



Criminal Evidence: Fourth Amendment Issues

Course Learning Objectives and Outcomes

This course is designed to provide the following learning objectives

After this course, the Participant will understand the duties, roles and responsibilities of counsel in situations involving the evidentiary validity of a stop, search and/or seizure.

After this course, the Participant will learn practice tips on how to evaluate the validity of a stop, search, seizure or arrest.

After this course, the Participant will develop an understanding about evidence gathered from a search, seizure or stop.

Participants will learn to evaluate the viability of a motion to suppress based on hypotheticals.

Upon completion of the course, participants should be able to apply the course material; improve their ability to research, plan, synthesize a variety of sources from authentic materials, draw conclusions; and demonstrate an understanding of the theme and concepts of the course by applying them in their professional lives.



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Disclaimer: The views expressed herein are not a legal opinion. Every fact situation is different and the reader is encouraged to seek legal advice for their particular situation.

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About the Presenter

Rachel Koch is an Assistant Public Defender of Cook County, Illinois. She currently works in the Child Protection Conflicts Division where she represents parents when the state petitions to take their children from their care. Her work consists of all the tools in the civil toolbox to get parents reunited with their children. Some highlights of her work include a trial win for a former Roma refugee who lived in Baltimore and was in Chicago on vacation, his baby rolled off the motel bed, broke her leg and was treated by a biased doctor. Because of her work on the case, he was reunited with his children. She is also an Adjunct Professor at DePaul University College of Law where she has taught Education Law and Policy and Evidence. Prior to her work for Cook County, Ms. Koch had a solo practice where she represented clients in all stages of litigation in criminal defense, family law, civil forfeiture, family law, civil and administrative cases; she also worked in private practice.

Ms. Koch attended DePaul University College of Law, where she was a Sullivan Fellow at the International Human Rights Law Institute and an assistant to the late Professor Emeritus M. Cherif Bassiouni. She also attended programs abroad in Costa Rica and Italy, focusing on International Law.

Ms. Koch comes to the law after twenty years of experience teaching both young people and adults in New Mexico, Chicago, and Ecuador; Rachel was inspired to study law while working for a teacher training organization where the evolution of International Human Rights Law is a focus.

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Table of Contents

| | |
|---|-------------|
| Course Learning Objectives and Outcomes | 1 |
| Sponsor Information | 2 |
| Presenter Information | 3 |
| Table of Contents | 4-5 |
| Course Description | 6 |
| Course Presentation | 6 |
| Course Material | 6 |
| Timed Agenda: | 7-8 |
| COURSE MATERIAL | 9-17 |
| INTRO/OVERVIEW | 9 |
| PRIVACY EXPECTATIONS | 9-14 |
| Katz 1967: | 9 |
| Places- | 9-10 |
| Plain view | 9 |
| Homes | 9-10 |
| HYPO #1 | 10 |
| Open fields - <i>Oliver v. United States</i> , 466 U.S. 170, 104 S.Ct. 1735 (1984) | 10 |
| Curtilage - <i>United States v. Dunn</i> , 480 U.S. 294, 107 S.Ct. 1134 (1987): | 10-11 |
| HYPO #2 - <i>People v. Woods</i> , 2019 IL App (5th) 180336, 145 N.E.3d 80, 437 Ill.Dec. 782 (2019) Et al | 11 |
| Exceptions/exigent circumstances: LIST FIRST | 11-13 |
| Prevent physical harm to officer or other person (community caretaker) | 11-12 |
| HYPO #3 | 12 |
| Prevent destruction of relevant evidence | 12 |
| HYPO # 4 <i>People v. Augusta</i> , 2019 IL App (3d) 170309, 145 N.E.3d 526 (2019) | 12 |
| Hot pursuit | 13 |

| | |
|---|-------|
| HYPO #5 - <i>People v. Horton</i> , 2019 IL App (1st) 142019-B, 142 N.E.3d 854 (2019) Texas see <i>Barocio v. State</i> , 2005 WL 544815, 158 S.W.3d 498 (2005). | 13 |
| Any other reason that helps with the administration of justice | 13 |
| HYPO #6 - <i>K.P. v. State</i> , 2013 WL 6800973, 129 So.3d 1121 (2013); Texas see <i>Brackens v. State</i> , 2009 WL 4856567, 312 S.W.3d 831 (2009). | 13 |
| Cars, briefly | 13-14 |
| HYPO #7 Many Law citings | 13-14 |
| TERRY STOPS - <i>Terry v Ohio</i> , 392 U.S. 188, S.Ct. 1868, 20 L.Ed.2d 889 (1968) | 14-15 |
| When does a Terry stop turn into an unconstitutional seizure of a person? - MENDENHALL STANDARD – <i>United States v. Mendenhall</i> , 446 U.S. 544, 100 S.Ct. 1870 64 L.Ed.2d 497 (1980) | 14-15 |
| MINORS/STUDENTS/SCHOOL - HYPO #8 <i>New Jersey v. T.L.O.</i> , 469 U.S. 325, 105 S.Ct. 733, 83 L.Ed.2d 720 (1985) | 15-16 |
| NJ V. TLO 1985 | 16 |
| HYPO #9 | 16 |
| Safford Unified School District #1 v. Redding, 557 U.S. 364, 129 S.Ct. 2633, 174 L.Ed.2d 354 (2009). | 16 |
| Resources | 17-18 |
| Resources Specific to this Course | 17-18 |
| Resources for the Legal Professional | 18 |

Course Description

Course Presentation

This course provides a fundamental overview of the process and procedure of Fourth Amendment issues in the context of criminal evidence: searches,

This course provides an intellectual foundation and introduces a set of learning skills essential for success in the legal profession and for life beyond. The course will provide opportunities for careful reading, for creative and critical thinking, for oral and written communication, and for engaging with others in a shared conversation about stimulating material.

Course Material

This material is intended to be a guide in general and is not legal advice. If you have any specific question regarding the state of the law in any particular jurisdiction, we recommend that you seek legal guidance relating to your particular fact situation.

The course materials will provide the attendee with the knowledge and tools necessary to identify the current legal trends with respect to these issues. The course materials are designed to provide the attendee with current law, impending issues and future trends that can be applied in practical situations.

Timed Agenda:

Presenter Name: Rachel Koch

CLE Course Title: Criminal Evidence: Fourth Amendment Issues

| Time Format (00:00:00 - Hours: Minutes: Seconds) | Description |
|---|---|
| 00:00:10 | ApexCLE Company Credit Introduction |
| 00:00:22 | Criminal Evidence: Fourth Amendment Issues |
| 00:00:32 | Presenter Rachel Koch Introduction |
| 00:01:14 | CLE Substantive Material Presentation Introduction |
| 00:08:48 | PRIVACY EXPECTATION PER 4TH AMENDMENT AND EXCEPTIONS |
| 00:9:01 | Katz v. United States 1967 |
| 00:9:48 | Places - Privacy Expected |
| 00:10:42 | Plain View - In Regards to Privacy Expectation Places |
| 00:12:09 | Homes |
| 00:12:53 | HYPO #1: Break-ins at Dunkin Donuts |
| 00:16:16 | 4th Amendment Protections |
| 06:16:31 | Open Fields Oliver v. US 1984 |
| 00:18:24 | Curtilage - Areas Connected to the Home U.S. v. Dunn 1987 |
| 00:20:11 | Four Factors to Distinguish Curtilage |
| 00:22:43 | HYPO #2: Unattended Child in a Residence |
| 00:26:15 | EXCEPTIONS EXIGENT CIRCUMSTANCES |
| 00:26:54 | Prevent Physical Harm to Officer or Other Person |
| 00:27:57 | HYPO # 3: Valid Traffic Stop - Gun Observed |
| 00:30:17 | Prevent Destruction of Relevant Evidence |
| 00:30:23 | HYPO #4: Valid Traffic Stop - Suspected Drugs |
| 00:31:35 | Hot Pursuit |
| 00:31:40 | HYPO #5: Suspect with Possible Gun |
| 00:33:35 | Any Other Reason that Helps with the Administration of Justice |
| 00:33:42 | HYPO #6 Parent Calls Police - Concerned About Son's Behavior |

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|-----------|---|
| 00:35:10 | Cars Briefly |
| 00:35:53 | HYPO #7 Police Stop Car for Driving 5 Miles Over Speed Limit - Smell of Cannabis - People v. Rice |
| 00:37:32 | People v. James 1994 - Warrantless Search of Car if Probable Cause |
| 00:38:56 | People v. Stout 1985 - Distinctive Odor of Cannabis can be Persuasive Evidence of Criminal Activity |
| 00:42:17 | Terry Stops - Seizure While Walking and pat-down search Terry v. Ohio 1968 |
| 00:47:24 | When Does a Terry Stop Turn into an Unconstitutional Seizure of a Person |
| 00:47:43 | MENDENHALL STANDARD - Mendenhall v. US 1980 |
| 00:52:32 | Minors/Students/School |
| 00:53:08 | Legal Doctrine Parents Patrea - Teacher acting in place of Parent |
| 00:055:13 | HYPO #8: Two Girls Smoking in the School Bathroom |
| 00:56:14 | NJ v. TLO 1985 |
| 00:57:39 | HYPO #9 Female Student 13 years old Sent to Principal on Tip that she has Ibuprofen - Strip Search |
| 00:59:04 | Safford Unified School District #1 v. Redding - Standard for Legitimacy for School Search of Minor |
| 01:00:00 | Presenter Closing Summary |
| 01:01:56 | End of CLE Substantive Material |
| 01:01:57 | ApexCLE Company Closing Credits |
| 01:02:03 | End of Video |
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Course Material

I. Intro/overview

- A. Basics – some review
- B. List topics (PRIVACY EXPECTATION – WHERE DO WE HAVE THAT AND WHERE DON'T WE; TERRY STOPS; MINORS – WHAT'S DIFF)
- C. Hypotheticals to go with some areas, based on cases, citations provided
- D. Topics/politics/controversy - conversation around policing and the needs of a given society to have rules and enforcement of the rules to protect its body of citizens and the individual's need to be protected from intrusive government or government actor overreach or dangerous government overreach. That balance or lack of that balance, those are conversations happening all over the world. Ireland and South Africa are two countries having these conversations to try to reconcile their past histories. How do we make it look like what we want it to look like and what do we want it to look like?

II. Privacy expectation

A. Katz 1967:

- 1. Police bugged a public payphone. The Supreme Court said NOT to search because the Fourth Amendment protects people, not places.

B. Places-

1. Plain view

- a) Legally situated (gov't actor w/right to be there)
- b) PC to believe object is evidence of crime activity
 - (1) PC must be immediately upon seeing
- c) Can't move ANYTHING

2. Homes

- a) Garbage
- b) Abandoned property

- (1) There is no reasonable expectation of privacy to abandoned property.

(a) HYPO #1

After a series of break-ins to a Dunkin Donuts, the suspect cut his hand and left a bloody trail inside the store. The cash from the register is found dumped in a field near the store, covered in blood. After watching the store video, officers stop David Defendant for investigation. They notice he has a fresh cut on his hand. He is taken into custody. Detectives run a criminal background. He has only misdemeanors. NO DNA on file.

Detectives talk to David Defendant. He is offered water, takes the water, drinks out of the bottle, and then lawyers up. David Defendant is returned back to holding. He leaves the water bottle. Detectives have the DNA run off of the water bottle matches David Defendant.

David Defendant says he tried to take the water bottle with him when he was returned to holding. Detectives told him that he couldn't have it outside of the interview room. Different story...

- (2) You can search trash that is left out in the alley. No warrant needed

3. Open fields

- a) No privacy expectation. *Oliver v. United States*, 466 U.S. 170, 104 S.Ct. 1735 (1984)
- b) Even though no trespassing signs, not visible or accessible to public
- c) Rationale: 4th A protects “intimate” activities of the home; open fields more accessible to public – therefore no privacy expectation

4. Curtilage:

- a) Area immediately surrounding home
- b) Site of “intimate activity” – greater connection to home
- c) *United States v. Dunn*, 480 U.S. 294, 107 S.Ct. 1134 (1987): contrast curtilage to open fields
 - (1) Considered part of home
 - (2) Yards, decks, porches for activities associated w/home
 - (3) 4 factors to distinguish
 - (a) Distance: how far from actual home?

- (b) Enclosure: is the area within enclosure around the home?
- (c) Function: is the area used for home-type activities?
- (d) Protection: effort made to protect the area from people seeing in?
- (4) Dunn: barn was open fields, not curtilage, so officer who looked into barn and saw a crystal meth lab didn't need a warrant
 - (a) Utilized aerial photos and observation of chemical smell typically associated with making crystal meth to conclude activities weren't the home type

d) HYPO # 2

Police responded to a call of an unattended child in a residence. The officers knocked and rang the doorbell to the home, but nobody answered, and they did not hear anything suspicious.

The citizen who made the report then directed the officers to a side window, accessible only from inside the home's fenced backyard, and the officers looked through that window and observed a baby in a crib inside the home.

When the adult residents arrived home a short time later, the police followed them into the house and into the room where the baby was located. The trial court granted the defendant's motion to suppress, finding no justification for the officers' warrantless entry to the backyard and the home. The State conceded that the police entered both the curtilage and the home itself without a warrant but argued that the actions were part of the officers' community caretaking function. *People v. Woods*, 2019 IL App (5th) 180336, 145 N.E.3d 80, 437 Ill.Dec. 782 (2019); Florida see *Ortiz v. State*, 2009 WL 3784585, 24 So.3d 596 (2009); New York see *People v. Tardi*, 28 N.Y.3d 1077, 66 N.E.3d 1084 (2016); Texas see *Corbin v. State*, 2002 WL 1174569, 85 S.W.3d 272 (2002). The decision to suppress the evidence was reversed.

5. Exceptions/exigent circumstances: LIST FIRST

- a) Prevent physical harm to officer or other person (community caretaker)*
-

(1) HYPO #3

During a valid traffic stop, an officer observed the defendant, who was the front seat passenger, holding a gun which he placed into the glove box as the officer approached.

The police then had the defendant and the other officers exit the vehicle, at which time a crowd of residents began to gather and shout at the police. Citing safety concerns, the police relocated the vehicle and its occupants to the police station to complete their investigation.

b) Prevent destruction of relevant evidence

(1) HYPO #4

During a valid traffic stop, officers see Larry put something, suspect drugs, into his mouth. Officer Murphy grabbed the defendant by the throat, pulled his head back, forced open his mouth, and reached inside to remove suspected drugs. *People v. Augusta*, 2019 IL App (3d) 170309, 145 N.E.3d 526 (2019).

c) Hot pursuit

(1) HYPO #5

As two officers were driving down the street one of the officers saw the defendant in front of a house with a “metallic object” that may have been a gun in his waistband.

The officers stopped the car and got out. Defendant ran inside the house and locked the door. The officers found keys on the front porch and unlocked the door. They entered the house and went upstairs where they found the defendant in a bedroom crouched by the side of a bed.

One officer entered the bedroom with his gun drawn. He told the defendant to raise his hands and come out. When the defendant complied, the officer took the defendant downstairs while the other officer searched the bedroom, saw a bulge in the mattress, and found a gun underneath the mattress. *People v. Horton*, 2019 IL App (1st) 142019-B, 142 N.E.3d 854 (2019); *Texas see Barocio v. State*, 2005 WL 544815, 158 S.W.3d 498 (2005).

d) Any other reason that helps with the administration of justice

(1) HYPO #6

Patty Parent calls the police because she is concerned about her son's behavior. Police come to the house. Brian is refuses to allow the police to search his backpack. Police ask Patty to search Brian's backpack. Florida see *K.P. v. State*, 2013 WL 6800973, 129 So.3d 1121 (2013); Texas see *Brackens v. State*, 2009 WL 4856567, 312 S.W.3d 831 (2009).

Patty finds and removes the 9mm handgun.

(2) Must be Gov't Actor

B. Cars, briefly

1. Hypo #7

Officers stop cars for driving 5 miles over the speed limit. As the officers approach the car, the driver rolls the window down and puts hands on the wheel to be seen. The Officers smell burnt cannabis. The Driver provided a license and rental agreement for the vehicle he was driving and was very calm. Based on the cannabis smell, officers remove the driver and search the car, uncovering a large amount of cash and methamphetamine.

2. Under the automobile exception, officers can conduct a warrantless search of a car if they have a Probable Cause to believe the car has evidence of criminal activity subject to seizure. *People v. James*, 163 Ill.2d 302, 312 (1994); California see *People v. Fews*, 27 Cal.App.5th 553, 238 Cal.Rptr.3d 337 (2018); Florida see *State v. Williams*, 2007 WL 2681794, 967 So.2d 941 (2007).
3. What's a Probable Cause?
 - a) ground for belief of guilt and
 - b) belief of guilt must be particularized with respect to the person to be searched or seized. *Maryland v. Pringle*, 540 U.S. 366, 371 (2003); Texas see *Baldwin v. State*, 2009 WL 605368, 278 S.W.3d 367 (2009).
4. How do I tell if a Probable Cause is there?
 - a) officers may rely on training and experience to draw inferences and make certain deductions. *Ornelas v. United States*, 517 U.S. 690, 700 (1996).
5. Does the smell of cannabis mean there's crime?

- a) It is well established that the distinctive odor of cannabis can be persuasive evidence of criminal activity. See *People v. Stout*, 106 Ill.2d 77, 87 (1985).
- b) Affirmed in cases in 90s, 2000s, and within last few years
- 6. Can the smell be the only indicator on the Probable Cause?
 - a) whether an officer can form probable cause to believe a crime has been committed in possessing cannabis based solely on the smell of burnt cannabis without some further evidence as to the weight of the cannabis given the change in the law.
- 7. But what about recent laws?
 - a) “[I]t appears to the court that it’s still good law that smelling the odor of burnt cannabis gives the officer probable cause to search the vehicle, whether he finds five grams of cannabis or five tons of cannabis.”
- b) Distinction between legalization and decriminalization**
- 8. affirmed**

III. TERRY STOPS

C. A Terry stop is a SEIZURE. *Terry v Ohio*, 392 U.S. 188, S.Ct. 1868, 20 L.Ed.2d 889 (1968)

- 1. Walking down the street. Stopped by the police. Pat down (usually for officer safety)
- 2. Limited to outer garments.
- 3. Limited to weapons or things that could feel like a weapon
- 4. Temporary and lasting no longer than necessary
- 5. Reasonable, Articulate Suspicion.
 - a) Articulating precisely what reasonable suspicion means is not possible: “Reasonable suspicion is a commonsense, nontechnical conception that deals with the factual and practical considerations of everyday life on which a reasonable and prudent person, not legal technicians, act. *Ornelas v. United States*, 517 U.S. 690, 116 S.Ct. 1657 (1996)
 - b) Detainee is reasonably suspected of criminal activity PLUS Officer reasonably suspects detainee is armed
 - c) TOTALITY OF CIRCUMSTANCES

D. When does a Terry stop turn into an unconstitutional seizure of a person?

1. MENDENHALL STANDARD – *United States v. Mendenhall*, 446 U.S. 544, 100 S.Ct. 1870, 64 L.Ed.2d 497 (1980) – woman at airport approached by federal agents asking for ticket and ID; name she gave didn't match ticket name; after identifying themselves as agents, she acted very nervous; they asked her to come for questioning – they said she didn't have to but she did; they asked to search her bags; she agreed; asked to search her person; she agreed. She gave 2 bags of heroin to a female officer and was arrested. She moved to suppress heroin, saying the search wasn't voluntary or consensual.
 - (1) The Court held that a person is “seized only when, by means of physical force or a show of authority, his freedom of movement is restrained.” Mendenhall Standard evaluation factors
 - i. Threatening presence of several officers
 - ii. Officers displaying weapon
 - iii. Physical touching of the individual
 - iv. use of language or tone of voice indicating that compliance with the officer's request might be compelled
 - v. standard: WHETHER OR NOT A REASONABLE PERSON WOULD FEEL FREE TO SAY NO TO OFFICERS AND/OR LEAVE

IV. MINORS/STUDENTS/SCHOOL

- E. The school environment requires an easing of the restriction to which searches by public authorities are normally subject.
 1. Parents patrea
- F. School officials DO NOT need probable cause or a search warrant to search students.
- G. School officials need Reasonable Suspicion
 1. That law being broken
 2. School rule is being broken
- H. **HYPO #8:**

Two girls smoking cigarettes in the bathroom. Jane denied that she was smoking. Search of Jane's purse found “evidence” that she was also selling marijuana at school: pipe and list of names and money owed. *New Jersey v. T.L.O.*, 469 U.S. 325, 105 S.Ct. 733, 83 L.Ed.2d 720 (1985).

1. Evidence = list of students that owed her money and drug paraphernalia

I. NJ V. TLO 1985

- a) Ruling: Reasonableness standard for conducting searches at school
- b) REASONABLE SUSPICION @SCHOOL
 - (1) Was the search justified? Was a law or school rule violated?
 - (2) Is the search reasonable in light of student age, sex/gender, & nature of offence?

c) HYPO #9

Savana, 8th grader 13 years old, was brought to the principal's office based on an anonymous tip that she had ibuprofen on her person. Once at the office, Savana denied having the ibuprofen but was ordered to be disrobe and was strip-searched by school officials.

J. Safford Unified School Dist. No. 1 v. Redding, 557 U.S. 364, 129 S.Ct. 2633, 174 L.Ed.2d 354 (2009).

- a) Savana, 8th grader 13 years old, was brought to the principal's office based on an anonymous tip that she had ibuprofen on her person. Once at the office, Savana denied having the ibuprofen but was ordered to be disrobe and was strip-searched by school officials.
- b) Apply standard
 - (1) Is searching justified?
 - (a) Law or school rule violated?
 - (2) Search reasonable in light of student age, sex/gender, & nature of offence?

Resources

Resources Specific to this Course

In addition, please see the resources cited within the material.

CRIMINAL EVIDENCE BASICS: 4TH AMENDMENT ISSUES

Cases cited

Katz v. United States, 389 U.S. 347 (1967)

#2 People v. Woods, 2019 IL App (5th) 180336

United States v. Dunn, 480 U.S. 294 (1987)

#3 - People v. McCavitt, 2019 Il App (3d) 170830

#4 - People v. Augusta, 2019 IL App (3d) 170309

#5 - People v. Horton, 2019 IL App (1st) 142019-B

Open Fields: Oliver v. United States, 466 U.S. 170 (1984)

United States v. Mendenhall, 446 U.S. 544 (1980)

#7 - People v. Rice, 2019 IL App (3d) 170134

People v. James, 163 Ill. 2d 302, 312 (1994)

People v. Moore, 341 Ill. App. 3d 804 (2003)

Maryland v. Pringle, 540 U.S. 366, 371 (2003).

Ornelas v. United States, 517 U.S. 690, 700 (1996)

People v. Stout, 106 Ill. 2d 77, 87 (1985)

Terry v. Ohio, 392 U.S. 1 (1968)

#8 - NJ V. TLO, 469 U.S. 325 (1985)

#9 - Safford Unified School District #1 v. Redding, 557 U.S. 364 (2009)

Resources for the Legal Professional

ABA Center for Professional Responsibility - www.abanet.org/cpr

Chicago Bar Association - www.chicagobar.org

Commission on Professionalism - www.2civility.org

Judicial Inquiry Board - <http://www.illinois.gov/jib>

Illinois Board of Admissions to the Bar - www.ilbaradmissions.org

Illinois Department of Financial and Professional Regulation - www.idfpr.com/default.asp

Illinois Lawyers' Assistance Program, Inc - www.illinoislap.org

Illinois State Bar Association - www.isba.org

Illinois Supreme Court - www.state.il.us/court

Lawyers Trust Fund of Illinois - www.ltf.org

MCLE Program - www.mcleboard.org