

Devotion: Proverbs 8: 1-11 Does not wisdom call out? Does not understanding raise her voice?

² At the highest point along the way, where the paths meet, she takes her stand; ³ beside the gate leading into the city, at the entrance, she cries aloud: ⁴ “To you, O people, I call out; I raise my voice to all mankind.

Business: Please stay visible on camera during class.

REGISTRATION email – Please read and respond in a separate email (according to the instructions).

W7 10/11	CJ5 Ch. 4-5 Problems & solutions in policing	Professional discretion, strategies, investigation, use of force	HW4 1. Discuss one challenge in policing; choose a federal or local level crime/practice. 2. What practice/policy helps officers use good discretion? • Respond to a post (50)	POST due 10/16 Response 10/17
W8 10/25	CJ5 Ch. 6 The U.S. Constitution	4 th /5 th Amendment related issues, court cases, evidence, doctrines.	HW5 Choose a search/arrest issue. How are the 4 th /5 th Amendment protections related to your article? What specific protection exists? • Respond to a post (50 words)	POST due 10/25 Response 10/23

READ: Ch. 5 Police and Discretion, Ch. 6 Policing and the U.S. Constitution

EXAM 2 – Monday November 1 (Chapters 3-6)

VIDEO: Motivation – Get up. Get out! <https://www.youtube.com/watch?v=V3WrCx3mwNo> (4:07 min)

Lesson Goal: Chapter 5 – Policing and Social Problems

What is involved in patrolling? How is law related to police discretion?

What is discretion?

DEF: Discretion is the use of *personal judgment* based on experience, training and present circumstances.

What is *distinctive* about police professional discretion?

1. Discretion must conform to the legal parameters that apply to the situation (legal factors).
2. Police are the *only* public official sanctioned to use *deadly force*.

Police Occupational Stressors – refers to the challenges common to policing.

1. Shift-work that requires 24 hours/ 7 days a week coverage of the jurisdiction
2. Seniority-based assignments with least experienced officers given tougher shifts (11pm-7am)
3. Exposure to long periods of inactivity
4. Exposure to violence and life-threatening situations
5. *Us-them* (police/public) projection of anti-public sentiment
6. Negative media coverage
7. Authority to use deadly-force
8. High prioritization of legal processes in daily work
9. Compartmentalization/ separation of professional/private life

VIDEO: Police Discretion in a Traffic Stop – 8:25 min.

https://www.youtube.com/watch?v=XJiaYw3Cq_Y

What justifies /Why law enforcement officers are allowed to practice discretion?

1. Police recruitment selection, screening
2. Training and experience
3. Knowledge gained about human nature and interaction
4. Profession requires exposure to danger and the need for self-protection

Police are a *paramilitary* organization (similar/parallel to military in structure/goals)

1. The *hierarchy* of police resembles the structure of the military (ranks, uniforms, medals, specialized units)
2. The *accountability* system emphasizes top-down leadership
3. The *level of personnel most exposed* day-to-day to the mission are the lowest ranks

Police Patrolling Activities

1. Preventive patrolling (vehicle, bicycle, foot patrol, etc.)
2. Calls for service – responding to public call for assistance, relief, protection
3. Administrative duties – writing reports, witnessing at trials
4. Officer initiated duties – traffic control, enforcing safety, exploring possible criminal activity

How are the “totality of circumstances” related to discretion?

1. Facts present and past that are related directly and indirectly can shape what is “reasonable.”
2. **Deductive reasoning** leads from **general ideas to specific** conclusions.

In other words, *how do police take in diverse facts and ideas* to conclude that a criminal act has or is taking place?

This also brings into play the idea of “intuition.”

DEF: *Intuition is the concept of collective knowledge and awareness based on personal experience that takes into account but also goes beyond training.*

What is a case clearance? Why is it important to police?

1. Arrest and, 2. Prosecution (not conviction)

What is an exceptional case clearance? (4 conditions)

What is case clearance of a juvenile (person under the age of 18)

DEF: Case clearance (UCR/FBI conditions).

<https://ucr.fbi.gov/crime-in-the-u.s/2010/crime-in-the-u.s.-2010/clearances>

How is the field of forensics tied to policing? What is forensics? (p. 97-99)

What is CODIS? - Did you notice the D in CODIS (stands for DNA)?

<https://www.fbi.gov/services/laboratory/biometric-analysis/codis>

What is IAFIS? – Did you notice the F in IAFIS (stands for Fingerprints)?

<https://www.fbi.gov/services/records-management/foipa/privacy-impact-assessments/iafis>

Lesson Goal: Chapter 6 – Policing and the U.S. Constitution

1. Make sure you understand the following definitions:
 - a. Probable cause – it is *reasonable* to believe a criminal act has taken place or is in progress.
 - b. Reasonable suspicion – *totality of circumstances* substantiates *questioning*, “*stop, question & “frisk”*”
 - c. Exclusionary rule of evidence – illegally acquired evidence is inadmissible
 - d. Fruits of the poisoned tree – *further* evidence that is related to inadmissible evidence
 - e. Inevitable discovery – in the *routine of investigation* evidence that would be revealed
 - f. Good faith exception – an *honest mistake* made by police leading to evidence, for example, evidence is discovered because of police entry into a wrong address.
 - g. The **expectation of privacy** is implied in the 4th Amendment of the U.S. Constitution

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized (U.S. Constitution, 4th Amendment, 1789).

VIDEO: What is the difference between probable cause and reasonable suspicion? – 9:45 min.

https://www.youtube.com/watch?v=PvTH1_eD0iY

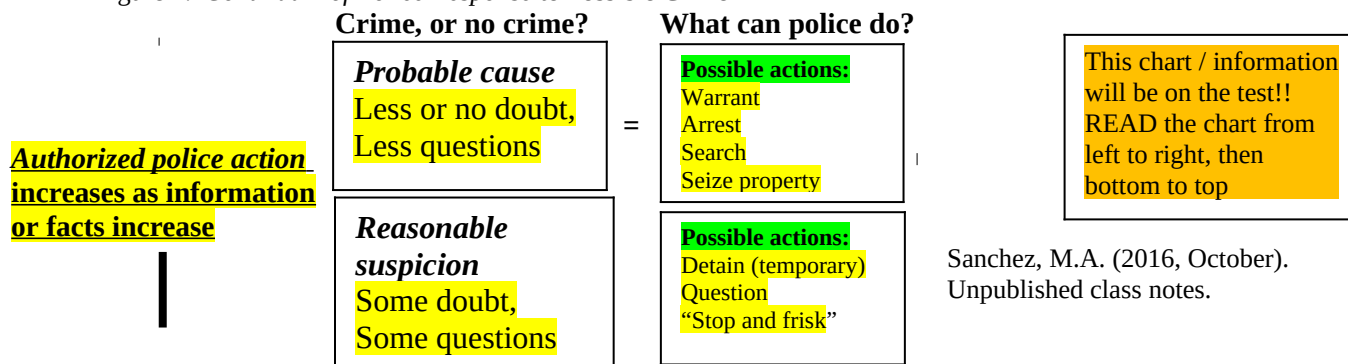
2. How is *probable cause* probable? (see CJ4, p. 118)
 - a. Personal observation – facts and connection of facts based on training and experience
 - b. Information – types of information on criminals, crime patterns, eyewitnesses, reports
 - c. Evidence – facts and artifacts which relate to the law, for example, seeing a weapon
 - d. Association – connecting persons, acts to situations, i.e. known criminals (this by itself can be considered *circumstantial evidence*, and not sufficient as reasonable cause

What are the basic components of an **arrest warrant**? - Look this up and prepare to share in class.

What are the basic components of a **search warrant**? - Look this up and prepare to share in class.

3. What are the two basic of presumptions to **warrantless searches**? When can they take place?
- Searches incident to arrest* – related to the immediate area in control of the suspect, to
 - Confiscate weapons and ensure safety, and 2. Protect evidence that may be destroyed
 - Searches given consent* – these relate to verbal statements of persons authorized to consent to searches, for example, school principals, owners of rented properties, spouses/parents.
4. How do police defend their actions? Remember to ask, “What would a reasonable person think?”

Figure 1. Continuum of Police Response to Possible Crime



VIDEO: What is basis for a driver’s credential analysis? *** (new)

<https://www.youtube.com/watch?v=6OadbQeRKhk>

VIDEO: Unreasonable search and seizure 4:14 mins. / Cell phones 5:34 min.

<https://www.youtube.com/watch?v=UpujOKi0gRs>

VIDEO: What about cell phones? - 5:34 min.

<https://www.youtube.com/watch?v=-6DAY4Jd5Tg>

VIDEO: Can the police search my vehicle? – 6:19 min. *** new

<https://www.youtube.com/watch?v=OdB6YawfGU8>

Do you know the difference between custody and detainment?

DEF: *What is custody/arrest?* The legal act of arrest or whenever police create the situation where a “reasonable person” would not feel free to leave” (CJ4, p. 133).

DEF: *What is detainment?* The legal act of temporarily controlling a person’s freedom of movement to determine a possible violation of law, for example *suspicious behavior*.

Examples of detainment: DUI traffic stop, writing of a traffic ticket, or general search or questioning such as airport safety searches prior to boarding flights.

5. **Issues of Privacy and Searches – Plain View/ Electronic Assistance, warrant or no warrant?**

- Plain view doctrine – *No Warrant*: 1. Item is detected easily by an officer, 2. Officer is in a legal place to view item, 3. Discovery is inadvertent, 4. It is immediately evident as illegal.
- Electronic assistance – *No Warrant*: 1. Not required in public spaces in which privacy cannot be expected, *Yes Warrant needed*: 2. Required in contexts of private conversations (phones, phone booths, for limited time and restricted purposes and related to particular suspected crime).
- Stop and Frisk – *No warrant*: 1. *Reasonable suspicion* (not probable cause), **pat down, not a search!**

VIDEO: Smell and evidence of Marijuana and law enforcement– 2:26 min.

<https://www.youtube.com/watch?v=VoWYNy8KqDg>

U.S. Supreme Court Finding related to Kentucky case search based on marijuana smell

<https://www.supremecourt.gov/opinions/10pdf/09-1272.pdf>

GQ: What would you argue about the discussion?

VIDEO: Miranda rights/Warnings – Simple enough, right? - 1:15 min

<https://www.youtube.com/watch?v=T45aF1NLMyM>

6. What are “Miranda rights - warnings?”
 - a. Based on U.S. Supreme Court decision in *Miranda v. Arizona* (1966).
 - b. Ernesto Miranda was questioned for 2 hours before confessing to kidnapping and rape.
 - c. The Court determined that he was not informed of his **6th Amendment** right to legal representation. The “right to remain silent” (*non-self-incrimination*) was not a part of Miranda but has been included in the warning in order to allow for confessions to be uncontestable.
 - d. The Miranda decision is based on ideas of a) custody, b) coercion, c) credibility.

VIDEO: What Are Miranda Rights? Miranda Rights Explained – 3:28 min

<https://www.youtube.com/watch?v=ICifhjRnDvg>

Miranda Exceptions: What are the *exceptions* to requiring the Miranda rights?

1. No questions related to testimony are being asked, for example, name, address, activity?
2. Police have not determined a suspect, and are solely gathering information, witnesses.
3. Volunteering a confession prior to questioning by police.
4. A statement is made by the suspect to someone other than police.
5. During a stop & frisk (which is a detention, not an arrest).
6. During a traffic stop (which is a detention, not an arrest).
7. Public safety threat (example: no Miranda rights were read to one of the Boston Marathon bombers captured)

WEBPAGE: FBI Notice on Miranda Exceptions – (no need to read the Miranda warnings)

<https://leb.fbi.gov/2011/february/the-public-safety-exception-to-miranda>

Use of deadly force – Fleeing Felon Doctrine

Tennessee v. Garner (1985), The U.S. Supreme Court determined that use of deadly force is limited to fleeing felons when police have probable cause to believe the suspect represents a serious threat to the officer or the public.

Graham v. Connor (1989) The U.S. Supreme Court determined that *use of force (any level)* is to be judged by the “**reasonableness of the moment**” which implies the officer’s discretion weighs more than the possible *objective measures* (facts) related to the decision.

What is a false confession/ coerced confession?

Confessions that are admissions of guilt by persons who did not commit the crime.

1. Voluntary false confession – the person willingly admits guilt (to cover-up) based on personal motives
2. Coerced false confession – the person willingly admits guilt based on fear/threat/ or reward (police/outsider)
3. Internalized false confession – the person believes in their own guilt because of delusion, false memory

An admission of guilt is almost irrefutable (cannot be argued/challenged) unless evidence clearly demonstrates the confession was voluntarily false, coerced false, or internalized false. Suspects can be manipulated by circumstances to admit guilt.

A key impact of confessions is that the direction of the investigation can move exclusively to proving, collecting and interpreting evidence to verify the confession/guilt of the confessed party.

Principle of categorical distinction: “All tigers are cats (inductive/general conclusion), but not all cats are tigers (deductive/specific conclusion).”

Facts about cats that resemble identification with tigers, does not mean they are not tigers.

Application of this idea in real life: Facts about persons that resemble a category of offenders (profile), does not mean they are in the category of offender. Example: People who experience dysfunctional parents, illegal drugs in the home, violence in the home, spouse arrested, parent accused of sex offenses do not become criminals. These are all factors that may contribute to offending, but they do not mean if someone is exposed to it that they are automatically an offender.

GQ: How might *categorical distinction/conclusion* lead to generating a false confession? Pressing for a confession because the investigator already believes in the categorical distinction/ guilt of the suspect.

VIDEO: “Making of a Murderer” – S2, E2: watch 5:00 – 25:00 min. section
Brendon Dassey – coerced confession, age, and the totality of circumstances.

