The criminal justice process includes everything that happens to a person from arrest through prosecution and conviction to release from the control of the state. The vast majority of crimes that occur are investigated and prosecuted under state laws. There are, however, many federal crimes that are handled in the federal criminal justice system. The federal and state systems are similar in many ways, but each state has certain features that make it unique.

Typically the process moves through certain stages, and the person arrested might gain his or her freedom at any stage. Some are freed almost immediately at the police station, and some regain their freedom only after serving time in a correctional institution. At various points in the investigation, trial, and sentencing process, the prosecutor may drop the case for lack of evidence, or the judge may declare a mistrial if the jury is unable to reach a verdict.
This chapter deals with the investigation phase of the process, including how the U.S. Constitution limits what police can do. The next three chapters cover proceedings before trial, the trial itself, and sentencing and corrections. The juvenile justice process is discussed in Chapter 16. The final chapter of this unit examines some of the legal issues related to terrorism.

**Arrest**

An arrest takes place when a person suspected of a crime is taken into custody. An arrest is considered a seizure under the Fourth Amendment, which requires that seizures be reasonable. A person can be taken into custody by a police officer in one of two ways: with an arrest warrant issued by a judge or without a warrant if there is probable cause. Someone who is taken into custody under circumstances in which a reasonable person would not feel free to leave is considered to be under arrest, whether or not he or she is told that.

An arrest warrant is a court order commanding that the person named in it be taken into custody. A warrant is obtained by filing a complaint before a judge or magistrate. The person filing the complaint is generally a police officer but may be a victim or a witness. The person making the complaint must also describe and swear to the facts and circumstances of the alleged crime. If, on the basis of the information provided, the judge finds probable cause to believe that an offense has been committed and that the accused committed it, a warrant will be issued. On many occasions, police do not have time to get a warrant. In certain felony cases and in misdemeanor cases, they may make a warrantless arrest in public based on probable cause.

Probable cause to arrest means having a reasonable belief that a specific person has committed a crime. This reasonable belief may be based on much less evidence than is necessary to prove a person guilty at trial. For example, suppose the police receive a radio report of a bank robbery. An officer sees a man matching the description of the bank robber waving a gun and running away from the bank. The officer would have probable cause to stop and arrest the man, but that evidence alone would likely not be enough to convict him of the crime.

There is no exact formula for determining probable cause. When arresting without a warrant, police must use their own judgment as to what is reasonable under the circumstances of each case. In all cases, probable cause requires more than mere suspicion or a hunch. Some facts must be present that indicate that the person arrested has committed a crime.

In recent years, the courts have allowed law enforcement officials to use a drug courier profile to help establish probable cause for arrest. Drug courier profiles are often based on commonly held notions concerning the typical age, race, personal appearance, behavior, and mannerisms of drug couriers. Police often use them simply to provide a basis to stop and question a person.
Some argue that it is unfair to use such factors in determining probable cause. These critics argue that individualized suspicion—as opposed to the generalized characteristics of drug couriers—should be required to establish probable cause. Others believe that drug cases present unique law enforcement problems and that the use of the profiles is necessary in order to stop drug trafficking.

Police may establish probable cause based on information provided by citizens in the community. Information and statements from victims or witnesses can be used to obtain an arrest warrant. Police also use tips from informants to establish probable cause if they can convince a judge that the information they have obtained is reliable.

Figure 12.1 Sequence of Events in the Criminal Justice Process

The criminal justice process includes everything that happens from the arrest through prosecution, conviction, and eventual release from control by the state. Additional information is provided in Chapters 13–15. **ANALYZE THE DATA** What happens after charges are brought against the individual?
In determining the reliability of an informant’s tip, a judge will consider a number of circumstances. These include whether the informant has provided accurate statements in the past, how the informant obtained the information, and whether the police can corroborate, or confirm, the informant’s tip with information from other sources.

**Problem 12.1**

The police receive a tip that a drug pusher named Richie will be flying from New York City to Washington, D.C., sometime on the morning of September 8. The informant describes Richie as a tall man with reddish hair and a beard. He also tells police that Richie has a habit of walking fast and that he will be carrying illegal drugs in a brown leather bag. The police have received reliable information from this informant in the past.

On the morning of September 8, the police watch all passengers arriving from New York City. When they see a man who fits the description—carrying a brown leather bag and walking fast—they arrest him. A search of the bag reveals a large quantity of cocaine.

**a.** Do you think the police had probable cause to arrest Richie? Explain.

**b.** Should the police have obtained a warrant before arresting Richie? Why or why not?

**c.** Assume the police have not received a specific tip but they know that crack cocaine is being brought regularly on trains from one city to another by teenagers hired by older drug dealers. They see a 16-year-old African American male arriving by train. He is alone and is carrying a small canvas bag. Should the police be able to stop and question him? Under what circumstances should they be able to search or arrest him?

A police officer does not need probable cause to stop and question an individual on the street, but the officer must have **reasonable suspicion** to believe that the individual is involved in criminal activity. Reasonable suspicion is based on even less evidence than probable cause, but it must be more than a mere hunch. If the officer has reasonable suspicion that the person is armed and dangerous, he or she may do a limited pat-down of the person’s outer clothing—a **stop and frisk**—to remove any weapons the person may be carrying.

Even if a police officer does not have probable cause or reasonable suspicion, the officer may go up to any individual and ask to speak to him or her. The person may decline and continue his or her activity,
and the officer is not legally permitted to take the person’s silence or departure into account in determining probable cause or reasonable suspicion. In all states, however, if the person runs from the police upon being asked for identification, that flight may give the officer reasonable suspicion to stop the person again, at which point the person is not free to walk away. This is especially true with stops in high crime areas.

The most common kind of arrest occurs when people do not realize they are being arrested at all. When a police officer stops a person driving a car for violating traffic laws, the driver is technically under arrest because the driver is not free to leave but must stay until the officer releases him or her. The detention in this common situation is usually brief, lasting only as long as it takes the officer to check identification and registration, and typically ends when a citation, or ticket, is issued for the violation. The U.S. Supreme Court has ruled that police can order all passengers out of a car when making a lawful traffic stop.

The Case of . . .

**The Unlucky Couple**

After an evening at the movies, Lonnie Howard and his girlfriend, Melissa, decide to park in the empty lot behind Briarwood Elementary School. They begin talking and start drinking the beer they brought with them. After several beers, the couple is startled by the sound of breaking glass and voices from the rear of the school.

Unnoticed in their darkened car, Lonnie and Melissa observe two men loading office furniture and electronics equipment from the school into the back of a van. Quickly concluding that the men must be burglars, Lonnie decides he should leave the parking lot. He revs up his engine and roars out of the parking lot onto Main Street.

Meanwhile, unknown to Lonnie and Melissa, a silent security alarm has also alerted the local police to the break-in at the school. Responding to the alarm, Officer Vicki Ramos heads for the school. She turns onto Main Street just in time to see one vehicle—Lonnie’s car—speeding away from the school.

**Problem 12.2**

a. If you were Officer Ramos, what would you do in this situation? If you were Lonnie, what would you do?

b. If Officer Ramos chases Lonnie, will she have probable cause to stop and arrest him?

c. How do you think Officer Ramos would act after stopping Lonnie? How do you think Lonnie and Melissa would act?

d. Role-play this situation. As Officer Ramos, decide what you would say and how you would act toward the occupants of the car. As Lonnie and Melissa, decide what you would say and how you would act toward the police officer.

e. What could Lonnie and Melissa do if they were mistakenly arrested for the burglary? What could they do if they were abused or mistreated by Officer Ramos?

f. Assume Lonnie takes a baseball bat from the back of the car and begins to wave it after being stopped by Officer Ramos. Would it be legal for Officer Ramos to use deadly force?
Steps to Take

What To Do If You Are Arrested

- **Do not struggle with the police.** Be polite. Avoid fighting or swearing, even if you think the police have made a mistake. Resisting arrest and assaulting a police officer are usually separate crimes that you can be charged with even if you have done nothing else wrong. If you believe you have been assaulted by the police, be sure to write down the officer’s name and badge number. If possible, also write down the names and phone numbers of any witnesses.

  Give your name, address, and phone number to the police. Otherwise, keep quiet until you have spoken to a lawyer. Do not discuss your case with anyone at this point, and don’t sign any statements about your case.

  You may be searched, photographed, and fingerprinted. Notice carefully what is done but do not resist. If any personal property is taken from you, ask for a written receipt.

  As soon as possible after you get to the police station, call a trusted relative or friend. Tell this person where you are, what you have been charged with, and what your bail or bond is. (See Chapter 13 for information about bail.)

  Please note that this information applies to adults who are arrested. When juveniles are taken into custody, a parent or guardian must be notified and there is no right to bail. There may also be other differences between juvenile and adult arrest procedures and the steps you should take. (See Chapter 16 for information about the juvenile justice system.)

Cooperating with the police

- **When you are arrested for a minor offense, you may, in some places, be released without having to put up any money.** This is called an unsecured bond or citation release. If you do not qualify for a citation release, you may have to put up some money before release. This is called posting a cash bond or collateral. Ask for a receipt for the money.

- **When you are arrested for a serious misdemeanor or felony, you will not be released immediately.** Ask the friend or relative you have called to get a lawyer for you. If you cannot afford a lawyer, one will be appointed by the judge when you are first brought to court.

  Before you leave the police station, be sure to find out when you are due in court. *Never be late or miss a court appearance.* If you do not show up in court at the assigned time, a warrant may be issued for your rearrest.

- **Do not talk about your case with anyone except your lawyer.** Be honest with your lawyer, or he or she will have trouble helping you. Ask that your lawyer be present at all lineups and interrogation sessions. Most criminal defense lawyers recommend that you not talk to police about the crime until you speak with a lawyer.
Television crime shows suggest that much of a police officer’s work involves deadly force. In fact only a small percentage of interaction between the police and the public involves the use of force. When force is used, it usually does not involve police use of a weapon or other type of deadly force. A police officer may use as much force as is reasonably necessary to make an arrest. However, most police departments limit the use of deadly force to incidents involving dangerous or threatening suspects. The U.S. Supreme Court has ruled that deadly force “may not be used unless it is necessary to prevent escape, and the officer has probable cause to believe the suspect poses a significant threat of death or serious physical harm to the officer or others.”

If a police officer uses too much force or makes an unlawful arrest, the accused may bring a civil action seeking monetary damages for a violation of the federal Civil Rights Act. The government could also file a criminal action against the police. In addition, many local governments have processes for handling citizen complaints about police misconduct. Note, however, that a police officer is never liable for false arrest simply because the person arrested did not commit the crime. Rather, it must be shown that the officer acted maliciously or had no reasonable grounds for suspicion of guilt. Also, if an arrest is later ruled unlawful, the evidence obtained as a result of the arrest may not be used against the accused.

Problem 12.3

a. What arguments can Harris make that his rights were violated?

b. What arguments can Officer Scott make that his use of force did not violate Harris’ rights?

c. How should this case be decided? Explain.

d. Draft a policy that the police could use to determine when a chase is justified.
Americans have always valued their privacy. They expect to be left alone, to be free from unwarranted snooping or spying, and to be secure in their homes. While there is no explicit right to privacy in the U.S. Constitution, the Fourth Amendment sets out the right to be free from “unreasonable searches and seizures” and establishes conditions under which search warrants may be issued. Like others in the Bill of Rights, this right limits the power of government, not the actions of private citizens. If an individual violates your privacy, however, you may be able to make a claim under tort law, discussed in Unit 3.

Balanced against the individual’s reasonable expectation of privacy is the government’s need to gather information. In the case of the police, this is the need to collect evidence against criminals and to protect society against crime.

The Fourth Amendment does not give citizens an absolute right to privacy, and it does not prohibit all searches—only those that are unreasonable. In reviewing whether the police acted reasonably in conducting a search, courts carefully consider the facts and circumstances of each case, sometimes called the “totality of the circumstances.” Traditionally, courts have found searches and seizures of private homes to be reasonable only when authorized by a valid warrant. In practice today, warrantless searches are very common (except for searches of homes) as long as they are reasonable.
The courts have recognized certain situations in which warrantless searches are considered to be reasonable and allowed. These are discussed on pages 144–146.

The U.S. Supreme Court has sometimes used the concept of “reasonable expectation of privacy” to help determine whether a search was reasonable or unreasonable. Courts ask: did the person in a particular situation have an expectation of privacy, and does society consider that expectation in this instance to be reasonable? In one such case, the Supreme Court found that a person did not have a reasonable expectation of privacy in garbage left in a plastic bag for pickup on the curb in front of his house. The police were allowed to search this person’s garbage without first obtaining a warrant.

Although the language of the Fourth Amendment is relatively simple, search and seizure law is complex. There are many exceptions to the basic rules. Once an individual is arrested, it may be up to the courts to decide whether any evidence found in a search was legally obtained. If a court finds that the search was unreasonable, then evidence found in the search cannot be used at the trial against the defendant. This principle—the exclusionary rule—does not mean that the defendant cannot be tried or convicted, but it does mean that evidence seized in an unlawful search cannot be used at trial.

**Problem 12.4**

Examine the following situations. Decide whether the search violates the Fourth Amendment. Explain your decisions.

a. The police see Dell standing at a bus stop in an area known for drug dealing. They stop and search him, finding drugs in his pocket.

b. After Brandon checks out of a hotel, the police ask the hotel manager to turn over the contents of the wastebasket, where they find notes planning a murder.

c. Jill’s ex-boyfriend breaks into her apartment and looks through her desk for love letters. Instead he finds drugs, which he gives to the police.

d. Pam is seen shoplifting in a store. Police chase Pam into her apartment building and arrest her outside the closed door of her apartment. A search of the apartment reveals a large quantity of stolen goods.

e. Sandi is suspected of receiving stolen goods. The police go to her house and ask Claire, her roommate, if they can search the house. Claire gives them permission, and they find stolen items in Sandi’s dresser.
Ever since the development of the modern police force in London by Sir Robert Peel in 1829, determining the best way to police the police—to investigate and hold them accountable for following laws as they enforce them—has been an ongoing challenge.

In most municipalities, city government is headed by an elected mayor or a city manager hired by an elected city council. In either case, the mayor or city manager has the power to hire and fire the police chief. If voters are dissatisfied with the work of the police force, this will reflect badly on the mayor or the city manager, who will have a strong incentive to either improve the work of the force or hire a new chief who will do a better job.

Police departments handle complaints from citizens through an internal affairs unit. In small departments, one officer handles citizen complaints in addition to other duties. In larger departments, citizen complaints are handled by a specialized unit, often staffed by supervisors.

A number of jurisdictions have taken additional steps that involve persons independent of the police department in the review of police conduct. Among the most common structures are the following:

**Civilian Complaint Review Board Model:**
The civilian complaint review board is usually made up of citizen volunteers who review findings that the police department’s internal affairs unit proposes in response to complaints from citizens. In some jurisdictions, the complaint review board relies on the police investigation to make a determination.

In others, the review board has staff members who investigate the complaints. This process is more open to the public and can help build trust in the community, but the volunteers on the board may know little about police work.

**Police Commission Model:**
The police commission has independent authority over the operation of the police department. Commission members are usually appointed by elected officials such as the mayor and/or city council. In some cases the commission employs a staff of investigators to review complaints. The commission can recommend disciplinary action to the chief of police, when appropriate, or independently impose discipline when necessary.

**Office of Professional Accountability Model:**
An outside expert is brought in as the head of the police department office of internal affairs. This expert is appointed by the mayor and confirmed by the city council. This model blends inside expertise with outside accountability.

### Problem 12.5

**a.** Critics of investigations by a police department’s internal affairs unit talk about a “blue wall of silence” blocking a thorough investigation. What do you think this phrase means?

**b.** What are the strengths and weaknesses of each model described above? Which approach would you recommend for your community? Explain your reasons.
Searches With a Warrant

A search warrant is a court order. It is obtained from a judge who is convinced that there is a bona fide (genuine) need to search a person or place. Before a judge issues a warrant, someone, usually a police officer, must file an affidavit—a sworn statement of facts and circumstances—that provides the probable cause to believe that a search is justified. If a judge issues a search warrant, the warrant must specifically describe the person or place to be searched and the particular things to be seized.

Once the search warrant is issued by the judge, the search must be conducted within a certain number of days specified in the warrant. Also, in many states the search must be conducted only in the daytime, unless the warrant expressly states otherwise. Finally, a search warrant does not usually authorize a general search of everything in the specified place. For example, if the police have a warrant to search a house for stolen 20-inch televisions, it would be unreasonable for the police to look in desk drawers, envelopes, or other small places where such televisions could not possibly be hidden. However, the police can seize evidence related to the case and any other illegal items that are in plain view when they are properly searching the house for the televisions.

When the police have a warrant to search a house, the Fourth Amendment’s reasonableness requirement usually means that they must knock, announce their purpose and authority (that is, that they are police officers), and request admission. The police generally cannot enter a house forcibly—even with a search warrant—unless they have met the “knock and announce” test described above.
However, the U.S. Supreme Court has allowed for “no-knock” entries when circumstances present a threat to the officers or where evidence would likely be destroyed if advance notice were given (such as in drug cases). In 2006 the Supreme Court allowed the use at trial of evidence obtained after police entered a house without following “knock and announce” rules.

**Searches Without a Warrant**

By law, searches of private homes usually require a warrant. However, the courts have recognized some situations in which searches are reasonable and may be legally conducted without a warrant.

- **Search incident to a lawful arrest.** A search that is part of, or incident to, a lawful arrest is considered reasonable. This allows the police to search a lawfully arrested person and the area immediately around that person for hidden weapons or for evidence that might be destroyed. This is called a “grab area” search. If the arrest occurs next to or in the accused’s car, police may also search the passenger compartment of the car, but usually not the trunk. The Supreme Court has also allowed a “protective sweep” through an arrested person’s home in search of other potentially armed persons.

- **Stop and frisk.** A police officer who reasonably thinks a person is behaving suspiciously and is likely to be armed may stop and frisk the suspect for weapons. This protects the safety of officers and bystanders who might be injured by a person carrying a concealed weapon. The Supreme Court has also said that seizing an illegal substance (such as drugs) during a valid frisk is reasonable if the officer’s sense of touch makes it immediately clear that the object felt is an illegal one. This is known as the “plain feel” exception.

- **Consent.** When a person voluntarily agrees, the police may conduct a search without a warrant and without probable cause. Normally, a person may grant permission to search only his or her own belongings or property. In some situations, however, one person may legally allow the police to conduct a search of another person’s property. For example, a parent may usually allow officers to search a child’s property. In 2006 the Court said that one spouse could not give consent to a warrantless search of her home when the other spouse was present and objected to the search.
Border and airport searches. Customs agents are authorized to search without warrants and without probable cause. They may examine the baggage, vehicles, purses, wallets, and similar belongings of people entering the country. Body searches or searches conducted away from the border by customs agents are allowed only where there is reasonable suspicion of criminal activity. In view of the danger of terrorist activities, security personnel and airlines are permitted to search all carry-on luggage and to search all passengers by means of fixed and hand-held metal detectors. Since the September 11, 2001, terrorist attacks, these searches can take place several times from the moment a passenger enters the airport until he or she boards the flight. Part of the rationale for border and airport searches is that people have a reduced expectation of privacy in these two settings and accept a certain amount of intrusion by government into their privacy.

Vehicle searches. A police officer who has probable cause to believe that a vehicle contains contraband may conduct a search of the entire vehicle, as well as any containers in the vehicle that might contain the contraband, without a warrant. This does not mean that the police have a right to stop and search vehicles randomly on the streets. The right to stop and search must be based on probable cause. 

Problem 12.6

a. Role-play this encounter. As the officers, decide what questions to ask McGee. As McGee, decide what to tell the officers.

b. Assume McGee tells the police what he knows. What should the police do then?

c. Should the police get a search warrant before going to Johnson’s house? If they go without a warrant, do they have probable cause to arrest him? Why or why not?

d. If the police decide to enter Johnson’s house, should they knock and announce themselves or break in unannounced?

e. If the police enter the house, can they arrest Johnson? Where can they search, and what, if anything, can be seized? Role-play the scene at the house.

Fingers McGee

While on duty, Officer Yomoto and Officer Jones receive a radio report of a robbery at the Dixie Liquor Store. The report indicates only that the suspect is male, about six feet tall, and wearing old clothes. Meanwhile, Fingers McGee is finishing up some shopping at a nearby store and has just seen the owner of the Dixie Liquor Store chasing a man. The man was carrying a paper sack and what appeared to be a knife as he ran down the street. McGee thinks the man looks like Mark Johnson, a drug addict, and he thinks the man was running toward Johnson’s house located at 22 Elm Street. Officers Yomoto and Jones encounter Fingers McGee on a street corner and begin to ask him questions.
• **Plain view.** If an object connected with a crime is in plain view and can be seen from a place where an officer has a right to be, it can be seized without a warrant. For example, if an officer legally stops a car for a traffic violation and sees a gun lying on the car seat next to the driver, he or she may seize it without a warrant. Likewise, if an officer has gained legal entrance into a suspect’s house and sees drug paraphernalia on a coffee table, the officer does not need a warrant to seize the **contraband**, or illegal items.

• **Hot pursuit.** Police officers in hot pursuit of a suspect are not required to obtain a search warrant before entering a building that they have seen the suspect enter. It is also lawful for the police to seize evidence found in plain view during hot pursuit of a suspected felon.

• **Emergency situations.** In certain types of emergency situations, the police are not required to get a search warrant. These situations include searching a building after a telephoned bomb threat, entering a house after smelling smoke or hearing screams, and other situations in which the police do not have time to obtain a warrant from a judge. The U.S. Supreme Court has also allowed warrantless entries of a person’s home where the police have probable cause to believe that failure to enter immediately without a warrant will result in destruction of evidence, escape of the suspect, or harm to the police or another individual inside or outside the building. This exception has been limited by the Supreme Court to serious crimes.

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**Public School Searches**

As you have learned, the Fourth Amendment does not protect citizens against all government searches and seizures, only unreasonable ones. In its consideration of the extent to which students at public schools enjoy Fourth Amendment rights while they are at school, the U.S. Supreme Court has granted school authorities broad discretion to search students and their possessions in several situations.

The touchstone of the Supreme Court’s analysis under the Fourth Amendment in criminal searches is the reasonableness, considering all the circumstances, of the particular government invasion of an individual’s personal security. In public school cases, however, the main concern is whether a search is reasonable in the context of the school’s legitimate interests.
Student Drug Testing

Tecumseh High School offers a variety of extracurricular activities for its students. These activities include choir, band, color guard, Future Farmers of America (FFA), Future Homemakers of America (FHA), and the academic team, as well as athletics and the cheerleading squad. The majority of the school’s 500 students participate in one or more of these activities.

At the start of the 1998 school year, the school district adopted the Student Activities Drug Testing Policy. While the school acknowledged only a minimal problem with drugs, they adopted this policy to prevent a bigger problem from developing. The policy required drug testing of all students who participated in any school-sanctioned extracurricular activity. Specifically, in order to participate in an activity, each student had to sign a written consent agreeing to be tested for drug use on several occasions: prior to participating in the activity, randomly during the year while participating in the activity, and at any time while participating in the activity upon reasonable suspicion.

According to the policy, students to be tested at random are called out of class in groups of two or three. The students are directed to a restroom, where a faculty member serves as a monitor. The monitor waits outside the closed restroom stall for the student to produce the urine sample. The monitor pours the contents of the vial into two bottles. Together the faculty monitor and the student seal the bottles. The student signs a form, which the monitor places with the filled bottles into a mailing pouch in the presence of the student. The bottles are then sent to be tested at a designated laboratory. Random drug testing was conducted in this manner on approximately eight occasions during the 1998 and 1999 school years.

There are no academic penalties for refusing to take the test or for a negative result, and results of the tests are not shared with law enforcement authorities. Students who refuse to submit to the policy simply cannot participate in the extracurricular activity. In two school years, a total of 484 students were tested as part of this policy. Four students tested positive.

Two students, neither of them athletes, challenged this policy in federal court as a violation of their right to privacy. The trial court sided with the school, but the federal court of appeals reversed the decision. The school board has appealed to the U.S. Supreme Court, which has agreed to hear the case.

Several years earlier, the U.S. Supreme Court upheld the policy of an Oregon high school to conduct random, suspicionless searches of student athletes at a high school with a serious drug problem. In that case, school officials had determined that the student athletes were among the leaders of the “drug culture” at the school.

Problem 12.7

a. How is the Tecumseh case like the Oregon case? How is it different? How is this case similar to and different from the New Jersey v. TLO case discussed on page 148?

b. What are the most convincing arguments challenging the policy for the students?

c. What are the most convincing arguments in justifying the policy for the school?

d. How should this case be decided? Explain.

e. Assume that the case is decided in favor of the school. Will this mean that schools can test all students? Faculty and staff? Should schools be able to test everyone for drugs? Explain your reasons.
In the 1985 case of *New Jersey v. TLO*, an assistant principal suspected a student of violating the public high school’s rule against smoking. The principal searched the student’s purse and found evidence of marijuana use. Although the U.S. Supreme Court recognized that a student does have a reasonable expectation of privacy while at school, it nevertheless upheld the search by the principal. Instead of requiring that the school have probable cause to suspect a student of criminal activity, as in a traditional criminal search, the school authority only needs to have reasonable suspicion that a search will turn up evidence that the student is violating either school rules or the law.

Because drug use is a serious issue in schools today throughout the United States, courts have given schools great discretion in devising ways to combat the problem. For example, the courts allow schools to search student lockers on the theory that lockers belong to the school and that students do not have a reasonable expectation of privacy in property owned by the school. Most courts have also allowed drug-sniffing dogs and their handlers to enter schools to search for drugs. However, the courts have usually been reluctant to allow strip searches of students suspected of drug use, finding such searches to be unreasonable.

**Suspicionless Searches**

Searches and seizures are usually considered unreasonable if there is no individualized suspicion of wrongdoing. For example, the police could not search all the people gathered at a street corner if they suspected that only one of them possessed evidence of a crime. They could search only the person upon whom their individual suspicion is focused so that the privacy rights of the others on the corner are protected.

The U.S. Supreme Court has recognized some limited circumstances in which this requirement of individualized suspicion need not be met. For example, the Court has upheld suspicionless searches conducted in the context of a program designed to meet special needs beyond the goals of routine law enforcement. These special circumstances include fixed-point searches at or near borders to detect illegal immigrants, highway sobriety checkpoints, and mandatory drug and alcohol tests for railroad employees who have been involved in accidents. The Court found these searches to be reasonable and in support of a special need beyond ordinary law enforcement. These searches continue to be controversial because they seem to depart from the Fourth Amendment’s traditional requirement that searches be based on probable cause. In the 1990 case of *Michigan Dept. of State Police v. Sitz*, the Supreme Court determined that properly conducted sobriety checkpoints are constitutional. However, some states have determined that such checkpoints that have been allowed by the Court in fact violate their state constitutions and have banned them.
Each of the cases below deals with the policy of allowing the government to conduct searches that are not based on individualized suspicion of criminal wrongdoing. Analyze the facts carefully. Balance the individual’s interest in privacy against the government’s justification for conducting the searches. Then decide whether or not the U.S. Supreme Court should allow each search.

a. In early 1986, the Michigan Department of State Police established a sobriety checkpoint pilot program. All vehicles passing through a checkpoint would be stopped and their drivers briefly examined for signs of intoxication. If an officer detected any signs of intoxication, the driver would have his or her driver’s license and car registration checked. If warranted, the officer could decide to conduct further sobriety tests. Should the field tests and the officer’s observations suggest that the driver was intoxicated, an arrest would be made. All other drivers would be permitted to resume their journey immediately.

The program was carried out on only one night. During the hour-and-fifteen-minute duration of the checkpoint’s operation, 126 vehicles passed through the checkpoint, with an average delay of approximately 25 seconds per vehicle. Two drivers were detained for field sobriety testing, and one of the two was arrested for driving under the influence of alcohol. A third driver who drove through without stopping was pulled over by an officer in an observation vehicle and arrested for driving under the influence. Before any further checkpoints could be carried out, several drivers filed a lawsuit claiming that the checkpoints created an unreasonable seizure of their vehicles in violation of their Fourth Amendment rights.

b. In August 1998, Indianapolis began to operate checkpoints in an effort to catch drug traffickers. Between August and November, the city conducted six checkpoints and stopped a total of 1,161 vehicles. At the checkpoint, police would stop a group of cars at random and inform the drivers that they were being detained briefly. One officer would ask the driver for license and registration information and check for evidence of the driver’s impairment. Another officer would conduct a plain view search of the inside of the vehicle from outside, while a trained dog would sniff around the outside of the car for drugs. Unless this procedure produced evidence of probable cause, the drivers were able to leave, typically within five minutes. These stops resulted in 104 arrests, about half of which were for drug offenses. Several drivers who were detained sued the city for violation of their Fourth Amendment rights.
Racial profiling in Police Investigations

Racial profiling is the inappropriate use of race as a factor in identifying people who may break or have broken the law. Profiling can take the form of inappropriate police action based on ethnicity, national origin, or religion as well as race. Profiling occurs when, for example, an airport security guard selects an “Arab-looking” person to be searched solely because of his or her appearance. Critics of racial profiling, including civil rights advocates and some police professional organizations, say that it violates the people’s constitutional right to equal protection before the law as well as the presumption of innocence. They also say it is an ineffective law enforcement tactic, it reinforces racial stereotypes in society, and it creates negative relations between police and citizens.

The general rule is that it is inappropriate for an officer to stop a person solely because of his or her race, ethnicity, national origin, or religion. However, in some situations officers may appropriately consider these factors among others in deciding whom to stop. For example, if an eyewitness to a robbery describes the robber as an African American man, a police officer may use race as a factor in deciding to stop an African American man that she sees running from the immediate vicinity of the crime.
What Should Be Done About Racial Profiling?

A committee of state legislators is meeting to discuss solutions to the issue of racial profiling. A study by the state government shows that African American drivers are 35 percent more likely to be stopped and searched by police than drivers of other races. A survey of people who have been pulled over in the state shows that a majority of people felt that they were stopped for legitimate reasons. However, one in three African Americans and one in four Latinos felt they had been unfairly stopped. Many complained of abusive treatment by police.

Assume that you are a state legislator on the committee trying to solve these problems. Read the following excerpts from proposals offered by committee members.

**Gomez:** The problem is that police are not used to dealing with people from other cultures and have stereotypes of people of other races. All police should receive training on diversity and how to be culturally sensitive.

**Wu:** This practice has gone on for so long because people are not aware of their rights. When people are stopped, they should immediately be told why and be given a card that lists their rights along with a business card listing the name and contact information of the officer.

**Letaliano:** Police officers are not being disciplined for their inappropriate behavior because the police chiefs are unaware of what is going on. We need to collect data regularly to make police officers more aware of why they are really stopping people and to keep them accountable to the public. Each time a driver is stopped, the officer should be required to fill out a form detailing the time and date, driver’s age, probable race, gender, and the reason for stopping the person.

**Reynolds:** The U.S. Constitution and state laws already prohibit searches not based on probable cause. The police department already has internal complaint procedures that people can follow if they feel they were stopped because of their race. This is enough to protect citizens. To do more could make the police reluctant to stop people who might be criminals.

**Al-Aziz:** It’s too hard for citizens to prove that they were stopped illegally. All stops by police should be videotaped so we can see how the police treat the suspect and then take disciplinary action against officers who act improperly.

**Debouche:** We can’t rely only on laws or the police department to solve the problem. The answer is to have a board made up of ordinary citizens that hears complaints and has the power to take disciplinary action against officers who act inappropriately.

**Problem 12.8**

a. Which of these proposals seems most likely to help address the issue as you see it? Give your reasons.

b. Invite members of your community to participate in this activity. Be sure that representatives from both law enforcement and a group concerned about racial profiling are invited. Is there evidence that racial profiling is a problem in your community? If so, what is the evidence? What can be done to deal with the problem? If it is not a problem where you live, what measures can be taken to keep it from becoming a problem?
Problem 12.9

Determine whether profiling was used in making each of the following decisions. Give your reasons.

a. Two African American men are driving over the speed limit on a highway where police know drugs are being transported to a part of the city with a large African American population. A police officer stops them for speeding and then conducts a complete search of their car, including their trunk, to look for drugs. They do not find any drugs.

b. After a terrorist attack, the government decides to use more telephone wiretaps to gather information in communities that have mosques.

c. A man reports overhearing two Spanish-speaking men in a coffee shop planning to rob a specific jewelry store the next day. The witness could not see the men’s faces and does not know their names. The next day the police go to the store and question two “Latino-looking” men who are sitting in a car outside.

d. A woman entering the United States holds a passport from a country with which the United States was recently at war. A customs agent detains her for questioning.

Interrogations and Confessions

After an arrest is made, it is standard police practice to question, or interrogate, the accused. These interrogations often result in confessions or admissions of guilt. The accused’s confessions or admissions are later used as evidence at trial.

Balanced against the police’s need to question suspects are the constitutional rights of people accused of a crime. The Fifth Amendment to the U.S. Constitution provides citizens with a protection against self-incrimination. This means that a suspect has a right to remain silent and cannot be forced to testify against himself or herself at trial. This protection rests on a basic legal principle: the government bears the burden of proof. Suspects are not obliged to help the government prove they committed a crime or to testify at their own trial. Under the Sixth Amendment, a person accused of a crime has the right to the assistance of an attorney.

The U.S. Supreme Court has held that a confession is not admissible as evidence if it is not voluntary and trustworthy. This means that using physical force, torture, threats, or other techniques that could force an innocent person to confess is prohibited. In the case of Escobedo v. Illinois, the Supreme Court said that even a voluntary confession is inadmissible as evidence if it is obtained after the defendant’s request to talk with an attorney has been denied. The Court reasoned that the presence of Escobedo’s attorney could have helped him avoid self-incrimination.
Although some defendants might ask for an attorney, others might not be aware of or understand their right to remain silent or their right to have a lawyer present during questioning. In 1966, the Supreme Court was presented with such a situation in the case of *Miranda v. Arizona*. In its decision, the Court ruled that Ernesto Miranda’s confession could not be used at trial because officers had obtained it without informing Miranda of his right to a lawyer and his right to remain silent. As a result of this case, police are now required to inform people taken into custody of the so-called *Miranda* rights before questioning begins.

Suspects sometimes complain that they were not read their *Miranda* rights and that the entire case should therefore be dropped and charges dismissed. Failure to give *Miranda* warnings, however, does not affect the validity of an arrest. The police have to give *Miranda* warnings only if they want to use statements from the accused at the trial. In fact, in his second trial, even though the court could not use his confession as evidence against him, Miranda was convicted based on other evidence.

The controversial *Miranda* case illustrates the delicate balance between the protection guaranteed to the accused and the protection from crime provided to society. This balance is constantly changing, and the effect of the case has been altered by more recent cases.
The Juvenile and Miranda Warnings

In 1995, teenagers Michael Alvarado and Paul Soto attempted to steal a truck in a shopping mall parking lot in Santa Fe Springs, California. Alvarado approached the passenger side door of the truck, and Soto, holding a .357 Magnum pistol, approached the driver. The driver refused to give Soto the keys, so Soto shot and killed him. Alvarado then helped Soto hide the gun.

Both Alvarado and Soto were convicted of second-degree murder and robbery. Alvarado was convicted in large part because of incriminating statements he made about his involvement in the shooting during a two-hour interview with a police detective about a month after the murder.

At the time of the interview, Alvarado was a 17-year-old high school student. The detective contacted Alvarado’s mother, who agreed to bring him to the police station for questioning. When Alvarado arrived with his parents, the detective denied the parents’ request to remain with their son during the interview.

While they waited in the lobby, Alvarado was questioned alone. During the two-hour session, the detective twice asked Alvarado if he wanted to take a break. Alvarado admitted to his role in the killing. At the end of the interview he went home. Alvarado was never advised that he had a right to remain silent, to consult a lawyer prior to answering questions, or to leave the police station.

Problem 12.10

a. What are the strongest arguments that Alvarado should have been given Miranda warnings at the beginning of the questioning by the detective?

b. What are the strongest arguments that there was no need to give Alvarado Miranda warnings in these circumstances?

c. If you were a judge on an appeals court hearing this case, how would you analyze the issue of whether Alvarado was in custody and being interrogated? Should his age and experience be a factor? Explain.

d. Should Alvarado have done anything differently? Should the detective have done anything differently?

In one case, the Supreme Court created a public safety exception to the Miranda rule. In this case, a police officer who was arresting a rape suspect in a grocery store asked the suspect where his gun was before advising him of his rights. The suspect then pointed to a nearby grocery counter, where the gun was found. The Court held that police may ask questions related to public safety before advising suspects of their rights. The Court has also limited the impact of the Miranda rule by strictly requiring that the person be in a condition of custodial interrogation before the warnings are needed. Custodial interrogation means that the person is in custody (not free to leave) and is being interrogated (questioned) by the police. Remember that defense counsel will ask the judge before trial to exclude the results of an illegal search. Similarly, defense counsel will ask the judge at a pretrial hearing to exclude any statement given by the defendant in violation of the Miranda rule.