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CRIMINAL PROCEDURE OUTLINE

OVERVIEW

Criminal Procedure: The rules governing the conduct of police and government officials in the investigation of crime. Focuses on the 4th, 5th, and 6th Amendments of the U.S. Constitution.

- **Purpose of these Rights:** To offset general warrants and writs of assistance from Great Britain times.

Selective Incorporation: Only those fundamental rights that are deeply rooted and essential to our concept of ordered liberty are incorporated to the states by way of the 14th Amendment.

- **i.e., Brown v. Mississippi:** Coerced confessions are not free and voluntary beyond a reasonable doubt and are not admissible evidence and are violations of a defendant's 14th Amendment Due Process rights.

  i.e., Duncan v. Louisiana: The 14th Amendment guarantees a right of jury trial in all criminal cases which—were they to be tried in a federal court—would come within the 6th Amendment.
- **Mostly Incorporated:** Almost all of the 4th, 5th, and 6th Amendments are incorporated to the states (except the grand jury provision of the 5th Amendment).

Themes Throughout This Course: (1) Accuracy v. Fairness, **(2)** Accuracy v. Limiting Government Intrusion, **(3)** Fairness v. Efficiency, etc.

Due Process: The Due Process Clause requires that state action, whether through one agency or another, shall be consistent with the fundamental principles of liberty and justice which lie at the base of all our civil and political institutions.

EXCLUSIONARY RULE INTRODUCTION

The 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.

- **"Houses":** Has been interpreted to include offices, stores, and other businesses and commercial premises.
- **Only Affects Government Actors; Burdeau v. McDowell:** The Supreme Court ruled that the 4th Amendment only limits governmental action. It does not reach private searches or seizures.
    - **But Applies When Private Citizens Act According to Police Orders:** If an officer requests a landlord to search through her tenant's belongings or assists in the process, or if Best Buy repair shop employees are paid by the FBI for reporting signs of child pornography on customers' computers.

The Exclusionary Rule: This rule prevents the government from using evidence obtained in violation of the United States Constitution.

- **Weeks v. United States:** The purpose of the 4th Amendment is to protect the people from the no-holds-barred general searches that were once conducted in the times of Great Britain and colonial times. The people have a right to personal security, personal liberty, and private property and it cannot be wantonly cast away. It's admirable what government officials do to bring the guilty to punishment, but they are not to be aided by the sacrifice of those great principles established by years of endeavor and suffering which have resulted in their embodiment in the fundamental law of the land.
- **Mapp v. Ohio:** The exclusionary rule was designed to protect the guilty, but also the innocent people who deserve privacy.
    - **Holding:** "We hold that all evidence obtained by searches and seizures in violation of the Constitution is, by that same authority, inadmissible in a state court."
    - **Purpose of Exclusionary Rule:** "To deter—to compel respect for the constitutional guaranty in the only effectively available way—by removing the incentive to disregard it."
    - **Reasoning:** Since the 4th Amendment's right to privacy has been declared enforceable against the states through the Due Process Clause of the 14th Amendment, the same sanction of exclusion against the federal government is also enforceable against the states because the exclusionary rule laid out in *Weeks* is an "essential ingredient of the right to privacy." To rule otherwise is to grant the right but, in reality, to withhold its privilege and enjoyment.

"SEARCH" UNDER THE 4TH AMENDMENT

Passing the 4th Amendment Threshold: If a search or a seizure under the 4th Amendment does not occur, no 4th Amendment protections apply.

- **Public view:** An item cannot be "searched" if it is in plain public view.

Keep in Mind Two Things and Weigh Them: (1) The mode of intrusion, and **(2)** the invasiveness of the intrusion.

Property Right Theory/Test

Boyd v. United States: A search occurs if a government official commits a physical intrusion—a trespass—into a constitutionally protected area in order to find something or to obtain information.

Privacy Theory/Test

Katz v. United States: "What a person knowingly exposes to the public, even in his own home or office, is not a subject of 4th Amendment protection. But what he seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected."

- **Reasoning:** The 4th Amendment protects people, not places. Even though Katz was in a phone booth making a phone call, he intended for the contents of that call to remain private and not be broadcasted to the world.
- **The Test for a Search; Reasonable Expectancy of Privacy Test: (1)** First, a person must have exhibited an actual (subjective) expectation of privacy, and **(2)** second, the expectation must be one that society is prepared to recognize as reasonable. If both questions are answered yes, then the information was private, and a search took place.

- **"Reasonable Expectation":** When a reasonable person would not expect her privacy to be seriously at risk; contains a matter of significantly statistical probability.
- **"Legitimate/Justifiable Expectation":** A value judgment that someone ought to have the right to privacy in a certain circumstance.
- **Factors to Consider: (1)** Nature of the place being searched (public vs. private), **(2)** the steps taken to enhance the privacy (closing doors, locking things, etc.), **(3)** the nature of the object or activity (electronic surveillance, thermal imaging, etc.), **(4)** the physical nature of the intrusion (location of the observer), and **(5)** the extent to which the surveillance is unnecessarily intrusive (how much info is gleaned from it).

The False Friends Doctrine; United States v. White: No one can have an objective expectation of privacy in anything they say to someone else, even if that person turns around and tells it to the police.

- **Location Doesn't Matter:** It doesn't matter if you held the conversation in the privacy of your own home or another private place.
- **Holding from United States v. White:** "If the conduct and revelations of an agent operating without electronic equipment do not invade the defendant's constitutionally justifiable expectations of privacy, neither does a simultaneous recording of the same conversations made by the agent or by others from transmissions received from the agent to whom the defendant is talking and whose trustworthiness the defendant necessarily risks."

- **Reasoning:** The problem here is not necessarily the privacy expectations of the defendant when relying on his companion or accomplice, but rather what expectations of privacy are "justifiable" and therefore protected in the absence of a warrant. Individuals neither know nor suspect that their accomplices will go to the police, and therefore do not have a reasonable expectancy of privacy over the matter.
    - **Exception:** You assume the risk that one of your friends will invite the police in, but you don't assume the risk that the government will be listening at all times (i.e., spying on you in parks, stores, etc.).
- **Harlan's balancing Test:** "The question must be answered by assessing the nature of a particular practice and the likely extent of its impact on the individuals sense of security balanced against the utility of the conduct as a technique of law enforcement."

Third-Party Doctrine; Smith v. Maryland: A person has no legitimate expectation of privacy in information he voluntarily turns over to third parties, so Smith couldn't have had an expectation that society is prepared to recognize as reasonable.

- **Holding:** Smith "in all probability entertained no actual expectation in the phone numbers he dialed, and that, even if he did, his expectation of privacy was not legitimate." The installation and use of a pen register, consequently, was not a search, and no warrant was required.
- **Reasoning:** Although Smith's conduct may have been calculated to keep the *contents* of his conversation private, his conduct was not and could not have been calculated preserve the privacy of the number he dialed. It's doubtful that people

entertain any actual expectation of privacy because "all telephone users realize that they must convey phone numbers to the telephone company, since it is through telephone company switching equipment that their calls are completed." Also, phone companies keep permanent records of all calls for tracking long distance calls and preventing illegal activity.

- **Who is the "Public":** One other person or one other entity.

Dog Sniffs; United States v. Place: The Court held that exposure of Place's luggage, which was located in a public place, to a trained canine, did not constitute a "search" within the meaning of the 4th Amendment. This particular search was much less intrusive than the typical search, and did not "expose noncontraband items that otherwise would remain hidden from public view."

- **Reasoning Behind the Rule; Illinois v. Caballes:** Official conduct that does not compromise any legitimate interest in privacy is not a search subject to the 4th Amendment. Any interest in possession contraband cannot be deemed "legitimate," and thus, governmental conduct that *only* reveals the possession of contraband compromises no legitimate privacy interest.
- ***But See* Florida v. Jardines:** The government's use of trained police dogs to investigate the home and the curtilage is a "search" within the meaning of the 4th Amendment.
    - **Reasoning:** The officers gathered the information by physically entering and occupying the area to engage in conduct not explicitly or implicitly permitted by the homeowner. The home is first among equals under the 4th

Amendment. This would be undermined if police could stand in a home's porch or side garden and trawl for evidence with impunity.

- **Dog Sniffs vs. Feeling Luggage:** Officers feeling luggage and dog sniffs aren't the same because squeezing luggage is not a binary technique.

Open Fields vs. Curtilages

Open Fields Doctrine; Hester v. United States: Police entry of an open field does not implicate the 4th Amendment.

- **Open Field Definition:** Any unoccupied or undeveloped area outside of the curtilage of a home. An open field need be neither "open" nor a "field" as those terms are used in common speech.

Curtilages: Oliver v. United States: An individual may not legitimately demand privacy for activities conducted out of doors in fields, except in the area immediately surrounding the home.

- **The Curtilage Test:** Curtilage questions should be resolved with reference to four factors: **(1)** the proximity of the area claimed to be curtilage to the home, **(2)** whether the area is included within an enclosure surrounding the home, **(3)** the nature of the uses to which the area is put, and **(4)** the steps taken by the resident to protect the area from observation by people passing by.
    - **Purpose:** These factors help decide whether the area in question is so intimately tied to the home itself that it should be placed under the home's "umbrella" of 4th Amendment Protection.

- **Aerial Surveillance of Curtilages; California v. Ciraolo:** Police officers flew over defendant's home at 1,000 foot level, without a warrant, and took pictures of marijuana in his back yard. Any member of the public flying in this airspace who glanced down could have seen everything that the officers observed. The defendant's expectation that his garden was protected from such observation is unreasonable and is not an expectation that society is prepared to honor.
    - **Reasoning:** The 4th Amendment of the home has never been extended to require law enforcement officers to shield their eyes when passing by a home on public thoroughfares. Nor does the mere fact that an individual has taken measures to restrict some views of his activities preclude an officer's observations from a public vantage point where he has a right to be and which renders the activities clearly visible.
- **Garbage Cans; California v. Greenwood:** A person does not have a reasonable expectation of privacy in garbage left outside the curtilage of a home for trash removal. The person is literally leaving the garbage out to the public, and anyone could possibly come through and snoop throughout it.

Sense-Enhancing Technology; Kyllo v. United States: Obtaining by sense-enhancing technology any information regarding the interior of the home that could not otherwise have been obtained without physical "intrusion into a constitutionally protected area" constitutes a search—at least where the technology in question is not in general public use.

- **Reasoning:** Not ruling this way would leave homeowners at the mercy of advancing technology. There are intimate details within a person's home that warrants protection.

Beeper Cases

United States v. Knotts: Held that it was constitutional for officers to use a radio transmitter which emitted periodic signals to track a suspect to gauge his whereabouts on public roads (they hid it in a five gallon container of chloroform later purchased by the defendant for the use of making drugs.

United States v. Karo: Held that the warrantless "monitoring of a beeper in a private residence, a location not open to visual surveillance, violates the 4th Amendment rights of those who have a justifiable interest in the privacy of the residence."

- **Difference Between the Two Cases/Why Karo was Unconstitutional:** Technology installed *outside* the defendant's home, in order to obtain information regarding an activity occurring *inside* his home.

United States v. Jones: The government's installation of a GPS device on a target's vehicle, and its use of that device to monitor the vehicle's movements, constitutes a "search."

- **Reasoning:** The government physically occupied private property (the car) for the purpose of obtaining information. Katz did not repudiate prior 4th Amendment precedent but added to it. If there is a physical intrusion into your personal property, that still constitutes a search.

- **Distinguishing Jones from Knotts and Karo:** Third-parties accepted to put the beepers on the object and then sold it to the defendant. There was no third party in Jones. That's why Jones was a "search" and these two cases were not.

Cell Phones

Carpenter v. United States: An individual maintains a legitimate expectation of privacy in the record of his physical movements as captured through CSLI (cell site location information). The location information obtained from Carpenter's wireless carriers was the product of a search.

- **Reasoning:** Cell phone location information is detailed, encyclopedic, and effortlessly compiled. Given the unique nature of cell phone location records, the fact that the information is held by a third party does not itself overcome the user's claim to 4th Amendment protection. Such intrusion requires a warrant.
- **Carpenter Search Test (Warrant Required): (1)** New kinds of "digital age" records, **(2)** generated as part of "necessary participation" in daily life, **(3)** through no "meaningful voluntary choice," **(4)** and the record reveal "an intimate window into a person's life."

SEIZURE

Seizures: Today (assuming sufficient grounds to do so) the police may seize contraband, fruits of a crime, criminal instrumentalities, as well as "mere evidence" (evidence that will aid in a particular apprehension or conviction).

Persons; California v. Hodari: "The quintessential 'seizure of the person' under our 4th Amendment is an arrest."

- **Terry v. Ohio:** "A seizure occurs when the officer, by means of physical force or show of authority has in some way restrained the liberty of a citizen."

PROBABLE CAUSE

Warrant Clause: No warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.

Probable Cause is Necessary: A search or seizure conducted in the absence of probable cause ordinarily is considered unreasonable.

Probable Cause to Arrest Definition; Brinegar v. United States: Probable cause to arrest "exists where the facts and circumstances within the officer's knowledge and of which they have reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in that belief than *an offense has been or is being committed*" *by the person to be arrested.*

- **Probable Cause to Search Definition:** The same definition applies, except that the italicized language is replaced with "evidence subject to seizure will be found in the place to be searched."

- **General Rule:** A warrant is required for both.

Probable Cause for a Warrant

Affidavit: An officer or prosecutor must write an affidavit in support of a search warrant.

Neutral and Detached Magistrate: It is a long-standing principle that probable cause must be determined by a "neutral and detached magistrate," and not by "the officer engaged in the often competitive enterprise of ferreting out crime."

The Test; Illinois v. Gates: The task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the "veracity" and "basis of knowledge" of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.

- **Factors; Aguilar-Spinelli Two Pronged Test: (1)** Basis of knowledge—establishes the means by which the affiant/informant came by the information given in the affidavit. **(2)** Veracity or Reliability—establishes that the sources of information is honest, trustworthy, and credible. The affidavit must address both of these.
  - **Basis of Knowledge Factors: (1)** Personal observations of the officer, **(2)** inferences of police officer from other observable facts, **(3)** informant statements (establishing same info as 1 and 2), **(4)** detailed factual background (Draper v. United States), and **(5)** prediction of future events (Illinois v. Gates; unique or very nuanced, accurate predictions).

        - **Veracity or Reliability Factors: (1)** Presumed reliability of affiant under oath if police officer or prosecutor, **(2)** innocent citizen with a good reputation, **(3)** innocent citizen making statements against his own interests, **(4)** an informant with a past record of reliability, or **(5)** an informant who accurately predicts the future.
    - **Still Depends on the Magistrate:** Even if the magistrate finds a sufficient basis of knowledge and sufficient reliability, she must still find that there is in fact probable cause.
    - **Need Not Be Perfect:** In dealing with probable cause, we deal with probabilities. These are not technical; they are factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act. If affidavits submitted by police officers were subjected to strict tests, police may result to warrantless searches and just hope they have probable cause upon later review.
    - **Probably:** Probable cause does not mean "probably." The standard does not "demand any showing that such a belief be more likely true than false."

Anonymous Tips; Illinois v. Gates: An anonymous tip itself isn't enough, but with corroborating evidence from police, it can be enough.

- **Reasoning:** "The anonymous tip predicted a range of details relating not just to easily obtained facts and conditions existing at the time of the tip, but to future actions of third parties ordinarily not easily predicted."

Challenging Affidavits; Franks v. Delaware: (1) Defendant must make a "substantial preliminary showing" that a false statement was made knowingly and intentionally, or with reckless disregard. **(2)** If shown, the 4th Amendment requires a hearing. **(3)** If perjury is

established by a preponderance of the evidence, the affidavit's remaining contents must be examined for probable cause. **(5)** Only applies to statements of officer or prosecutor under oath.

Subjective Intent: The subjective intent and motivations of the police officer in seeking the warrant or making the arrest is irrelevant.

ARREST WARRANTS

Custodial Arrest: To be taken into custody by lawful authorities for the purpose of being held in order to answer for a criminal charge.

- **Seizures:** All arrests are "seizures" of persons, but not all seizures constitute arrests.
- **Traffic Stops; Atwater v. City of Lago-Vista:** Anything for which a police officer can enforce, even minor traffic stops, can lead to lawful arrests.
- **Arrestee v. Citationee:** Police may search an arrestee, but not a citationee, without probable cause (U.S. v. Robinson).
- **Misdemeanors v. Felonies:** Police officers must witness a misdemeanor to arrest in public without a warrant, but can arrest in public for a felony without one.
- **Payton v. New York:** An officer may not arrest a person in her home without a warrant, absent exigent circumstances or consent.
    - **Reasoning:** An entry to arrest and an entry to search for and seize property implicate the same interest in preserving the privacy and the sanctity of the home, and justify the same level of constitutional protection.

- **Steagald v. United States:** May not arrest a person in another person's home without at least a search warrant for the other person's home, absent exigent circumstances or consent.
    - **Reasoning:** An arrest warrant protects that defendant against unreasonable seizure but not the third party against unreasonable searches.
- **No Automatic Release:** An arrest that is invalid because it was executed without a warrant does not automatically mandate a release of the defendant. Instead any evidence obtained is excluded.
- **Executing Arrest Warrant:** An arrest warrant carries with it "the limited authority to enter a dwelling in which the suspect lives."
    - **Requirements:** Officers must usually knock and announce who they are, their purpose, and wait a reasonable time before entry. A reasonable time depends on the totality of the circumstances. No knock warrants can be issued based on some exigency ground.
- **Exigent Circumstances Exception; Minnesota v. Olsen:** A warrantless intrusion may be justified by hot pursuit of a fleeing felon, or imminent destruction of evidence, or the need to prevent a suspect's escape, or the risk of danger to the police or to other persons inside or outside the dwelling.
- **Preliminary Hearing; Gerstein v. Pugh:** Whatever procedure a state may adopt, it must provide a fair and reliable determination of probable cause as a condition for any significant pretrial restraint of liberty, and this determination must be made by a judicial officer either before or promptly after arrest.

- **Requirements:** In order to satisfy the Gerstein timeliness requirement, a jurisdiction must provide a probable cause determination within 48 hours after a warrantless arrest, absent a bona fide emergency or other "extraordinary circumstance."

EXCESSIVE USE OF FORCE

4th Amendment: Protects against unreasonable seizures and also excessive use of force.

Graham v. Conner: All claims of excessive force—not just deadly force—would be analyzed under the 4th Amendment's reasonableness standard.

- **Reasonableness Test:** Requires careful attention to the facts of each case, including **(1)** the severity of the crime, **(2)** whether the suspect poses an immediate threat to the safety of the officers or others, and **(3)** whether he is actively resisting arrest or attempting to evade arrest by flight.
    - **Viewpoint:** Reasonableness must be judged from the perspective of a reasonable officer on the scene who has to make split-second decisions, rather than with the 20/20 vision of hindsight.

§ 1983; Qualified Immunity: Even if it's established that an officer acted unreasonably, there shall be no liability unless **(1)** the official violated a constitutional or statutory right, and **(2)** the right was "clearly established" at the time of the challenged conduct.

- **Clearly Established Right:** A right that is "sufficiently clear that every reasonable official would have understood that what he is doing violates that right." It must be found in a prior precedential case with identical facts.

SEARCH WARRANTS

Elements; Same As Arrest Warrant: (1) Probable cause, **(2)** oath or affirmation, **(3)** particularly describing the place to be searched and the persons or things to be seized, abd **(4)** reviewed and approved by a neutral and detached magistrate.

- **See Lo-Ji Sales, Inc. v. New York:** the warrant did not particularly state all of the things to be searched and seized, and the magistrate was neither "neutral" nor "detached," but instead actively helping with the investigation on the scene.
- **Knock and Announce; Wilson v. Arkansas:** There is an implicit knock and announce requirement for search warrants.
    - **Wait Time after Knocking:** A reasonable time depends on the facts and circumstances. Maybe 15 to 20 seconds when evidence has potential to be destroyed.
        - **Absent Exigent Circumstances:** When immediate entry is not required as a result of an exigency, the reasonable wait time before causing damage to enter may well be longer than if the door to the house is open and they can enter without damaging the residence.
- **Bypassing Knock and Announce; Richards v. Wisconsin:** In order to justify a no-knock entry, the police must have a reasonable suspicion that knocking and announcing their presence, under the particular circumstances, would be dangerous or futile, or that it would inhibit the effective investigation of the crime by, for example, allowing the destruction of evidence.
    - **Reasonable Suspicion:** Officers must articulate specific and particularized facts to show that the suspicion is more than an "inchoate and unparticularized hunch."

    - **No Suppression of Evidence; Hudson v. Michigan:** The exclusionary rule no longer applies to violations of the knock and announce rule.
- **Damage to Property:** Police may damage premises so far as necessary for a no-knock entrance without demonstrating the suspected risk in any more detail than the law demands for an unannounced intrusion simply by lifting the latch.

Executing A Warrant; What and Where Can You Search: Quick Rules

- **Premises:** Police may search as much of the premises as is authorized in the warrant.
- **Containers:** Police may search containers large enough to contain the sought-after items.
- **Objects:** Police may seize an object not described in the warrant if they have probable cause to believe it is a seizable item (contraband or fruit, instrumentality, or evidence of a crime).
- **New Information:** Police must limit or stop execution of the warrant if information becomes available that would require them to do so (wrong house, etc.). But reasonable reliance of fact will not invalidate the search (Maryland v. Garrison).

Executing a Warrant; Who Can You Search and Seize: Quick Facts

- **Particularity:** The search warrant must specifically describe the persons be search and seize.
- **Searching Other People:** Police cannot search other people who happen to be at the location absent independent probable cause that seizable evidence will be found.
- **Detention:** But police may, without any probable cause or reasonable suspicion, detach all occupants of the premises and the "immediate vicinity" for the duration of the search.

- **During Execution:** This detention rule only applies once execution of the warrant begins.

EXCEPTIONS TO SEARCH WARRANTS

General Rule; Katz v. United States: Warrantless searches are unreasonable per se and are subject to only a few specifically established and well-delineated exceptions.

Exigent Circumstances: No warrant is needed for a search if one of the following apply:

- **Hot Pursuit:** Chase began in public can continued into a private place.
- **The other Three:** Reasonable cause to believe that if no immediate entry that:
  - **Evidence:** Evidence will be destroyed.
  - **Escape:** Suspect will escape.
  - **Harm:** Harm will result to police or others inside or outside the building.
- **Factors: (1)** Gravity of the harm AND **(2)** the likelihood that the suspect is armed.
  - **Example; Warden v. Hayden:** Speed was essential in this search, and a thorough search of the house was the only way to ensure that Hayden was the only man on the premises and that all weapons which could be used against the police or to effect an escape were identified.
- **Exception; Police Created Exigency Rule:** Under this doctrine, police may not rely on the need to prevent destruction of evidence when that exigency was created or manufactured by the conduct of the police.

- **Kentucky v. King:** The exigent circumstances rule applies when police do not gain entry to premises by means of an actual or threatened violation of the 4th Amendment.

Search Incident too a Lawful Arrest:

- **Person and Lunge Area; Chimel v. United States:** A police officer, upon arrest, may search **(1)** the arrestee's person and **(2)** the area "within his immediate contro."—construing that phrase to mean the areas from within which he might gain possession of a weapon or destructible evidence.
  - **Reasoning:** A gun on a table or in a drawer in front of one who is arrested can be as dangerous to the arresting officer as one concealed in the clothing of the person arrested. You cannot use this rule to search the persons whole house though, and it only applies to the immediate area where the arrest physically happens.
- **Expanding Chimel; United States v. Robinson:** The polices' right to search incident to a lawful arrest of an arrestee's person is automatic, and no probable cause or reasonable suspicion is required.
- **Arrest Inventory Searches:** An officer may search the arrestee's person as part of the "inventory" process at the police station (typically involves opening physical containers). This rule helps protect the arrestee's valuables while in jail and reduces the risk of false claims of theft by the arrestee.
- **Other Confederates; Maryland v. Buie:** If the arrest occurs in a home, the police may also conduct a warrantless search of "closets and other spaces

immediately adjoining the place of arrest for persons who might be hiding from which an attack could be immediately launched."

- **Cell Phones; Riley v. California:** The Court declined to extend *Robinson* to searches of data on cell phones, and held instead that officers must generally secure a warrant before conducting a search.
    - **Reasoning:** Cell phones place vast quantities of personal information literally in the hands of individuals, and yields far more information than the search of even a person's house would. Plus, the data can be stored by disconnecting the phone from the network or putting it in a faraday bag.
    - **Balancing Test:** The Court generally determines whether to exempt a given type of search from the warrant requirement by assessing, on the one hand, the degree to which it intrudes upon an individual's privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental interests.
- **Breath Tests; Birchfield v. North Dakota:** Warrantless breath tests, incident to a lawful arrest, are per se constitutional. The court balanced the privacy interest of the individual against the interest of the government in combatting drunk driving.
    - **But Not Blood Tests:** The Court also held that warrantless blood tests are not justifiable as an incident to a lawful arrest. Blood tests are more intrusive, as humans don't bleed as much as they breath.
    - **But see Mitchell v. Wisconsin:** When a driver is unconscious and cannot be given a breath test, the exigent circumstances doctrine generally permits a blood test without a warrant (destruction of evidence).

Arrest of Automobile Occupants; The Automobile Exception

- **New York v. Belton:** When a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile. Police may also examine the contents of any containers found within the passenger compartment, for if the passenger is within reach of the arrestee, so also will containers in it be within his reach.
  - **Citationee v. Arrestee:** Belton does not apply when only a citation issued, only when an arrest is made.
  - **Virginia v. Morre:** If state law does not authorize custodial arrests, it's still a lawful arrest for 4th Amendment analysis. A search conducted as an incident of such arrest, therefore, satisfies the 4th Amendment.
  - **Thornton v. United States:** Extended Belton to apply to individuals who have just stepped out of their car when police arrest them.
- **Limiting Belton; Arizona v. Gant:** Police may search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest. When these justifications are absent, a search of an arrestee's vehicle will be unreasonable unless police obtain a warrant or show that another exception to the warrant requirement applies.

Pretextual Stops; Whren v. United States: The subjective motivations of the police officer in pulling over a motorist are irrelevant to the determination of whether probable cause existed or whether any 4th Amendment violation has occurred.

Automobile Searches; Cars and Containers:

- **Carrol v. United States; Mobility Rationale:** Carroll holds a search warrant unnecessary where there is probable cause to search an automobile stopped on the highway; the car is movable, the occupants are alerted, and the car's contents may never be found again if a warrant must be obtained. Hence, an immediate search is constitutionally permissible.
    - **Automobile Exception:** Officers only need probable cause to search a vehicle provided the vehicle was "mobile" at the time of the seizure. No warrant is required.
    - **When the Car is Moved to the stationhouse; Chambers v. Maroney:** "Here, the blue station wagon could have been searched on the spot when it was stopped since there was probable cause to search and it was a fleeting target for a search. The probable cause factor still existed at the station house and so did the mobility of the car unless the Fourth Amendment permits a warrantless seizure of the car and the denial of its use to anyone until a warrant is secured.
        - **Reasoning:** "For constitutional purposes, we see no difference between on the one hand seizing and holding a car before presenting the probable cause issue to a magistrate and on the other hand carrying out an immediate search without a warrant. Given probable cause to search, either course is reasonable under the Fourth Amendment."

- **Coolidge v. New Hampshire:** The "mobility" rationale ceased to exist when the individual has been taken in to custody and much time has passed.
    - **Reasoning:** "In this case, the police had known for some time of the probable role of the Pontiac car in the crime. Coolidge was aware that he was a suspect in the murder, but he had been extremely cooperative throughout the investigation, and there was no indication that he meant to flee. He had already had ample opportunity to destroy any evidence he thought incriminating. There is no suggestion that, on the night in question, the car was being used for any illegal purpose, and it was regularly parked in the driveway of his house. The opportunity for search was thus hardly fleeting."
- **California v. Carney; Lesser Expectations of Privacy:** "In short, the pervasive schemes of regulation, which necessarily lead to reduced expectations of privacy, and the exigencies attendant to ready mobility justify searches without prior recourse to the authority of a magistrate so long as the overriding standard of probable cause is met."
    - **Reasoning: (1)** Unlike homes, automobiles "are subjected to pervasive and continuing governmental regulation and controls" such as periodic inspection. **(2)** Carney's home was readily mobile, it was licensed to operate on public streets, and a turn of the key in the ignition could move the car beyond reach of the police.

- **Mobile Homes; House or Car:** This requires a fact intensive analysis. If in a more residential environment, more likely to be viewed as a home.

- **Cardwell v. Lewis:** "One has a lesser expectation of privacy in a motor vehicle because its function is transportation and it seldom serves as one's residence or as the repository of personal effects. A car has little capacity for escaping public scrutiny. It travels public thorough fares where both its occupants and its contents are in plain view."

- **South Dakota v. Opperman; Inventory Searches:** The Court held that probable cause and warrant requirements of the Fourth Amendment do not apply to routine inventory searches.
  - **Reasoning:** "The standard of probable cause is peculiarly related to criminal investigations, not routine, non-criminal procedures. In view of the noncriminal context of inventory searches, and the inapplicability in such a setting of the requirement of probable cause, courts have held—quite correctly—that search warrants are not required, linked as the warrant requirement textually is to the probable-cause concept."
    - **But See Florida v. Wells:** The Court held that highway patrol officers were not permitted to open a locked suitcase they discovered during an inventory search because "the Florida highway patrol had no policy whatever with respect to the opening of closed containers encountered during an inventory search."

- **California v. Acevedo:** The police may search a container in a car without a warrant if their search of the car itself is supported by probable cause.
    - **Limitation:** "Probable cause to believe that a container placed in the trunk contains contraband or evidence does not justify a search of the entire car."
    - **Reasoning:** "A container found after a general search of the automobile and a container found in a car after a limited search for the container are equally easy for the police to store and for the suspect to hide or destroy. Also, opening a brown paper bag has minimal intrusion as compared to the slashing of the upholstery of a vehicle seen in *Carrol*."

Plain View Doctrine (Not Really A Search): An object of an incriminating nature may be seized without a warrant if it is in "plain view" of a police officer lawfully present at the scene.

- **Elements:** An article is in plain view, and subject to warrantless seizure, if:
    - **(1)** The officer observes it from a lawful vantage point (executing a valid search or arrest warrant, executing a valid warrantless search/arrest pursuant to an exception, or viewing evidence from a lawful public place such as a sidewalk).
    - **(2)** She has a right of physical access to it (must not only be able to see the object, but be able to lawfully gain physical access to it); and
    - **(3)** It is immediately apparent to her that it is contraband or a fruit, instrumentality of the crime (the officer must know, without any further movement or investigation of the item, that it is evidence).
        - **Arizona v. Hicks:** Must have probable cause to believe it is evidence.

- **Reasoning:** Recording the serial numbers was not a search, but moving the turntables to look underneath it was a search that wasn't supported by exigent circumstances (no gun or shooter could be found under there). Also, purely looking at the expensive stereo in a squalid apartment isn't enough for probable cause.

- **Horton v. California:** Officer need not inadvertently or accidently view something in plain view, and the subjective intent of the officers in these situations do not matter (they can hope to find incriminating evidence).

Plain Touch Doctrine; Minnesota v. Dickerson: "If a police officer lawfully pats down a suspect's outer clothing for weapons and feels an object whose contour or mass makes its identity immediately apparent, there has been no invasion of the suspect's privacy beyond that already authorized by the officer's search for weapons; if the object is contraband, its warrantless seizure would be justified by the same practical considerations that inhere in the plain view context."

Consent

- **Test; Schneckloth v. Bustamonte:** Whether a consent to a search was in fact "voluntary" or was the product of duress or coercion, express or implied, is a question of fact to be determined from the totality of the circumstances.
    - **Voluntariness:** "Voluntariness is a question of fact to be determined from all the circumstances, and while the subject's knowledge of a right to refuse is a factor to be taken into account, the prosecution is not required to demonstrate such knowledge of a prerequisite to establishing a voluntary consent."

- **Limited:** Consent can be limited in time and place (can consent to search of kitchen but not bedroom).
- **Withdrawal:** Consent can be withdrawn, but must be done so unambiguously.
- **Race (State v. Bartlett):** Race is a relevant factor in the analysis in NC courts.

- **Co-tenants, One Absent; Matlock v. United States:** The consent of one who possesses common authority over the premises or effects is valid as against the absent, nonconsenting person with whom that authority is shared.
  - **Common Authority:** "Rests on mutual use of the property by persons generally having joint access or control for most purposes, so that it is reasonable to recognize that any of the co-inhabitants has the right to permit the inspection in his own right and that the others have assumed the risk that one of their number might permit the common area to be searched."
    - **Reasonableness Test; Illinois v. Rodriguez:** Common authority is a reasonableness test. The officers do not have to have all of the facts correct, but only reasonably believe that the consenting person had common authority of the premises or effect.
  - **Exception:** "So long as there is no evidence that the police have removed the potentially objecting tenant form the entrance for the sake of avoiding a possible objection."
- **Co-tenants, Both Present; Georgia v. Randolph:** A warrantless search of a shared dwelling for evidence over the express refusal of consent by a physically present resident cannot be justified as reasonable as to him on the basis of consent.

- **Absent:** A person does not have to be very far away to be deemed absent (can be in the backyard, or literally asleep in the other room).
- **Roberts, Dissenting, False Friends Doctrine Reasoning:** "If an individual shares information, papers, or places with another, he assumes the risk that the other person will in turn share access to that information or those papers or places with the government."
- **Fernandez v. California; Limited Rule:** "Consent by one resident of jointly occupied premises is generally sufficient to justify a warrantless search." Randolph is a narrow exception and "went into great lengths to make clear that its holding was limited to situations in which the objecting occupant is present."

TERRY DOCTRINE; REASONABLE SUSPICION STANDARD

Terry v. Ohio: A police officer can seize a person and subject him to a limited search for "weapons" on nothing more than reasonable suspicion.

- **Balancing Test; Camera v. Municipal Court:** "There is no ready test for determining reasonableness other than by balancing the need to search (or seize) against the invasion which the search (or seizure) entails."
    - **Particularity Requirement (Terry):** In justifying the particular intrusion, the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusiton.

- **Reasonableness Standard:** Whether the facts available to the officer at the moment of the seizure or the search "warrant a man of reasonable caution in the belief" that the action taken was appropriate."
- **Weapons Only Rationale:** "The sole justification of the search in the present situation is the protection of the police officer and others nearby, and it must therefore be confined in scope to an intrusion reasonably designed to discover guns, knives, clubs, or other hidden instruments for the assault of the police officer."

Stop and Frisk (More Specific)

- **STOP:** To initiate an investigative seizure (to make a stop) the officer must have reasonable suspicion that criminal activity is afoot.
  - May initiate an investigative seizure if the officer has reasonable suspicion, supported by specific and articulable facts and all rational inferences, that the suspect is engaged in criminal activity.
- **FRISK:** Only a "protective frisk" for weapons
  - **Test:** My conduct a protective frisk of the outer clothing if the officer has reasonable suspicion, supported by specific and articulable facts, that the suspect is armed and presently dangerous.
    - **4th Circuit Rule:** If someone is armed, they are automatically deemed presently dangerous.
  - **U.S. v. Hensly:** Extends terry doctrine stop and frisk to cases where officer has reasonable suspicion that the individual has already completed a felony. Court left open the question of completed misdemeanors.

- **Don't Forget Plain Touch Doctrine:** If you can "Immediately" determine something you touch is contraband, you may seize it.

Reasonable Suspicion Standard

- **Test:** Totality of the circumstances. Each factor in isolation may not be enough but, taken together, they may paint a different story.
  - **Common Factors:** Smell of drugs, lying/inconsistent stories, unusual travel plans, presence in a "high crime area," unprovoked flight, "furtive movements (quick and out of the ordinary)," nervousness (or lack of nervousness), making eye contact with an officer (or not), officer training and experience.
  - **What it's Not:** Not an "inchoate and unparticularized suspicion or hunch." And not a suspicion based on activity that "sweeps in a broad category of innocent people."
  - **Broad Use:** Substantively can justify stops and frisks on reasonable suspicion that ny minor offense is being committed (minor traffic offenses, etc.).
  - **Common Sense:** Really use common sense judgments when determining reasonable suspicion.
- **Reasonable Suspicion from Anonymous Tips; Illinois v. Gates:** The court adopted a "totality of the circumstances" approach to determining whether an informant's tip establishes probable cause, using the "veracity, reliability, and basis of knowledge" elements from Spinelli and Aguilar as the main factors.
  - **Same Factors for Reasonable Suspicion:** "These factors are also relevant in the reasonable suspicion context, although allowance must be made in applying them for the lesser showing required to meet that standard."

- **Quantity and Quality:** "Both factors—quantity and quality—are considered in the 'totality of the circumstances—the whole picture,' that must be taken into account when evaluating whether there is reasonable suspicion."
- **Reasoning:** "Just because an anonymous tip alone is not enough to establish probable cause, that doesn't mean it is not enough to establish a reasonable suspicion. The tip was not as detailed as the one in Gates, and the corroboration was not as complete, but the required degree of suspicion was likewise not as high."
    - **Keep in Mind; Testilying:** "In addition, under the Court's holding, every citizen is subject to being seized and questioned by any officer who is prepared to testify that the warrantless stop was based on an anonymous tip predicting whatever conduct the officer just observed."

- **Florida v. J.L.; No Prediction of Future Events:** "The tip in the instant case lacked the moderate indicia of reliability present in *White* and essential to the Court's decision in that case. The anonymous call concerning J.L. provided no predictive information and therefore left the police without means to test the informant's knowledge or credibility. All police had to go on in this case was the bare report of an unknown, unaccountable informant who neither explained how he knew about the gun nor supplied any basis for believing he had inside information about J.L. If White was a close call on the reliability of anonymous tips, this one surely falls on the other side of the line."

- **Navarette v. California; 911 Calls:** Anyone who makes a 911 call, anonymous or not, will automatically qualify for reasonable suspicion as long as there is basis of knowledge.
- **Traffic Stops Without Tips:** An officer can also stop a vehicle based on personal observation of potentially illegal activity; (1) reasonable suspicion of criminal activity; or (2) probable cause to stop for a traffic infraction.
    - **If (1):** The usual reasonable suspicion rules apply.
    - **If (2):** Officer must develop reasonable suspicion of other criminal activity to justify prolonging the stop (or seek consent to search).
- **Wardlow v. Illinois:** Presence in a "high crime area" plus unprotected flight equals reasonable suspicion.
    - **Justice Stevens, Dissenting:** "The inference we can reasonably draw about the motivation for a person's flight, rather, will depend on a number of different circumstances. Factors such as time of day, the number of people in the area, the character of the neighborhood, whether the officer was in uniform, the way the runner was dressed, the direction and speed of the flight, and whether the person's behavior was otherwise unusual might be relevant in specific cases."

SEIZURES OF PERSONS

Dunaway v. New York; Seizure-in-fact: "Petitioner was not questioned briefly where he was found. Instead, he was taken from a neighbor's home to a police car, transported to a police station, and placed in an interrogation room. He was never informed that he was 'free to go.'; indeed, he would have been physically restrained if he had refused to accompany the officers or had tried to escape their custody."

- **Arrest Doesn't Need to be Declared:** "The application of the 4th Amendment's requirement of probable cause does not depend on whether an intrusion of this magnitude is termed an 'arrest' under state law. The mere facts that petitioner was not told he was under arrest, was not 'booked,' and would not have had an arrest record if the interrogation had proved fruitless, while not insignificant for all purposes, obviously do not make petitioner's seizure even roughly analogous ot the narrowly defined intrusions involved in *Terry* and its progeny."
    - **See also Florida v. Royer:** "We have concluded that at the time Royer produced the key to his suitcase, the detention to which he was then subjected was a more serious intrusion on his personal liberty than is allowable on mere suspicion of criminal activity" (he was detained in a room at the airport and had his, luggage, plane ticket and I.D. taken because he matched a drug courier profile) . . . . "Royer was never informed that he was free to board his plane if he so chose, and he reasonably believed that he was being detained."

Pennsylvania v. Mimms; Ordering Drivers out of Cars: "Balancing the competing interests, the Court ruled that when an officer legally stops a driver on the highway, he may order the driver out of the car *without further justification*. It described the interest in police safety as 'legitimate and weighty.' On the other side of the scale is the driver's interest, having them lawfully stopped, to be permitted to stay in his car."

Maryland v. Wilson; Passengers in Cars: "On the public interest side of the balance, the same weighty interest in officer safety is present regardless of whether the occupant of the stopped car is a driver or passenger."

United States v. Sharpe; Extended Terry Stops: Obviously, if an investigative stop continues indefinitely, at some point it can no longer be justified as an investigative stop.

- **Factors to Consider if Terry Stop is Rightfully Prolonged: (1)** The law enforcement purposes to be served by the stop, **(2)** the time reasonably needed to effectuate those purposes, **(3)** whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly (this is the important one), and **(4)** the actions of the suspect in prolonging the stop.

United States v. Mendenhall; The Test for Seizure: "We adhere to the view that a person is 'seized' only when, by means of physical force or a show of authority, his freedom of movement is restrained."

- **Reasonableness Standard:** "We conclude that a person has been 'seized' within the meaning of the 4th Amendment only if, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave."
    - **Factors:** Threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled.
- **But See United States v. Hodari D.:** A show of authority followed by a fleeing form that continues to flee cannot constitute a "seizure."
    - **Rule:** "An arrest requires *either* physical force *or*, where that is absent, *submission* to the assertion of authority."

4TH AMENDMENT STANDING

Alderman v. United States: "The established principle is that suppression of the product of a 4th Amendment violation can be successfully urged only by those whose rights were violated by the search itself, not by those who are aggrieved by the introduction of damaging evidence. Coconspirators and codefendants have been accorded no special standing."

- **Jones v. United States; No Vicarious Liability:** "In order to qualify as a 'person aggrieved by an unlawful search and seizure' one must have been a victim of a search or seizure, one against whom the search was direct, as distinguished from one who claims prejudice only through the use of evidence gathered as a consequence of a search or seizure directed at someone else."
- **The Test for Protection; Rakas v. Illinois:** Use the Katz REP test.
    - **Reasoning from Rakas:** "Under the rule, petitioners' claims must fail. They asserted neither a property nor a possessory interest in the automobile, nor an interest in the property seized. The fact that they were legitimately on the premises in the sense that they were in the car with the permission of the owner is not determinative of whether they had a legitimate expectation of privacy in the particular area of the automobile searched."
- **Minnesota v. Olsen; Overnight Guests:** The individual has standing as an overnight guest because the owner effectively "shared" his expectation of privacy with his guest.
    - **Reasoning:** "To hold that an overnight guest has a legitimate expectation of privacy in his host's home merely recognizes the everyday expectations of privacy that we all share. Staying overnight in another's home is a longstanding social custom that serves functions recognized as valuable by society. From either

perspective, we think that society recognizes that a houseguest has a legitimate expectation of privacy in his hosts' home."

- **But See Minnesota v. Carter:** No 4th Amendment violation occurred here (case where officer looked through window at Carter and others bagging crack in an apartment)
    - **Reasoning:** "Respondents here were obviously not overnight guests, but were essentially present for a business transaction and were only in the home a matter of hours. There is no suggestion that they had a previous relationship with Thompson, or that there was any other purpose to their visit. While the apartment was a dwelling place for Thompson, it was for those respondents simply a place to do business. The purely commercial nature of the transaction engaged in here, the relatively short period of time on the premises, and the lack of any previous connection between respondents and the household, all lead us to conclude that respondents situation is closer to that of simply permitted on the premises (Jones v. United States).

THE EXCLUSIONARY RULE PT. 2

- See the First Exclusionary Rule section for how the rule works.

U.S. v. Calandra; Judicially Created Remedy: "The exclusionary rule is a judicially created remedy designed to safeguard 4th Amendment rights generally through its deterrent effect, rather than a personal constitutional right of the party aggrieved."

- **Exceptions:** Does not apply in grand jury proceedings, civil matters, punishment phase of trial, impeachment trials, etc.

Fruit of the Poisonous Tree Doctrine

Silverthorne Lumber Co. v. U.S.: The government cannot use evidence obtained as a result of the unconstitutional conduct.

- Cannot introduce drugs found during search of person/home/car in violation of the 4th Amendment.
- Also extends to other evidence found as an indirect result of that conduct.
- **Example:** Unlawful search of A's person and finds a notebook with drug transaction information on it implicating B. Cannot now use that newly-gathered information as possible probable cause to arrest B.

Exclusionary Rule Analysis

(1) What is the "tree" (the violation)?

(2) What is the "fruit" (evidence)?

(3) Does the fruit actually come from the tree? (Does independent source or inevitable discovery doctrine apply?

(4) If so, are there facts to suggest the fruit is no longer poisonous? (Dissipation of the taint).

Independent Source Doctrine: The evidence was found through a lawful source completely independent of the unlawful activity.

- **Burden of Proof:** Preponderance of the evidence.
- **Example; Murray v. United States:** The officers, completely aside from the unlawful entry into the warehouse, had enough info for probable cause for a warrant. They obtained the warrant without using any of the information they gathered from the unlawful search. Therefore, they had an independent source from which they obtained probable cause to obtain lawful entry into the warehouse to seize the marijuana.

- **Policy Issue:** Does this encourage 4th Amendment violations? Can officers create "fake informants" after illegally searching a place to conjure up probable cause? What if the unlawful conduct negates probable cause? (they find nothing there. Still apply for a warrant?)

Inevitable Discovery Doctrine: If the prosecution can establish that the information ultimately or inevitably would have been discovered by lawful means, then the deterrence rationale has so little basis that the evidence should be received.

- **Burden of Proof:** Preponderance of the evidence that evidence would be inevitably found.
- **Example: Nix v. Williams:** The Government argued that if the search had not been suspended and Williams had not led the police to the victim, her body would inevitably have been discovered in essentially the same condition within a short time. Therefore, the contested evidence should be admissible.

Dissipation of the Taint Doctrine; The Test: Whether the unlawfully obtained evidence become sufficiently attenuated from the initial unlawful conduct to be deemed admissible regardless.

- **Factors from Brown v. Illinois (Totality of the Circumstances; Don't need all four):** (1) The length of time that has elapsed between the initial illegality and the seizure of the fruit in question; (2) the flagrancy of the initial misconduct (bad faith violations take longer to dissipate than good faith violations); the existence or absence of intervening causes of the seizure of the fruit; and (4) the presence or absence of an act of free will by the defendant resulting in the seizure of the fruit.

- **But See U.S. v. Ceccolini:** Witness testimony is less likely to be suppressed so taint will disappear faster in these situations.

- **See Utah v. Strieff:** The Court held that "the officer's discovery of the valid arrest warrant attenuated the connection between the unlawful stop and the evidence seized incident to the arrest."

Good Faith Exception

United States v. Leon: The exclusionary rule does not apply when an officer obtains evidence in objective reasonable reliance on a search warrant that later turns out to be invalid.

- **Sources of Invalidity:** (1) No probable cause (determined on appeal, or if there is false info in affidavits), or (2) not sufficiently particular.
- **Limits to Exclusionary Rule:** Reliance must be objectively reasonable; knowing or reckless falsity of affidavit; magistrate abandons neutrality (Lo-ji Sales); facially deficient warrants (officer can tell there is not enough for probable cause, or prosecutor tells officer no probable cause but officer intentionally seeks a sympathetic judge).
- **The Test for Whether the Exception Applies:** "It must be resolved by weighing the costs and benefits of preventing the use in the prosecution's case in chief of inherently trustworthy tangible evidence obtained in reliance on a search warrant issued by a detached and neutral magistrate that ultimately is found to be defective."
- **Reasoning Behind Rule:** While the neutral and detached magistrate does not have unfettered discretion in finding probable cause, when the call is a close one, great deference is given to his decision. The 4th Amendment is meant to deter officers, not magistrates. Judges and magistrates are not adjuncts to the law enforcement team; as neutral judicial officers, they have no stake in the outcome of particular criminal

prosecutions. The threat of exclusion thus cannot be expected significantly to deter them. Imposition of the exclusionary sanction is not necessary meaningfully to inform judicial officers of their errors. It is the magistrate's job to determine whether probable cause exists for a warrant, and we should not sanction the officer for the magistrate's error.

Massachusetts v. Sheppard; Reliance on the Magistrate: "The officers in this case took every step that could reasonably expected of them. Detective O'Malley prepared an affidavit which was reviewed and approved by the District Attorney. He presented the affidavit to a neutral judge. The judge concluded that the affidavit established probable cause. He was told by the judge that the necessary changes would be made. He then observed the judge make some changes and received the warrant and affidavit. At this point, a reasonable officer would have concluded, as O'Malley did, that the warrant authorized search for the materials outlined in the affidavit."

Hudson v. Michigan: The exclusionary rule does not apply to knock and announce violations.

- **Reasoning:** "Indeed, the exclusionary rule only applies 'where its remedial objectives are thought most efficaciously served'—that is, 'where its deterrence benefits outweigh its substantial social costs.' Allowing the exclusionary rule to apply for violations of the knock-and-announce rule would 'generate a constant flood of alleged failures to observe the rule, and claims that any asserted justification for a no-knock entry had inadequate support."

Herring v. U.S.: A negligent error on behalf of police activity is not enough by itself to require the extreme sanction of exclusion.

- **Reasoning:** The purpose of the exclusionary rule is to discourage intentional police misconduct. Here, only an accident was committed that led to a violation. Absent a history of repetitive misconduct of the same kind, this is not enough to trigger the exclusionary rule.

Davis v. United States: "Evidence obtained during a search conducted in reasonable reliance on binding precedent is not subject to the exclusionary rule."

FIFTH AMENDMENT

CONFESSIONS; THE VOLUNTARINESS REQUIREMENT

5th Amendment: No person shall . . . be compelled in any criminal case to be a witness against himself.

- **Text:** The plain words clearly protect an individual from, at a minimum, being forced to testify against himself in his own criminal trial.

The Pristine 5th Amendment; Voluntary Confessions and Due Process

Span v. New York; The Test: The totality of the circumstances here seems incredibly relevant to the court in finding a lack of mental freedom.

- **Holding:** "We conclude that petitioner's will was overborne by official pressure, fatigue and sympathy falsely aroused, after considering all the facts in their post-indictment setting."
- **Involuntariness Factors:** (1) youth, (2) mental incapacity, and (3) police methods.
    - **Reasoning:** The use of involuntary confessions not only turns on concerns of inherent untrustworthiness, but on deep-rooted feeling that the police must obey

the law while enforcing the law. Spano was 25, and only had a 9th grade education. Records show that he had a history of emotional instability. He didn't make a narrative confession, but was subject to the leading questions of a skillful prosecutor in a question and answer confession. Several men played a role in this procedure. The interrogation lasted 8 hours, overnight. The police persisted in the face of his repeated refusals to answer on the advice of his attorney, and they ignored his reasonable requests to contact the local attorney whom he had already retained. Finally, the officers forced the only individual whom Spano could trust to falsely mislead him into confessing.

Hector (A Slave) v. State: Whether a confession is sufficiently free and voluntary to be competent testimony is a matter of law to be decided by the court and not by the jury.

Colorado v. Connelly; God's Coercion: Focusing on the lack of state action, the Court held that the confession was, for purposes of the due process clause, voluntary.

But See Kastigar v. U.S.: "Witnesses called to testify before grand juries can be compelled to testify if they are given what is known as 'use-and-derivative-use immunity. This doctrine forbids use of the compelled testimony, and everything derived from it, in a criminal case against the person providing the testimony.

Distinguishing Self-Incrimination vs. Coerced Confessions

5th Am.: No person shall be *compelled* in any *criminal case* to be a witness *against himself*.

Due Process Clause: Under the Due Process Clause, individuals have the constitutional right to be free from giving any involuntary statements, either through threat, fear, or physical or psychological stress.

THESE ARE TWO SEPEARTE THINGS. ONE REQUIRES COERCION, THE OTHER ONE DOESN'T

Privilege Against Self Incrimination; Miranda v. Arizona

Remember: Voluntariness of confessions arose from 14th Amendment Due Process Clause is still important after Miranda. Miranda becomes a necessary, but not sufficient, aspect of voluntariness.

Purpose: Miranda focuses on "procedures which assure" the 5th Amendment, not about defining the 5th amendment right, but about developing procedures to protect that right. (See Michigan v. Tucker)

Free Choice: "Free choice" in this case really means "informed choice," or choice free from psychological torture.

Protection from Self: The privilege against self-incrimination is also a protection of the individual from himself. Therefore, he needs to know and be aware of his rights in order to be afforded that protection.

Holding/Miranda Rights: "At the outset, if a person in custody is to be subjected to interrogation, he must first be informed in clear and unequivocal terms that he has the right to remain silent. The warning of the right to remain silent must be accompanied by the explanation that anything said can and will be used against the individual in court. An individual held for interrogation must be clearly informed that he has the right to consult with a lawyer and to have the lawyer with him during interrogation. It is necessary to warn him not only that he has the right to consult with an attorney, but also that if he is indigent a lawyer will be appointed to represent him."

- **Carnley v. Cochran; No Silent Waiver:** "Presuming waiver from a silent record is impermissible. The record must show, or there must be an allegation and evidence which show, that an accused was offered counsel but intelligently and understandingly rejected. Anything less is not a waiver."
- **Presumed Compulsion:** Unmirandized statements carry with them an irrebuttable presumption of compulsion. Miranda's bright line rule mandates exclusion of statements such as these in the prosecution's case in chief (can be used for impeachment purposes).

Illinois v. Perkins; Undercover Officers: The Court held that encounters between suspects and undercover officers are not subject to *Miranda*, noting that "warnings are not required when the suspect is unaware that he is speaking to a law enforcement officer and gives a voluntary statement.

Harris v. New York; Cross-Examination: Court held that statements taken in violation of Miranda cold be used to impeach a defendant's testimony (just not in the prosecution's case-in-chief).

New Jersey v. Portash; Coerced Statements May Not be Used at All: The Court held that "a defendant's compelled statements, as opposed to statements taken in violation of Miranda, may not be put to any testimonial use against him in a criminal trial." (violation of the pristine 5th Amendment).

New York v. Quarles; Public Safety Exception: "We hold that on these facts there is a 'public safety' exception to the requirement that Miranda warnings be given before a suspect's answers may be admitted into evidence, and that the availability of that exception does not depend upon the motivation of the individual officers involved.

- **Reasoning:** The need for answers to questions in a situation posing a threat to the public safety outweighs the need for the prophylactic rule protecting the Fifth Amendment's privilege against self-incrimination. In this situation, officers would act in interest of their own safety, and the safety of others. The doctrinal underpinnings of Miranda do not require its application in situations where police officers ask questions reasonably prompted by a large concern for the public safety.

Oregon v. Elstad: Fruit of the poisonous tree analysis if for 4th Amendment only, not for Miranda violations (or in the 5th Amendment context generally).

- **Reasoning:** This was a noncoercive Miranda violation, so neither the 5th Amendment nor the Due Process Clause was violated by the officers (no compulsion). So the unmirandized statements may not be used in case-in-chief but do not serve as a poisonous tree to taint the subsequent statement given after the Miranda warnings have been given to the defendant.
- **Interesting Question:** If a statement was obtained in violation of Miranda, and the DPC or 5th Amendment, maybe a poisonous tree analysis is called for because there is a constitutional violation (Court hasn't answered this question).

Missouri v. Seibert; Question-First Interrogation Method: "Because the question-first tactic effectively threatens to thwart Miranda's purpose of reducing the risk that a coerced confession would be admitted, and because the facts here do not reasonably support a conclusion that the warnings given could have served their purpose, Seibert's post-warning statements are inadmissible."

- **Reasoning:** Because this midstream recitation of warnings after an interrogation and unwarned confession could not effectively comply with Miranda's constitutional requirement, we hold that a statement repeated after a warning in such circumstances is inadmissible. When Mirada warnings are inserted in the midst of coordinated and continuing interrogation, they are likely to mislead and "deprive a defendant of knowledge essential to his ability to understand the nature of his rights and consequences of abandoning them."

When Does Miranda Attach

Berkemer v. McCarty; Miranda Custody: Miranda applies when "a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." Also, Miranda applies to misdemeanors.

- **Test for Custody:** Whether a reasonable person would understand that "he was subjected to restraints comparable to those associated with a formal arrest." (requires more than temporary seizure but not necessarily formal arrest).
- **Exceptions:** Traffic stops are not Miranda-triggering (these are more similar to Terry stops). Miranda warnings also aren't necessary to ask for names or registration.
    - **Reasoning:** First, detention of a motorist pursuant to a traffic stop is presumptively temporary and brief, lasting only a few minutes. Second, circumstances associated with the typical traffic stop are not such that the motorist feels at the mercy of the police. Indeed, a traffic stop presents a substantially less "police dominated" encounter than a stationhouse arrest (it's semi-public, and people can see the officer's actions).

- **Important Note:** There is a difference between an inherent power imbalance and a coerced confession.

Rhode Island v. Innis; Miranda Interrogation: "We conclude that the Miranda safeguards come into play whenever a person in custody is subjected to either (1) express questioning or (2) its functional equivalent. That is to say, the term 'interrogation,' under Miranda refers not only to express questioning, but also to any words or actions on the part of the police officer (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect."

- **Objective Test:** This is an objective test. Subjective intent doesn't matter.

Waiving Miranda

North Carolina v. Butler; Miranda Waiver: "If the interrogation continues without the presence of an attorney and a statement is taken, a heavy burden rests on the government to demonstrate that the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel."

- **The Waiver Standard:** "The question is not one of form, but rather whether the defendant in fact knowingly and voluntarily waived the rights delineated in the Miranda case."
- **Implied Waiver:** "The courts must presume that a defendant did not waive his rights; the prosecution's burden is great; but in at least some cases waiver can be clearly inferred

from the actions of the person interrogated. The defendant's silence, coupled with an understanding of his rights and a course of conduct indicating waiver, may support a conclusion that a defendant waived his rights."

- **But See Berghuis v. Thompkins:** An interrogation need not cease until a suspect has expressly invoked either the right (1) to remain silent or (2) an attorney.

The Right to Counsel; Invoking Miranda

Rule from Miranda: If a suspect requests counsel, the interrogation must cease until an attorney is present.

Edwards v. Arizona: (1) When an accused has invoked his right to have counsel present during a custodial interrogation, a valid waiver of that right cannot be established by showing only that he responded to further police-initiated custodial interrogation even if he has been advised of his rights.

- (2) When an accused has expressed his desire to deal with police only through counsel, he is not subject to further interrogation until counsel has been made available to him, unless the accused himself initiates further communication, exchanges, or conversations with the police.
    - **Oregon v. Bradshaw:** A "defendant-initiated" conversation has to be "indicating a desire on the part of the accused to open up a more generalized discussion relating directly or indirectly to the investigation."

Davis v. United States; Invoke Unambiguously: The suspect must unambiguously request counsel in a way where a reasonable officer in the circumstances would understand the statement to be a request for an attorney.

- **Remember Berghuis v. Thompkins:** An interrogation need not cease until a suspect has expressly invoked either the right to remain silent or an attorney.

Example; Minnick v. Mississippi: Suspect invokes right to counsel, leaves custody for the weekend and consults counsel twice, returns Monday at the command of police and without counsel makes incriminating statements.

- **Holding:** Court held this violated the right to counsel under the 5th Amendment.

Maryland v. Shatzer; Two Week Rule: An invocation of the right to counsel lasts for two weeks, and must be renewed.

SIXTH AMENDMENT RIGHT TO COUNSEL

5th Amendment: Really for self-incrimination, and lawyers can help with this during interrogation. The defendant must affirmatively invoke the right to counsel, and waiver of the right may be implied (during the investigative phase).

6th Amendment: Begins when criminal proceedings have begun. The right to counsel does not depend upon a request by the defendant, and courts indulge every reasonable presumption against waiver.

- **Powell v. Alabama:** "The Court noted that during perhaps the most critical period of the proceedings that is to say, from the time of their arraignment until the beginning of their trial, when consultation, thorough-going investigation and preparation are vitally

important, the defendants are as much entitled to such aid of counsel during that period as at the trial itself."

Massiah v. United States: It is a violation of the Sixth Amendment right to counsel if police deliberately elicit incriminating statements from a defendant in the absence of counsel after the adversary process commences.

- **Reasoning:** If the right to counsel was to have any efficacy it must apply to indirect and surreptitious interrogations as well as those conducted in the jailhouse. In this case, Massiah was more seriously imposed upon because he didn't even know that he was under interrogation by a government agent. While the police may still conduct investigation of the suspected criminal after indictment, the defendant's own incriminating statements, obtained by federal agents under the circumstances here disclosed, may not constitutionally be used by the prosecution as evidence against him at his trial.

Brewer v. Williams; Sixth Amendment Waiver: The state must prove an intentional relinquishment or abandonment of a known right or privilege.

- **Inferences Drawn in Favor of Defendant:** If the defendant has not clearly waived his right, the court takes all inferences of ambiguity in favor of the defendant and non-waiver.
- **Express:** Your waiver under the 6th Amendment must be express and unequivocal.
- **Seriousness of Crime Doesn't Matter:** The severity of the crime should not be a factor in whether your 4th, 5th, or 6th Amendment rights were violated.