

BASIC COURSE UNIT GUIDE

15

CONSTITUTIONAL RIGHTS AND INTERROGATION

This unit guide covers the following learning goals contained in the POST Basic Course performance objective document:

- 3.37.0 Constitutional Law
- 8.8.0 Interrogation

Revised October 1990



THE COMMISSION
ON PEACE OFFICER STANDARDS AND TRAINING
STATE OF CALIFORNIA

This unit of instruction is designed as a **guideline** for Performance Objective-based law enforcement basic training. This unit is part of the POST Basic Course Guidelines system developed by California law enforcement trainers and criminal justice educators for the California Commission on Peace Officer Standards and Training.

This Guide is designed to assist the instructor in developing an appropriate lesson plan to cover the performance objectives, which are required as minimum content of the Basic Course.

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Table of Contents

Learning Goals and Performance Objectives	i
Materials/Equipment	ii
Unit Outline	
I. Constitutional Law (3.37.0)	15-1
II. Interrogation (8.8.0)	15-7
Supporting Materials and References.	15-12

Learning Goals and Performance Objectives

3.37.0

CONSTITUTIONAL RIGHTS LAW

Learning Goal: The student will understand and have a working knowledge of the basic constitutional rights of person(s) suspected or accused of a crime.

3.37.1 The student will identify the provisions of the following amendments to the U. S. Constitution and the impact each has upon a peace officer's duties:

- A. 1st Amendment
- B. 4th Amendment
- C. 5th Amendment
- D. 6th Amendment
- E. 8th Amendment
- F. 14th Amendment

3.37.3 Given a description of an act in violation of Title 18, Chapter 13, Section 241 of the U. S. Code, the student will identify the violation by chapter and section of the U. S. Code and by its crime classification.

3.37.4 Given a description of an act in violation of Title 18, Chapter 13, Section 242 of the U. S. Code, the student will identify the violation by chapter and section of the U. S. Code and by its crime classification.

8.8.0

INTERROGATION

Learning Goal: The student will understand the basic rights to be protected during interrogation.

8.8.1 The student will identify the requirements for administration of "Miranda rights" by field officers.

8.8.2 Given an exercise depiction person(s) acting suspiciously, the student will safely approach, contact, interview, and commence interrogation methods after admonishing the suspect of the Miranda rights when appropriate and making the proper disposition of the person.

Material/Equipment

Each training institution should develop its own list of equipment and materials for each unit. This list is dependent upon the instructional strategies methods/media considerations.

Overhead Projector
U.S. Constitution

Learning Goal 3.37.0 : The student will understand and have a working knowledge of the basic constitutional rights of person(s) suspected or accused of a crime.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>I. CONSTITUTIONAL RIGHTS LAW (3.37.0)</p> <p>A. The Bill of Rights - As It Concerns Law Enforcement</p> <ol style="list-style-type: none"> 1. The Founding Fathers stated very clearly the belief that "all men are created equal and are endowed with certain inalienable rights". 2. At a later date, under the Constitution and its Amendments, the rights were provided in more detail. The first ten Amendments to the Constitution are referred to as the Bill of Rights. 3. Later, additional amendments were added as needed. Law enforcement officers must understand and protect these rights in all aspects of law enforcement. 4. These basic rights apply to all persons in the United States regardless of citizenship. <p>B. 1st Amendment - Restrictions on Powers of Congress</p> <ol style="list-style-type: none"> 1. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people to peaceably assemble, and to petition the Government for a redress of grievances." 2. The meaning of this Amendment is quite clear. It means that a person can worship freely; or not worship at all, if so inclined; and that all other religious groups have the same rights . . . 3. However, there are limits! The rights to free speech must be exercised reasonably. It does not mean a person is free to stand outside somebody's bedroom window at 2:00 a.m. and shout and sing, to the point of disturbing the public peace. Nor may a person shout "fire" in a crowded auditorium; nor disrupt an orderly assembly, a church service, nor a session of the court by heckling, speaking out, or shouting. 	<p>3.37.1 The student will identify the provisions of the following amendments to the U. S. Constitution and the impact each has upon a peace officer's duties:</p> <ol style="list-style-type: none"> A. 1st Amendment B. 4th Amendment C. 5th Amendment D. 6th Amendment E. 8th Amendment F. 14th Amendment <p>Illustration #1</p>

Learning Goal 3.37.0: The student will understand and have a working knowledge of the basic constitutional rights of person(s) suspected or accused of a crime.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>4. A person cannot incite to riot, or urge or counsel others to commit a crime or breach of the peace; nor accost others in a public place with vile or obscene language.</p> <p>5. The "press" may report the news accurately; but may still be liable for slander or libel if this privilege is abused.</p>	<p>Note: <i>Zurcher V. Stanford Press</i> 436 U.S. 547</p>
<p>C. 4th Amendment</p> <p>1. Seizures, Searches and Warrants</p> <p>"The right of the people to be secure in their persons, homes, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."</p> <p>2. The Fourth Amendment is explicit; however, there are exceptions</p> <p>a. Under the Fourth Amendment, a person's home is a castle; but it may not be used as a place of refuge for criminals.</p> <p>b. On fresh and immediate pursuit, an officer may follow a criminal who has taken refuge in a house or building to make the arrest.</p> <p>c. The courts have held that when a person is legally arrested, that person and effects may be searched by an officer and any weapon or contraband may be seized and used as evidence.</p>	<p>Illustration #2</p> <p>Note: <i>Peo. v. Pace</i> (1979) 92 Cal.App. 3d 199</p> <p><i>U.S. v. Chadwick</i> (1977) 433 U.S. 1.</p> <p><i>U.S. v. Schleis</i> (8th Circ.) 582F2d 1166</p>
<p>D. 5th Amendment - Criminal Proceedings and Condemnation of Property</p> <p>1. "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury,</p>	<p>Illustration #3</p>

Learning Goal 3.37.0 The student will understand and have a working knowledge of the basic constitutional rights of person(s) suspected or accused of a crime.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." Proposed September 25, 1789; ratified December 15, 1791.</p> <p>E. 6th Amendment - Mode of Trial in Criminal Proceedings</p> <p>"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense." Proposed September 25, 1789; ratified December 15, 1791.</p> <p>F. 8th Amendment</p> <p>1. Bails, Fines, Punishments</p> <p>"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." Proposed September 25, 1789; ratified December 15, 1791.</p> <p>2. It should be noted that suspects can be informed of these rights, but be careful not to name any particular bail agent. This would be a conflict of interest.</p>	<p>Illustration #4</p> <p>Illustration #5</p>

Learning Goal 3.37.0 : The student will understand and have a working knowledge of the basic constitutional rights of person(s) suspected or accused of a crime.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>G. 14th Amendment - Citizenship, Representation, Equal Protection</p> <p>1. "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State whereby they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."</p> <p>H. United States Code - Title 18, Chapter 13, (Civil Rights) Section 241</p> <p>1. Conspiracy against rights of citizens. If two or more persons conspire to injure, oppress, threaten or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or if two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured -</p> <p>They shall be fined not more than \$5,000 or imprisoned not more than ten years or both.</p> <p>2. Based on our Constitution, Congress has legislated certain statutes to insure equal rights. This resulted in prohibiting unequal treatment.</p> <p>3. Law enforcement officers are subject to this law and Constitution and can be held liable for unequal application.</p> <p>4. As used in this law, the term "citizens" includes all persons within the boundaries of the United States.</p>	<p>Illustration #6</p> <p>3.37.3 - Given a description of an act in violation of Title 18, Chapter 13, Section 241 of the U.S. Code, the student will identify the violation by Chapter and Section of the U.S. Code and by its crime classification.</p>

Reference Notes

In General

The section gave no authority for a prosecution for conspiracy local in nature, to prevent Negro citizens from making or performing contracts to labor. (1906) *Hodges v. U.S.*, 203 US 1, 51 LEd 65, 27 SCR 6.

Qualification with respect to alienage, color and race, referred only to differences in punishment. (1941) *U. S. v. Classic*, 313 US 299, 85 LEd 1368, 61 SCR 1031, rev'g (DC-La), 35 FSupp 66.

The section authorized punishment of two different offenses. The one was willfully subjecting any inhabitant to deprivation of rights secured by Constitution; the other was willfully subjecting any inhabitant to different punishment on account of his alienage, color or race, than was prescribed for the punishment of other inhabitants. (1941) *U. S. v. Classic* 313 US 299, 85 LEd 1368, 61 SCR 1031, rev'g (DC-La), 35 FSupp 66.

The section was a penal statute and gave rise to no civil action for damages. (1909) *Browner v. Irvin*, (CC-Ga), 169 Fed 964; (1958) *Watson v. Devlin*, (DC-Mich), 167 FSupp 638. Aff'd 268 F(2d) 211.

Deprivation of constitutional rights of colored inhabitants by police officer could not be justified on the ground that he was acting pursuant to orders. (1953) *U.S. v. Konovsky*, (CA 7), 202 F(2d) 721.

It is well established that the federal civil rights statutes do not confer additional privileges, rights, or immunities on a person, but are designed to safeguard those rights by making a violation of them an offense. (1951) *State v. Alexander* 7 NJ 585, 83 Atl(2d) 441.

Learning Goal 3.37.0: The student will understand and have a working knowledge of the basic constitutional rights of person(s) suspected or accused of a crime.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>I. United States Code - Title 18, Chapter 13 (Civil Rights) Section 242</p> <ol style="list-style-type: none"> 1. Deprivation of rights under color of law. Whoever under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, race, than are prescribed for the punishment of citizens, shall be fined not more than \$1,000 or imprisoned not more than one year, or both. (June 25, 1948, c. 645, 1, 62 Stat. 696) (unless death results - felony) 2. Section 242 is another law established to protect persons from unequal application of the law. 3. It is an important factor to realize that law enforcement officers represent the law, that they are a symbol of the law. As such, they have the responsibility to ensure that these rights are not violated. 	<p>3.37.4 Given a description of an act in violation of Title 18, Chapter 13, Section 242 of the U.S. Code, the student will identify the violation by chapter and section of the U.S. Code and by its crime classification.</p>
<p>J. Assignments (Instruction and Evaluation)</p> <ol style="list-style-type: none"> 1. Assignment #1 (Evaluation of Objective 3.37.1) The 1st, 4th, 5th, 6th, 8th and 14th Amendments have had a great impact on police work. You are to read each of these amendments, pick four of them, then in your own words, write what you believe is their effect upon police work (negative or positive). 2. Assignment #2 (Evaluation of Objective 3.37.3) Read Title 18, Section 241; then, in your own words, define what you believe to be the intent and reason behind this legislation and identify the crime classification that is involved. 	<p>Give assignment to student for both additional instruction and evaluation. Indicate to them they will be graded on this instead of a written test of some other type.</p>

Reference Notes

Prior Law

This section is based on Act Mar. 4, 1909, c. 321, Section 19, 35 Stat. 1092 (Section 51 of former Title 18).

Revision Note:

Clause making conspirator ineligible to hold office was omitted as incongruous because it attaches ineligibility to hold office to a person who may be a private citizen and who was convicted of conspiracy to violate a specific statute. There seems to be no reason for imposing such a penalty in the case of one individual crime, in view of the fact that other crimes do not carry such a severe consequence. The experience of the Department of Justice is that this unusual penalty has been an obstacle to successful prosecutions for violations of the act. Mandatory punishment provision was rephrased in the alternative because the court has this discretion by making use of its power to suspend sentence under Section 3651 of this title.

In General

The gist of the crime defined by the statute was an unlawful conspiracy based on the unlawful agreement of defendants. (1936) Steedle v. U.S., (CCA 3), 85 F(2d) 867, 107 ALR 1361; (1937) Walker v. U.S., 9 (CCA 8), 93 F(2d) 412, rev'g 19 FGSupp 975.

Conviction in federal court under the section, precluded a subsequent prosecution in state court for offense growing out of same transaction. (1933) People v. Spitzer, 148 Misc 97, 266 NYS 522.

Constitutionality

Congress was without constitutional power to enact laws to punish persons for conspiring to deprive persons of equal protection of state laws. (1883) U.S. v. Harris, 106 US 629, 27 LEd 290, 1 SCR 601

Learning Goal 3.37.0 The student will understand and have a working knowledge of the basic constitutional rights of person(s) suspected or accused of a crime.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>3. Assignment #3 (Evaluation of Objective 3.37.4)</p> <p>Read Title 18, Section 242; then, in your own words, define what you believe to be the intent and reason behind this legislation and identify the crime classification that is involved.</p>	

Learning Goal 8.8.0: The student will understand the basic rights to be protected during interrogation.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>II. INTERROGATION (8.8.0)</p> <p>A. Introduction</p> <p>1. Definitions</p> <p>a. Interviewing: A process by which an officer seeks, obtains, and evaluates information given to him by persons having personal knowledge of events or circumstances of a crime.</p> <p>b. Interrogation: Questioning one suspected of a crime.</p> <p>c. Admonition of Rights: Telling a suspect of the rights to silence and attorneys per U.S. Constitution Provisions (5th and 6th Amendment)</p> <p>d. Valid Waiver of Rights: Requires a formal affirmative response by the suspect indicating he understands his "rights" as explained and that he agrees to answer questions.</p> <p>B. U. S. Constitutional Provisions</p> <p>1. 5th Amendment</p> <p>a. "No person shall be held to answer for a capital, or otherwise infamous, crime unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia when in actual service in time of war or public danger, nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb, <u>nor shall be compelled in any criminal case to be a witness against himself</u>, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use without just compensation."</p> <p>2. Interpretation of 5th Amendment Regarding Self-Incrimination</p>	<p>Note: Use Handout #1</p> <p>Note: Any juvenile upon being taken into "temporary custody" must be advised regardless of the intent to interrogate. See W&I 625 and <u>In re Galt</u>. However, no waiver should be sought if the officer does not intend to interrogate.</p>

Reference Notes

Constitutionality (Continued)

The section was constitutional. (1900) *Motes v. U.S.* 178 US 458, 44 LEd 1150, 20 SCR 993.

The inclusion of Fourteenth Amendment (Const. amend. 14) rights within the compass of this section does not render it unconstitutionally vague. (1966) *U.S. v. Guest*, 383 US 745, 16 LEd(2d) 239, 86 SCR 1170, rev'g (DC-Ga), 246 FSupp 475.

Nature of the Statute

The section was a purely criminal statutory provision and did not make damages to be recovered in an action for acts constituting the offense, penalties, as bearing on what statute of limitations applied to such action for damages. (1913) *O'Sullivan v. Felix*, 233 US 318, 58 LEd 980, 34 SCR 596, aff'g (CCA 5), 194 Fed 88.

This section does not provide a civil cause of action for damages. (1958) *Watson v. Devlin*, (DC-Mich), 167 FSupp 638. Aff'd 268 F(2d)211.

Neither general criminal conspiracy statute (Section 371 of this title) nor civil rights criminal conspiracy statute (this section) creates a civil cause of action. (1965) *Bryant v. Donnell*, (DC-Tenn), 239 FSupp 681.

Conspirators

The section applied to the acts of two or more election officers who conspired to injure and oppress qualified voters by omitting the votes cast from the count and return to the state election board. (1915) *U.S. v. Mosley*, 238 US 383, 59 LEd 1355, 35 SCR 904.

Learning Goal 8.8.0: The student will understand the basic rights to be protected during interrogation.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>a. In the 1966 case, <i>Miranda v. Arizona</i>, 384 U.S. 436, the U.S. Supreme Court held that whenever an offender is subjected to a "Custodial Interrogation" an admonition of the offender's constitutional rights <u>must be given</u>.</p> <p>C. <i>Miranda vs. Arizona</i> 1966</p> <ol style="list-style-type: none"> 1. 5th and 6th Amendment application 2. Admonition <ol style="list-style-type: none"> a. You have the right to remain silent. b. Anything you say can and will be used against you in a court of law. c. You have the right to talk to a lawyer and have him present with you while you are being questioned. d. If you cannot afford an attorney, one will be appointed to represent you free of cost. e. Do you understand each of these rights? 3. Waiver <ol style="list-style-type: none"> a. Having these rights in mind, do you wish to talk with me now? 4. Application <ol style="list-style-type: none"> a. Oral communication only b. Does not apply to: <ol style="list-style-type: none"> (1) Handwriting exemplars (2) Line up (advise right to counsel) (3) Fingerprints (4) Sobriety tests (5) Volunteered or spontaneous statements 	<p>1. & 2. - 5th Amendment</p> <p>3. & 4. - 6th Amendment</p>

Learning Goal 8.8.0: The student will understand the basic rights to be protected during interrogation.

Unit Outline & Presentation	Objectives & Instructional Cues
<ul style="list-style-type: none"> (6) Conversations <u>initiated by</u> the offender (7) Temporary detention, but when questioning shifts from investigatory to interrogation, Miranda applies <p>5. Forms of invoking right to remain silent (all questioning must cease)</p> <ul style="list-style-type: none"> a. Refuses to answer questions b. Total silence c. Request to call attorney d. Request to have attorney present e. Refuses to sign formal waiver f. Juveniles requesting presence of a third party (relevant adult) <p>6. Specific aspects of "Miranda"</p> <ul style="list-style-type: none"> a. Waivers must be made <ul style="list-style-type: none"> (1) Knowingly (2) Intelligently (3) Voluntarily b. Spontaneous or voluntary statements do not require admonitions. The officer has no obligation to stop and Mirandize c. Officers may not use subterfuge to obtain a waiver, however, subterfuge is permissible to obtain statements after a valid waiver. 	

Learning Goal 8.8.0: The student will understand the basic rights to be protected during interrogation.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>7. Miranda Rights should be given when:</p> <ol style="list-style-type: none"> a. Police initiated interrogation b. Evidence sought would incriminate him c. While in custody or significantly detained <p>8. Exceptions to Miranda</p> <p>Courts have allowed police to question suspects without advising of Miranda Rights pursuant to the "Emergency Rescue Doctrine". Generally, this "Rescue Doctrine" exception will apply only when:</p> <ol style="list-style-type: none"> (a) The possibility of saving someone's life is the officers' primary purpose and motive. The police questioned a kidnap suspect as to the location of the victim, believing the victim may still be alive. <i>People vs. Willis</i> 104 CA 3d 433 (1980) (b) There is no other reasonable alternative because of the urgency involved. Police frisked an armed rape suspect in a public place. The police discovered an empty holster. The police without Miranda asked "where's the gun?" The suspect showed where the gun was. Court held admissible. <i>N.Y. vs. Quarles</i> 467 U.S. 649 <p>D. Classroom Demonstration</p> <ol style="list-style-type: none"> 1. The classroom should be set up in such a manner to reflect the setting and environment in which the interrogation will be conducted. 2. Each student should be provided the rating sheet so they can see on what they will be rated. 3. You are to do the interrogation. Have a fellow instructor play your partner and a third the suspect. 	<p>8.8.2</p> <p>Given an exercise depicting person(s) acting suspiciously, the student will safely approach, contact, interview, and commence interrogation methods after admonishing the suspect of the Miranda rights, when appropriate, and making the proper disposition of the person.</p>

Learning Goal 8.8.0: The student will understand the basic rights to be protected during interrogation.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>4. When questioning begins to focus on one particular person regarding a particular act, the questioning is moving beyond the investigatory state toward custodial interrogation which requires the admonition to be given.</p> <p>5. Although alcohol, drugs and narcotics are frequently considered in determining the validity of a waiver, they do not automatically render a suspect incapable of giving proper waiver. The general rule is that these factors are simply variables to be weighed in determining whether the waiver was knowingly and intelligently made.</p> <p>6. Agency policies.</p> <p>a. Does the agency require:</p> <ul style="list-style-type: none"> (1) Signed waivers (2) Tape recording waivers (3) All suspects be admonished (4) Specific forms be completed (5) Reading admonition via departmental form (6) Asking "specific questions" 	<p>8.8.1 The student will identify the requirements for administration of "Miranda rights" by field officers.</p>

Learning Goal 8.8.0 : The student will understand the basic rights to be protected during interrogation.

Unit Outline & Presentation	Objectives & Instructional Cues
<ul style="list-style-type: none">(3) All suspects be admonished(4) Specific forms be completed(5) Reading admonition via departmental form(6) Asking "specific questions"	

SUPPORTING MATERIAL

AND

REFERENCES

COMPARISON OF INTERVIEWS AND INTERROGATIONS

INTERVIEW

INTERROGATION

WHY (Purpose)

... to gather and to test the validity of information to determine the particulars of the matters under investigation.

...to gather and to test the validity of information to determine whether the subject was responsible for or involved in the matter under investigation.

WHO (Subjects)

...victims and witnesses who are willing to provide police with any information they possess about the matter under investigation.

...persons suspected of crimes as well as others who may have information but are reluctant to offer it.

WHEN (Timing)

...interviews should take place as soon as possible after the event has occurred so statements of witnesses are not affected by memory loss, influence of talking to others, etc. Immediate gathering of information enables the investigator to prepare for interrogation of subjects.

...interrogations should take place ideally when the investigator has gathered enough information to know how truthful the subject is. They are more fruitful after witnesses and victims have been interviewed -- and physical evidence has been located and evaluated.

WHERE (Location)

...at a place convenient and familiar to the subject---or in a neutral setting. The subject's home, place of business or any place where privacy is assured is preferred.

...the police station is best since it enables the officer to control completely the security of the subject as well as other factors which might tend to be distracting.

HOW (Method)

...low-pressure, informal atmosphere is preferred to allow the subject to tell in narrative style what he has to offer. Specific questions should be used to gather more detail and to jog witnesses' memories.

...basically the same method as with interviews, but the atmosphere is more formal and the officer works toward a more specific purpose.

MIRANDA IN CALIFORNIA

by

Training Division Law Unit

Revised October 1984

I. Historical Review

A. Miranda v. Arizona, (1966) 384 U.S. 436

Following the 1965 Supreme Court decision in Escobedo v. Illinois, in which the court held that whenever a suspect in custody requested to speak with an attorney, all police questioning must cease, the court expanded this requirement in Miranda by adopting the following rule for interrogation: (This is a two part test.)

1. Whenever a person is in police custody and
2. The police intend to ask questions (or make any statement) which is intended to, or is inherently likely to induce an incriminating response,
3. The officers must first advise the person of his or her "Miranda" rights.
 - a. NOTE: This is now a little more than the original "arrest" and "questions" test. It now includes only the requirement of police custody, which is a broader concept than "arrest", and also includes statements by the officers which might induce an incriminating response from the person in custody.
 - b. This two-part test requires that the person be both in custody and subject to "questioning" before the Miranda issue comes up.
 - c. Custody for Miranda purposes will be found: "whenever a person has been deprived of his freedom of action in any significant way."

B. Application of the Rule

1. For adults, the rule is as stated above; i.e. it is the two-part test of "custody" and "questions or statements likely to induce incriminating responses."

2. For juveniles the test is a one-part test. Under California statutory law (Section 627 WIC) the arresting officer shall advise any juvenile taken into custody on any Section 601 or 602 WIC charge or his Miranda rights.
 - a. Thus, for juveniles, it does not matter whether the officer intends to question him or her, so long as the custody is based on a Section 601 or 602 WIC.
3. The Miranda rule only pertains to admissions and confessions of a person in police custody, and cannot be used to exclude physical evidence taken during an arrest such as clothing, fingerprints, photographs of the suspect, body tissue samples, blood, or handwriting samples.

However, physical evidence which was located in direct response to statements from the person in custody will be excluded from evidence if the court finds the statement itself inadmissible under Miranda. (Fruit of the poisoned tree).

4. Miranda is an absolute rule, standing by itself as a shield to be used only by the person in police custody. Failure to comply with the Miranda rule will result in the exclusion of any admission or confession regardless of the seeming voluntariness of such admissions or confession.

In other words, before the court will even address the second issue present in all confessions or admissions problems, which is voluntariness, the court will determine if Miranda was adhered to. No Miranda, no further issues to resolve, the confession will be inadmissible. EXCEPTIONS: few and far between and discussed later in this outline.

II. The Concept of Custody

A. Who determines whether "custody" was present?

1. Remember the test for custody; "...whenever the person has been deprived of his freedom of action in any significant way."
2. The court will look at the totality of the circumstances to determine if the person was in "custody".
 - a. Factors to be considered:
 - (1) If the officer told the person he was under arrest, or was in custody, generally the court will find "custody".

- (2) Where did the questioning take place?
- * police station = more than likely custody.
 - * police car = more than likely custody.
 - * dark alley no public view = probably custody.
 - * suspect's home = not likely in custody.
 - * public place in public view = less likely.
- (3) When did questioning take place?
- * late at night = more likely custody.
 - * broad daylight = less likely.
- (4) Number of officers present?
- * Many police officers = probably custody.
 - * One officer = less likely in custody.
- (5) Relatives of friends of suspect present?
- * None around = probably custody.
 - * Many around = less likely custody.
- (6) Duration of the questioning?
- * Lengthy interrogation = likely in custody.
 - * Brief interrogation = less likely.
- (7) How accusatory was the interrogation?
- * General investigative questions designed to show innocence as well as potential involvement in crime = less likely custody.
 - * Confrontation with evidence or facts to convince the suspect to "confess" = more than likely custody.
- (8) How much information on "guilt" has the officer already found?
- * Enough to arrest the suspect = likely custody.

- * Some cause to believe in suspect's guilt, but not enough to arrest = less likely.
- * No cause to believe in guilt, just some cause to believe the suspect may know something about the crime under investigation = a general police investigation, no custody.

(9) What physical "objective" facts indicate that custody existed?

- * Physical restraint of suspect = custody.
- * Threats (express or implied) of Physical restraint if failure to comply with the officer's commands = custody.
- * Officer's polite request for cooperation of assistance = no custody.

(10) Whether the suspect believed he was in custody?

- * Was it reasonable under the circumstances for a reasonable man to believe he was in fact in custody; i.e., not free to go, then custody will be found.
- * Was it unreasonable under the circumstances for a reasonable person to believe that he or she was in custody? If no reasonable man or woman would have believed that he or she was in custody, then no custody.

3. Questions During Detentions

Miranda warnings need not be given when questions are of a "general investigative" nature and the person is subject only to a "transitory" detention.

- a. Detentions based on "reasonable suspicion" or,
- b. based on a traffic offense for citation purposes, or
- c. questions asked at scene of a crime such as of witnesses, etc.

4. "General Investigative" vs "Interrogative" Questioning.

- a. General Investigative questioning is not subject to strict Miranda rules because the officer is simply attempting to determine "who, what, why, when, and where" of some incident

involving police action; i.e. the scene of a crime where officers are asking all present "what happened here?", etc., or when the police ask a "potential witness" if he or she saw anything that might aid them in a police investigation.

- b. Interrogation questioning is where specific questions are asked of persons suspected of direct involvement in a crime, and they are asked for the purpose of eliciting an incriminating answer.
- c. Spontaneous statements are those statements made voluntarily by any person and not in response to questions by the police. These statements are not subject to Miranda even if the two part test for Miranda has been met.
- d. Confrontation with evidence is generally held to be a form of "interrogation" since such actions are likely to induce an incriminating response. Always Mirandize and get a waiver from one in custody before confronting him or her with evidence of guilt.
- e. Neutral questions are those clearly not intended to elicit an incriminating response but are asked for some other valid reason; i.e. "what happened to you?" (asked of an injured person at a hospital). If the injured person answers, "One of the guys we were trying to rob had a knife and he cut me up." This statement would be admissible under Miranda since it was an incriminating answer in response to a "neutral question". This answer would be admissible whether or not the declarant had been given his Miranda rights or not and even if he had refused to waive them previously.

(California case law differs slightly from the above rule since the California Supreme Court has held that "...even booking or otherwise neutral information...is within the privilege against self-incrimination." Until Prop 8 is heard in the Supreme Court on this issue we must be careful with neutral questions.

III. Understanding and Waiver of Miranda Rights

- A. Before an in-custody person may be interrogated, he must be given his Miranda rights, acknowledge an understanding of them, and expressly waive them before questioning can begin.
 - 1. This is the clear rule of Miranda.
 - 2. The rights must be given verbatim to be certain.

3. It must be clear that the person understood them.
4. The waiver of the rights must be expressly made.
5. The subsequent statement must be voluntary.

B. Understanding

1. The condition of a person in custody will be considered in resolving any question about the person's understanding of the Miranda rights.
 - a. Injured persons, especially those with head injuries, will always raise questions about the ability to understand the rights given them. Medical reports often critical in such cases.
 - b. Intoxicated persons will also claim inability to understand the rights. Not automatic, but may cause problems. Be sure to record evidence of understanding; such as questions in response, etc.
 - c. Mental retardation or low IQ, will not by itself result in finding lack of ability to understand and intelligently waive, but you must show facts to substantiate that the person did understand.

C. Waiver or Refusal to Waive

1. Refusal to Waive; Once the person asserts the right to remain silent, or demands to see his or her attorney, all police questioning must cease.

NOTE: Federal cases differ here; in effect even though an arrestee refused to waive his rights after being booked for one crime, he was later questioned by another officer regarding a different crime altogether and on that crime he waived and confessed. The U.S. Supreme Court held the confession admissible since it was unrelated to the crime for which the arrestee had refused to waive his rights. Under Prop 8 this rule should be operative in California.

2. Waiver

- a. Once a waiver has been made, officers may question the person subject to the following limitations.
 - (1) Waiver may be withdrawn at any time during the questioning. "If the person indicates in any manner that he wishes to stop talking to the officer, the questioning must cease."

However, where the indication is not clear, the officers only have a duty to clarify what, if any, right the suspect may be attempting to assert.
EXAMPLE: "I want to talk to my mother."

This is no longer an automatic end to police questions, but does require that the officers stop questioning long enough to find out "why the suspect wants to talk to his mother."

If it is for the purpose of "...telling her I will be late for supper." the questioning may continue since it is now clear that he was neither attempting to assert his right to remain silent or to get his attorney..

NOTE: This rule is based now on the federal cases and assuming that Prop 8 is valid on this point should be the law in California now.

To be safe, however, in close cases; follow the California cases;

* If the suspect wants to do something before talking, let him go; i.e., talk to his mommy, his Teddy Bear, etc.

3. Problem Areas in Miranda

a. Voluntariness of Confessions

(1) Under California law voluntariness must be proven by the prosecution "beyond a reasonable doubt" while the federal law requires only proof by a preponderance of the evidence. Under Proposition 8 the federal case law is now the standard on this issue.

(2) Voluntary means that the person made a free will choice to make the statements to officers, and the free will was not overborne by any undue influence or improper conduct by the police.

* Threats: Any threat by the questioning officer; even "implied" threats will destroy the "voluntary" nature of the statement.

Examples:

Threat to prosecute minor as adult unless the minor "...tells the truth."

Threat to arrest a close relative or spouse if arrestee does not confess.

Discussion regarding the fact that those "...who tell the truth rarely get the gas chamber."
(Implied threat)

NOTE: This prohibition against making threats to induce confessions does not prohibit the officer from "...asking tough questions, exchanging information, summarize your evidence, outline your theories of the case, confront the suspect with his inconsistencies or lies, contradict his alibis, and even debate with him the issues of his case."

- * Promises: Any statement that contains an expressed or implied promise that the suspect will get better treatment, leniency, or other benefit from the police, the prosecution, or the courts, if he confesses will result in a finding that the confession was involuntary and inadmissible.
- * Psychological Coercion: One cannot use psychological pressures to overcome the free-will desire to resist confession. Appeals to deep rooted religious beliefs, unnatural fears or phobias, or other kinds subtle coercions to secure confessions will result in finding them involuntary.

NOTE: This does not mean that you cannot "trick" the suspect into confessing, so long as the trick would not be likely to result in a confession from an innocent person.

BEFORE USING TRICKS, MUST HAVE VALID WAIVER

Examples:

- * Tell him his partner is already confessing, so it doesn't matter if he tells the truth anymore.
- * Tell him his fingerprints were found on the murder weapon and a witness has already identified his photo.

WARNING In view of several recent California cases, this technique is not recommended for a suspect who has been interviewed

several times before and has each time asserted his innocence of the crime. "...where a demonstrated resistance to confession is overborne by subtle psychological pressures, the resulting confession will be involuntary and inadmissible.

IV. Summary of Miranda

- A. Two-Part Test: "custody" and "questions or statements likely to induce incriminating response."
 - 1. Custody = found in the totality of the circumstances.
 - a. "...deprived of freedom of action in significant way."
 - 2. Questions or statements designed to, intended to, or inherently likely to induce an incriminating answer.
 - a. Questions; general investigative or interrogative.
 - b. Statements; likely to induce incriminating answers from suspect.
- B. Adults & Juveniles; rules differ. Adults the two-part test, while juveniles only "custody" for 601 or 601 WIC charge is needed to invoke Miranda.
- C. Understanding and Waiver
 - 1. Understanding of the rights.
 - a. Condition of suspect.
 - b. Mental retardation, etc.
 - 2. The Waiver
 - a. Must be expressed or clearly implied.
 - b. May be withdrawn at any time prior to or during questioning.
 - c. Must be voluntary.
 - (1) California rules require voluntariness be proven "beyond a reasonable doubt" while federal rule (and ours under Prop 8) require proof by a preponderance of the evidence."

- (2) Threats will negate voluntariness.
- (3) Promises will negate voluntariness.
- (4) Psychological coercion will negate voluntariness.
- (5) Deception or tricks are okay so long as not likely to result in confession by innocent person, AND only after Miranda warnings are given and waived.

V. Proposition 8 (The Victim's Bill of Rights)

- A. Under Prop 8 there are a number of areas in which the cases in California have varied significantly from those of the federal courts.
1. Voluntariness = as stated above, the burden on the prosecution is less in the federal cases; requiring only proof "...by the preponderance of the evidence."
 2. Once a refusal; "...always a refusal" under California cases. Not so in federal cases. Suspect who refuses to waive his rights on one charge may be interviewed later relative to another separate and distinct charge and if he waives his rights during the subsequent interview his statements may be admissible against him at his trial for the second offense.
 3. Under California cases, statements taken outside of Miranda are not admissible for any reason by the prosecution. Under the federal cases, they may be used to impeach the defendant who takes the stand and testifies, and may be used to refute a claim of insanity.
 4. In California juveniles and even some adult cases have held that a request to speak with a parent or other responsible person is "...to be considered a request to speak with an attorney." Not so in the federal cases. Only "attorney" or "lawyer" or other clear words of such meaning will "...automatically be considered a request to speak with an attorney." Any other title; i.e., mother, probation officer, etc. will only require the questioning officer to interrupt his questioning long enough to ascertain "what, if any, constitutional right the suspect may be ineffectively trying to assert." Once this issue is clarified, and it is clear that the suspect was not attempting to assert the right to an attorney, the questioning may be resumed.

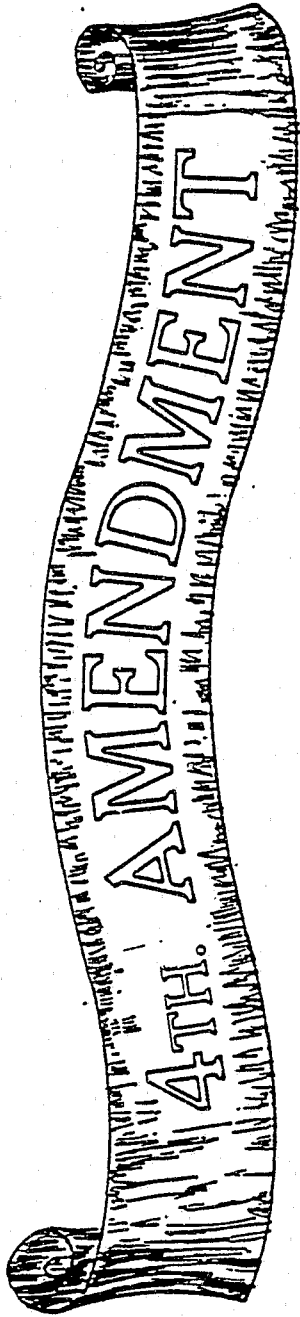
1ST. AMENDMENT

The Right to Freedom of Religion, Speech, Press, Assembly, Petition

Congress shall make no Law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech; or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Effective:
December 15, 1791

ILLUSTRATION 2



≡≡≡ 3 STANDARDS ≡≡≡

- PROBABLE CAUSE
- UNREASONABLENESS
- PARTICULARITY

Probable cause is most important standard from legal point of view

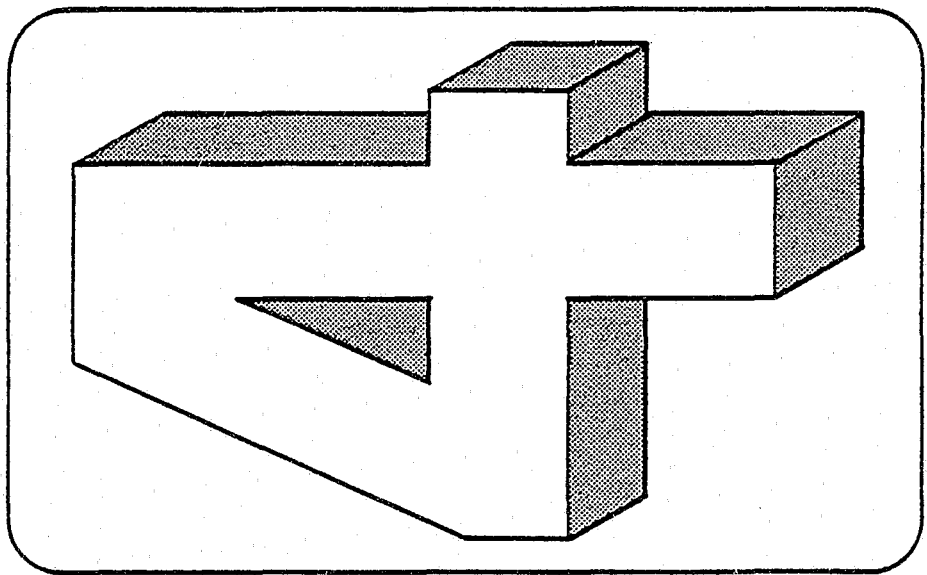


ILLUSTRATION 3

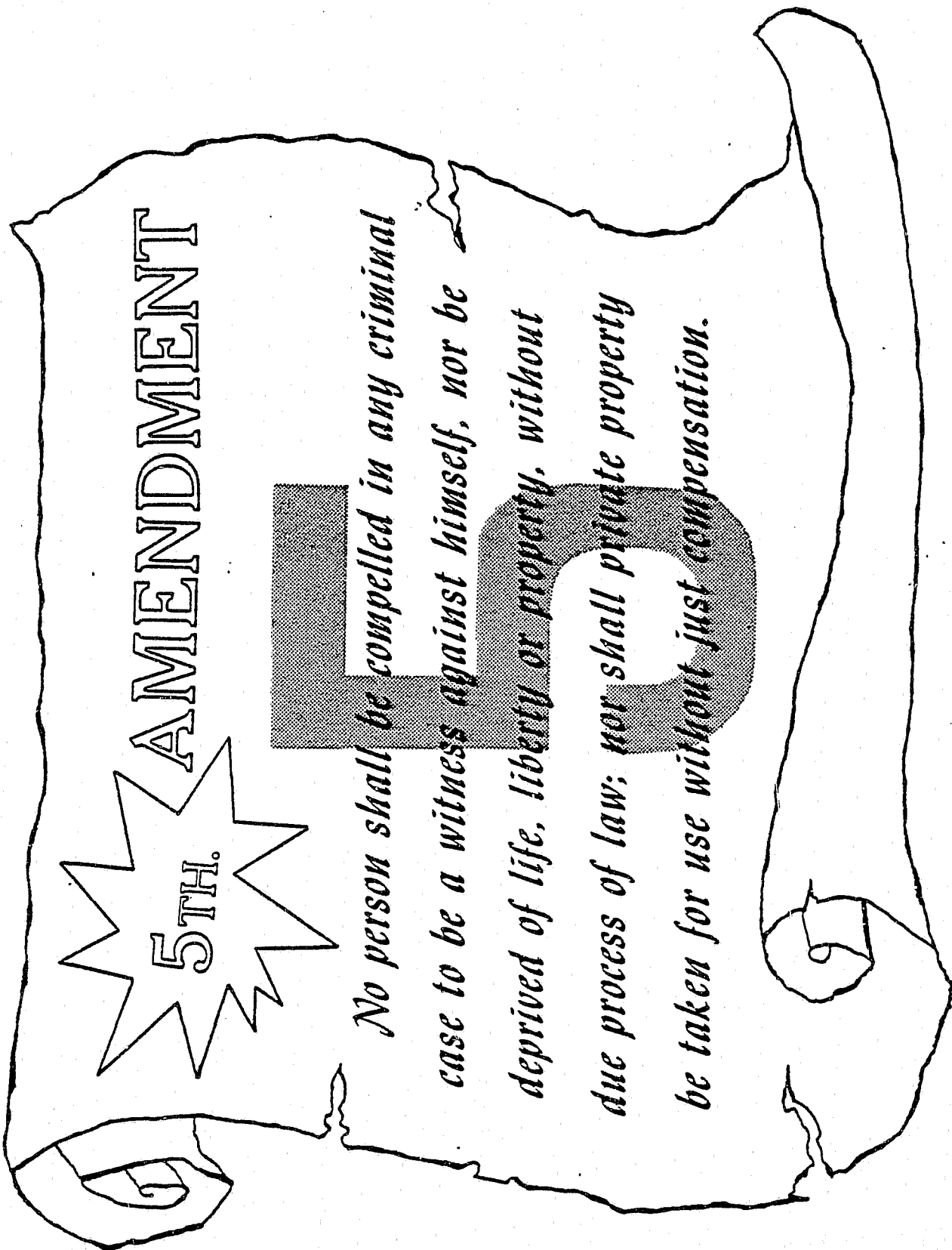


ILLUSTRATION 4



6TH. AMENDMENT

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of state and district wherein the crime shall have been committed, which districts shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.



8TH. AMENDMENT

The Right to Protect Against Excessive Fines, Bail, Punishment

*Excessive bail shall not be required,
nor excessive fines imposed, nor cruel
and unusual punishment inflicted.*

*Effective:
December 15, 1791*

14TH.
AMEND
MENT

*No state shall make or enforce, any
law which shall abridge the privileges
or immunities of the citizen of the
United States, nor shall any state
deprive any person of life, liberty or property, without
due process of law, nor deny to any person within its
jurisdiction the equal protection of the laws.*

Reference Materials

This section is set up as reference information for use by training institutions. These materials can be utilized for prime instruction; remediation, additional reading, viewing or for planning local units of instruction. They are presented here as instructional materials that may assist the learner or the academy staff in the teaching-learning process. Each training institution is encouraged to expand this list but only after careful viewing and reading to determine its acceptability.

"Confessions", Part I, II, and III, AG Series LE-216, 217, 218, Attorney General Series, Sacramento, California.

"Identification Requirements and Authority for Interviewing", Module 266.01, .02, Project MILE, Los Angeles Police Dept.

"Legal Information for Law Enforcement", 76-6, Syllabus, Attorney General series, Sacramento, California.

"Reapplication of Miranda", AG Series 76-6, Attorney General Series, Sacramento, California.

United States Constitution.

In no way is this list an endorsement of any author, publisher, producer, or presentation. Each training institution must read or view these materials, and others to establish their own list of reference materials.