

Course Learning Outcomes for Unit II

Upon completion of this unit, students should be able to:

4. Analyze the roles and operations of courts in the criminal justice process flow.
 - 4.1 Analyze the ways the Fourth Amendment affects the criminal justice process flow.
6. Describe criminal court processes and procedures.
 - 6.1 Describe the Fourth Amendment, including its background and implications.
 - 6.2 Identify the ways the Fourth Amendment affects community.

Course/Unit Learning Outcomes	Learning Activity
4.1	Unit Lesson Chapter 11 Unit II Assignment
6.1	Unit Lesson Chapter 11 <i>Blackledge v. Allison</i> Unit II Assignment
6.2	Unit Lesson Chapter 11 Unit II Assignment

Reading Assignment

Chapter 11: Pretrial Procedures

In order to access the following resource, click the link below:

Please review Justice Stewart's Opinion of the Court in the resource below.

Blackledge v. Allison, 431 U.S. 63 (1977). Retrieved from <https://advance-lexis-com.libraryresources.columbiasouthern.edu/api/document?collection=cases&id=urn:contentItem:3S4X-9GS0-003B-S2KF-00000-00&context=1516831>

Unit Lesson

Pretrial Issues

Criminal justice hinges on pretrial issues that will be discussed in this unit. Resources, money, and preliminary adjudication deal with events that occur or do not occur before the beginning of a trial. Each of the issues that will be discussed in this lesson are important, for a potential suspect identified by enforcement agents, the suspect's rights to a fair trial may be jeopardized by relatively small errors in procedure. For example, a video of the suspect committing a crime may not be allowed to be used as evidence. For the video to be admissible, it has to be properly preserved, authenticated, proven to be a good demonstration of the accusation, and in the possession of proper authorities from its initial procurement. Critical events concerning the legality of production of the video and how it was retrieved may also affect its admissibility.

The burden of proof for complying with pretrial issues that affect the admissibility of evidence falls on the government prosecuting the case.

Searches for Admissible Evidence

The Federal Rules of Evidence vary slightly by jurisdiction, but the basics have been established for quite a while. As criminal justice practitioners are constantly reminded, the rules continue to evolve. For example, the process of authenticating documents has evolved to a point where a forensic laboratory can determine the approximate age of an object by measuring the state of decay of carbon-14 with beta counting devices or, more recently, by using an accelerator mass spectrometry (Nave, n.d.). Forensic laboratories can provide information about the age of the material, country of origin, and, sometimes, even the name of the mill that produced the paper.

The short briefs provided for the following pretrial issues are intended to be used as frameworks for future analysis and study depending on personal career choices in the criminal justice field. For the purpose of this course, an introductory and basic understanding of the analysis provided will suffice.

Searches with warrants: The Federal Rules of Criminal Procedure provide specifics on how to obtain warrants for different types of potential evidence. Rule 41, "Search and Seizure," provides details for obtaining a warrant and under what conditions it may be granted (Authority for Promulgation of Rules, 2014). The issues discussed in this unit are considered of sufficient importance to highlight them. For example, if a federal magistrate is not reasonably available, a judge of a state court in the same federal district may issue a warrant for seizing a person or property within the district. Notice the limitations on this exception. If the officer applying for the warrant has a reasonable suspicion, the person or property may be moved out of a district, and the federal magistrate may issue a warrant, but the state judge may not.

Federal warrants for investigating domestic and international terrorism may be issued by any federal magistrate. Also, the broadest of all jurisdictional limits allows any federal magistrate and the District of Columbia courts the authority to issue warrants within the U.S. territories, possessions, commonwealths, and property under the control of U.S. diplomats located in foreign countries.

Warrants may be issued based on affidavits, sworn testimony, and recording testimony, and they can be requested by telephone or other reliable electronic means. Aggrieved persons, based on unlawful search and seizure of property, may make a motion to the issuing magistrate for return of the property, release from custody, and, if necessary, suppression of any evidence obtained (Authority for Promulgation of Rules, 2014).

No warrant: Understanding a warrantless search and seizure requires you to focus on the guidelines used by the federal courts' interpretation of the Fourth Amendment to the U.S. Constitution and then infer which situations do not require warrants, which are listed below:

- a search occurs when a person's subjective expectation of privacy is infringed;
- a seizure of property occurs when there is some *meaningful interference* with an individual's *possessory interest* in that property; or
- a seizure of a person occurs when, *in view of all the circumstances* surrounding the incident, a *reasonable person* would have *believed* that he or she was *not free to leave*, and, when the officer, by means of *physical force* or *show of authority*, has *in some way restrained the liberty* of that person (U.S. Const. amend. IV).



Man Under Arrest
(Kasikij, 2017)

The italicized phrases above have been subjected to multiple decisions by the U.S. Supreme Court; for example, consider the phrase *subjective expectation of privacy*. Also, take a look at the example below.

The federal government attached listening and recording devices on the outside of a telephone booth that captured a conversation of a citizen discussing a criminal activity involving gambling across state lines (Transmission of Wagering Information; Penalties, 1967). Justice Stewart, writing the majority opinion, stated that it must be determined whether a public telephone booth is a constitutionally protected area. If so, it would make it a violation of privacy to obtain information from users of that booth by using electronic recording devices (*Katz v. United States*, 1967).

The majority concluded that by entering a telephone booth to make a call, a reasonable person would have a subjective expectation of privacy while in the booth, and that expectation was violated by the government placing a listening/recording device on top of the booth. Justice Stewart went on to note that a warrant would have probably been issued for the placement of the devices if it had been requested.

Justice Black dissented based on two objections, which are listed below.

- The majority's interpretation of the meaning of the Fourth Amendment was wrong.
- The U.S. Supreme Court should not rewrite the Fourth Amendment to make it fit current technologies and, therefore, reach a result that many people believe to be desirable (*Katz v. United States*, 1967).

The example of how the Fourth Amendment element relates to warrants emphasizes that there will always be two or more sides (opinions) of what course of action the criminal justice system should take to carry out the need to have an orderly society. Note that lawyers and judges never memorize law or interpretations of the U.S. Constitution because laws are constantly changing based on a multitude of factions. It seems to be best for criminal justice practitioners to understand that interpretations of laws always have more than one analysis; it is imperative that practitioners always analyze and are able to argue all possible sides of criminal justice procedures to ensure compliance with the current interpretation of laws.

Arrest

An *arrest* is defined as a seizure of a person that occurs when, *in view of all the circumstances* surrounding the incident, a *reasonable person believes* that he or she is *not free to leave* and when the officer, by means of *physical force or show of authority, in some way restrains the liberty* of that person (*California v. Hodari*, 1991).

The italicized statements are the contentious portions of the current definition, and, as with a search and seizure, there are arrests based on warrants and without warrants.

Warrants for arrest: Rule 4, "Arrest Warrant or Summons on a Complaint," within the Federal Rules of Criminal Procedure is easy to read, understand, and execute. A complaint needs to establish that a federal offense has been committed and that the defendant committed it. The complaint may or may not be accompanied by one or more affidavits establishing the connection of the defendant to the offense. Once these are filed, the judge *must* issue an arrest warrant. In the alternative, the attorney for the government may request a summons in lieu of an arrest warrant with the intent on serving the defendant. By serving the complaint on a defendant, the served person may or may not appear before the court. If the defendant does not appear as ordered in the summons, then an arrest warrant must be issued by the judge (Authority for Promulgation of Rules, 2014).

Warrantless arrest: No one—citizens or officers working in the U.S. criminal justice system—may arrest another citizen without a warrant issued by a court with proper jurisdiction. On the other hand, there are situations where common sense prevails, and an arrest can be made, such as in the cases described below:

- witnessing a crime take place;
- witnessing a felony or having reasonable cause to believe a person who committed a felony is not in the presence of the arresting person;
- witnessing a misdemeanor, such as a breach of peace; and
- being confident that the arrest can be made without endangering others.

Police officers may make warrantless arrests using less restraint when the following criteria is met:

- when witnessing any crime in progress,
- with probable cause to believe the suspect committed a felony,
- with probable cause to believe a petit crime has been committed (misdemeanor),
- in hot pursuit of a suspect who enters a dwelling,
- when entering a dwelling upon reasonable belief that a person is being harmed, and
- when requested by an occupant to enter a dwelling (Authority for Promulgation of Rules, 2014).

The aforementioned are samples only; each jurisdiction has its own standards, so be sure to research and understand current law for your team. The issues in warrantless arrests are very seldom clear. For example, the issue of *probable cause* has and will continue to be controversial. The U.S. Supreme Court had to overturn an appellate decision by finding that when a postal inspector received information from a reliable informant that credit cards were being stolen from the mail, it is good basis for a warrantless arrest (*U.S. v. Watson*, 1976).

Grand Jury

Federal grand juries have one purpose, and that is to determine if there is sufficient probable cause to bring criminal charges. Not all states use the grand jury system; therefore, research individual jurisdictions for local rules, regulations, and procedures. Focus your research on what powers the grand jury has to conduct investigations, force production of documents, and compel sworn testimony of witnesses to appear before it.

Arraignment – Preliminary Hearing

Arraignments tend to be consistent across jurisdictional lines and have a primary purpose of allowing an accused to enter a plea and, in some jurisdictions, no contest or the equivalent to California's plea subject to *People v. West* (1970). The court may then schedule a sentencing hearing (guilty plea, no contest, and pleas pursuant to *People v. West* or its equivalent), preliminary hearing, and bail hearing for not-guilty pleas. Some jurisdictions address bail issues during the arraignment.

Bail: Most practitioners have found that bail is controlled jurisdictionally and, at times, by local judges. In federal courts, release and detention pending judicial proceedings is controlled and monitored. The Offices of the U.S. Attorneys (n.d.) produced an excellent description of the federal rules in its *Criminal Resource Manual*.

Bail issues generally focus on the Eighth Amendment requirement that excessive bail should not be required as a pretense for keeping defendants incarcerated.

Motions

Keep in mind that attorneys, judges, and justices do not memorize court rules. Some of the rules become second nature from repeated use, but all practitioners need to keep abreast of changes in formats, filing date limitations, and subject matters. Motions are a request to the court of proper jurisdiction to issue an order.

Evidentiary suppression: The suppression of evidence is probably the most important motion used in criminal defense. The basis for suppressing evidence is most often based on the following criteria:



Basis for Suppressing Evidence

Some jurisdictions grant motions for gag orders to be heard during the first appearance of the defendant before the court and, in extraordinary cases, even before the arraignment. The most common causes for granting gag orders are listed below:

- Publicity may endanger the life or physical safety of an individual.
- They may cause defendants and/or witnesses to flee the jurisdiction.
- They can cause destruction of or tampering with evidence.
- They create a hostile environment and intimidation of potential witnesses.
- They may otherwise seriously jeopardize an investigation or unduly delay a trial.

Expert witnesses: There are two types of witnesses: lay and expert. Expert witnesses may provide testimony not generally known by the public. For example, a luthier (someone who makes stringed instruments) may testify on the quality difference between French polish and varnish when applied to classical guitars. Testimony on how the techniques are used, price difference for the applications, and tone difference based on the finish may be offered. On the other hand, a lay witness may not offer an opinion on the price difference between two instruments.

An expert in pricing classical guitars would have to satisfy either the Frye or Daubert test. Jurisdictions generally use one or the other of these two methods for determining the admissibility of an expert's opinion on an issue before the court. A brief description of these tests are as follows described below.

The Frye test is admissible scientific evidence that must be a result of a theory that has "general acceptance" in the scientific community. (*Frye v. United States*, 1923)

The Daubert test is admissible scientific evidence that must satisfy the four tests described below.

1. The theory is testable. (i.e., Has it been tested?)
2. The theory must have been peer reviewed.
3. The reliability and error rate should be evaluated by the judge (100% not required).
4. The extent of general acceptance by the scientific community should be evaluated (*Daubert v. Merrell Dow Pharmaceuticals*, 1993)

It is important to know and understand your jurisdiction's standards for the use of expert witnesses.

Change of venue: The Sixth Amendment of the U.S. Constitution continues to be stressed by social media. The Amendment states that a defendant who is accused of a crime has the right to be tried by an impartial jury of the state and district wherein the crime was committed (U.S. Const. amend. VI). Social media has become so effective that organizations can rally thousands of citizens to boycott advertisers sponsoring a newsperson because the organization does not agree with the views of the reporter (Koku, 2011). When a heinous crime is committed in a small community, social media has the capability of affecting the population's understanding of the facts and circumstances surrounding the crime.

A motion for change of venue is nothing more than a request of a judge to move a trial to another district to find an unbiased jury pool. There is stress on providing unbiased jurors as required by the Sixth Amendment when social media takes a side in the legal proceedings. Jurors must be free from exposure to positions taken by mass media so they may render an impartial decision. Criminal justice practitioners in the future will find it increasingly more difficult to contain pretrial publicity capable of swaying opinions. The Fifth and Sixth Amendments are now, and will continue to be, at odds.

Juvenile Court Procedures

The definition of *juvenile* as related to the criminal justice system in the United States is defined by each jurisdiction. For the federal courts, it is a person who commits a federal crime while aged 18 or younger (*United States v. Smith*, 1987). None of the pretrial issues discussed above apply to juveniles because, by definition, a juvenile cannot be convicted of a crime. Minors (jurisdictional definition) are treated as juveniles until a court declares that the juvenile court's authority over the minor is revoked. If not revoked, the procedures listed below are common.

- Records of proceedings are sealed.
- Only parents or guardians of minors are allowed to attend hearings.
- Attorneys may represent minors.
- Courts issue "findings."
- Courts may commit a minor to youth facilities.
- Courts may defer any corrective action, such as commitment or diversion, pending the minor's completion of court-defined remedial actions for the minor.

Conclusion

This unit provides short descriptions of various procedures used in criminal justice. To succeed in any criminal justice system, two skill sets are required; see below.

Understanding the different goals for criminal justice: There are two attitudes and perspectives of criminal justice, and they affect all aspects of how each individual functions within the system. The system is either viewed from the citizen's perspective or the criminal defendant's position. Citizens view the system as supporting freedom from crime, protecting personal assets, and preventing government interference in private activities; in other words, small government is designed to keep criminal activity down and away from citizens.

The protectors of the defendants work hard to ensure that accused persons are treated fairly and in accordance with what the U.S. Constitution mandates. When courts interpret clauses in the U.S. Constitution, this faction wants the defendants to get the breaks and protection.

Analysis of the desires, attitudes, and voting habits of each of the aforementioned groups continues daily and affects the functions of individual criminal justice systems. It is imperative that each practitioner be aware of his or her personal attitude toward the primary goals of the system and how the system actually works. There are various names for this division; for this course, they are referred to as *citizen* and *defendant* orientations. It appears that the majority of criminal justice personnel naturally gravitate toward one or the other. The important issue is knowing one's inclinations.

References

- Authority for Promulgation of Rules, 28 U.S.C. § 2072-2074 (2014).
- California v. Hodari, 499 U.S. 621 (1991).
- Daubert v. Merrell Dow Pharmaceuticals, 509 U. S. 579 (1993).
- Frye v. United States, 293 F. 1013 (1923).
- Kasikij, P. (2018). *ID 118485037* [Photograph]. Retrieved from <https://www.dreamstime.com/man-under-arrest-criminal-scence-get-caught-handcuf-handcuffed-policeman-image118485037>
- Katz v. United States, 389 U.S. 347 (1967).
- Koku, P. S. (2011). On boycotts organized through the Internet. *Journal of Marketing Development and Competitiveness*, 5(6), 83–93.
- Nave, R. (n.d.). Carbon dating. Retrieved from <http://hyperphysics.phy-astr.gsu.edu/hbase/Nuclear/cardat.html>
- Offices of the United States Attorneys. (n.d.). 26 release and detention pending judicial proceedings (18 U.S.C. 3141 et seq.). Retrieved from <https://www.justice.gov/usam/criminal-resource-manual-26-release-and-detention-pending-judicial-proceedings-18-usc-3141-et>
- People v. West, 3 Cal. 3d 596 (1970).
- Transmission of wagering information; penalties, 18 U.S.C. § 1084 (1967).
- United States v. Smith, 675 F. sup. 307 (1987).
- United States v. Watson, 423 U.S. 411 (1976).
- U.S. Const. amend. IV
- U.S. Const. amend. VI

Suggested Reading

In order to access the following resources, click the links below:

The following court case was referenced in the Unit II Lesson. To learn more about the case, read below:

Katz v. United States, 389 U.S. 347 (1967). Retrieved from <https://advance-lexis-com.libraryresources.columbiasouthern.edu/api/document?collection=cases&id=urn:contentItem:3S4X-FS40-003B-S29Y-00000-00&context=1516831>

The following court case was referenced in the Unit II Lesson. To learn more about the case, read below:

United States v. Watson, 423 U.S. 411 (1976). Retrieved from <https://advance-lexis-com.libraryresources.columbiasouthern.edu/api/document?collection=cases&id=urn:contentItem:3S4X-B3X0-003B-S4F6-00000-00&context=1516831>

If your jurisdiction uses the Daubert test, read the case below.

Daubert v. Merrell Dow Pharmaceuticals, 509 U.S. 579 (1993). Retrieved from <https://advance-lexis-com.libraryresources.columbiasouthern.edu/api/document?collection=cases&id=urn:contentItem:3S4W-XDR0-003B-R3R6-00000-00&context=1516831>

Learning Activities (Nongraded)

Nongraded Learning Activities are provided to aid students in their course of study. You do not have to submit them. If you have questions, contact your instructor for further guidance and information.

Attend court proceedings in your jurisdiction to include arraignments, bail hearings, trials, and, if possible, appellate hearings.