

Objectives

- Identify and explain the precedence set by the Burger, Robert, and Rehnquist Courts on the extent of police power
- Analyze the impact of these cases in light of the Warren Court decisions to articulate the extent of police discretion available to law enforcement
- Evaluate the extent to which the law is applied equally to everyone

Materials

- Computer
- Optional printout of tables

Vocabulary

- Qualified immunity
- Fourteenth Amendment
- Search and seizure
- Fourth Amendment
- Sixth Amendment

Prework

Recommended to have completed Lesson 4 of this unit: The Warren Court—Civil Rights through Civil Proceedings Reform.

Warm-Up (about 10 minutes)

Step 1: Have students recall their knowledge about qualified immunity and criminal procedure rulings of the Warren Court.

Step 2: Using the answer, cite, evidence format, have students write down a brief answer to the following prompt: To what extent did the rulings of the Warren Court impact police discretion?

Student answers should include topics around reading Miranda rights and qualified immunity.

Lesson Activities

ACTIVITY 1: BURGER, ROBERT, AND REHNQUIST COURT CASES (ABOUT 25 MINUTES)

Step 1: Have students in groups of 5 read the cases in the table below. Assign one case to each student to read, complete in the table, and then summarize to the group. Share that these are key cases that set precedence regarding police power.

Case	Precedence it set about police power	Impact on civil rights and liberties	Precedent from Warren Court used
Burger Court			
<i>Tennessee v. Garner</i> (1985)			
Rehnquist Court			
<i>Whren v. United States</i> (1996)			
<i>Florida v. Bostick</i> (1991)			
<i>Ohio v. Robinette</i> (1996)			
Robert Court			
<i>Frasier v. Evans</i> (2021)			

Step 2: Ask students to share what precedence each case sets out about police power and if they noticed a connection between the precedents set forth by the Warren Court.

ACTIVITY 2: SOCRATIC SEMINAR DISCUSSION (20 MINUTES)

Step 1: Have students delve deeper into understanding the impact the interpretation of law has over time by prompting them with the following questions in a Socratic seminar format. Encourage students to record their answers before participating and remind students to use evidence from the sources they have encountered in this lesson.

- Does the law apply equally to everyone? Is everyone presumed innocent until proven guilty?
- To what extent has each of these cases impacted the interpretation of civil rights and liberties outlined in the Constitution and Section 1983?
- Recall the common law argument made about the Warren Court's rulings. Did Burger, Rehnquist, and Robert Courts mirror the same ruling style? How so?
- How did the interpretation of the law change over time in these cases?
- In what ways was police discretion expanded or reformed over time in these cases?

Step 2: After hearing students' answers, contextualize the conversation further by sharing with students in the context of *Florida v. Bostick* and *Ohio v. Robinette* that the decision of *Whren v. United States* expanded the power of the police to stop almost anyone at any time. Share with them that collectively, these judgments represented the Rehnquist Court's deference to police in matters of constitutional violations of civil liberties in racially and politically charged contexts.

OPTIONAL BREAK IF NOT ON BLOCK SCHEDULING

ACTIVITY 3: CASE RESEARCH CONNECTING PAST TO PRESENT FORMATIVE ASSESSMENT (35–60 MINUTES)

Step 1: Have students apply the knowledge they have learned in their case analysis of police discretion to evaluate a modern-day case from either the Roberts Court or another lower-level court that relates to qualified immunity or search and seizure. Share with students that they will research their chosen case in pairs and create either a Prezi, Google Slideshow, or FlipGrid to explain the case. Remind students that they must explain the case, the precedent set forth, or the legal question at stake if the case has not been decided and how it relates to qualified immunity or search and seizure.

Step 2: Have students work in pairs during class and then present their project either at the end of the class or the next class session.

Exit Ticket (about 5–10 minutes)

How has your understanding of police reform and discretion changed? In what way?

Optional Extension Activity

ACTIVITY: PODCAST SOCRATIC SEMINAR (UP TO 1 HOUR)

Step 1: Have students listen to the 2021 NPR Throughline podcast "[The Real Black Panthers](#)" either ahead of time or in class.

Step 2: Engage students in a Socratic seminar that extends the conversation from this lesson to explore the criminal justice proceedings reform eventually stymied by adversarial encounters between police patrols and militant Black armed resistance.