion, on the other hand, has a lower degree of certainty than probable cause and is defined as that "quantum of knowledge sufficient to induce an ordinarily prudent and cautious man under similar circumstances to believe criminal activity is at hand" (Shapiro, 1991). For practical purposes, reasonable suspicion is lower in certainty than probable cause, but higher than mere suspicion.

Although the definition of probable cause is the same in various areas of law enforcement, the focus of that definition may vary. Probable cause is required in arrests both with and without a warrant, as well as searches and seizures of property both with and without a warrant. In the arrests of persons, the probable cause concerns are whether an offense has been committed and whether the person in question did, in fact, commit that offense. In the cases of search and seizure of property, the concerns are whether the items to be seized are connected with criminal activity and whether they can be found in the place to be searched. In the absence of probable cause, the search or arrest is illegal and the evidence obtained must be excluded by the court and cannot be used against the defendant. The exclusionary rule provides that any evidence obtained during an investigation in violation of the 4th Amendment is not admissible in a criminal prosecution. The primary purpose of this rule is to prevent police misconduct. Furthermore, probable cause to suspect one of committing a crime has a quite different implication than probable cause to believe that a conviction is warranted. In the context of arrest, probable cause must exist between suspicion and prediction of eventual trial outcome (Shapiro, 1991).

Probable cause may be established in one of three ways. First, probable cause may be obtained through an officer's own knowledge of particular facts and circumstances. This means that the officer has personally witnessed the suspect commit the violation of law. For example, in the officer's presence, John strikes Paul in the face with a baseball bat, so the officer may immediately arrest John. The officer can also develop probable cause through the course of his or her investigation, if he has determined that sufficient evidence exists to establish that the suspect is likely the one who committed the crime. In determining probable cause based upon evidence, law enforcement may utilize a variety of forms of evidence such as video of the suspect in the act, eye-witness testimony, or other physical evidence. If the officer was not present when John struck Paul, but he arrived to the scene shortly thereafter, an arrest may be made based on probable cause if John can be located within a reasonable amount of time after the incident and Paul has provided sufficient testimony to the facts (Jetmore, 2007).

Second, the police may also develop probable cause through information given by a third party or an informant. However, the information obtained must be deemed reliable for the officer to act upon it. For example, a bank has been recently robbed and a confidential informant contacts the police stating that he was in an apartment with three men discussing robbing a bank. He states that he saw the men viewing diagrams of the bank, alarm codes, and escape routes. He informs officers that he also observed several weapons and can easily identify the suspects (Jetmore, 2007). Last, the police may establish probable cause through information from an informant plus corroboration by the officer. This is often more thorough and reliable than simply acting upon information from a third party since the officer can attest to its validity.

Although probable cause and reasonable suspicion differ in the degree of certainty and are used in different situations, both are based on the *totality of the circumstances*. This means that there is no one single deciding factor in determining whether probable cause exists, but rather there has been a consideration of all facts and circumstances surrounding the offense. The more circumstances that are taken into account, the higher the likelihood of establishing probable cause or reasonable suspicion. In the above example of the bank robbery, the police would not be able to obtain a search warrant simply based upon the testimony of the informant. The Supreme Court has held that in determining whether an informant's tip establishes probable cause for issuance of a warrant, a magistrate is to make a common sense, practical decision based on the totality of the circumstances surrounding the case (Schiff, 1984).

References

Jetmore, L. (2007). Investigations: Understanding probable cause. *Law Officer*, 3(3).

Schiff, J. (1984). Criminal procedure – Fourth Amendment: In determining whether an affidavit based upon an informant's tip constitutes probable cause to issue a search warrant, a magistrate is to apply a totality of circumstances approach. *Villanova Law Review*, 29(1).

Shapiro, B. (1991). *Beyond reasonable doubt and probable cause: Historical perspectives on the Anglo-American law of evidence*. Berkeley, CA: University of California Press.

Learning Activities

u02s1 - Studies

Readings

Use your *Criminal Procedure* text to complete the following:

- Read Chapter 3, "Probable Cause and Reasonable Suspicion," pages 66–86. This chapter presents the legal and practical meaning of *probable cause* and the variety of ways it is defined, determined, and established. In addition, the chapter introduces you to the concept of *reasonable suspicions* and how it differs from *probable cause*, though both are based on the totality of the circumstances.
- Read Chapter 4, "The Exclusionary Rule," pages 88–115. This chapter presents the controversial exclusionary rule, which has generated debate among criminal justice professionals at all levels. It explores the definition of the exclusionary rule, its purpose, the role of judges in forming the rule, and how the rule developed in the federal and state courts.

Use the Capella library to read Kamisar's 1984 article, "[Gates, 'Probable Cause,' 'Good Faith,' and Beyond](#)," from *Iowa Law Review*, volume 69, pages 551–615.

Use the Capella library to read Lafave's 2009 article, "[The Smell of Herring: A Critique of the Supreme Court's Latest Assault on the Exclusionary Rule](#)," from *Journal of Criminal Law & Criminology*, 99(3), 757–787. As you read, apply your knowledge of the controversial rule from your Chapter 4 readings. What should happen to criminals caught red-handed if the warrant is improperly issued? Should the government always get the benefit of the doubt? Or should the offender? What other constitutional issues does this situation raise? Consider how this situation applies to the Alternatives to the Exclusionary Rule discussion in this unit.

Use the Internet to complete the following:

- Read Oaks's 1970 article, "[Studying the Exclusionary Rule in Search and Seizure](#)," from *The University of Chicago Law Review*, volume 37, issue 4.
- Read [What Is Probable Cause?](#) from ProbableCause.Org.
- Review [Landmark Cases of the U.S. Supreme Court](#) from Street Law.
- Review [United States v. Leon](#) (1984) in preparation for the discussion in this unit.

Optional Internet Resources

Familiarizing yourself with the following materials will provide you with additional insight and perspective about the topics covered in this unit:

- RBILYEU. (Producer). (2014). [4th Amendment exclusionary rule](#) [Video].
- Flex Your Rights. (n.d.). [What is probable cause?](#)
- Berman, S. J. (n.d.). [When the police can make an arrest: Probable cause](#). Nolo.
- Harper, R. (1988). [Has the replacement of "probable cause" with "reasonable suspicion" resulted in the creation of the best of all possible worlds?](#) *Akron Law Review*, 22(1).
- Kinports, K. (2009). [Diminishing probable cause and minimalist searches](#). *Penn State Law*, 6(649).

u02d1 - Use of Informants

Competencies Addressed in This Discussion

- **Competency 1:** Articulate how the rules of criminal procedure apply to a criminal justice practitioner.
- **Competency 4:** Specify how the procedural rules apply to the admission of evidence in criminal cases.

Introduction

Probable cause is very time- and place-specific, and information used in an investigation to generate a search warrant must be current. Law enforcement must be able to establish that evidence of a crime may be found at that time and in a certain place. In *United States v. Leon* (1984), the Court held that five-month-old information from an informant is "stale" and cannot be used to establish probable cause. However, in the same case, the Court did not specify how much time may elapse between the informant's observation and the issuing of a warrant, but instead stated that the issue of staleness "must be determined by the circumstances of each case."

Instructions

In your main post:

- Assume the role of a law enforcement officer and identify the challenges inherent in evaluating staleness from the circumstances of the *United States v. Leon* case.
- Discuss two situations where evidence would not be stale even after the passage of a considerable length of time.
- Explain how the digital era has redefined the issue of evidence staleness.

Discussion Objectives

The competencies addressed in this discussion are supported by discussion objectives, as follows:

- Competency 1: Articulate how the rules of criminal procedure apply to a criminal justice practitioner.
 - Assume you are a law enforcement officer and identify challenges inherent in evaluating staleness by the circumstances of the case.
- Competency 4: Specify how the procedural rules apply to the admission of evidence in criminal cases.
 - Discuss two situations where evidence would not be *stale* even after the passage of a considerable length of time.
 - Explain how the digital era has redefined evidence *staleness*.

Response Guidelines

Respond to the posts of two peers. Interact with your colleagues about how you might approach stale information provided to you in your future career. Explain how your insights are similar to or different from those of your peers and why. Examine the situations your peers posted and compare them to the ones you chose. Did the insights they shared regarding the challenges inherent in evaluating staleness impact you or your positions in any way? If so, how?

APA citations are not required for discussions; however, if outside material is used, you are required to cite references.

Course Resources

[CJ Discussion Scoring Guide](#)

[Criminal Justice Undergraduate Library Research Guide](#)

[G.R.E.A.T. Discussion Guidelines](#)

[United States v. Leon](#)

[Community of Excellence](#)

u02d2 - Alternatives to the Exclusionary Rule

Competencies Addressed in This Discussion

- **Competency 1:** Articulate how the rules of criminal procedure apply to a criminal justice practitioner.
- **Competency 4:** Specify how the procedural rules apply to the admission of evidence in criminal cases.

Introduction

Evidence obtained in violation of the 4th Amendment cannot be used at trial. The primary purpose of the exclusionary rule is to deter police misconduct. However, there are a number of exceptions to the exclusionary rule that allow evidence that is seized without a warrant to be introduced at trial. These include the good faith exception, the inevitable discovery exception, the purged taint exception, and the independent source exception.

Instructions

In your main post:

- Explain the advantages and disadvantages of at least two of the exceptions to the exclusionary rule.
- Identify which exception to the exclusionary rule you feel preserves the integrity of the judicial system and explain why.
- Propose two additional exceptions to the exclusionary rule and how they would aid law enforcement in investigating cases while still maintaining professionalism.
- Explore how the additional proposed exceptions would aid law enforcement in investigating cases while still maintaining professionalism.

Discussion Objectives

The competencies addressed in this discussion are supported by discussion objectives, as follows:

- Competency 1: Articulate how the rules of criminal procedure apply to a criminal justice practitioner.
 - Propose two additional exceptions to the exclusionary rule.
 - Explore how the additional proposed exceptions would aid law enforcement in investigating cases while still maintaining professionalism.
- Competency 4: Specify how the procedural rules apply to the admission of evidence in criminal cases.
 - Explain the advantages and disadvantages of exceptions to the exclusionary rule.
 - Identify an exception to the exclusionary rule that preserves the integrity of the judicial system and explain why.

Response Guidelines

Respond to the posts of two peers. Interact with your colleagues about the impact that exceptions to the exclusionary rule may have on both defendants and law enforcement officials. Explain how your suggestions for exceptions to the exclusionary rule differ from those of your peers. Did the insights your peers shared impact you or your positions on the proper procedure for evidence collection in any way? If so, how?

APA citations are not required for discussions; however, if outside material is used, you are required to cite references.

Course Resources

CJ Discussion Scoring Guide

[Criminal Justice Undergraduate Library Research Guide](#)

G.R.E.A.T. Discussion Guidelines

[Community of Excellence](#)

Unit 3 >> Stages of an Arrest

Introduction



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Competencies Addressed in This Unit

- **Competency 1:** Articulate how the rules of criminal procedure apply to a criminal justice practitioner.
- **Competency 2:** Illustrate ethical compliance with criminal procedure from a criminal justice practitioner perspective.
- **Competency 3:** Apply the 4th, 5th, and 6th Amendments in a criminal justice context.
- **Competency 5:** Communicate effectively in writing.

Stop and Frisk Versus Arrest

Stop and frisk are two separate acts, rather than one continuous act. First, there is the *stop*, which is only justified if the police officers have reasonable suspicion that criminal activity is about to take place or has taken place. Stops based on race alone are not valid, but lower courts disagree on whether race can be taken as one factor in determining reasonable suspicion for a stop. In the late 1990s, concerns were raised across the United States in regard to police harassment of minority groups in their everyday encounters with law enforcement. Many of these concerns centered on the extent to which police were stopping people on the highway for *driving while black*, as well as racial bias in pedestrian stops of citizens by policing strategies concentrated in minority communities that targeted illegal gun possession and drug trafficking (Gelman, Fagan, & Kiss, 2005).

People stopped by the police cannot be forced to answer questions but can be forced to identify themselves if that is authorized by state law. The Supreme Court has held that the police may arrest an individual if they fail to identify themselves, if the state law has criminalized such behavior. However, an interesting question arises when state law does not make it a crime to refuse to identify oneself but does clearly allow the police to temporarily detain the suspects and determine his or her identity. Officers are allowed to ask for identification, as long as such a request is reasonably related in scope to the circumstances that justified the initial stop (Bray, 2007).

A *frisk*, which is a pat-down for weapons, should only take place after a stop and only if it is justified by concerns of safety for the officers and for others. A frisk that goes beyond a mere pat-down for weapons is illegal. The Supreme Court has held that the probable cause required to justify a search for weapons is probable cause to believe that someone is armed and dangerous, even though that belief does not constitute probable cause to make an arrest (Barrett, 1998).

Officers cannot constitutionally squeeze, slide, or manipulate an object felt during the frisk (unless probable cause has suddenly been established). Doing that goes beyond a mere pat-down for weapons. For legal purposes, stationhouse detention should be considered equivalent to an arrest.

There are different types of seizure under the 4th Amendment; an arrest is but one type. The more intrusive the seizure, the greater is the protection given by the courts. Whether a person has been seized or not is determined by the standard of a reasonable person under the same circumstances, not by the perception of a suspect or the police. The seizure of an individual may provide the opportunity to question the person and obtain incriminating statements that may be used at trial; to obtain information that may lead to the discovery of other evidence, including evidence sufficient to constitute probable cause to arrest; to obtain fingerprints or other incriminating evidence relating to the personal characteristics of the accused; or to provide for witnesses to view the suspect for identification purposes (Williamson, 1982).

An arrest has four elements: seizure and detention, intention to arrest, arrest authority, and understanding by the arrestee. There are specific requirements for arrests with a warrant and without a warrant. The common law rules for felony arrests, misdemeanor arrests, and citizen's arrests differ, but they are usually superseded by state law. There are rules, usually based on court cases and state law, regarding what an officer can and cannot do after an arrest. The Constitution requires that officers knock and announce before making an arrest, but there are exceptions based on state law and court decisions.

References

- Barrett, J. (1998). Deciding the stop and frisk cases: A look inside the Supreme Court's conference. *St. John's Law Review*, 72(3).
- Bray, J. (2007). Suspects who refuse to identify themselves. *Police Chief Magazine*, 74(4).
- Gelman, A., Fagan, J., & Kiss, A. (2007). An analysis of the New York City police department's "stop-and-frisk" policy in the context of claims of racial bias. *Journal of the American Statistical Association*, 102(479), 813.
- Williamson, R. A. (1982). The dimensions of seizure: The concepts of "stop" and "arrest." *Ohio State Law Journal*, 43(4), 771–818. Retrieved from <http://scholarship.law.wm.edu/facpubs/454>

Learning Activities

u03s1 - Studies

Readings

Use your *Criminal Procedure* text to complete the following:

- Read Chapter 5, "Stop and Frisk and Stationhouse Detention," pages 117–146. Though often viewed as a single action, stop and frisk are best understood as two separate acts; each must be based on reasonable suspicion.

- Read Chapter 6, "Arrests and Use of Force," pages 148–185. In this chapter, you will see that the term *seizure* is broader than the term *arrest*. While all arrests are seizures, not all seizures are arrests.

Use the Capella library to read Gelman, Fagan, and Kiss's 2007 article, "[An Analysis of the New York City Police Department's 'Stop-and-Frisk' Policy in the Context of Claims of Racial Bias](#)," from *Journal of the American Statistical Association*, volume 102, issue 479, page 813.

Use the Internet to read the article "[Detention Short of Arrest: Stop-and-Frisk](#)," from Justia.

Optional Internet Resources

Familiarizing yourself with the following materials will provide you with additional insight and perspective about the legalities of stop and frisk, temporary detention, and arrests.

- Trujillo, J. (2015). *Stop and frisk is alive and well*. *The Huffington Post*.
- Schwartzbach, M. (n.d.). *What's the difference between an arrest and a detention or "stop and frisk"?* Nolo.
- Barrett, J. Q. (2012). *Deciding the stop and frisk cases: A look inside the Supreme Court's conference*. *St. John's Law Review*, 72(3).
- Williamson, R. A. (1982). *The dimensions of seizure: The concepts of "stop" and "arrest"*. *Ohio State Law Journal*, 43(4), 771–818.
- *United States v. Robinson*, (72-936) 414 US 218 (1973).

u03a1 - Plain Touch Doctrine

Competencies Addressed in This Assignment

- **Competency 1:** Articulate how the rules of criminal procedure apply to a criminal justice practitioner.
- **Competency 2:** Illustrate ethical compliance with criminal procedure from a criminal justice practitioner perspective.
- **Competency 3:** Apply the 4th, 5th, and 6th Amendments in a criminal justice context.

Overview

The plain touch doctrine is a legal principle that allows a police officer to seize any contraband that the officer can immediately and clearly identify by touch while conducting a legal pat-down search. In *Minnesota v. Dickerson* (1993), the Supreme Court held: "If a police officer lawfully pats down a suspect's outer clothing and feels an object whose contour or mass makes its identity immediately apparent, there has been no invasion of the suspect's privacy beyond that already authorized by the officer's search for weapons; if the object is contraband, its warrantless seizure would be justified by the same practical considerations that inhere in the plain-view context."

Instructions

For your assignment, prepare a three-page training memo, citing a minimum of two academically verified sources, to be distributed to rookie officers in your department during their training regarding proper criminal procedure with respect to the plain touch doctrine.

In your memo:

- Articulate legally compliant procedural steps for a criminal justice practitioner in a situation involving the plain touch doctrine.
- Explain classification of the plain touch doctrine as reasonable or unreasonable for a criminal justice professional.
- Examine whether the plain touch doctrine is a threat to 4th Amendment protections.
- Describe the implications of officers being able to manipulate objects that can be readily felt.

Be sure to review the Plain Touch Doctrine Scoring Guide to ensure you understand the criteria for this assignment.

Requirements

Your memo should meet the following requirements:

- **Written communication:** Must be free of errors that detract from the overall message.
- **References:** A minimum of two references.
- **APA format:** Format resources and citations as per current APA style and formatting guidelines.
- **Length of memo:** Three pages, not including the title page and the references page.
- **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.

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 the Campus tutorial, 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.

Reference

Minnesota v. Dickerson, (91-2019) 508 US 366 (1993).

Course Resources

[Capella Writing Center](#)

[Criminal Justice Undergraduate Library Research Guide](#)

[Selecting a Database](#)

[Selecting the Best Keywords](#)

[Smarthinking](#)

[SafeAssign](#)

[Submit an Assignment \[PDF\]](#)

[Writing Feedback Tool](#)

[APA Style and Format](#)

APA Style Paper Template

u03d1 - Arrests and Searches

Competencies Addressed in This Discussion

- **Competency 1:** Articulate how the rules of criminal procedure apply to a criminal justice practitioner.
- **Competency 3:** Apply the 4th, 5th, and 6th Amendments in a criminal justice context.

Introduction

According to court decisions, after an arrest, an officer may: search the arrestee, search the area of immediate control, search the vehicle the arrestee was riding in, search the passenger compartment, handcuff the arrestee, monitor the person's movements, and search the arrestee at the place of detention. In *United States v. Robinson* (1973), the Supreme Court held that "in the case of a lawful custodial arrest a full search of the person is not only an exception to the warrant requirement of the Fourth Amendment, but is also a reasonable search under that Amendment."

Instructions

In your main post:

- Explore justifications for each of the things an officer is allowed to do after an arrest without the need for a warrant.
- Establish how certain actions exceed what you would consider to be acceptable were you the *arrestee*.
- Lay out measures to ensure compliance with legal parameters when working in the criminal justice field.
- Establish how courts have interpreted the parameters involved in a search after an arrest, incorporating two cases as points of reference.

Discussion Objectives

The competencies addressed in this discussion are supported by discussion objectives, as follows:

- Competency 1: Articulate how the rules of criminal procedure apply to a criminal justice practitioner.
 - Explore justifications for each of the things an officer is allowed to do after an arrest without the need for a warrant.
 - Establish how courts have interpreted the parameters involved in a search after an arrest, incorporating two cases as points of reference.
 - Lay out measures to ensure compliance with legal parameters when working in the criminal justice field.
- Competency 3: Apply the 4th, 5th, and 6th Amendments in a criminal justice context.
 - Establish how certain actions go beyond what is considered to be acceptable in an arrest situation.

Reference

United States v. Robinson, (72-936) 414 US 218 (1973).

Response Guidelines

Respond to the posts of two peers. Interact with your colleagues about how you would feel about these actions as a police officer versus as a citizen.

Discuss how important it is to follow the rules of criminal procedure as a criminal justice practitioner. Explain how proper criminal procedure affects both practitioners and arrestees. Did the insights your peers shared impact you or your positions in any way? Why or why not ?

APA citations are not required for discussions; however, if outside material is used, you are required to cite references.

Course Resources

CJ Discussion Scoring Guide

[Criminal Justice Undergraduate Library Research Guide](#)

G.R.E.A.T. Discussion Guidelines

[Community of Excellence](#)

Unit 4 >> Search and Seizure

Introduction



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Competencies Addressed in This Unit

- **Competency 1:** Articulate how the rules of criminal procedure apply to a criminal justice practitioner.

- **Competency 3:** Apply the 4th, 5th, and 6th Amendments in a criminal justice context.
- **Competency 5:** Communicate effectively in writing.

Search and Seizure

This unit presents the rules for vehicle stops, searches, and inventories, each of which is governed by different 4th Amendment and other legal rules. The 4th Amendment and the right to privacy are the two constitutional rights limiting the powers of the police in search and seizure cases. The 4th Amendment provides for the right against unreasonable searches and seizures.

Additionally, the constitutional right to privacy is often invoked in search and seizure cases in addition to the 4th Amendment right against unreasonable searches and seizures. The right to privacy is a constitutional right that one has the right to be left alone; however, it is a right not specifically mentioned in the Constitution.

The term *search and seizure* is often used as one term; in reality, they are two different terms and refer to different acts. Reasonable expectation of privacy requires that the person must have exhibited an actual expectation of privacy and the expectation must be one that society is prepared to recognize as reasonable. This reasonable expectation of privacy exists when two requirements are met: first, the person must have exhibited an actual expectation of privacy, and second, the expectation must be one that society is prepared to recognize as reasonable. Reasonableness governs the scope of a search. In search cases, it is useful for officers to remember this rule: Do not search for an elephant in a matchbox.

There are four categories of things that are subject to searches and seizures: contraband, fruits of the crime, instrumentalities of the crime, and *mere evidence* of the crime. When performing a legal search, four requirements must be met. There must be probable cause, a supporting oath or affirmation, a description of the place to be searched and persons or things to be seized, and a magistrate's signature. When making an arrest, the police may search the area of immediate control.

There are many situations when a warrantless search is valid. Some types of searches that do not need a warrant are searches incident to lawful arrest, including searches with consent, searches under exigent circumstances, and searches in hot pursuit of dangerous suspects. It is important to understand who may give valid consent to a search. Two non-police searches do not need a warrant: special needs and administrative searches. Special needs searches do not need a warrant or probable cause. An announcement of officer presence is required when serving a warrant, but there are exceptions.

A *seizure* is defined as the exercise of dominion or control by the government over a person or thing because of a violation of law. The general rule is that searches and seizures can be made only with a warrant. There are two kinds of seizures: with a warrant (the rule) and without a warrant (the exception). Case law on electronic searches and seizures is still evolving. Searches and seizures of computers, e-mails, and related devices and data are governed by the 4th Amendment, but case law and statutes are still evolving.

Learning Activities

u04s1 - Studies

Readings

Use your *Criminal Procedure* text to read Chapter 7, "Searches and Seizures of Things," pages 186–225. Some types of searches do not need a warrant. This chapter explores searches done during lawful arrests, with consent, and while in pursuit of dangerous suspects.

Use the Internet to review *United States v. Place* (1983) in preparation for the first discussions in this unit.

Use the Capella Library to read Castillo's 2008 article, "[Is Privacy Still Possible? The Fourth Amendment in an Age of \(Digital\) Surveillance](#)," in *Criminal Justice*, 33(1), 8–13.

Optional Internet Resources

Familiarizing yourself with the following materials will provide you with additional insight and perspective about the legalities of stop and frisk, temporary detention, and arrests.

- Nolo. (n.d.). [Understanding search-and-seizure law](#).
- Meyer, R. (2015). [U.S. Supreme Court: GPS trackers are a form of search and seizure](#). *The Atlantic*.
- [The Federal Bureau of Investigation](#). (n.d.).
- Exploring Constitutional Conflicts. (n.d.). [When do searches or drug tests of students in the public school violate the 4th Amendment guarantee against unreasonable searches?](#)
- FindLaw. (n.d.). [Individualized suspicion required for student searches](#).
- Quarmby, B. (n.d.). [The case for national DNA identification cards](#). Duke University.
- Barrett, J. Q. (2012). [Deciding the stop and frisk cases: A look inside the Supreme Court's conference](#). *St. John's Law Review*, 72(3).
- Williamson, R. A. (1982). [The dimensions of seizure: The concepts of "stop" and "arrest"](#). *Ohio State Law Journal*, 43(4), 771–818.
- [Board of Education of Independent School District No. 92 of Pottawatomie County et al. v. Earls](#), (01-332) 536 US 822 (2002).
- [Vernonia School District 47J v. Acton](#), (94-590), 515 US 646 (1995).

u04d1 - Canine Searches

Competencies Addressed in This Discussion

- **Competency 1:** Articulate how the rules of criminal procedure apply to a criminal justice practitioner.
- **Competency 3:** Apply the 4th, 5th, and 6th Amendments in a criminal justice context.

Introduction

Certain circumstances must exist for a search to be constitutional. For example, contemporaneous searches must occur at the time as, or very close in time and place to, the arrest. Searches citing exigent circumstances may involve some kind of an emergency that makes getting a search warrant impractical, useless, dangerous, or unnecessary. There is generally a reasonable expectation of privacy that exists when a person exhibits an actual expectation of privacy, and the expectation is one that society is prepared to recognize as reasonable. That aside, the U.S. Supreme Court held in *United States v. Place*, that there is no *search* within the meaning of the 4th Amendment if police use narcotics detection dogs to smell closed containers for drugs, as long as police are on the premises legally.

Instructions

Consider that there is no need for a search warrant or for probable cause to conduct dog sniffs.

In your main post:

- Express your position on the Court's decision in *United States v. Place*, using an additional case to support your opinion.
- Describe the constitutional requirements that apply, or do not apply, in canine searches.
- Differentiate between the constitutionality of canine searches versus other searches that require probable cause.

Discussion Objectives

The competencies addressed in this discussion are supported by discussion objectives, as follows:

- Competency 1: Articulate how the rules of criminal procedure apply to a criminal justice practitioner.
 - Express your position on the Court's decision in *United States v. Place*, using an additional case to support your opinion.
- Competency 3: Apply the 4th, 5th, and 6th Amendments in a criminal justice context.
 - Describe constitutional requirements for canine search.
 - Differentiate between canine searches and searches that require probable cause.

Reference

United States v. Place, (81-1617) 462 US 696 (1983).

Response Guidelines

Respond to the posts of two peers. Interact with other learners about whether you agree with the way in which the Court decided the case in *Place*. What were the similarities and differences between your perspective and those of other learners about *Place* and other related court decisions? Did you agree with others regarding the constitutionality of canine versus other searches that do require probable cause? Why or why not?

APA citations are not required for discussions; however, if outside material is used, you are required to cite references.

Course Resources

[CJ Discussion Scoring Guide](#)

[Criminal Justice Undergraduate Library Research Guide](#)

[G.R.E.A.T. Discussion Guidelines](#)

[United States v. Place](#)

u04d2 - Student Drug Testing

Competencies Addressed in This Discussion

- **Competency 1:** Articulate how the rules of criminal procedure apply to a criminal justice practitioner.
- **Competency 3:** Apply the 4th, 5th, and 6th Amendments in a criminal justice context.

Introduction

Drug testing elementary and high school students taking part in athletics and other school programs is valid. In the case *Vernonia School District 47J v. Acton* (1995), the Court upheld random drug testing of high school athletes. In the subsequent case *Board of Education of Independent School District No. 92 of Pottawatomie County et al. v. Earls* (2002), the Court extended that ruling to middle and high school students participating in any extracurricular activity.

Instructions

Locate a case dealing with random drug testing of elementary or high school students.

In your main post:

- Explore the Court's reasoning that drug testing is a minimal intrusion to students.
- Assess whether the interests of the government in this line of cases are important enough to override the individual privacy protection.
- Articulate whether you, as a criminal justice professional, believe these rulings should also extend to college students.

Discussion Objectives

The competencies addressed in this discussion are supported by discussion objectives, as follows:

- Competency 1: Articulate how the rules of criminal procedure apply to a criminal justice practitioner.
 - Assess whether government interests are important enough to override individual privacy protections.
 - Articulate whether elementary and high school search rulings should apply to college students.
- Competency 3: Apply the 4th, 5th, and 6th Amendments in a criminal justice context.
 - Explore the Court's reasoning that drug testing is a minimal intrusion to students.

References

Vernonia School District 47J v. Acton, (94-590), 515 US 646 (1995).

Board of Education of Independent School District No. 92 of Pottawatomie County et al. v. Earls, (01-332) 536 US 822 (2002).

Response Guidelines

Respond to the posts of two peers. Interact with other learners about whether you agree with the courts' reasoning that drug testing is a minimal intrusion to students. Did you agree with others regarding whether the interests of the government in this line of cases are important enough to override the individual privacy protection? Why or why not? What were the similarities and differences between your view and others' regarding whether elementary and high school search rulings should apply to college students?

APA citations are not required for discussions; however, if outside material is used, you are required to cite references.

Course Resources

[CJ Discussion Scoring Guide](#)

[Criminal Justice Undergraduate Library Research Guide](#)

[Lexis Nexis Library Guide](#)

[G.R.E.A.T. Discussion Guidelines](#)

Unit 5 >> Motor Vehicles Stops, Searches, and Inventories

Introduction



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Competencies Addressed in This Unit

- **Competency 1:** Articulate how the rules of criminal procedure apply to a criminal justice practitioner.
- **Competency 2:** Illustrate ethical compliance with criminal procedure from a criminal justice practitioner perspective.
- **Competency 3:** Apply the 4th, 5th, and 6th Amendments in a criminal justice context.
- **Competency 4:** Specify how the procedural rules apply to the admission of evidence in criminal cases.
- **Competency 5:** Communicate effectively in writing.

Guidelines for Vehicle Stops

Motor vehicle stops by law enforcement have come under fire in recent years and have caused concern for many citizens who do not understand what is legally possible and what is not. When it comes to what the law has to say on vehicle stops, there are general guidelines that apply. The 4th Amendment to the U.S. Constitution guarantees all citizens the "right to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." Even if it is only for a brief period of time and for a limited purpose, the temporary detention of a person during a traffic stop constitutes the *seizure* of a person within the provision of the 4th Amendment. Therefore, traffic stops are subject to the constitutional imperative that they not be *unreasonable* under the circumstances (Israel, Kamisar, LaFave, & King, 2005). However, police officers do not need a warrant or probable cause to legally stop a motor vehicle. That said, there must be reasonable suspicion of involvement in criminal activity or evidence of a traffic violation. This reasonable suspicion must be developed out of the totality of the circumstances. A traffic stop lacking reasonable suspicion or probable cause is generally considered to be *unreasonable* and is an open invitation to suppression of any evidence found as well as ground for a civil suit for wrongful detention (Wallentin, 2007). In *Whren v. United States* (1996), the U.S. Supreme Court held that regardless of an officer's motivation, the stop of an automobile is reasonable and permitted by the 4th Amendment when the officer has probable cause to believe that a traffic violation has occurred.

Once a traffic violation has occurred, the officer has the right to conduct an investigation into other possible criminal activities (Gaines, 2006). A valid traffic stop permits the officer to legally order the driver and passengers out of the vehicle. This is done primarily as a safety measure for the officer. While the order does present an intrusion upon the personal liberties of the passengers, the Court has stated that "as a practical matter, passengers are already stopped...so the additional intrusion upon them is minimal." The Court further stated that from a standpoint of personal liberty, the only change in the passenger's circumstance if ordered out of the vehicle is that he will be outside of, rather than inside of, the stopped car. However, for purposes of officer safety, once outside the vehicle, the driver and passengers will be denied access to any weapon that might be concealed within the passenger compartment (Remsberg, 2007).

Police officers may also ask the driver to produce a driver's license and other documents as required by state law. Police may question the driver and the passengers and, if there is reason to suspect impairment, police may require field sobriety and Breathalyzer tests. Vehicle stops and searches may seem as if they are one continuous act; actually, they are two distinct acts and are governed by different rules. To be considered constitutional, vehicle stops only require reasonable suspicion, but subsequent searches require probable cause. If reasonable suspicion exists, law enforcement may search the passenger compartment of the vehicle for weapons only. If probable cause exists, the officer may search the entire vehicle, along with passengers' belongings inside the vehicle. Officers may also search a vehicle if given consent, even if they do not have probable cause.

References

- Gaines, L. (2006). An analysis of traffic stop data in Riverside, California. *Police Quarterly*, 9(2).
- Israel, J. H., Kamisar, Y., LaFave, W. R., & King, N. J. (2005). Criminal procedure and the constitution: Leading supreme court cases and introductory text. Retrieved from <http://www.wvu.edu/~lawfac/jscully/Race/documents/Whren.pdf>
- Remsberg, C. (2007). Supreme Court says officers can control passengers on traffic stops. *PoliceOne.com*. Retrieved from <http://www.policeone.com/legal/articles/1287043-Supreme-Court-say-officers-can-control-passengers-on-traffic-stops/>.
- Wallentine, K. (2007). Is a passenger "seized" during a traffic stop: The Supreme Court answers. *PoliceOne.com*. Retrieved from <http://www.policeone.com/legal/articles/1282465-Is-a-passenger-seized-during-a-traffic-stop-The-Supreme-Court-answers/>
- Whren v. United States, (95-5841) 517 U.S. 806 (1996).

Learning Activities

u05s1 - Studies

Readings

Use your *Criminal Procedure* text to read Chapter 8, "Motor Vehicle Stops, Searches and Inventories," pages 226–260. This chapter provides guidelines for valid stops and examines what can be done after a valid stop.

Use the Internet to complete the following:

- Read Remsberg's 2007 article, "[Supreme Court Says Officers Can Control Passengers on Traffic Stops](#)," from *PoliceOne.com*.
- Read Wallentine's 2007 article, "[Is a Passenger "Seized" During a Traffic Stop: The Supreme Court Answers](#)," from *PoliceOne.com*.

Use the Internet to review [United States v. Ross](#) (1982) in preparation for the discussion in this unit.

Multimedia

Click **Vehicle Stop – Evidence and Procedure** to view the presentation. You will use this media in the unit assignment.

Optional Internet Resources

Familiarizing yourself with the following materials will provide you with additional insight and perspective about the legalities of motor vehicle stops, searches, and inventories.

- Justia. (n.d.). [Vehicular searches](#).
- Israel, J. H., Kamisar, Y., LaFave, W. R., & King, N. J. (2005). [Criminal procedure and the constitution: Leading supreme court cases and introductory text](#).
- Hull Street Law. (2013). [Can a police officer order everyone out of the vehicle during a traffic stop?](#)

Course Resources

Vehicle Stop – Evidence and Procedure

u05a1 - Motor Vehicle Stop - Evidence and Procedure

Competencies Addressed in This Assignment

- **Competency 1:** Articulate how the rules of criminal procedure apply to a criminal justice practitioner.
- **Competency 3:** Apply the 4th, 5th, and 6th Amendments in a criminal justice context.
- **Competency 4:** Specify how the procedural rules apply to the admission of evidence in criminal cases.
- **Competency 5:** Communicate effectively in writing.

Overview

The law on vehicle stops has several guidelines that apply for the stop to be considered legal. There is no need for a warrant or probable cause to legally stop a motor vehicle, but there must be reasonable suspicion of involvement in criminal activity. Whether an officer has reasonable suspicion will depend on the facts of the scenario as it unfolds. Once a stop takes place, whether a search is indeed warranted will also depend on the facts at hand. It is important to keep in mind that the objective guidelines are going to be supported by the subjective interpretation of the facts by the police officer conducting the stop. It is at this point that the testimony and evidence become critical in supporting any decisions made to stop and/or search a vehicle.

In this assignment, you will have an opportunity to use critical thinking skills and a media simulation to determine the grounds for stop and search, and how you might handle a similar situation.

Instructions

Review the Motor Vehicle – Evidence and Procedure media piece (linked in resources) and prepare a three-page paper, citing a minimum of two academically verified references.

In your paper:

- Assess whether reasonable suspicion or probable cause existed to stop the vehicle in the scenario.
- Analyze whether the officer should have looked to see if there was evidence of a crime before stopping the vehicle in the scenario.
- Evaluate whether the officer could have detained the occupants of the vehicle at the scene while the other officer checked the business.
- Explore whether the officer had the right to search the vehicle or whether consent from the driver is needed.

Be sure to review the Motor Vehicle Stop – Evidence and Procedure Scoring Guide to ensure you understand the criteria for this assignment.

Requirements

Your paper should meet the following requirements:

- **Written communication:** Must be free of errors that detract from the overall message.
- **References:** A minimum of two references.
- **APA format:** Format resources and citations as per current APA style and formatting guidelines.
- **Length of paper:** Three pages, not including the title page and the references page.
- **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

[Capella Writing Center](#)

[Criminal Justice Undergraduate Library Research Guide](#)

[Selecting a Database](#)

[Selecting the Best Keywords](#)

[Smarthinking](#)

[SafeAssign](#)

[Submit an Assignment \[PDF\]](#)

[Writing Feedback Tool](#)

[Vehicle Stop – Evidence and Procedure | Transcript](#)

[APA Style and Format](#)

[APA Style Paper Template](#)

u05d1 - Closed Containers

Competencies Addressed in This Discussion

- **Competency 1:** Articulate how the rules of criminal procedure apply to a criminal justice practitioner.
- **Competency 2:** Illustrate ethical compliance with criminal procedure from a criminal justice practitioner perspective.

Introduction

United States v. Ross (1982) is one of the top five cases in vehicle stops, searches, and inventories. In this case, the Supreme Court was tasked with determining whether a legal warrantless search of an automobile allowed police to also search closed containers, specifically within the trunk of that vehicle. The Court ruled that the warrantless search of the containers found during the search of the car was constitutional and fell within the existing precedent of warrantless searches called the "automobile exception."

Instructions

Locate another case on point associated with vehicle stops and searches. In your main post, address the following:

- Summarize the material facts of the case you researched.
- Explain the applicable law the court relied on in reaching its decision in your selected case.
- Describe the legal requirements from your selected case that hold particular importance for police officers conducting a vehicle stop and search.
- Examine the potential impact of your selected case on the ethical behavior of police officers carrying out their assigned duties.

Discussion Objectives

The competencies addressed in this discussion are supported by discussion objectives, as follows:

- Competency 1: Articulate how the rules of criminal procedure apply to a criminal justice practitioner.
 - Summarize the material facts of the case you researched.
 - Explain the applicable law the court relied on in reaching its decision in your selected case.
 - Describe legal requirements based on case law applicable to police officers conducting a vehicle stop and search.
- Competency 2: Illustrate ethical compliance with criminal procedure from a criminal justice practitioner perspective.
 - Examine the potential impact of the case on the ethical behavior of police officers.

Reference

United States v. Ross, (80-2209) 456 US 798 (1982).

Response Guidelines

Respond to the posts of two peers. Interact with your colleagues about how the different cases would impact your decision making if you were a police officer. Explain how important you feel it is for law enforcement to understand and abide by case laws such as the *Ross* case and your selected case. How were the potential impacts you identified from your selected case on the ethical behavior of police officers carrying out their assigned duties the same or different from those of other learners? Did the insights your peers shared impact you or your positions in any way? If so, how?

APA citations are not required for discussions; however, if outside material is used, you are required to cite references.

Course Resources

CJ Discussion Scoring Guide

[Criminal Justice Undergraduate Library Research Guide](#)

G.R.E.A.T. Discussion Guidelines

[United States v. Ross](#)

Unit 6 >> Searches and Seizures

Introduction



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Competencies Addressed in This Unit

- **Competency 1:** Articulate how the rules of criminal procedure apply to a criminal justice practitioner.
- **Competency 3:** Apply the 4th, 5th, and 6th Amendments in a criminal justice context.

Plain View, Open Fields, Abandonment, and Border Searches

Your text presents four situations related to search and seizures that do not enjoy full 4th Amendment protection. The legal rules and requirements surrounding these situations differ but have in common some form of taking by the government of something that belongs to or used to belong to someone. These four situations involve contact with or action by law enforcement but constitute seizure of items or things and not people.

In this unit, you will learn about how the legal rules and requirements surrounding these situations differ. You will also have the opportunity to apply knowledge of the U.S. Constitution by analyzing the 4th Amendment in a case-study format. Case studies are widely used as a method to analyze a hypothetical situation that is similar to one that could be encountered. As you are now or could be in a leadership role, the case studies will provide you an opportunity to gather information about modern criminal procedures, determine its appropriateness to current professional practice, and speculate about how it may be used in the criminal justice field.

Plain view is defined items that are within the sight of an officer who is legally in a place from which the view is made, and who had no prior knowledge that the items were present, may properly be seized without a warrant—as long as the items are immediately recognizable as subject to seizure.

The plain view doctrine has three requirements: (1) awareness of the item must be through use of the sense of sight; (2) the officer must be legally in the place from which the item is seen; and (3) it must be immediately apparent that the item is subject to seizure. Inadvertence is no longer required to satisfy the requirements of plain view. The plain view doctrine applies to open spaces as well as motor vehicles. For enclosed spaces, a prior valid intrusion into a constitutionally protected area is needed, whereas for open spaces, no entry is needed.

By way of comparison to plain view, open view is when an officer is out in open space (such as the street) but sees an item within an enclosed area. Plain touch (or plain feel) doctrine holds that if an officer touches or feels something that is immediately identifiable as seizable, the object can be seized as long as such knowledge amounts to probable cause. The plain odor doctrine is when an officer smells something that is immediately recognizable as seizable, that object can be seized as long as that knowledge amounts to probable cause.

Plain view also applies even if mechanical devices are used. With regard to open fields, the rule is that items in open fields are not protected by the 4th Amendment guarantee against unreasonable searches and seizures, so they can be seized by an officer without a warrant or probable cause.

Curtilage is defined as "the area to which extends the intimate activity associated with the sanctity of a man's home, and the privacies of life." The test to determine curtilage is as follows: If a person has a reasonable expectation of privacy in a place, it is part of the curtilage and is protected by the 4th Amendment. Aerial surveillance of curtilage is valid. An area may be an open field despite a locked gate and a "No trespassing" sign. *Abandonment* is defined as the giving up of a thing or item absolutely, without limitation as to any particular person or purpose.

There are four factors used in determining when items are considered abandoned: (1) property left in an open field or public place is abandoned; (2) for property left on private premises, it depends on whether the occupant has left the premises; (3) for trash or garbage, it depends on where it is left; and (4) intent to abandon is determined by what a person does. Abandonment of motor vehicles is determined by four factors: (1) flight from the vehicle, (2)

where and for how long a vehicle is left unattended, (3) the condition in which the vehicle is left unattended, and (4) denial of possession or ownership of the vehicle.

Fourth Amendment protections do not fully apply at immigration borders, but once inside the border, some protections are afforded. The suspicionless disassembling of a tank of a motor vehicle at the border is valid. Vehicles may be stopped at fixed checkpoints and occupants questioned. A warrant or probable cause is required for vehicle searches that take place away from the border.

Learning Activities

u06s1 - Studies

Readings

Use your *Criminal Procedure* text to read Chapter 9, "Plain View, Open Fields, Abandonment, and Border Searches," pages 267–287. This chapter presents four situations related to *search* and *seizures* that do not enjoy full 4th Amendment protection. The legal rules and requirements surrounding these situations differ but have in common the *taking* by the government of something that belongs to or used to belong to someone. These four situations involve contact with or action by law enforcement but constitute seizure of items or things and not people.

Use the Internet to complete the following in preparation for the discussions in this unit:

- Review *Kyllo v. United States* (2001).
- Review *Oliver v. United States* (1984).

Optional Internet Resources

Familiarizing yourself with the following materials will provide you with additional insight and perspective about the topics covered in this unit:

- Rutledge, D. (2006). *Seizing evidence in plain view*. *Police*.
- MacIntosh, S. M. (1994). *Fourth Amendment – The plain touch exception to the warrant requirement*. *Journal of Criminal Law and Criminology*, 84(4), 743–768.
- Poulin, A. B. (1997). *The plain feel doctrine and the evolution of the Fourth Amendment*. *Villanova Law Review*, 42(3).
- Colbridge, T. B. (2001). *Electronic surveillance a matter of necessity*. HighBeam Research.
- Kash, D. A., & White, E. (2010). *A new law counters the semisubmersible smuggling threat*. *FBI Law Enforcement Bulletin*.

u06d1 - Search and Seizure in Open Fields

Competencies Addressed in This Discussion

- **Competency 1:** Articulate how the rules of criminal procedure apply to a criminal justice practitioner.
- **Competency 3:** Apply the 4th, 5th, and 6th Amendments in a criminal justice context.

Introduction

In *Oliver v. United States* (1984), the U.S. Supreme Court held that Oliver did not have a reasonable expectation of privacy in his open fields even though he put up a gate and a "No trespassing" sign. Entry onto such fields was not covered by the 4th Amendment. There was precedent for open fields not having 4th Amendment protection because such fields were not specifically mentioned in the 4th Amendment (along with persons, houses, et cetera). Neither businesses nor open fields are mentioned in the 4th Amendment, but a place of business that is not open to the public is protected.

Instructions

The 4th Amendment protects reasonable expectations of privacy even though such expectations are not mentioned in the language of the Amendment. For this discussion, choose and examine a precedential case that addresses open fields (other than *Oliver*).

In your main post:

- Based on the case you chose, articulate whether posting a "No trespassing" sign creates a reasonable expectation of privacy. Include your rationale for your decision.
- Explain how your case selection relates to whether open fields are protected from search and seizure.

- Differentiate between the constitutional requirements for protected searches and unprotected searches as they relate to the duties of a criminal justice professional.

Discussion Objectives

The competencies addressed in this discussion are supported by discussion objectives, as follows:

- Competency 1: Articulate how the rules of criminal procedure apply to a criminal justice practitioner.
 - Articulate whether a *no trespassing* sign creates a reasonable expectation of privacy based on case law.
 - Explain whether open fields are protected from search and seizure.
- Competency 3: Apply the 4th, 5th, and 6th Amendments in a criminal justice context.
 - Differentiate constitutional requirements for protected and unprotected searches.

Response Guidelines

Respond to the posts of at least two peers. Interact with other learners about whether posting a "No trespassing" sign creates a reasonable expectation of privacy. What were the similarities and differences between your position and those of your peers regarding why open fields are not protected from search and seizure? Did you agree with others regarding the constitutional requirements for protected searches and unprotected searches? Why or why not?

APA citations are not required for discussions; however, if outside material is used, you are required to cite references.

Course Resources

[CJ Discussion Scoring Guide](#)

[Criminal Justice Undergraduate Library Research Guide](#)

[G.R.E.A.T. Discussion Guidelines](#)

[Oliver v. United States](#)

[Community of Excellence](#)

u06d2 - Thermal Imaging Device Searches

Competencies Addressed in This Discussion

- **Competency 1:** Articulate how the rules of criminal procedure apply to a criminal justice practitioner.
- **Competency 3:** Apply the 4th, 5th, and 6th Amendments in a criminal justice context.

Introduction

In *Kyllo v. United States* (2001), the U.S. Supreme Court held that use of a technological device to explore the details of a home that would previously have been unknown without physical intrusion is a search and is presumptively unreasonable without a warrant. The federal prosecutor argued that thermal imaging does not constitute a search because (1) "it detects only heat radiating from the external surface of the house" and therefore there was no entry; and (2) it did not detect private activities occurring in private areas because "everything that was detected was on the outside."

The Court has ruled that plain view, plain odor, and plain touch are all constitutional. In *Kyllo v. United States*, the Court ruled the use of a thermal imaging device on a home was presumptively unreasonable without a warrant.

Instructions

In your main post:

- Explain whether, as a criminal justice practitioner, you agree with the Court in *Kyllo*, and why or why not. Include your rationale.
- Analyze whether heat radiating from a private home should be protected using an additional related case as support for your position.
- Differentiate the plain view, plain odor, and plain touch doctrines from the thermal imaging device in *Kyllo* with respect to search requirements.

- Explore whether you believe the results of the *Kyllo* case has had a positive or negative impact for law enforcement.

Discussion Objectives

The competencies addressed in this discussion are supported by discussion objectives, as follows:

- Competency 1: Articulate how the rules of criminal procedure apply to a criminal justice practitioner.
 - Explain your position regarding the ruling in *Kyllo v. United States*.
 - Differentiate the plain view, plain odor, and plain touch doctrines from thermal imaging devices.
 - Explore the impact of the decision in *Kyllo v. United States* on law enforcement.
- Competency 3: Apply the 4th, 5th, and 6th Amendments in a criminal justice context.
 - Analyze the level of legal protection for heat radiating from a private home.

Response Guidelines

Respond to the posts of at least two peers. Interact with other learners about whether you agree with the Court or the prosecutor. What were the similarities and differences between your perspective and that of other learners? Did you agree with others regarding whether what radiates from a private home should be protected based on the cases they located? Why or why not? Did you share the same view with other learners about the legality of thermal imaging devices? Was there a consensus on whether the results of *Kyllo* and other decisions have had a positive or negative impact for law enforcement?

APA citations are not required for discussions; however, if outside material is used, you are required to cite references.

Course Resources

CJ Discussion Scoring Guide

[Criminal Justice Undergraduate Library Research Guide](#)

G.R.E.A.T. Discussion Guidelines

[Kyllo v. United States](#)

[Community of Excellence](#)

Unit 7 >> Pretrial Identification

Introduction



Competencies Addressed in This Unit

- **Competency 1:** Articulate how the rules of criminal procedure apply to a criminal justice practitioner.
- **Competency 2:** Illustrate ethical compliance with criminal procedure from a criminal justice practitioner perspective.
- **Competency 3:** Apply the 4th, 5th, and 6th Amendments in a criminal justice context.
- **Competency 5:** Communicate effectively in writing.

Suspect Identification Stages

The police generally use three procedures for immediate identification of suspects: lineups, showups, and photographic identifications. In this unit, you will learn about these three procedures and the four constitutional rights of suspects during each of these pretrial identification stages. Suspects usually invoke four constitutional rights during these proceedings: the right to counsel, the right to due process, the right to protection against unreasonable searches and seizures, and the right to protection against self-incrimination. The rights to counsel and due process apply in lineups, showups, and photographic identification, but the rights to protection against unreasonable searches and seizures and self-incrimination do not.

Studies have shown that eyewitness identification is unreliable and has resulted in numerous innocent convictions. The U.S. Department of Justice has issued guidelines for use in lineups, showups, and photographic identifications to ensure fairness and reliability. There are other means of pretrial identification, including DNA testing, polygraph examination, Breathalyzer tests, handwriting, hair sample analysis, brain fingerprinting, and facial recognition (del Carmen, 2014).

The first of the procedures for immediate identification of suspects is the *lineup*. A lineup is a police identification procedure in which the suspect in a crime and others with similar physical characteristics are exhibited to the victim or witness to determine if the suspect committed the offense. The right to counsel applies for lineups after a formal charge has been filed—not before. The role of a lawyer during a lineup is to make sure the procedure is fair, but the lawyer must not be allowed to control the proceedings. The right to due process also applies and will be violated if the identification procedure is impermissibly suggestive. However, participants in a lineup are not afforded the right to protection against unreasonable searches and seizures or against self-incrimination. Under these circumstances, with regard to the right to protection against self-incrimination, the self-incrimination involved is physical, not testimonial, and is therefore not applicable.

Suspects can also be identified using a showup, which is a one-to-one confrontation between a suspect and a witness to a crime. The right to counsel in these circumstances applies only after a formal charge has been filed. The right to due process applies in showups and will also be violated if the identification procedure is impermissibly suggestive. The right to protection against unreasonable searches and seizures does not apply and the right to protection against self-incrimination also does not apply, for the same reasons as that of a lineup; the self-incrimination involved is physical, not testimonial.

The final procedure used for suspect identification is a photographic identification, which is a process in which a victim or witness is shown photographs of possible suspects in a one-on-one situation. The right to counsel does not apply with photographic identification. However, the right to due process does apply and will be violated as with the other forms of suspect identification if the identification procedure is impermissibly suggestive. The right to protection against unreasonable searches and seizures does not apply. In keeping with the other procedures outlined, the right to protection against self-incrimination does not apply, because the self-incrimination involved is physical, not testimonial.

Lineups and eyewitness identifications are considered controversial because they are "hopelessly unreliable" (del Carmen, 2014). Many changes are being made to lineups and eyewitness identification procedures.

Other methods of pretrial identification include the following:

- DNA testing – Results admissible in court.
- Polygraph examination – Results not admissible in court.
- Breathalyzer tests – Results admissible in court.
- Handwriting samples – Results admissible in court.
- Hair samples – Results admissible in court.
- Brain fingerprinting – Too early to tell if admissible in court.
- Facial recognition technology – Too early to tell if admissible in court.

Reference

del Carmen, R. V. (2014). *Criminal procedure: Law and practice* (9th ed.). Belmont, CA: Cengage.

Learning Activities

u07s1 - Studies

Readings

Use your *Criminal Procedure* text to read Chapter 10, "Lineups and Other Means of Pretrial Identification," pages 289–325. This chapter presents the legal issues surrounding three identification procedures and the four constitutional rights of suspects during the pretrial phase. It discusses DNA testing, polygraph examination, Breathalyzer tests, handwriting and hair sample analysis, fingernail scrapings, and brain-wave fingerprinting as tools for identifying suspects.

Use the Internet to complete the following:

- Review *Frye v. United States* from the Harvard Wiki in preparation for the assignment in this unit.
- Review *Neil v. Biggers* (1972) in preparation for the discussion in this unit.

- Read Lacy and Stark's 2013 article "[The Neuroscience of Memory: Implications for the Courtroom](#)," from *Nature Reviews Neuroscience*, 14, 649–658.

Optional Internet Resources

Familiarizing yourself with the following materials will provide you with additional insight and perspective about the topics covered in this unit:

- Sanborn, J. (2014). [Behind the messy science of police lineups](#). *Time*.
- Department of Public Safety, State of Vermont. (n.d.). [Eyewitness identification: Sample model policy](#).
- Innocence Project. (n.d.). [Eyewitness misidentification](#).
- Offices of the United States Attorneys. (n.d.). [Power to order lineup—Right to counsel](#).
- Wisconsin Law Journal. (2005). [Accidental ID may be inadmissible](#).

u07a1 - Polygraph Results

Competencies Addressed in This Assignment

- **Competency 1:** Articulate how the rules of criminal procedure apply to a criminal justice practitioner.
- **Competency 3:** Apply the 4th, 5th, and 6th Amendments in a criminal justice context.
- **Competency 5:** Communicate effectively in writing.

Overview

Polygraph results fail to conform to the Frye doctrine and are therefore inadmissible as evidence in court. This doctrine, enunciated in *Frye v. United States* (1923) states that, before the results of scientific tests will be admissible as evidence in a trial, the procedures used must be sufficiently established to have gained general acceptance in the particular field to which they belong. Most courts refuse to admit the results of polygraph (lie detector) tests in civil or criminal proceedings unless admissibility is agreed to by both parties.

Instructions

Polygraph results are frequently used in situations such as pre-employment screening or background tests. Why should these results be excluded from courtrooms?

For this assignment, prepare a three-page memorandum to your supervisor, an attorney, addressing the admissibility of polygraph results.

In your memorandum:

- Analyze the current position of the U.S. Supreme Court with respect to reliability and admissibility of polygraph evidence.
- Determine the potential impact of *Frye v. United States* on criminal cases.

Be sure to review the Polygraph Results Scoring Guide to ensure you understand the criteria for this assignment.

Requirements

Your memorandum should meet the following requirements:

- **Written communication:** Must be free of errors that detract from the overall message.
- **References:** A minimum of two references.
- **APA format:** Format resources and citations as per current APA style and formatting guidelines.
- **Length of memorandum:** Three pages, not including the title page and the references page.
- **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.

Reference

Harvard Law School. (n.d.). *Frye v. United States*. <http://www.law.harvard.edu/publications/evidenceiii/cases/frye.htm>

Course Resources

[Capella Writing Center](#)

[Criminal Justice Undergraduate Library Research Guide](#)

[Selecting a Database](#)

[Selecting the Best Keywords](#)

[Smarthinking](#)

[SafeAssign](#)

[Submit an Assignment \[PDF\]](#)

[Writing Feedback Tool](#)

[APA Style and Format](#)

APA Style Paper Template

[Frye v. United States.](#)

u07d1 - Fairness of Identification Procedures

Competencies Addressed in This Discussion

- **Competency 1:** Articulate how the rules of criminal procedure apply to a criminal justice practitioner.
- **Competency 2:** Illustrate ethical compliance with criminal procedure from a criminal justice practitioner perspective.
- **Competency 3:** Apply the 4th, 5th and 6th Amendments in a criminal justice context.

Introduction

The rights to counsel and to due process apply in lineups, showups, and photographic identification, but the rights to protection against unreasonable searches and seizures and self-incrimination do not. In *Neil v. Biggers* (1972), the Court determined that identification procedures must be fair. All three forms of identification have raised serious concerns among law and criminal justice professionals because of their proven unreliability. To determine whether the procedures applied are fair, courts must consider all the circumstances leading up to an identification.

Review the case of *Neil v. Biggers*. Then, locate a case on fairness in identification procedures.

In your main post:

- Summarize the key points of the *Neil v. Biggers* case.
- Explain the applicable law the court relied on in reaching its decision in your selected case.
- Describe the outcome in your selected case as it impacts fairness in identification cases.
- Explore which circumstances should be considered in determining fairness in the context of legal criminal procedure, from a criminal justice practitioner standpoint.

Discussion Objectives

The competencies addressed in this discussion are supported by discussion objectives, as follows:

- Competency 1: Articulate how the rules of criminal procedure apply to a criminal justice practitioner.
 - Describe the outcome in an identification case as it impacts fairness.
 - Summarize the key points of *Neil v. Biggers*.
- Competency 2: Illustrate ethical compliance with criminal procedure from a criminal justice practitioner perspective.
 - Explore circumstances to consider in determining fairness in identification cases.

- Competency 3: Apply the 4th, 5th, and 6th Amendments in a criminal justice context.
 - Explain the law applied in a selected identification case.

Response Guidelines

Respond to the posts of at least two peers. Interact with other learners about the selected cases. Does your understanding of the court's decision on fairness meet with those of other learners? Why or why not? How did your perceptions of fairness differ from the perceptions of others based on the cases selected?

APA citations are not required for discussions; however, if outside material is used, you are required to cite references.

Course Resources

CJ Discussion Scoring Guide

[Criminal Justice Undergraduate Library Research Guide](#)

G.R.E.A.T. Discussion Guidelines

[Neil v. Biggers](#)

[Community of Excellence](#)

Unit 8 >> Miranda and Interviewing of Suspects

Introduction



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Competencies Addressed in This Unit

- **Competency 1:** Articulate how the rules of criminal procedure apply to a criminal justice practitioner.
- **Competency 2:** Illustrate ethical compliance with criminal procedure from a criminal justice practitioner perspective.
- **Competency 4:** Specify how the procedural rules apply to the admission of evidence in criminal cases
- **Competency 5:** Communicate effectively in writing.

Miranda

The Supreme Court's landmark decision in *Miranda v. Arizona* (1966) established the principles and practices of procedural justice for suspects in custodial interrogation. The *Miranda* warning was intended to afford custodial suspects an informed choice between speaking to the police and remaining silent, and at the same time preventing involuntary statements. To better understand the *Miranda* warning, it is important to first distinguish between admissions and confessions. A confession means that a person says that he or she committed the criminal offense. An admission means that the person acknowledges having a part in the offense, but may not have committed it. The Court's first premise in *Miranda v. Arizona* was that the process of custodial interrogation contains inherent pressures that compel suspects, whether innocent or guilty, to speak to law enforcement. This premise was inferred from the interrogation practices it believed predominated in 1966. Therefore, the Court reached the legal conclusion that custodial interrogation

unacceptably endangers suspects' 5th Amendment privilege. The Court asserted that the safeguards of the *Miranda* warning would counteract the pressures inherent in a custodial interrogation (Weisselberg, 2008).

Before *Miranda*, voluntariness was the sole test for the admissibility of a confession or admission, but that standard was difficult for courts to apply. The voluntariness rule stated that if the confession was coerced or the result of police brutality, it is not considered voluntary. A confession was also considered invalid if it was brought about by deception or the suspect was denied counsel at the police station. However, *Miranda v. Arizona* changed the rules on admissibility from voluntariness to the *three-questions test*. Although voluntariness is still required, three questions must receive an answer of "yes" before the confession is considered valid. Those questions include: Was the *Miranda* warning given? If it was given, was there a waiver? If there was a waiver, was it intelligent and voluntary? After the *Miranda* warning, a suspect may waive his or her rights and agree to answer questions by or make statements to law enforcement. However, unless and until any warnings and waivers are demonstrated by the prosecution at trial, any evidence gleaned as a result of those interrogations cannot be used against the defendant. Furthermore, if a statement is taken without counsel present, then "a heavy burden rests on the government to demonstrate that the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel" (Weisselberg, 2008).

The *Miranda* warnings must be given whenever there is custodial interrogation by the police. The *Miranda* holding asserts that custodial interrogation brings psychological pressure to bear for the specific purpose of overcoming the suspect's unwillingness to talk, and it is therefore inherently compelling within the meaning of the 5th Amendment (Schulhofer, 1987). Although *custodial interrogation* is one phrase, it is composed of two separate terms: *custody* and *interrogation*. First is the issue of custody and when a suspect is considered to be in the custody of law enforcement, and therefore not reasonably free to leave. A suspect is considered in custody in two situations: when the suspect is under arrest or when the suspect is not under arrest but is "deprived of freedom in a significant way." If a person is not in custody when being interrogated, the procedural safeguards of *Miranda* do not apply. Similarly, a person in custody, but not being interrogated receives no protection from *Miranda*. It is only when the two concepts are joined, when custodial interrogation occurs that the *Miranda* decision is implicated (Williamson, 1993).

One of the most important factors here is that the totality of the circumstances that determines the issue of custody. It is not merely the suspect's or the police officer's perception of whether he has been deprived of freedom that determines custody. Custody is therefore determined if a reasonable person in those circumstances would believe that he or she is not at liberty to terminate the interview and leave. Statements obtained during a custodial interrogation without compliance with *Miranda*'s mandate may not be used against the defendant, whether such statements are exculpatory or inculpatory, or whether they constitute confessions or merely admissions of part of all of a criminal offense (Williamson, 1993).

References

Miranda v. Arizona, (759) 384 US 436 (1966).

Schulhofer, S. J. (1987). Reconsidering *Miranda*. University of Chicago – The Law School. Retrieved from http://chicagounbound.uchicago.edu/occasional_papers/20/

Weisselberg, C. D. (2008). Mourning *Miranda*. *California Law Review*, 96. Retrieved from http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1095620###

Williamson, R. A. (1993). Virtues (and limits) of shared values: The Fourth Amendment and *Miranda*'s concept of custody. William & Mary Law School Scholarship Repository. Retrieved from <http://scholarship.law.wm.edu/facpubs/452/>

Learning Activities

u08s1 - Studies

Readings

Use your *Criminal Procedure* text to read Chapter 11, "Confessions and Admissions: *Miranda v. Arizona*," pages 326–366. The 5th Amendment protects against the abuse of government authority in a legal procedure and asserts that no individual should have to be a witness against themselves or deprived of life, liberty, and property without due process of the law. This right afforded to all U.S. citizens has some unresolved issues and therefore is a source of controversy. This chapter explores the 5th Amendment through the eyes of the premier case, *Miranda v. Arizona*, which focuses on the admissibility of confessions and admissions.

Use the Internet to complete the following:

- Review *Miranda v. Arizona* (1966) in preparation for the assignment in this unit.
- Review *Missouri v. Seibert* (2004) in preparation for the discussion in this unit.
- Review *Oregon v. Elstad* (1985) in preparation for the discussion in this unit.

Multimedia

- Click **Miranda and Admissibility of Statements** to view the presentation. You will use this media in the unit assignment.

Optional Internet Resources

Familiarizing yourself with the following materials will provide you with additional insight and perspective about the important concepts in the *Miranda v. Arizona* decision.

- Weisberg, C. D. (2008). *Mourning Miranda*. *California Law Review*, 96.
- Williamson, R. A. (1993). *Virtues (and limits) of shared values: The Fourth Amendment and Miranda's concept of custody*. William & Mary Law School Scholarship Repository.
- MirandaWarning.Org. (n.d.). *What are your Miranda rights?*
- Nolo. (n.d.). *Miranda rights: What happens if police don't read you your rights?*
- FindLaw. (n.d.). *"Miranda" rights and the Fifth Amendment*.

u08a1 - Miranda and Admissibility of Statements

Competencies Addressed in This Assignment

- **Competency 1:** Articulate how the rules of criminal procedure apply to a criminal justice practitioner.
- **Competency 2:** Illustrate ethical compliance with criminal procedure from a criminal justice practitioner perspective.
- **Competency 4:** Specify how the procedural rules apply to the admission of evidence in criminal cases
- **Competency 5:** Communicate effectively in writing.

Introduction

For a suspect's statements to be admissible in court, they must meet certain criteria. As you have learned from the *Miranda* case, in that instance, the Court rejected voluntariness of statements as the sole test for admissibility. Although voluntariness is still required, it is now assumed if three questions can be answered in the affirmative. First, it must be shown that the *Miranda* warning was given. Second, if it was given, it will be necessary to determine whether there was a waiver. Finally, if there was a waiver, there must be evidence that the waiver was intelligent and voluntary. There are certainly other circumstances when confessions may be admissible when made before *Miranda* warning is given, which makes this area of law very intricate and fact-based.

You will use the *Miranda* and Admissibility Statements media as the foundation for your assignment.

Overview

Miranda v. Arizona changed the rules on admissibility from voluntariness to the *three-questions test*. For this assignment, prepare a three-page paper citing a minimum of two academically verified references.

In your paper:

- Determine whether you can question the occupants of the vehicle in the scenario at the scene without *Miranda* warning. (Question 1: Was *Miranda* warning given?)
- Analyze, after the *Miranda* warning was given, whether there was a waiver. (Question 2: If *Miranda* warning was given, was there a waiver?)
- Explore whether, assuming there was a waiver by the suspects, the waiver was intelligent and voluntary. (Question 3: If there was a waiver, was it intelligent and voluntary?)
- Explain how *Miranda* changed the way police officers perform their jobs.

Be sure to review the *Miranda* and Admissibility of Statements Scoring Guide to ensure you understand the criteria for this assignment.

Requirements

Your paper should meet the following requirements:

- **Written communication:** Must be free of errors that detract from the overall message.
- **References:** A minimum of two references.
- **APA format:** Format resources and citations as per current APA style and formatting guidelines.
- **Length of paper:** Three pages, not including the title page and the references page.
- **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

[Capella Writing Center](#)

[Criminal Justice Undergraduate Library Research Guide](#)

[Selecting a Database](#)

[Selecting the Best Keywords](#)

[Smarthinking](#)

[SafeAssign](#)

[Submit an Assignment \[PDF\]](#)

[Writing Feedback Tool](#)

[Miranda and Admissibility of Statements | Transcript](#)

[Miranda v. Arizona](#)

[APA Style and Format](#)

APA Style Paper Template

u08d1 - Violations of Miranda

Competency Addressed in This Discussion

- **Competency 1:** Articulate how the rules of criminal procedure apply to a criminal justice practitioner.

Introduction

In *Missouri v. Seibert* (2004), the Court held that giving the *Miranda* warning only after the police obtain an unwarned confession violates the *Miranda* rule. As a result of this decision, statements made after the *Miranda* warning is given are inadmissible even if these statements repeat those given before the *Miranda* warning was read to the suspect. In an earlier case, *Oregon v. Elstad*, the Court admitted a confession obtained after the police gave the *Miranda* warning—even though the suspect had previously made statements before the warning was given.

Imagine you are a police officer investigating a domestic violence case. You received a call that a man hit his wife in the face with a closed fist, causing injury. You arrived at the scene and locate the suspect in question. You handcuff him and put him in the back of your patrol car. You ask him if he hit his wife in the face. He states to you that he just "lost control" and did not mean to hurt her. He tells you that he is sorry for hitting her and will never do it again.

Once at the police station, your sergeant tells you to make sure you get plenty of information in the confession statement from the suspect to put into the arrest report. You provide the suspect with his *Miranda* warning and ask him to go into detail about the incident and him *losing control*. He tells you the whole story from the beginning and again states that he had no intention of hurting his wife.

Instructions

For this discussion, locate a case on point with the *Seibert* or *Elstad* case.

In your main post:

- Analyze admissibility of the suspect's confessions in the scenario provided before and after *Miranda* warning was given to the suspect.
- Determine whether the ruling in the case you researched aligns or conflicts with *Seibert* or *Elstad*.

- Articulate whether you agree with the court's rationale regarding the admissibility of statements made by a suspect in your selected case, and why.
- Explore how you feel the *Miranda* warning would impact your decision making if you were a police officer.

Be sure to support your position with the case law you located.

Discussion Objectives

The competency addressed in this discussion is supported by discussion objectives, as follows:

- Competency 1: Articulate how the rules of criminal procedure apply to a criminal justice practitioner.
 - Analyze admissibility of a suspect's confessions before and after *Miranda* warning is given.
 - Determine whether court decisions align or conflict with *Missouri v. Seibert* or *Oregon v. Elstad*.
 - Articulate your agreement or disagreement with court rationale in a confession admissibility case.
 - Explore how the *Miranda* warning could impact decision making for police officers.

Response Guidelines

Respond to the posts of two peers. Interact with other learners about your selected court decision regarding admissibility of confessions or statements made by a suspect. Did you share the same or different perspectives regarding confession admissibility case? Why? Did you agree with the analysis of other learners regarding the admissibility of a suspect's confessions before and after *Miranda* warning is given? Why or why not? Did the insights your peers shared impact you or your positions in any way? If so, how?

APA citations are not required for discussions; however, if outside material is used, you are required to cite references.

Course Resources

[CJ Discussion Scoring Guide](#)

[Criminal Justice Undergraduate Library Research Guide](#)

[G.R.E.A.T. Discussion Guidelines](#)

[Missouri v. Seibert](#)

[Oregon v. Elstad](#)

[Community of Excellence](#)

Unit 9 >> The Rights of the Accused During Trial

Introduction



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Competencies Addressed in This Unit

- **Competency 1:** Articulate how the rules of criminal procedure apply to a criminal justice practitioner.
- **Competency 3:** Apply the 4th, 5th, and 6th Amendments in a criminal justice context.

The Rights of the Accused During Trial

The constitutional rights guaranteed in the Bill of Rights are most highly protected during the trial stage of a criminal proceeding. The accused is guaranteed fundamental rights during trial; you will learn about the most important ones during this unit. In this unit, you will explore the highlights of five fundamental rights of the accused during the trial process that are guaranteed by the Constitution: the right to a jury trial, the right to counsel, the right to due process, the right against self-incrimination, and the right to a fair and impartial trial. The additional rights under the 5th Amendment are of immediate concern to the courts, not the police. The constitutional rights discussed in this unit cannot be reduced or taken away by federal or state laws; however, federal and state governments can add more rights if they choose.

The right to trial by jury is guaranteed in the Bill of Rights. This right is guaranteed by the 6th Amendment of the Constitution. The Constitution also speaks to the size of a jury, which may have between six and 12 jurors. Jury verdicts are not required to be unanimous according to the Constitution. A jury trial is required when the offense is one for which more than 6 months' imprisonment is authorized. Juries are made up of members known as a *jury of peers*, which means that the members of the jury are not consciously restricted to a particular group when selected. In the jury selection process, disqualification of jurors based on race, gender, creed, color, national origin, and other prohibited categories is unconstitutional.

Another important constitutional right in the criminal justice trial process is the right to counsel, which is also set forth in the Bill of Rights, in the 6th Amendment. At trial, counsel is needed because the defendant's lack of skill in the law might otherwise result in a wrongful conviction. There are two types of counsel available for criminal defendants: counsel retained by a defendant and court-appointed counsel (if indigent). The right to counsel applies for proceedings for all serious offenses, as well as misdemeanors, for which the defendant faces a possible jail sentence. This can be distinguished from the right to effective assistance of counsel, which is also guaranteed by the Constitution, but it can be difficult to establish ineffective counsel on appeal. Defendants also have the right to act as their own counsel. However, certain restrictions apply. The right to act as one's own counsel will only be allowed if the accused is aware of his or her right to counsel, if there is an express waiver, and if the accused is competent (del Carmen, 2014).

Criminal defendants also have the right to protection against self-incrimination. This right is guaranteed by the 5th Amendment. This right applies only to testimonial, rather than physical, self-incrimination. There are two separate privileges during trial that are covered by this rule: the privilege of the accused and the privilege of a witness. The 5th Amendment as well as the 14th Amendment provide for the right to due process. This right promotes fairness for the defendant. Currently, if the circumstances surrounding the nondisclosure of incriminating information raise a "'reasonable probability' that the disclosure would have made a difference in the trial's result, the defendant's due process right has been violated and the conviction must be reversed" (del Carmen, 2014).

Finally, the right to a fair and impartial trial is guaranteed in the Bill of Rights, by way of the 6th and 14th Amendments. This means that circumstances surrounding the trial must not be of a nature that would unduly influence the judge or jury. For example, judges may control prejudicial publicity by ordering a change of venue, sequestration, continuance, issuance of a gag rule, and control of the press.

Reference

del Carmen, R. V. (2014). *Criminal procedure: Law and practice* (9th ed.). Belmont, CA: Cengage.

Learning Activities

u09s1 - Studies

Readings

Use your *Criminal Procedure* text to read Chapter 12, "Basic Constitutional Rights of the Accused During Trial," pages 368–401. This chapter highlights five fundamental rights of the accused during trial guaranteed by the Constitution: the right to a jury trial, the right to counsel, the right to due process, the right against self-incrimination, and the right to a fair and impartial trial. It summarizes the additional rights under the 5th Amendment, which are of immediate concern to the courts, not the police.

Use the Capella Library to read Hartley, Ventura Miller, and Spohn's 2010 article, "[Do You Get What You Pay for? Type of Counsel and Its Effect on Criminal Court Outcomes](#)," from *Journal of Criminal Justice*, 38(5), 1063–1070.

Use the Internet to complete the following in preparation for the discussions in this unit:

- Review *Kyles v. Whitley* (1995).
- Review *Brady v. Maryland* (1963).
- Review *Strickler v. Greene* (1999).
- Review *United States v. Agurs* (1976).
- Review *United States v. Bagley* (1985).
- Review *Apodaca v. Oregon* (1972).
- Review *Johnson v. Louisiana* (1972).

Optional Internet Resources

Familiarizing yourself with the following materials will provide you with additional insight and perspective about the topics covered in this unit:

- Justia. (n.d.). [What does the Sixth Amendment right to jury trial protect?: The Supreme Court decides *Alleyne v. United States*](#).
- Hampson, R. (2013). [You have the right to counsel. Or do you? USA Today](#).
- Cohen, A. (2013). [How Americans lost the right to counsel, 50 years after 'Gideon'](#).
- Cornell University Law School: Legal Information Institute. (n.d.). [Federal rules of criminal procedure](#).
- Neilson, W. S., & Winter, H. (2005). [The elimination of hung juries: Retrials and nonunanimous verdicts](#). *International Review of Law and Economics*, 25, 1–19.

u09d1 - Duty to Disclose

Competencies Addressed in This Discussion

- **Competency 1:** Articulate how the rules of criminal procedure apply to a criminal justice practitioner.
- **Competency 3:** Apply the 4th, 5th, and 6th Amendments in a criminal justice context.

Introduction

In *Brady v. Maryland* (1963), the U.S. Supreme Court held that due process is violated when the prosecution suppresses evidence favorable to an accused upon request where the evidence is material either to guilt or to punishment. The Brady Rule on Disclosure of Evidence to the Accused purports that the prosecutor has a duty to disclose evidence favorable to a defendant. Many cases have since been decided that provide additional insight and clarification to this rule, such as *United States v. Agurs* (1976), *United States v. Bagley* (1985), *Kyles v. Whitley* (1995), and *Strickler v. Greene* (1999).

Instructions

In your main post:

- Analyze the *Brady* rule in the context of the Court's rationale for this decision from a criminal justice practitioner standpoint.
- Explain how the Court interpreted and refined the *Brady* rule in one of its subsequent cases: *United States v. Agurs*, *United States v. Bagley*, *Kyles v. Whitley*, or *Strickler v. Greene*.
- Explore how the Court's interpretation in your selected case, following *Brady*, impacts the application of the rule.

Discussion Objectives

The competencies addressed in this discussion are supported by discussion objectives, as follows:

- Competency 1: Articulate how the rules of criminal procedure apply to a criminal justice practitioner.
 - Explain how the Supreme Court interpreted and refined the rule in *Brady v. Maryland* in subsequent cases.
 - Explore how the Supreme Court's post- *Brady* interpretation of the rule impacts its application.
- Competency 3: Apply the 4th, 5th, and 6th Amendments in a criminal justice context.
 - Analyze *Brady v. Maryland* and the Court's rationale for its decision.

Response Guidelines

Respond to the posts of at least two peers. Interact with other learners about whether you agree with the way in which the Court interpreted and refined the *Brady* rule in its subsequent cases. What were the similarities and differences between your perspective and those of other learners regarding that refinement? Did you agree with others regarding whether and how the Court's interpretation of *Brady* in subsequent cases impacts the application of the rule? Why or why not?

APA citations are not required for discussions; however, if outside material is used, you are required to cite references.

Course Resources

CJ Discussion Scoring Guide

u09d2 - Jury Verdicts

Competency Addressed in This Discussion

- **Competency 1:** Articulate how the rules of criminal procedure apply to a criminal justice practitioner.

Introduction

In our criminal justice system, defendants have the right to a trial by jury. This right is guaranteed in the Bill of Rights, specifically, the 6th Amendment. While the Constitution does establish requirements as to the size of the jury, it does not require that the jury reach a unanimous verdict. A non-unanimous verdict is a verdict by a jury that is not the result of a unanimous vote. In *Apodaca v. Oregon*, the Supreme Court held that a 10-to-2 vote for conviction is constitutional. In *Johnson v. Louisiana*, the Supreme Court held that a 9-to-3 vote for conviction was constitutional. Given the defendant's right to be proven guilty beyond a *reasonable doubt*, the lack of requirement for a unanimous verdict may beg the question as to whether it is appropriate to allow majority verdicts rather than unanimous verdicts.

Instructions

For this discussion, consider the fact that the Supreme Court has discarded the argument that a less-than-unanimous verdict violates the reasonable doubt standard, stating that the term *reasonable doubt* refers to the individual juror and not the entire jury.

In your main post:

- Explore whether all criminal trials should require unanimous verdicts, using a related case as the basis for your position.
- Articulate two practical issues that might arise under unanimous verdict requirements.
- Describe the implications of non-unanimous jury verdicts as a criminal justice professional.

Discussion Objectives

The competency addressed in this discussion is supported by discussion objectives, as follows:

- Competency 1: Articulate how the rules of criminal procedure apply to a criminal justice practitioner.
 - Explore whether all criminal trials should be required to have unanimous verdicts.
 - Articulate potential practical issues that might arise under unanimous verdict requirements.
 - Describe the implications of non-unanimous jury verdicts.

Response Guidelines

Respond to the posts of at least two peers. Interact with other learners about whether you agree with the unanimous and non-unanimous verdict rules under your state's criminal law. Did you agree with others regarding whether all criminal trials should be required to have unanimous verdicts? What were the similarities and differences between the two practical issues you shared and the ones that others shared that might result if a unanimous verdict was the requirement? Did you share the same view with other learners about how low you believe a vote should go before the standard has not been met? Why or why not?

APA citations are not required for discussions; however, if outside material is used, you are required to cite references.

Unit 10 >> Legal Liabilities of Police Officers

Introduction



Competencies Addressed in This Unit

- **Competency 1:** Articulate how the rules of criminal procedure apply to a criminal justice practitioner.
- **Competency 2:** Illustrate ethical compliance with criminal procedure from a criminal justice practitioner perspective.
- **Competency 3:** Apply the 4th, 5th, and 6th Amendments in a criminal justice context.
- **Competency 4:** Specify how the procedural rules apply to the admission of evidence in criminal cases.
- **Competency 5:** Communicate effectively in writing.

Concept of Liability

American society is litigation prone, and the police are a popular target because they exercise authority and are involved in highly charged and often emotional confrontations with the public. Being sued is an occupational hazard in modern-day policing; there is probably no major police or law enforcement department in the country whose officers and supervisors have not been sued in a state or federal court. Thus, it is important to understand the basis of lawsuits the public usually files against police officers and the concept of *liability*. Lawsuits under the umbrella of liability might involve ethical violations, administrative violations, violations that led to civil liabilities, and violations that led to criminal liabilities. Violations could lead to reprimand or dismissal from the job, monetary payment for damages and legal fees, or punishment as severe as criminal sanctions such as fines, probation, or incarceration in a prison or jail.

In this unit, you will learn the two categories under which police work falls, as well as the state and federal laws under which police can be prosecuted. In addition, you will learn about other consequences of police misconduct.

You will also have an opportunity to reflect on the breadth of the three case studies you already wrote about in this course and write an application paper that synthesizes the constitutional issues and criminal procedure concepts and their real-world application.

Civil liability may occur under federal (Section 1983) cases. A Section 1983 case, usually filed in federal court, is one in which the plaintiff seeks monetary damages and/or an injunction from a government official who, while acting within the scope of authority, violated the plaintiff's constitutional rights or a right given by federal law. For liability to be found, two requirements for a Section 1983 lawsuit exist. First, the defendant must have been acting under color of law, and, second, there must have been a violation of a constitutional right or a right given by federal law (del Carmen, 2014).

There are, however, some defenses to such claims. An officer is not civilly liable unless he or she violated a clearly established statutory or constitutional right of which a reasonable person would have known. This is known as the *qualified immunity defense*. Section 1983 does not apply if the right violated was given by state law or agency policy, not by federal law.

Civil liability may also occur under state *tort law*. A tort is a civil wrong in which the action of one person causes injury to the person or property of another in violation of a legal duty imposed by law (del Carmen, 2014). There are intentional torts, which occur when there is an intention on the part of the officer to bring some physical harm to or mental coercion upon another person. There are also negligence torts, which occur when there is a breach of a common law or statutory duty to act reasonably toward those who may foreseeably be harmed by one's conduct. Either one of these could be the basis for a civil claim against a law enforcement officer. However, tort liability will not attach in all cases. For example, there is no liability under negligence tort law for failing to protect a member of the public, because the officer is protected by the public duty doctrine.

The public duty doctrine provides that government functions are owed to the general public but not to specific individuals. Special relationship is an important exception to the public duty doctrine. It means that there may be liability in negligence cases if a duty is owed to a particular person rather than to the general public. Defenses exist for liability in state tort cases as well. *Official immunity*, when an officer is not liable if performing a discretionary duty in good faith and is acting within the scope of authority, is the most common defense in state tort cases.

In addition to civil liability, there are other possible consequences of police misconduct, including the following:

- Prosecution under federal and state laws.
- Administrative investigations and punishment.
- Exclusion of evidence illegally seized (the exclusionary rule).
- Loss of law enforcement license.

Reference

del Carmen, R. V. (2014). *Criminal procedure: Law and practice* (9th ed.). Belmont, CA: Cengage.

Learning Activities

u10s1 - Studies

Readings

Use your *Criminal Procedure* text to read Chapter 14, "Legal Liabilities of Law Enforcement Officers," pages 432–462. Being sued is an occupational hazard in modern-day policing. This chapter focuses on lawsuits the public usually file against police officers and the concept of liability. Lawsuits under the umbrella of liability might involve ethical violations, administrative violations, violations that led to civil liabilities, and violations that led to criminal liabilities. Violations could lead to reprimand or dismissal from the job, monetary payment for damages and legal fees, or punishment as severe as criminal sanctions such as fines, probation, or incarceration in a prison or jail.

Use the Internet to complete the following:

- Review *Castle Rock v. Gonzales* (2005) in preparation for the discussion in this unit.
- Read the article "[Civil Rights – Color of Law Violations](#)" from The Federal Bureau of Investigation. This is an article about people operating under the color of law and the abuses that occur. This Web site will be helpful as you complete the media presentation Color of Law on ethical law enforcement procedures.
- Review *Brosseau v. Haugen* (2004) in preparation for the discussion in this unit.

Video

- United States Courts. (2014, August 6). [Court shorts: Right to counsel \[Video\]](https://youtu.be/CKQM52VAX6w). Retrieved from <https://youtu.be/CKQM52VAX6w>

Multimedia

- View the [Color of Law](#) presentation.
 - Use this media to test your knowledge of ethical law enforcement procedures presented in the scenarios. Participation in the exercise will assist you in knowing what situations are under the color of law or not.

Optional Internet Resources

Familiarizing yourself with the following materials will provide you with additional insight and perspective about the topics covered in this unit:

- [Civil liability for acts of off-duty officers – Part I](#). (2007). *AELE Monthly Law Journal*, 9, 101–106.
- Ryan, J. (n.d.). [Overview of police liability](#). Legal & Liability Risk Management Institute.
- Zook, L. (n.d.). [Reducing law enforcement liability – Reviewing the high risk critical areas](#). Institute for Criminal Justice Education.

- FindLaw. (n.d.). [Typical Section 1983 claims](#).
- [Civil liability for law enforcement pursuit driving \(I\)](#). (2007). *AELE Monthly Law Journal*, 2, 101–109.

u10a1 - Connecting Your Learning

Competencies Addressed in This Assignment

- **Competency 1:** Articulate how the rules of criminal procedure apply to a criminal justice practitioner.
- **Competency 2:** Illustrate ethical compliance with criminal procedure from a criminal justice practitioner perspective.
- **Competency 3:** Apply the 4th, 5th, and 6th Amendments in a criminal justice context.
- **Competency 4:** Specify how the procedural rules apply to the admission of evidence in criminal cases.
- **Competency 5:** Communicate effectively in writing.

In this assignment, the criteria in your Connect Your Learning Scoring Guide are directly aligned to Competencies 1–5 for the course.

Overview

Throughout the class, you have examined the court system, sources of rights such as the rules and procedures of the criminal justice system pertinent to the 4th, 5th, and 6th Amendments of the U.S. Constitution, and fundamental principles in criminal law. You have examined, probable cause and reasonable suspicion in action, various stops, use of force, important exceptions to the rules of search and seizure, confessions and admissions, constitutional rights at trial, and the legal liability that can be placed on law enforcement officers.

Instructions

Prepare a 4–6 page paper (1–1.5 pages per competency for Competencies 1 through 4), focused on the course competencies and address two key areas of learning for each competency. Competency 5 will be showcased through your coverage of Competencies 1–4. This paper should showcase your learning proficiency and describe the importance of your learning relative to application in a career context. This assignment should be placed in your ePortfolio for future reference, and to demonstrate your learning connections for future employment purposes.

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

Requirements

Your paper should meet the following requirements:

- **Written communication:** Must be free of errors that detract from the overall message.
- **References:** One reference per competency.
- **APA format:** Format resources and citations as per current APA style and formatting guidelines.
- **Length of paper:** 4–6 pages, not including the title page and the references page.
- **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: This assignment should be placed in your ePortfolio for future reference, and to demonstrate your learning connections for future employment purposes.

Course Resources

[Capella Writing Center](#)

[Criminal Justice Undergraduate Library Research Guide](#)

[Selecting a Database](#)

[Selecting the Best Keywords](#)

[Smarthinking](#)

[SafeAssign](#)

[Submit an Assignment \[PDF\]](#)

[ePortfolio](#)

[Writing Feedback Tool](#)

[APA Style and Format](#)

[APA Style Paper Template](#)

u10d1 - Litigation Against Law Enforcement Officials

Competencies Addressed in This Discussion

- **Competency 1:** Articulate how the rules of criminal procedure apply to a criminal justice practitioner.
- **Competency 2:** Illustrate ethical compliance with criminal procedure from a criminal justice practitioner perspective.

Introduction

Civil liability may occur under tort law in several circumstances. For instance, a police officer will be found liable when events can be blamed solely on the officer and on nobody else and they transcend negligence. Additionally, a supervisor can be held liable when the supervisor is involved in the act or when an incident can be linked to one or all of the seven areas of supervisor negligence. Finally, a city or county is considered liable when a situation was the result of policy or custom.

Recent cases have addressed the issue of liability regarding both police officers' individual liability as well as the potential civil liability of government entities. Two such cases are *Castle Rock v. Gonzales* (2005) and *Brosseau v. Haugen* (2004).

Instructions

For this discussion, review *Castle Rock v. Gonzales* and *Brosseau v. Haugen*, considering that both of these cases could be said to favor law enforcement.

In your main post:

- Explain potential sources of tort liability and whether they would be individual and/or departmental.
- Articulate adjustments at the officer and departmental levels to avoid civil liability.
- Describe the overall impact of the sources of tort liability on the field of criminal justice.

Discussion Objectives

The competencies addressed in this discussion are supported by discussion objectives, as follows:

- Competency 1: Articulate how the rules of criminal procedure apply to a criminal justice practitioner.
 - Explain potential individual and departmental sources of tort liability.
- Competency 2: Illustrate ethical compliance with criminal procedure from a criminal justice practitioner perspective.
 - Articulate officer- and departmental-level adjustments needed to avoid civil liability.
 - Describe how sources of tort liability impact the field of criminal justice.

Response Guidelines

Respond to the posts of at least two peers. Interact with other learners about whether you believe that this is a trend in this country toward stopping litigation against law enforcement officials. Do you share the same perspective as other learners regarding the decisions in these cases? Why or why not? What are some of the similarities and differences among your opinions and those of others regarding whether the ability of citizens to sue government in the kinds of cases in these examples should be eliminated?

APA citations are not required for discussions; however, if outside material is used, you are required to cite references.

Course Resources

CJ Discussion Scoring Guide

[Criminal Justice Undergraduate Library Research Guide](#)

G.R.E.A.T. Discussion Guidelines

[Brosseau v. Haugen](#)

[Castle Rock v. Gonzales](#)

[Community of Excellence](#)