THE 4th AND 5th
AND THE EXCLUSIONARY RULE

A film by John K. Marshall

Preliminary Study Notes
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The information and interpretations which follow are the sole responsibility of the authors.
GENERAL OBJECTIVES OF THE 4th AND 5th AND THE EXCLUSIONARY RULE

**LEGAL**

- Provides four specific case studies
- Motivates students to read cases
- Shows elements of legal discussion
- Teaches basics of "legal" vocabulary
- Familiarizes students with specifics of the U.S. Constitution

**SOCIOLOGICAL**

- Shows multiple functions of police
- Outlines police duties
- Shows how police perceive their duties
- Shows some public expectations of police duties and behavior
- Shows true "everyday life" of police
- Shows how police deal with "role conflict"
GLOSSARY for Study Guide to accompany:

THE 4th AND 5th AND THE EXCLUSIONARY RULE: PART I AND PART II

4th Amendment: "The right of the people to be secure in their persons, houses, papers and effects, AGAINST UNREASONABLE SEARCHES AND SEIZURES, shall not be violated, and no Warrants shall issue, BUT UPON PROBABLE CAUSE, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." Protects the individual and his home against unreasonable search and seizure. Protects the individual right to privacy, and the right to be left alone, unless probable cause exists.

5th Amendment: "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 offence 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."

Accessory: One who assists or takes part in a criminal offense.

One who, not being present, contributes as an assistant to the commission of an offense (accessory before the fact), or one who aids or shelters an offender with the intent to defeat justice (accessory after the fact).

"aiding or contributing in a secondary way"

Breach of Peace: Failure to keep the peace.

Circumstantial Evidence: Evidence based on situational factors; not admissible in court.

Defendent: The accused perpetrator of a crime; one of two parties in the adversary court process (opposes plaintiff); a person required to make answer in an action or suit.

Discretion: the power or authority to make subjective decisions based on situational factors. The authority, or "occupational license" to use free decision or individual judgment.

(e.g., police discretion - the right and authority to decide, by definition of and characteristics of the role, what action will be taken in a particular instance --- whether to arrest, warn, what charges to press...)

Evidence: information or data used in a court of law to support or refute a defendant's case; that which is legally submitted to a competent tribunal as a means of ascertaining the truth
of any alleged matter of fact under investigation before it.

Distinguished from:

- proof - the effect of evidence
- testimony - form of evidence obtained orally

**Exclusionary Rule:** that evidence illegally obtained will be excluded (inadmissible) in a court of law.

**Felony:** a serious crime, punishable by imprisonment in a state or Federal Penitentiary and/or fine.

**Identification:** "Something that identifies, or establishes the identity of a person or thing;" To prove the same as something described, claimed, or asserted.

**Misdemeanor:** A less serious criminal offense than a felony; punishable by fine and/or imprisonment in local (city or county) jail.

**Probable Cause:** "A reasonable ground of presumption that a charge is well-founded," "assumption founded on circumstances strong enough to give reasonable men a basis for believing it is true."

**Suppression of Evidence:** to knowingly hold back evidence
Legal Issues - Fourth Amendment

Both "Naked Strongarm" and "After the Game" present important 4th Amendment issues.

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

It limits official seizures of persons (arrest, etc.) and searches and seizures of things. It also has been held to apply to interception of conversations by wiretapping or bugging. And in 1961, in the land-mark case Mapp v. Ohio the United States Supreme Court held that the due process clause of the 14th Amendment made the 4th Amendment applicable to the states and that things found as a result of unconstitutional searches and seizures could not be used against the person whose rights had been violated.

In "Naked Strongarm" the key 4th Amendment issue is whether the police had sufficient basis to arrest the man – specifically, whether they had "probable cause" to believe he had committed a crime. On the facts as we can gather them there does not appear to be much doubt that there is "probable cause." Of course, at the trial there may be a possible innocent explanation for the suspect's action, but the police officer is permitted to act on probabilities after he arrives on the scene.

"After the Game" raises a whole range of 4th Amendment issues. First, what right did the police have to enter the house?
Apparently they did not have a search warrant or an arrest warrant. To get a warrant they would have had to go before a judge or a magistrate (in some places a part-time official) and present to him the reasons for believing there was probable cause to believe someone in the house had committed a crime and was subject to arrest or to believe there was evidence of crime of other things subject to seizure inside the house. Once they had received the warrant, the police would have been entitled to enter the house - using force if necessary. However, in view of the policemen's reaction to the perfectly legitimate question into whether they had a warrant, it appears that they did not.

There are a number of exceptions to the warrant requirement. If the person in charge of a house voluntarily consents the police may enter. In this sequence, it is not clear whether the first discussions at the door were such as to constitute voluntary consent or whether the police forced their way in without seeking consent.

Even without consent, the police would have been permitted to enter if necessary to make an arrest, but they spent so much time looking around once they were in without making an arrest that this justification probably is not available.

In addition to the entry, we must also consider what justification there was for the police to search the whole house as they appear to have done. This is the kind of broad-scale rummaging around that courts have found most offensive under the 4th Amendment unless there is some special legal justification. One possible justification for such a search might be to find all the people who are making the disturbance so they can arrest them for
the crime of disturbing the peace. (If any of the boys are juveniles, they can be arrested as "delinquents," a less specific basis, since it does not require a showing of specific acts which would be criminal for adults, but only a more general status.) But, as noted above, the police seem to have been purposely vague about why they were searching, and it might be hard for them to establish that it was to make an arrest.

Once the police smell glue they have a new possible basis both for an arrest and for a further search. One important exception to requirement of a search warrant is where a search is "incident to" an arrest. Some people question whether officers making an arrest should be able to do more than search the arrested person to be sure he does not have a weapon or evidence that he might destroy in his pockets or elsewhere on his person. However, until recently it seemed to be permissible under some court holdings for police making an arrest to extend their search to rooms beyond the room where the arrest took place, although it was hard to understand why the fact of the arrest should provide a basis for a warrantless search so far removed from the vicinity of the arrested person. In 1969, the U.S. Supreme Court in Chimel v. California held that the permissible scope of a warrantless search incident to an arrest did not extend beyond the area within which the arrested person might be able to grab a weapon or evidence. It seems fairly clear that under this rule, the search of the house
"after the game" could not be justified as incident to the boys' arrest, particularly once the search was extended to the basement.

Another possible basis for the search might be the so-called "plain-view" doctrine. Under that exception to the warrant requirement, if officers are in a place where they are legally entitled to be (but are they in our case?) they may seize evidence of a crime, contraband, or weapons if in their plain view, i.e., they do not have to search for them. But in Coolidge v. New Hampshire in 1971, this exception to the warrant requirement applies only if the officers were not searching for the items seized but stumbled on them inadvertently. Consider whether that is what happened in our case with respect to the glue-saturated material the officers found in the basement.

Finally, what about the arrest and removal of the boys? It is not clear that the officers would have arrested them if there had not been defiance ("Do you have a warrant?") and, particularly, if they had not smelled the glue. Did smelling the glue justify an arrest? Was it "probable cause?" Did it justify arresting all the boys without more information as to who had and had not been sniffing or creating a disturbance?

To test understanding of these issues consider how you would argue on behalf of the state if the boys were tried for violating the drug abuse statute relating to glue sniffing and if they defense made a motion pursuant to
Mapp v. Ohio cited above to prevent admission of any evidence relating to the things seized in the basement on the basis that the seizure was the result of an illegal search and seizure.
"After the Game": Sociological Implications

"After the Game suggests several sociological themes regarding police which we shall briefly explore: the importance of conflict regulation to the police role; police discretion and policy formation; and the abuse of police authority and supervision.

Conflict regulation and the multiplicity of police functions:

In this instance we see a common type of police action. One group, in this case neighbors, complains to police about the behavior of another group, the young men seen in the film. The neighbors feel they have a right to peace and quiet. The young men feel they have a right to do what they want in the privacy of their home. There is a conflict of interest, and the policeman is a middle man, called in to manage the conflict. The popular TV and movie image of police is that they chase and capture bank robbers, or through Sherlock Holmes-type investigative sleuthing, track down jewel thieves. In fact this is a very distorted picture as Table I reveals.

For historical reasons, American police have taken on a great variety of tasks, far more than is the case in most European countries. Most police work involves some type of social service or conflict regulation, rather than enforcing felony laws. Much police time is spent in a patrol car on "preventive patrol". When police do make arrests they are most commonly for public
drunkeness or disorderly conduct. The average patrolmen may make no more than one felony arrest a month. Many police go through an entire twenty years of service without firing, or even drawing, their guns. Yet most police departments and the public, do not give sufficient attention to this conflict regulation aspect of the police role. Police selection, training, performance evaluation, and organization stress the formal law and crime related functions of policing, rather than the other far more time consuming, and certainly important, aspects of the police role. Far more police are hurt in family conflict situations than in stopping armed robberies. Police often lack the resources to effectively deal with conflict situations. It is only recently that the importance of conflict regulation to the police role has been recognized. Even where police have appropriate training and resources for dealing with conflict situations, one (or both) parties to the conflict will be angry at police and feel mistreated.

The fact that police are expected to offer support to people in emergency situations, manage conflict, and enforce the criminal law, make it a more complex and demanding role than most other occupations.

The question can be raised as to why police were here in the first place. Don't they have anything better to do? Were five (?) police really needed to handle this call? Should police respond to every request for service from citizens? If there are more requests for service than there are police, what criteria should be used in deciding which ones to respond to? Clearly a request to aide a person being assaulted ought to have priority over a cat stuck in a tree, yet most issues are not clear cut. For
example, should the enforcement of consumer fraud laws receive more attention than laws against shoplifting? What should the relative mix be between police assigned to routine patrol and those used as decoys in anti-crime squads in high crime areas seeking to provoke criminal attacks? Should a department have a large crime prevention unit engaged in youth work at the expense of a fancy crime lab or a large vice squad, or vice versa? Such questions illustrate a type of discretion police departments have--how they use their resources. The film also illustrates the discretion police have in concrete situations.

**Police discretion and policy guidelines:**

Even if we grant that police should be here because a citizen complained, the question of what they should do once they are on the scene is much less clear. Unfortunately, the image most people hold of law enforcement is rather mechanistic and denies the role of values, choice, and personal style. A common view is that when a law is broken police respond and arrest and charge the guilty party. Yet we have thousands of laws and police can not begin to enforce them all with equal vigor. Most police efforts are re-active, responding to citizen requests for help. Citizens choose to report only some of the crimes they are victimized by. (Table 2).

Yet even when citizens make an effort to report crime or have someone arrested, this does not automatically become translated into a crime statistic. One study of police recording practices suggests that police disregard perhaps a quarter of the supposed felonies that come to their attention. Among factors affecting whether or not
police record a crime complaint are the social class background of the complainant, the amount of deference shown to police, and the complainant's desire for legal action. (6. Black "The Prosecution of Crime Rates," ASR, 1970). The decision of whether or not to arrest, or what to charge someone with, is often conditioned by the suspect's social class, race, past history and demeanor. Those lower in social class, minorities, young people and ex-offenders are more likely to be negatively affected by the police use of their arrest discretion.

What could the police have done in the film situation? We can sketch out a number of options for police here, the point being that the lack of one clear "right" answer make police work especially problematic. The police could, after ascertaining that no serious crime had been, or was likely to be, committed simply have left; they could have asked the young men to be a little quieter; they could have told them to stop making noise or face arrest; they could have "suggested" through implied threat of arrest or use of force, that the group break up and each young man go home; they might have talked to the neighbors, and tried to calm them down, with arguments such as "boys will be boys" or to create sympathy for the boys' as victims of racial fight; they might have tried to reach an agreement acceptable to both groups, e.g. the party would break up at 1 a.m., or music will be played softly; or the police could have "solved" the situation with arrests, if the neighbors were willing to sign a complaint. There is no clear answer as to what police should do in this situation.
What do students feel the police should have done? Does it seem possible to develop firm policy guidelines to eliminate police discretion? What are some of the positive and negative aspects of permitting police discretion? At what point do rules designed to ensure that all people receive equal treatment end up having opposite consequences?

It may come as a surprise to students to learn that until recently most police departments offered patrolmen little in the way of formal policy guidelines, even over such crucial issues as when to use weapons or engage in dangerous high speed chases. Guidelines that were in existence tended to be very abstract, or to tell police what they should not do, rather than what they should do in concrete situations.

This problem of formal policy vs. informal discretion is common to most organizations, but it is particularly pronounced in the case of police, with their highly varied tasks and the more tenuous link between police ends and the means they have at their disposal.

Discretion must be a part of any flexible system of law enforcement. Situations are just too varied and complex to have rigid rules about what police should do in every situation. There will always be questions of interpretation, where reasonable people may differ. Yet such discretion should be exercised by carefully supervised, selected and trained people, aware of the subtleties involved. In this film it appears that police are misusing their discretion.
The film unfortunately illustrates more than legally or administratively sanctioned discretion. How would your students feel if police came into their homes on a vague neighbor's complaint, arrested them and searched the premises? Had the young men in the picture done anything wrong? Did police follow the right procedures in discovering the evidence (towels with glue smell) of wrong doing? In this case the police entered the house and carried on a search, possessing neither an invitation to do so, nor a warrant. When the young man asked several times if police had a warrant, he was ignored. The young men were arrested, although no misdemeanor was committed in the presence of police, nor did they have probable cause to think a felony had been committed. Why would police take such action which would certainly not stand up in court? This involves questions of police abuse of authority and illustrates the difficulties of supervision.

Abuse of Police Authority and Supervision:

The Fourth Amendment was created to insure privacy and limit unwarranted police searches. The actions we have seen appear to be clear violations of this. What explains this? Perhaps police were unaware of the Fourth Amendment or its applicability here. More likely they felt pressure from the neighbors (probably older people like themselves) to take action. Police may also be personally angry at the youth for failing to respect their authority, since this was their second call to the house. Note that the first time they took no arrest action. (Recall that the police said "I don't believe in comin' back to the same place twice").
The police may have resented the life style of these young men, or been angry at them as a result of previous encounters.

The police may have felt torn between their own, and the neighbors, desire to take action against young men seen to be deserving of punishment, and the laws and departmental policy, which limit the conditions under which they can take official action. The pressure police feel to obtain their goals may lead to "innovative" and illegal means. The Courts have tried to deal with this through the exclusionary rule. Yet the court may not find out that evidence was illegally gathered. The case may never come to trial.

We don't know how this case was described to police supervisors, or presented in Court. If it was exactly as we saw it, the men probably would not have been charged, or found guilty, because of illegal police procedure and questionable evidence as to any wrong doing. However, if the neighbors signed a complaint, they might have been found guilty of disorderly conduct. Yet in presenting the case, police may change it to meet legal requirements. They may say that they were invited in, that the glue was lying out in plain sight, or that the youths were acting bizarrely or tried to assault them. The important point is that there is often a gap between formal records and the events they describe. A major question is how (and to what extent, and under what conditions) do police manage to take actions consistent with their own sense of what ought to be done, in spite of legal and policy requirements that may run contrary to this.
Even where there are clear legal and administrative guidelines for situations such as a search as seen in the film, police supervisors may on occasion be less than zealous in seeing that their men follow them. The fact that supervisors themselves rose from the ranks and may identify with patrolmen, may not be as conducive to effective supervision as would be a system, as in the military, where supervisors enter laterally. Many observers have commented on the solidarity among police and the power of the police subculture in America.

The decentralized nature of police work may make it difficult for police supervisors to enforce appropriate standards. A foreman in a factory can much more clearly see that the workmen he is responsible for supervising are doing, than can a Sargent or Lieutenant whose men are spread throughout a large city. Questions about police abuse might lead to a discussion of "who guards the guards"? There is no simple answer to this. One answer is that the guards guard themselves through effective supervision, and special internal affairs sections, and through carefully selecting people with integrity and inculcating them with the highest professional standards in training.

The Courts also exercise a degree of control over police, through mechanisms such as the exclusionary rule. Individuals can also bring costly civil damage suits against police. Civil authorities such as Mayors may exercise some control over police, particularly in their power to appoint the Chief and their role in setting the budget, but this is usually far removed from the actions of the man on the street.
Other forms such as Civilian Review Boards have usually been short lived, lacking in meaningful power, and have met with great police resistance. Yet none of these have been adequate to satisfy the demands of many citizens. A major political theme at the local level has been and remains efforts to increase police accountability.

Some additional questions raised by the film:

A number of other themes might be discussed. Where do the laws come from that police enforce? To what extent can police be said to be enforcing laws made by, or favoring adults, the rich, males, whites, and the straight? To what extent is their consensus on laws against gambling, prostitution, homosexuality, and drug use? Is arrest the best way to deal with glue sniffing? Why is glue sniffing against the law? Is it more damaging that alcohol? To what extent does this episode represent generational conflict and the youth culture? Would police have been as upset and made arrests if the situation and been reversed—what if the young men had called police to complain about the noise being made by their middle aged neighbors (perhaps female) who were drinking beer or scotch? How prevalent are false arrests? What will happen to the arrest records of the boys if they are found not guilty? If they are not destroyed how could this permanent record affect their later lives in seeking a job or credit?
STUDY GUIDE QUESTIONS ON PART I: 4th AMENDMENT AND THE EXCLUSIONARY RULE

"AFTER THE GAME"

ENTERING

I. Can the cops go in the house?

Ans. Yes, if invited (or have consent from occupants)
   Yes, if reasonable grounds to believe crime being committed (probable cause)
   Yes, if police see misdemeanor being committed
   Yes, if police has "probable cause" to suspect felony (e.g., smells marijuana or glue)
   No, if police don't have warrant and are not invited in
   No, if kid closes door on police, or demands warrant.

Question to class: What is the crime? Have students check local ordinances to see if crime is a felony or a misdemeanor. What is the crime that the police suspect in this sequence?

QUESTIONING

I. Legally, can the police ask:

   A. general questions (e.g., age, where parents are) up to "What's this smell in here?"

   Ans. YES

   B. questions about smoking "pot?"

   Ans. NO, not without giving kids rights if they are being detained or arrested.

II. If police are not planning to detain or arrest, can he ask question (B) above legally?

   Ans. YES
**Question to Class:** Do you think that the police have made up their minds at this time to arrest or detain the kids?

**Ans:** It is not clear that the police have made up their minds about arrest at this point in the film.

**SEARCH**

**GIVEN:** Police did not read rights to kids.

I. Can police search premises?

**Ans.** YES

II. Can police search premises and have it hold up in court?

**Ans.** NO

III. Can police search premises and not use it in court, but search only for their own knowledge?

**Ans.** YES, but are open to civil suit.

IV. Is it illegal for police to search premises without warrant if they do not plan to use evidence in court?

**Ans.** YES. They are trespassing.

**HYPOTHETICAL**

Police are going to arrest kids.
Police tell them that they are going to arrest them.
Police tell them that they have probable cause to do so (e.g., kids are disorganized, police smelled glue, pot, etc. at door)

**Legal search**
**Legal seizure**
**Legal and admissible court evidence.**

**REAL FILM SITUATION**

It is not clear that the police have decided to arrest the kids. If so, they did not give rights. **Can they search?** **When does it become illegal for police to continue their search?** -when asked about a warrant? -could kids charge police with criminal offense?
Question for Class: Why don't people prosecute the police when they have legal grounds to do so?

Ans. financial reasons; they know they won't win; lawyers are not willing to prosecute; practically impossible for citizen to "prove beyond a reasonable doubt" that police behavior was illegal; no evidence without witnesses; case is merely one person's word against another's.

ARREST

In this film, the police proceed on the basis that they had received two calls regarding these kids and the possibility of a disorderly party.

I. Do they have grounds to make an arrest?

Ans. NO

The police are acting on a misdemeanor.

II. Can they make this arrest?

Ans. NO, because when they go into the house, they can't see a misdemeanor taking place.

AFTER ARREST

After the arrest, the police searched the basement and found glue.

I. Can they do this search?

Ans. YES, but are open to charges of a civil suit.
II. Can the evidence obtained be used in any way?

Ans. NO

III. What is the charge?

Ans. RUNNING A DISORDERLY HOUSE

Question for class: I. Find out in your local ordinances if it is truly a crime to "run a disorderly house." What does this mean?

II. Do you think the police were right to arrest the youths on this charge?

III. What should the police do in this situation?

WHY ARREST?

GIVEN: a. Because of Exclusionary Rule, there is no evidence that will stand up in a court of law. (see section on Search)

b. Police know that evidence will not be admissible in court of law

c. Yet, police obtain evidence and bring kids to station "knowing" that glue-sniffing charge will never hold up in court.

I. Why do police arrest kids?

Ans. TO PROTECT THEM FROM THEMSELVES

II. How do police plan to protect kids by arrest?

Ans. 1. TO LET THEIR PARENTS KNOW WHAT THEY'VE BEEN DOING

2. TO IMMEDIATELY STOP (THROUGH ARREST) THEIR "GLUE SNIFFING" SO THEY DO NOT HARM THEMSELVES FURTHER.
III. Could police do anything besides arrest the kids to protect them from themselves?

**Ans.** YES:

IV. Would any other alternative be as effective as arrest in stopping their behavior?

**ANS.** NO

**GIVEN:** Other alternatives police **could** have used, but didn't, include:

A. Threaten kids with arrest if they continue their behavior.
B. Leave kids alone, but contact parents when they return from trip. Then, let parents deal with the problem.
C. Ignore the situation.

VII. Why did police choose to arrest rather than to threaten the kids?

**Ans.** Kids could have easily continued glue-sniffing after police left.

VIII. Why did police choose to arrest rather than to contact parents?

**Ans.** Although parents would have been able to deal with the situation, the police would have to wait until they returned. Kids could still sniff glue at that time; therefore, would still be in a position to harm themselves that night.

IX. Why did the police choose to arrest rather than ignore the situation?

**Ans.** THEY FELT THE DUTY TO PROTECT THE KIDS.
QUESTIONS FOR CLASS DISCUSSION:

I. Do the police have the duty to protect people from themselves?

II. Should the police protect people from themselves?

III. Should the police protect the following people from themselves?
Discuss in class.
   i. small children who are lost.
   ii. alcoholic person who is lost, disoriented, apt to hurt him/herself.
   iii. "local drunk" being rowdy in bar 
      cigarettes
   iv. "soft" drug user (non-narcotic) e.g., marijuana, cocaine...
   v. "hard" drug user (narcotic) e.g., heroine, morphine, methadone...
   vi. suicide attempts.

IV. where is the line drawn in public protection?

V. Do the police encounter difficulty in distinguishing when they should protect persons from themselves for their own good and when they should not?
Ans. YES

VI. What criteria do the police use in making these decisions?
Ans. POLICE DISCRETION, PROFESSIONAL EXPERTISE AND EXPERIENCE, "INTUITION," COMMON SENSE.
REAL

Cops arrest kids for running a disorderly house.
Cops conduct search.
Cops find glue sniffing apparatus.
Because of nature of search, evidence is inadmissible in court.
Cops are worried about kids; they might harm themselves through continued glue-sniffing.
Cops bring kids to station, charged with "running a disorderly house."
Cops hold kids at station until parents can be notified.
Cops know that "glue-sniffing" charge will never hold up in court.

***KIDS HAVE RECORD.

HYPOTHETICAL I

Cops enter house, question.
Cops don't arrest for "running a disorderly house"
Cops look around and find glue-sniffing apparatus.
Cops know that, since evidence was obtained illegally, they cannot charge kids with "sniffing glue" and have it hold up in court.
Cops are worried about kids.
Cops warn kids and leave.

HYPOTHETICAL II

Cops enter house, question.
Cops don't arrest for "running a disorderly house"
Cops look around and find glue-sniffing apparatus.
Cops know that, since evidence was obtained illegally, they cannot charge kids with "sniffing glue" and have it hold up in court.
Cops are worried about kids.
Cops warn kids, leave, and contact parents the next day.

HYPOTHETICAL III

Cops enter house, question
Cops arrest for "running a disorderly house"
Kids Cops find glue-sniffing apparatus
Kids were not sniffing glue. (someone else had been)
cops are worried about kids sniffing glue.
Cops bring kids down to station.
Next day, cops tell parents about glue-sniffing.
***Kids are in trouble with parents.
***Kids have record, and kids were innocent on both charges.

CAN YOU THINK OF OTHER HYPOTHETICAL CASES?
WHAT WOULD HAPPEN TO KIDS?

IS IT BETTER FOR A KID TO HAVE A RECORD AND BE PREVENTED FROM HARMING HIMSELF, OR BETTER FOR KID TO BE TAKING RISK OF HARMING HIMSELF, BUT NOT EVER BEING ARRESTED?

HOW DO POTENTIAL EMPLOYERS AND AUTHORITIES VIEW AN ARREST RECORD?
ADDITIONAL IDEAS FOR SPECIFIC STUDY GUIDE QUESTIONS. (Page numbers refer to Transcript)

I. What is meant by "Credibility" of alleged victim?
   How do the police determine whether a victim's story is or isn't credible? P. 5

II. "The discretionary power of the police is not to say that the police have a prosecutorial function."
   What is police discretion?
   How far can it be used?
   How far should it be used?
   (Although the speaker says that the police do not have the prosecutorial function, they do have the function (and the duty) to decide who will -- and who will not -- ever come to prosecution. Since they have the discretion, in marginal or vague cases, to arrest or to let go.) P. 25

III. How can the court really know that an individual who has been read his/her rights really knows what they mean, and is voluntarily waiving these rights without threat or coercion? Or, when is one sure that one "knowingly" waives rights?
   As panel discusses, should a waiver of these rights even be allowed, now that the Supreme court decisions have focused so strongly on the admissibility and inadmissibility of evidence?

IV. What is meant by a "reliable informant"?
   How is an informant's reliability measured? (by past record and performance? By the percentage of the informant's previous tips which were well-founded?)
Are there really any objective criteria to distinguish reliable from unreliable informants? P. 43