

INTRODUCTION

- I. Overview of Criminal Justice System
 - A. Criminal Justice System
 1. Arrest: 4th Amendment requirement that all searches be reasonable means that a warrant must be obtained from a judicial officer before all searches unless there are specific reasons for obtaining one.
 - a. Court role broadening; may require fingerprinting, photographing and other processes by court order (e.g., Hayes v. Florida).
 2. Initial Judicial Appearance. Arrestee must be brought before a judge within a short period of time.
 - a. Δ informed of charges; informed of his rights, assignment of an attorney and any bail/release arrangements.
 - b. Judicial inquiry as to merit of case commences; will be taken up again at Preliminary Hearing.
 - c. Introduction of enough evidence to prove Δ 's guilt to convince a jury. Δ may cross-examine witnesses.
 - d. If court finds insufficient probable cause, the complaint is dismissed. If probable cause exists, then Δ bound over to next step in prosecution.
 3. Filing Formal Criminal Charge. If no grand jury action required, prosecutor files **information** stipulating the formal charge. If grand jury, then they establish probable cause and file the formal charge through an **indictment**.
 - a. Δ may challenge the validity of the information or indictment and the admissibility of evidence in some jurisdictions.
 4. Arraignment. Δ 's 1st formal appearance where he asked to plead the charge (if he doesn't plea, "not guilty" is automatically entered). If Δ pleads guilty, the trial judge must make inquiries that Δ understands charges and the penalties that may be imposed. Judge also ensures there is some reasonable basis in the facts of the case for a plea.
 5. Trial. Prosecution must establish Δ 's guilt by proof beyond a reasonable doubt. State presents case first; Δ has option of making no case and relying on whether prosecution can establish

guilt (procedurally through motions to dismiss). After evidence and defense motions are disposed of, the jury is instructed on applicable law. Δ may attack the conviction (motion to aside verdict and order a new trial).

6. Sentencing. Some jurisdictions use a presentence report by professional probation officers (investigation of Δ's background, the crime, and other pertinent matters). Δ given opportunity to comment.
7. Appeal.

B. Criminal Procedure Rules

1. Fed. R. Crim. P. R. 4: Arrest Warrant or Summons Upon Complaint.
2. Fed. R. Crim. P. R. 5(a): Initial Appearance Before the Magistrate Judge: an officer making an arrest under a warrant issued on a complaint or any person making an arrest without a warrant shall take the arrested person without delay before the nearest federal magistrate judge (if arrested without a warrant, a complaint satisfying probable cause requirements must be filed).
3. Fed. R. Crim. P. Rule 41: stipulates authority to issue warrant, property and persons which may be seized with a warrant and issuance and contents.
4. Fed. R. Crim. P. Rule 12(a)(3): Pre-trial Motion to Suppress

DUE PROCESS & INCORPORATION

II. SOURCES & RATIONALES FOR THE EXCLUSIONARY RULE

A. Introductory Note

1. Prevents gov't from introducing at trial evidence secured in violation of constitutional dictates; bars evidence secured as a result of unreasonable searches and seizures.
 - a. Considered to be an essential part of the 4th Amendment. 4th Amendment safeguards people against unreasonable searches and seizures and guarantees evidence obtained in violation of 4th Amendment rights will not be used against them at trial.

[A] Federal Exclusionary Rule

- B. WEEKS V. U.S [mail fraud case; warrantless search of Δ's home and seizure of papers]
1. Issue: Whether a federal official may effect an unreasonable, warrantless search and seizure of letters and private documents

may be seized from a suspect's home in violation of the 4th Amendment.

2. Exclusionary Rule: Evidence obtained through an unreasonable and unconstitutional search and seizure effected by a federal official is inadmissible in court for prosecution.
3. Holding: In federal trials, the 4th Amendment bars the use of evidence unconstitutionally/illegally seized by federal law enforcement officers.

[B] Incorporation of Federal Exclusionary Rule

C. MAPP V. OHIO [homeowner resisting warrantless search and seizure]

1. Issue: Whether evidence seized in an unreasonable, warrantless search and seizure was admissible for prosecution of a suspect in a state court for a state crime.
2. Weeks Exclusionary Rule: In federal trials, the 4th Amendment bars the use of evidence unconstitutionally seized by federal law enforcement officers.
3. Holding: All evidence obtained by searches and seizures in violation of the Constitution is inadmissible in state court.
4. Comment: Justifications for the Exclusionary Rule:
 - a. deterrence of unlawful police activity (compel respect for constitutional rights) and
 - b. preserve judicial integrity (permitting prosecutors to use unconstitutionally seized evidence would subject judges to complicity in the willful disobedience of the Constitution they're sworn to uphold).

D. Notes & Questions Section

1. U.S. v. Calandra: purpose of Exclusionary Rule is not redress the injury to privacy of the search victim; the rule is a *judicially* created remedy designed to safeguard 4th Amendment rights generally thru deterrent effects, rather than a personal constitutional right of the aggrieved party.
2. Mich. v. Tucker: Δ sought to suppress testimony of a witness who was discovered as a result of statements made by Δ in response to custodial interrogation without being *mirandized*. The witness' testimony was admissible altho' it was derived from inadmissible statements.
 - a. Court used a balancing test of (1) providing an effective sanction to a constitutional right versus (2) strong interest of making all evidence available to trier of fact and society's interest in effective prosecution of criminals.
3. Stone v. Powell: held federal habeas corpus relief was unavailable for state prisoner who claimed his conviction rested on evidence obtained in violation of 4th Amendment if state afforded him a full

and fair opportunity to litigate that contention. Majority opinion contrasted Mapp and Miranda exclusionary rules:

- a. Mapp:
 - (1) not a personal constitutional right; serves to deter future constitutional violations.
 - (2) Altho' it mitigates judicial consequences of invading Δ's privacy, exclusion of evidence at trial does nothing to remedy the completed and "wholly extrajudicial 4th Amendment violation."
 - (3) Cannot be perceived to enhance the "soundness of the criminal process" by improving the reliability of evidence introduced at trial. Evidence excluded under Mapp is typically reliable and probative information bearing on the guilt/innocence of Δ.
- b. Miranda:
 - (1) Protects 5th Amendment privilege against self-incrimination, safeguarding a fundamental trial right.
 - (2) Reflects fundamental values, including our preference for the accusatorial system, fear of inhumane treatment and sense of fair play.
 - (3) Guards against the use of unreliable statements.

III. THE SCOPE & EXCEPTIONS TO THE EXCLUSIONARY RULE

- A. Fruit of the Poisonous Tree Doctrines: Exclusionary Rule extends to direct products of government illegality and secondary evidence that is "fruit of the poisonous tree."
 1. Can apply to 4th, 5th & 6th Amendment cases.
 2. E.g., illegal search and seizure for murder evidence finding a diary discloses a witness' name who agrees to testify. Unconstitutional search is the initial illegality: the poisonous tree. The diary is inadmissible because it is the "fruit of the poisonous tree." Witness' testimony could be admissible under Exclusionary Rule Exceptions.
 3. Must identify nature of the poisonous tree.
 - a. e.g. #1, Δ arrested without probable cause, mirandized and voluntarily waives the right and confesses. The confession is admissible under 5th & 6th Amendments and Miranda Doctrine, but inadmissible under the 4th Amendment.
 - b. e.g. #2, Δ lawfully arrested, not mirandized, subjected to custodial interrogation, during which he informs police he concealed a gun used in a crime. Δ's confession is inadmissible under Miranda Doctrine as a fruit of a Miranda violation. Inadmissible under Miranda jurisprudence, not constitutional law.

- B. **Exceptions to the Fruit of the Poisonous Tree Doctrine**
1. **Independent Source Doctrine**: Threshold inquiry is whether the challenged evidence is in some sense the product of illegal gov't activity. Evidence that is not causally linked to gov't illegality is admissible pursuant to Independent Source Doctrine (i.e., fruit of a non-poisonous tree").
 - a. Applies if the challenged evidence is discovered during lawful police activity.
 - b. Applies if evidence is initially discovered unlawfully, but is subsequently obtained independent of the original discovery.
 2. **Inevitable Discovery Rule**: Provides that evidence is admissible despite police illegality if the evidence seized was not causally linked to the wrongdoing, proved by a **preponderance of the evidence**.
 3. **Attenuated Connection Principle** [didn't learn this in class]

[A] **Inevitable Discovery Rule**

- C. **NIX v. WILLIAMS** (1984) [Williams II; suspect appealed admissibility of child's corpse as fruit of the poisonous tree based on violation of his 6th Amendment Right to Counsel]
1. Issue: Whether a victim's body discovered by police in the course investigation from deliberate elicitation of the suspect was inadmissible because of the initial 6th Amendment Right to Counsel violation.
 2. Dicta:
 - a. Core rationale for exclusionary rule is to deter police activity so that evidence is not unconstitutionally gathered (high social cost for letting guilty go unpunished); prosecution is not to be put in a better position but for the occurrence of the illegality.
 - b. Contrary: derivative evidence analysis ensures that prosecution is not put in a worse position because of earlier police error/misconduct. The **Independent Source Doctrine** allows admission of evidence that has been discovered by a means wholly independent of a constitutional violation.
 - c. If the prosecution can establish by **preponderance of the evidence** that the information ultimately or inevitably would have been discovered by lawful means, then there's no deterrence basis, and the evidence is admissible.
 - d. Exclusion of evidence that would have been inevitably discovered adds nothing to either the integrity or fairness of a criminal trial. Suppression would not promote the integrity

of the trial process and would inflict an unacceptable burden on the administration of criminal justice.

3. Holding: If the government can prove that evidence would have been obtained inevitably and therefore would have been admitted regardless of police overreach, then in the instance of fairness, the evidence is admissible.

D. **OREGON v. ELSTAD** (1985) [burglary suspect admits to crime before officer has chance to *mirandize* him]

1. Issue: Whether the 5th Amendment requires suppression of a confession after proper Miranda warnings and a valid waiver of rights solely because police obtained an earlier voluntary but unwarned admission.
2. Dicta:
 - a. Δ's ignorance of the full consequences of his decisions vitiates voluntariness. Δ must have full awareness of the consequences of abandoning his Miranda rights, but need have awareness of the full consequences.
 - b. Miranda requires the unwarned admission be suppressed, however, the admissibility of any subsequent statement should turn solely on whether the incriminating statement was willingly and voluntarily given.
3. Holding: Absent deliberately coercive or improper tactics in obtaining the initial statement, the mere fact that a suspect made an unwarned admission does not warrant presumption of compulsion; a second voluntarily given admission after subsequent administration of Miranda warnings makes the second statement admissible.

4TH AMENDMENT - SEARCHES & SEIZURES

IV. **"THRESHOLD" OF 4TH AMENDMENT RIGHT TO BE SECURE AGAINST SEARCHES**

- A. **4th Amendment**: The right of 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.
- B. Introductory Note
 1. Following cases deal with breadth of 4th Amendment's regulation of searches.

2. 4th Amendment only applies to official searches and seizures. When an individual challenges gov't conduct on 4th Amendment grounds, there may be a "threshold" question whether that conduct constituted a "search" or "seizure."
3. Different criteria for threshold search cases:
 - a. Boyd v. U.S. (1886): order to produce documents qualified as a search because it was a material ingredient and effected the sole object and purpose of a search; forced a party to produce evidence against himself.
 - b. Olmstead v. U.S. (1928): Court changed approach. Wiretapping from outside a building did not constitute a search because there was no actual physical invasion and no trespass upon a protected location.
 - c. On Lee v. U.S. (1952) (**False Friends case**¹): an informant's electronic transmission of statements to a nearby law enforcement officer did not constitute a search; 4th Amendment did not govern because the speaker's consent to presence of an informant precluded trespass, and because the speaker was talking confidentially and indiscreetly to a confidante and was overheard.
 - d. Lopez v. U.S. (1963) (False Friend case): a known IRS agent's recording of bribe offer was not subject to 4th Amendment search proscriptions because suspect consented to agent's presence in his office and had taken the risk of recording and reproduction in court by willing speaking to agent.
 - e. Hoffa v. U.S. (1966) (False Friends case): An informant who listened to, reported and testified about Δ's inculpatory remarks did not "search" within meaning of 4th Amendment because no interest legitimately protected by the 4th Amendment was involved; rather misplaced confidence that the informant would not reveal the confided wrongdoing.
 - f. Silverman v. U.S. (1961): law enforcement agents violated 4th Amendment rights by inserting a microphone into a party wall to pick up conversations thru heating ducts. Physical intrusion deemed sufficient to violation constitutional muster.

[A] 4th Amendment Electronic Surveillance Cases

Search Requirement or Per Se Rule

- C. KATZ V. U.S. (1967) [electronic eavesdropping on phone booth bookie]

¹ False Friends Doctrine: Gov't use of undercover agents to obtain inculpatory statements from suspects.

1. Issue: Whether a person has a 4th Amendment right to a reasonable expectation of privacy, even if accessible to the public, in a place where he has strived to preserve his privacy.
2. Rule: Where a person has a reasonable expectation of privacy, the 4th Amendment protects his activities from search and seizure.
3. Holding: If a person is in a place where he has a reasonable expectation of a right to privacy, gov't bugging and recording Δ's words violated privacy upon which he justifiably relied, and was an unconstitutional 4th Amendment search and seizure (the fact that the bug was not mounted to the booth was not significant).
4. Court's Rationale: (i) 4th Amendment protects people, not places. What a person knowingly exposes to the public (at home or at work) is not protected by 4th Amendment. (ii) Δ sought to exclude the "uninvited ear," not the "intruding eye" when he entered the phone booth. Once occupied, the door is shut, and the caller is entitled to assume that his words will not be broadcast to the world.
5. Harlan's Concurrence: devised the Katz Reasonable Expectation of Privacy Test:
 - a. person must have exhibited an actual expectation of privacy (subjective component) and
 - b. the expectation must be one that society is prepared to recognize as reasonable (objective component).
 - c. Police conduct does not constitute a search if either prong of the test is lacking.

- D. U.S. V. WHITE (1971) [false friend allowing gov't agents to bug and monitor conversations]
1. Issue: Whether the 4th Amendment bars warrantless search and seizure of recorded and transmitted conversations between an informant (who carried and concealed bugging devices on his person) and a suspect, which were monitored and recorded by gov't agents.
 2. Rule: False Friends doctrine and warrantless recordings and transmissions of conversations are not proscribed by 4th Amendment (On Lee v. U.S. and Lopez v. U.S.).
 3. Holding: Warrantless recordings and transmissions of recordings are deemed reasonable and lawful investigative efforts, and are not unconstitutional under the 4th Amendment.
 4. Harlan's Dissent:
 - a. Court should've utilized the Katz Reasonable Expectation of Privacy Test; whether the expectations of privacy are constitutionally justifiable and will be protected by 4th Amendment in the absence of a warrant.
 - b. Policy Considerations: impact on daily speech. "Smothers" spontaneity of speech and offhand exchange. Sacrificed to

a rule of law permitting official monitoring of private discourse limited only by the need to recruit a willing assistant (informant).

- E. **SMITH V. MD.** (1979) [warrantless monitoring of Δ's pen register]
1. Issue: Whether the installation and use of a pen register² constitutes a 4th Amendment search, applicable to the states through the 14th Amendment.
 2. Katz Rule: application of 4th Amendment depends on whether person invoking protection can claim a justifiable, reasonable or legitimate expectation of privacy invaded by gov't action. Inquiry:
 - a. whether the individual, by conduct, exhibited an actual (subjective) expectation of privacy (seeking to preserve something as private) and
 - b. whether individual's subjective expectation of privacy is one that society is prepared to recognize as reasonable (justifiable under the circumstances).
 3. Holding: There is no legitimate expectation of privacy in the dialing of telephone numbers; the installation and monitoring of a pen register is not a search and is therefore not subject to 4th Amendment protection (warrant requirement).

[B] People, Areas & Effects Protected by 4th Amendment Cases

- F. **OLIVER V. U.S.** (1984) [warrantless search of marijuana farmers' fields]
1. Issue: Whether there is a reasonable expectation of privacy to be free from gov't interference and warrantless search of open fields (i.e., away from the residence), an unconstitutional/illegal violation of the 4th Amendment.
 2. Hester Rule: An individual may not legitimately demand privacy for activities conducted out-of-doors in open fields,³ except in area immediately surrounding the home.⁴

² Pen Register: a mechanical device that records the numbers dialed on a telephone by monitoring the electrical impulses caused when the dial on the telephone is released. It does not overhear oral communications and does not indicate whether calls are actually completed. Usually installed at a central telephone facility and records on a paper tape all the numbers dialed from the line to which it is attached.

³ **Open Fields Doctrine**: permits police officers to enter and search a field without a warrant. May include any unoccupied or undeveloped land outside of the curtilage (could be fields or thickets).

3. Holding: Gov't intrusion upon open fields is not an unreasonable search proscribed by the 4th Amendment, because from the text of 4th Amendment and historical and contemporary understanding of its purposes, an individual has no legitimate right expectation that open fields will remain free from warrantless intrusion by gov't officers.
4. Marshall's Dissent
 - a. Court stipulates 4th Amendment specifies matter within its protection (person, house, papers and effects) and real property is not among the listed items. Inconsistent with previous rulings, such as Katz v. U.S. (police proscribed from electronically monitoring a conversation in a public telephone booth), phone booths, conversations, offices and commercial premises are within 4th Amendment protections requiring search warrants. Court ruled curtilage is subject to 4th Amendment protections; also not enumerated list (person, house, paper or effect) – why is it incorporated.
 - b. Δs entitled to constitutional protection; fulfill Reasonable Expectation of Privacy Analysis: (i) positive law recognizes legitimacy of Δs' insistence that strangers keep of their lands and subjects trespassers to sanctions (criminal liability); (ii) Objective Component: Privately-owned woods and fields shielded from public view are regularly employed in a variety of ways society acknowledges deserve privacy; (iii) Subjective Component: Δs took normal precautions to maintain privacy by posting trespass warnings.

[1] **Reasonable Expectation of Privacy v. Actual Expectation of Privacy**

- G. **CALIF. v. CIRAULO** (1986) [aerial surveillance of homeowner's curtilage]
1. Issue: Whether curtilage is constitutionally protected against warrantless gov'tl intrusion via aerial searches at low altitudes.
 2. **Plain View Doctrine**: A home is where there is a reasonable expectation of privacy, however, objects, activities and statements exposed to plain view of outsiders are not protected because there is no manifestation of intent to keep them private, and are therefore unreasonable.
 3. Holding: It is unreasonable to expect curtilage was constitutionally protected from aerial observation with the naked eye from an altitude of 1,000'; the 4th Amendment does not require the police,

⁴ **Curtilage Doctrine**: the land immediately surrounding and associated with the home. 4th Amendment protection is afforded to curtilage. Boundaries usually clearly marked, defining the curtilage – the area around the home to which activity of home life extends.

travelling in public airways at this altitude, to obtain a warrant in order to observe what is visible to the naked eye.

4. Powell's Dissent: Court acknowledge Δ 's expectation of privacy in curtilage was reasonable (proximity to home, steps undertaken to secure privacy from public at ground level); however, he had no reasonable expectation of privacy from aerial surveillance. Court does not explain to J. Powell's satisfaction: most air travellers only have a fleeting, anonymous glimpse of landscape and buildings they pass over; therefore there is no exposure to the public by failing to build barriers to block aerial surveillance.

H. Notes & Questions Section

1. Florida v. Riley (1989): held a helicopter hovering at 400 feet did not constitute a search; within boundary of 4th Amendment territory.
2. U.S. v. Knotts (1983): gov't agents attached a beeper to a container of chemical, enabling agents to monitor container's movements and location. Court ruled surveillance of container's movements did not constitute a search because the possessor of the container could not claim a reasonable expectation of privacy in the movements because he exposed them to anyone who cared to look. It did not matter that the agents used an electronic monitoring device because the information secured could have been obtained by visual surveillance from public places.

I. BOND v. U.S. (2000) [border patrol agent squeezing passenger's bag]

1. Issue: Whether a policeman's warrantless physical manipulation (touch) of a bag constitutes an unconstitutional search (violative of the 4th Amendment).
2. Katz Rule: (1) whether the individual exhibited an actual expectation of privacy and whether he has shown that he sought to preserve something as private; and (2) whether the expectation of privacy in our society is prepared to recognize as reasonable.
3. Holding: A gov't agent's warrantless physical manipulation of luggage is an illegal/unconstitutional search in violation of the 4th Amendment.
4. Powell's Dissent: 4th Amendment protects against gov't intrusion that upsets an actual/subjective expectation of privacy that is objectively reasonable. It's not objectively reasonable if any member of the public could've used his senses to detect everything the officer observed (Calif. v. Ciraolo). Strangers may observe curtilage or sift thru trash left at curb for collection.

J. Notes & Questions Section

1. **Factors relevant to assessing the “reasonableness” of privacy expectations:**
 - a. voluntary disclosure of information to a 3d party who was cooperating with the gov’t.
 - b. failure to take precautions to safeguard one’s privacy and/or public exposure of one’s activities.
 - c. refusal to recognize a privacy entitlement would compromise nothing that society has any interest in protecting.

- K. **KYLLO V. U.S.** (2001) [police with thermal imager detect homeowner growing marijuana indoors based on excessive heat from halide lights]
1. **Issue:** Whether the warrantless use of infra-red detector to detect thermal images of a residence constitutes an illegal search violative of the 4th Amendment.
 2. **Katz Rule:** a 4th Amendment search does not occur even when the explicitly protected location of a *house* is concerned unless the individual manifested a subjective expectation of privacy in the object of the challenged search and society is willing to recognize that expectation as reasonable.
 3. **Holding:** Homes are constitutionally protected and held inviolate from warrantless gov’t intrusion; the use of an infra-red imager (i.e., sense-enhancing technology) to scan the thermal output of a home (that could not otherwise be obtained without a physical intrusion) is therefore an illegal search under the 4th Amendment.
 4. **Stevens’ Dissent:** A subjective expectation that heat waves would remain private is implausible and not likely to be recognized by society as a reasonable expectation. The imager didn’t disclose anything relating to the interior of the home. The only conclusions the officers could’ve come to would’ve been inferences (i.e., from discarded garbage). The Court assumed an inference could amount to a 4th Amendment violation. the officers’ conduct was not unreasonable.

V. **UNREASONABLENESS AND PROBABLE CAUSE REQUIREMENT**

- A. Introductory Note
1. Following cases deal with substance of protection provided by 4th Amendment; protection contained in 2 separate clauses:

<p><u>Unreasonableness Clause</u> The right of people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and</p>	<p><u>Warrant Clause</u> no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.</p>
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2. Probable Cause problems arise in connection with arrests and searches; because natures and objects are different, the definitions of probable cause to arrest and probable cause to search are different.
3. **Probable Cause to Arrest** exists where the facts and circumstances within the officers' knowledge and of which they have reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed by the person to be arrested. (Brinegar v. U.S.)
4. **Probable Cause to Search** exists if the facts and circumstances within the officers' knowledge and of which they have reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an item subject to seizure will be found in the place to be searched. (Brinegar v. U.S.)
 - a. Must be a quantum of likelihood that:
 - (1) something that is properly subject to seizure by the gov't, i.e., contraband, fruits, instrumentalities or evidence of a crime;
 - (2) is presently
 - (3) in the specific place to be searched.
5. Probable cause doesn't require certainty; only sufficient likelihood. A showing of probable cause is not undermined if the conclusions drawn turn out to be **mistakes**.
 - a. Because certainty is not demanded, probable cause to search and probable cause to arrest raise the issue of the necessary quantum of probability required by the 4th Amendment.
 - b. Inherent in determinations of probable cause is a demand for current information. The object of the search must be sufficiently likely to be in place searched at the time of search. Mere passage of time is likely to diminish the probability that an item that was in a particular place still remains at the location.
 - c. Information forming the basis of a determination of a probable cause to search is subject to challenge as stale; will no longer sufficiently support the conclusion that the sought item is currently located in the place to be searched.

6. Informants as troublesome source of information for probable cause determinations; **hearsay**.⁵
 - a. Informants: include known and anonymous suppliers of information. Concerns that are not present when officers or others provide first-hand information arise when the information said to support probable cause is personally known only to an absent, possibly anonymous informant.
 - b. **DRAPER v. U.S.** (1959) [hearsay from a known, credible, reliable informant, whose information was detailed, precise, specific (about a “mule”) and was corroborated by police]: Benchmark pre-1960s probable cause decision. Issue arising when basis for police action is an informer’s tip. Court ruled when hearsay information is given by a credible source and is corroborated by police, there are reasonable grounds to believe that the remaining unverified information would likely be true.

[A] Probable Cause Cases

- B. **SPINELLI v. U.S.** (1969) [probable cause for arrest of gambler based on informant’s tip incorporated into police affidavit]
 1. Issue: Whether an informant’s tip is sufficient to establish probable cause for arrest in compliance with the reasonableness clause of the 4th Amendment.
 2. Rule:
 - a. Where an informer’s tip is a necessary element in finding probable cause, its proper weight must be determined by precise analysis.
 - b. Aguilar Test: (i) application failed to set forth **underlying circumstances** necessary to enable the magistrate to independently judge the validity of the informant’s conclusion and (ii) officers did not attempt to support their claim that the informant was credible or his information reliable.
 3. Holding: An informant’s tip must set forth underlying circumstances necessary for a magistrate to independently judge the validity of the informant’s information and the law enforcement officials must corroborate and verify the accuracy, credibility and reliability of the source and his information, and probability of criminal activity.
- C. **ILLINOIS v. GATES** (1983) [anonymous tip identifying the movements and activities of drug dealer homeowners]

⁵ Hearsay Doctrine for Probable Cause Determinations: the information was not acquired first-hand by officer or other individual who related it to the magistrate or trial court; i.e., was not within the personal knowledge of the officer or individual.

1. Issue: Whether a tipster's anonymous letter is constitutionally sufficient to establish 4th Amendment requirements for probable cause for search and arrest.
2. Rule: **Totality of Circumstances Test**; **corroboration, veracity, reliability and basis of knowledge** are intertwined concepts and should not be applied separately. Balancing an assessment of relative weights of all indicia of reliability/unreliability and attending an informant's tip.
3. Dicta: **Probable Cause Standard**: only probability and not a prima facie showing of criminal activity. A 2 prong test is not helpful to magistrates in probable cause determinations:
 - a. Affidavits drawn by non-lawyers in midst and haste of criminal investigation. Technical requirements of elaborate specificity are inappropriate.
 - b. Warrants are typically (and properly) issued on basis of nontechnical, common-sense judgments of laymen applying a standard less demanding than those used in formal legal proceedings.
 - c. Courts' scrutiny of affidavit should not be de novo reviews; deference should be made to magistrates' determinations.
 - d. Traditional standard of review for magistrates' probable cause determination: substantial basis for concluding that a search would uncover evidence of wrongdoing, the 4th Amendment is satisfied.
4. Holding:
 - a. Abandonment of the Aguilar and Spinelli Tests; instead, a **Totality of Circumstances Analysis**. Magistrates should make practical, common-sense decisions, including veracity and basis-of-knowledge of tipsters supplying hearsay information.
 - b. An affidavit must provide a magistrate with a **substantial basis** for determining existence of probable cause.
 - c. Using a totality of circumstances analysis, an anonymous letter, buttressed by the police's corroboration was sufficient to establish 4th Amendment probable cause and provided substantial basis for the magistrate's warrant issuance.

D. Notes & Questions Section

1. Courts debated over quantum of probability contemplated by 4th Amendment. in Gates, the Court offered insight into constitutionality requirement quantum of probability: the Probable Cause Standard (substantial basis for finding of probable cause).
2. Hearsay can come from varieties of informants: criminals, anonymous parties.

3. Despite Gates, a number of state courts adhere to Aguilar-Spinelli Tests. Altho' federal and state courts are bound by the Court's interpretations of the Constitution, they can discern no more/no less privacy protection in interpreting the 4th Amendment than the Court, but they are free to interpret state constitutional guarantees that are identical, equivalent or similar under 4th Amendment (i.e., states grant their citizens the greater privacy and liberty protection than afforded by Aguilar-Spinelli).
- E. **WHREN V. U.S.** (1996) [motorist pulled over traffic infractions by plainclothes police; drugs discovered in vehicle; pretextual stop]
1. Issue: Whether the temporary detention of a motorist who the police have probable cause to believe committed a civil traffic offense is inconsistent with 4th Amendment's prohibition against unreasonable seizures unless a reasonable officer would have been motivated to stop the car by a desire to enforce traffic laws.
 2. Rule: Inquiry as to whether an individual officer had a proper state of mind (i.e., probable cause or an articulable hunch).
 3. Dicta:
 - a. Temporary detention of individuals during an automobile traffic stop by police (even for brief period) is a 4th Amendment seizure of persons; generally, the decision to stop a car is reasonable where the police have probable cause to believe that a traffic violation occurred.
 - b. Court unwilling to entertain 4th Amendment challenges based on actual motivations of individual officers. U.S. v. Robinson: held a traffic-violation arrest would not be rendered invalid by the fact that it was a mere pretext for a narcotics search. Subjective intent alone does not make otherwise lawful conduct illegal or unconstitutional. Forecloses on any argument that the constitutional reasonableness of traffic stops depends upon the actual motivations of the individual officers involved. Constitutional basis for objecting to intentionally discriminatory application of laws is the 14th Amendment, not the 4th. Subjective intentions do not have a role in probable cause 4th Amendment analysis.
 4. Holding: There is probable cause for officers to stop motorists for traffic code violations, and such stops are reasonable under the 4th Amendment

VI. UNREASONABLENESS AND THE WARRANT REQUIREMENT

- A. Introductory Note




<p><u>Unreasonableness Clause</u> The right of people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and</p>	<p><u>Warrant Clause</u> no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.</p>
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1. Chapter addresses:
 - a. relationship between warrants and 4th Amendment reasonableness requirement and
 - b. specific dictates of 4th Amendment's warrant clause.
2. 4th Amendment does not explicitly demand a warrant to search or to seize. History demonstrates it was the abusive use of warrants to search and seize that troubled and galvanized Framers.
3. Warrant Clause was designed to prevent threats and eliminate abuses generated by general warrants and writs of assistance. Also requires particularity of place to be searched, persons or things to be seized.
4. In construing the 4th Amendment, the Court has discerned certain implicit restrictions upon the issuance and execution of warrants.

[A] Warrants as a Procedural Condition for Search & Seizure

[1] Warrant Requirement & Searches of Persons, Houses, Papers & Effects
Search Requirement or Per Se Rule

- B. **JOHNSON v. U.S.** (1948) [warrantless search of an opium smoker]
1. Issue: Whether a warrantless search of suspect's home shared with others, was unreasonable, in violation of common constitutional rights under the 4th Amendment.
 2. Rule: Judicial officers (not police) must determine when right of privacy must reasonably yield to right of search.
 3. Holding: A warrantless search of a residence is unlawful, unreasonable and unjustified, notwithstanding facts unquestionably showing probable cause because the Constitution requires that the deliberate, detached judgment of a judicial officer be imposed between e citizen and policy.
- C. Notes & Questions Section
1. It is apparent the officers acted with restraint in Johnson, however the restraint was self-imposed rather than by a neutral magistrate. There was also notification of magistrate after seizure effected. Court has never sustained a search in which the officers

- reasonably expected to find evidence of a crime and voluntarily confined their activities to the least intrusive means to that end.
2. Searches conducted outside the judicial process (without magisterial review) are per se unreasonable under the 4th Amendment, subject only to a few well-delineated exceptions.
 3. Omission of judicial authorization bypasses the safeguards provided by an objective predetermination of probable cause and substitutes instead a less reliable procedure of hindsight. Moreover, bypassing scope leaves only police discretion.

[2] Warrant Requirement & Seizure of Persons

- D. **U.S. v. WATSON** (1976) [Warrantless arrest for commission of felony crime; Δ possessed stolen credit cards]
1. Issue: Whether a warrantless **arrest** made with probable cause for a **felony** crime is lawful.
 2. Rule: Congress (and states) permits warrantless arrests with probable cause for felony crimes.
 3. Holding: Warrantless **public** arrests made with probable cause for the commission of a felony crime are lawful and constitutional.
 4. Powell's Concurrence: Policy consideration: a constitutional rule permitting felony arrests only with a warrant or in exigent circumstances could severely hamper effective law enforcement. Good police practice often requires postponement of arrest even after establishing probable cause in order to place suspect under surveillance or develop evidence. If officers fail to obtain the warrant, they would risk a court decision that the subsequent exigency would not excuse their omission, or the warrant might grow stale. Thus, police would have to arrest hastily and forego possible evidence development.
 5. Marshall's Dissent: Arrests should be subject to the same warrant requirements as searches. A warrantless arrest is an invasion of privacy. Just as a warrant is required to minimize the intrusion of a search, there is no reason to place greater reliance on police determination of probable cause sufficient for an arrest than in such determination as per a search.

Search Requirement or Per Se Rule

- E. **ATWATER v. CITY OF LAGO VISTA** (2001) [warrantless full custodial arrest of soccer mom for misdemeanor offense]
1. Issue: Whether 4th amendment forbids a warrantless arrest for a minor criminal offense, such as a misdemeanor seatbelt violation punishable only by fine.

2. Rule: Probable cause standard applies to all arrests without the need to balance interests and circumstances involved in particular situations.
3. Holding: If an officer has probable cause to believe an individual committed even a very minor offense in his presence, he may arrest the offender without violating the 4th Amendment. 4th Amendment does not forbid warrantless arrests for misdemeanor criminal offenses.
4. O'Connor's Dissent: Court's per se rule poses serious consequences, since a broad range of conduct falls into category of fine-only misdemeanors. Unbounded discretion carries potential for abuse.

F. Notes & Questions Section

1. Gerstein v. Pugh (1975): held 4th Amendment requires probable cause hearing either before or promptly after arrest.
2. County of Riverside v. McLaughlin (1991): held probable cause hearings should be held within 48 hours of arrest. An individual held less than 48 hours is still entitled to prove that the delay in his case was unreasonable. If no hearing within 48 hours, burden shifts to gov't to prove bona fide emergency or other extraordinary circumstance.

VII. ISSUANCE, CONTENT AND EXECUTION OF WARRANTS (Unreasonableness and the Warrant Requirement)

[A] Searches of Persons, Houses, Papers & Effects

[1]

Conte

- A. ANDRESEN V. MD. (1976) [sleazy property attorney and general search]
1. Issue: Whether evidence of other crimes not specifically listed in a search warrant be validly seized if it relates to the crime listed.
 2. Rule: General warrants are prohibited by the 4th Amendment, in order to preclude the rummaging through a person's belongs.
 3. Holding: Evidence of crimes relating to or relevant to proving the crime under which a warrant is issued may be validly seized under the warrant; the evidence seized not relating to subject lot was relevant to Δ's state of mind, which is a necessary element of the underlying crime and was thus properly seized.
 4. Brennan's Dissent: Question is not how the warrants are interpreted in hindsight, but how they were viewed by the parties executing them. The amount of seized material either suppressed or returned to Δ is indicative of the unlawful generality of the warrants.

- B. **MARYLAND v. GARRISON** (1987) [search warrant flawed by mistake of fact served on incorrect party in 3d floor apartment]
1. Issue:
 - a. Whether factual mistake invalidated a warrant that would have been valid if it had reflected a completely accurate understanding of the premises searched.
 - b. Whether a warranted flawed by factual mistake and executed on an individual violated his constitutional right to be secure in his home.
 2. Rule: 4th Amendment Particularity-of-Description Requirement.
 3. Holding:
 - a. Discovery of facts demonstrating a valid warrant was unnecessarily broad does not retroactively invalidate the warrant; the warrant's validity must be assessed on the basis of information divulged by the officers to the magistrate.
 - b. So long as the factual mistake was honest, a warrant flawed by factual mistake does not violate an individual's 4th Amendment rights.
 4. Blackmun's Dissent
 - a. Expansion of search without warrant, absent probable cause and exigent circumstances and the particularity-of-description requirement; search of Δ's apartment was unlawful. Evidence should've been excluded.
 - b. Particularity-of-description requirement is satisfied where the description is such that the officer with the search warrant with reasonable effort can ascertain and identify the place intended.
 - c. Police did not meet a standard of reasonableness: (i) knew search would be in a multi-unit building (could've discerned from 7 separate mailboxes and bells); (ii) when they ran into McWebb, they could've inquired where he lived before commencing the search; and (iii) should've realized their error after their security sweep.
- C. Notes & Questions Section
1. Probable cause doesn't require certainty; fair probability suffices. A probable cause showing is not invalidated by the fact that the conclusions it supports turn out to be mistaken
 2. A warrant is subject to 4th Amendment challenge if the officer supplying the basis for the warrant *intentionally* or *recklessly* furnishes false information to the magistrate.
 - a. **Franks v. Delaware** (1978): held it was permissible to challenge the truthfulness of statements made in an affidavit supporting application for a warrant. Where Δ makes a

substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by affiant in the warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause, the 4th Amendment requires a hearing to be held at Δ 's request. If the allegation of perjury is established by a preponderance of the evidence, and with the affidavit's false material to one side, the affidavit's remaining content is insufficient to establish probable cause, the search must be voided and the fruits of the search excluded to the same extent as if probable cause were lacking on the face of the affidavit.

3. Critical element to warrant validity (but not specified in the Constitution) is the "**neutral and detached magistrate**" demand. The individual who issues warrants must be neutral, and not biased or partial toward the approval of the warrant application.
 - a. **Connally v. Georgia** (1977): held a magistrate who received \$5 for issuing a warrant, but no compensation for refusing to issue a warrant was not constitutionally qualified.
 - b. **Coolidge v. New Hampshire** (1971): held a warrant issued by a state Attorney General in his capacity as "justice of the peace" was unconstitutional.
 - c. **Shadwick v. City of Tampa** (1972): held individuals charged with issuance of warrants need not be trained lawyers. Court approved a scheme where municipal court clerks were authorized to issue arrest warrants for violations of city ordinances.

[2] **Knock-and-Announce Doctrine**

- D. **WILSON v. ARKANSAS** (1995) [failure of police to knock-and-announce at home of drug dealer and arsonist/firebomber]
 1. **Issue:** Whether the 4th Amendment reasonableness clause requires officers to knock-and-announce prior to entering a residence.
 2. **Rule:** 4th Amendment reasonableness clause.
 3. **Holding:** Common law **Knock-and-Announce Doctrine** forms a part of the reasonableness inquiry under the 4th Amendment; however, altho' a search or seizure of a dwelling might be constitutionally defective if police officers enter without prior announcement, law enforcement interests may also establish reasonableness of an unannounced entry.
- E. Notes & Questions Section; Instances where unannounced entry.

1. **Richards v. Wisconsin** (1997): Court rejected per se exception to knock-and-announce (felony drug cases); creating exceptions based on culture surrounding a general category of criminal behavior presents concerns: (i) considerable overgeneralization and (ii) reasons for creating an exception in one category can be easily applied to others. To justify a “No-Knock Entry,” police must have a reasonable suspicion that knocking and announcing their presence under particular circumstances would be dangerous or futile, or that it would inhibit the effective investigation of the crime. Court also observed magistrates may issue **no-knock warrants** when sufficient cause can be demonstrated ahead of time.
2. **U.S. v. Ramirez** (1998): addressed question of whether the Richards reasonable suspicion standard announced for “no-knock” entries applies when the entry results in destruction of property. Excessive or unnecessary destruction of property in the course of a search may violate the 4th Amendment, even tho’ the entry itself is lawful and the fruits of the search not subject to suppression (unannounced entry is permissible on a reasonable suspicion, and the constitutionality of the entry is not altered by the fact that property was damaged or destroyed during the entry. Consequently, anything found during a subsequent search is lawfully obtained. The seizure involved in damaging or destroying property during a “no-knock” entry could, however, be unconstitutionally unreasonable and could support a claim for damages.
3. Altho’ a warrant is valid, execution of the warrant might also be unreasonable because police exceeded scope of their authority under the warrant.
 - a. If a warrant to search a home for a stolen computer authorizes a search of places within the home where the computer could be found, searches of places that are too small to accommodate the computer are unreasonable because the privacy invasions entailed in those searches are not justified under the warrant.
4. **Wilson v. Layne** (1999): officers exceeded scope of their authority by permitting other individuals to accompany them during a search. Court held inviting the media along for a ride violated the 4th Amendment.

VIII. REASONABLE SEARCHES WITHOUT WARRANTS: THE NATURE AND SCOPE OF THE EXCEPTIONS TO THE WARRANT REQUIREMENT

- A. Introductory Note
 1. 4th Amendment warrant requirement subject to a few well-delineated and specifically established **exceptions**:

- a. Searches Incident to Arrest.
- b. Exigent Circumstances.
- c. Automobile Doctrine Searches.
- d. Inventory Searches.
- e. Consent Searches.
- f. Plain View Seizures.

[A] Searches Incident to Arrests and Searches for Arrestees

- B. CHIMEL v. CALIFORNIA (1969) [warranted arrest; warrantless search of suspect's dwelling for stolen coins; immediate control doctrine]
- 1. Issue: Whether the warrantless search of a validly arrested suspect's residence can be constitutionally justified as incident to that arrest.
 - 2. Rule: 4th Amendment Reasonableness Clause.
 - 3. Dicta:
 - a. Within Immediate Control Doctrine: It is reasonable for an arresting officer to search for and seize any evidence on arrestee's person in order to prevent its concealment or destruction, including an area into which an arrestee might reach in order to grab a weapon or evidentiary items.
 - b. No comparable justification for routinely searching any room other than that in which an arrest occurs or searching through desk drawers or other closed or concealed areas in the room itself. Such searches, in absence of well-recognized exceptions, may be only under authority of a search warrant.
 - 4. Holding: A search incident to a lawful arrest is limited to the suspect's person & the area within which he could reach for a weapon or evidence; the scope of a warrantless search beyond the person and immediate control of an arrestee is unreasonable and lacks constitutional justification.
 - 5. White's Dissent: Unreasonable to require police to leave scene to obtain a warrant when there is sufficient probable cause when there is the strong possibility that accomplices at the scene may remove evidence.
- C. U.S. v. ROBINSON (1973) [protective frisk search incident to lawful arrest of motorist (for revoked permit) revealed contraband]
- 1. Issue: Whether permissible scope of the search incident to lawful arrest of an arrestee's person may extend beyond a protective frisk to the physical manipulation of objects found on the arrestee.
 - 2. Rule: Search incident to lawful arrest is a traditional exception to 4th Amendment warrant requirement. Exception developed as: (i) search may be made of arrestee by virtue of lawful arrest and (ii)

the search may be made of the area within the arrestee's immediate control.

3. Holding: Lawful arrest establishes the authority to search, and in the case of lawful custodial arrest, a full search of the person is a reasonable exception to the 4th Amendment warrant requirement.
4. Marshall's Dissent: Disagrees with Court's efforts to establish a general rule; argues there should be case-by-case adjudication. Too much police discretion; possibility that a police officer lacking probable cause to obtain a search warrant will use a traffic stop as a pretext to conduct a search. Case-by-case adjudication will always be necessary to determine whether a full arrest was effected for legitimate reasons rather than as a pretext for search an arrestee (search of Δ 's clothing was a separate search).

D. Notes & Questions Section

1. Gustafson v. Florida (1973): Court held a warrantless search of an arrestee was authorized by Robinson because the officer had probable cause to arrest and he lawfully effectuated the arrest (Δ tried to distinguish from Robinson by arguing there were no police regulations requiring a full body search or statute requiring arrest).
2. Knowles v. Iowa (1998): Court addressed constitutionality of searching an individual incident to issuance of a citation for a traffic offense. Officer stopped motorist for speeding; state law authorized arrest, but officer decided to issue a citation in lieu of arrest. State statute provides an officer who chooses to cite a traffic offender may conduct a search of the magnitude that would be conducted for a search incident to arrest. Officer searched driver and vehicle and found a pot pipe. Court agreed search incident to citation violated 4th Amendment law; there was no need to disarm the arrestee or to preserve evidence. The underlying rationales for search incident to arrest cannot justify a full search for a traffic citation. Moreover, the need to discover and preserve evidence cannot justify a full search incident to a citation for speeding because once the driver is stopped for speeding and issued a citation, all evidence necessary to prosecute the offense has been obtained; no further evidence of speeding will be found in the person or in his car. The possibility the officer would stumble onto evidence wholly unrelated to the speeding offense is remote. Officers can avoid the Knowles Rule by arresting for minor infractions (and authorized by state law) and conducting full searches incident to those arrests.

- E. NEW YORK v. BELTON (1981) [automobile search of interior as incident to lawful arrest of driver and passengers (i.e., occupants)]

1. Issue: What is the proper scope of a search of the interior of an automobile incident to a lawful custodial arrest of its recent occupants.
2. Rule:
 - a. Terry Doctrine: scope of a search must be strictly tied to and justified by the circumstances which rendered its initiation permissible.
 - b. Chimel Rule: Court found ample justification to search person and areas within arrestee's immediate control.
 - c. Robinson Rule: in the case of lawful custodial arrest, a full search of the person is a reasonable and an exception to the 4th Amendment warrant requirement.
3. Holding: When an officer has made a lawful custodial arrest of the occupant in an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile. The officer may also examine the contents of any containers⁶ found within the passenger compartment (perceived to be within occupant's immediate control).

F. Notes & Questions Section

1. Washington v. Chrisman (1982): Held an officer could enter a dormitory room of an arrested student without a warrant because it is not unreasonable for an officer to monitor the movements of an arrested person as his judgment dictates, following the arrest. The exception is justified by the officer's compelling needs to ensure his own safety and the integrity of the arrest.
 - a. did not address whether Chrisman Doctrine would apply if officer requested/commanded arrestee to enter an area.
 - b. did not discuss whether an officer has any authority to search proximate areas while exercising authority to monitor arrestee's movements (i.e., immediate control).

G. PAYTON v. NEW YORK (1980) [warrantless entry into murder suspect's home to effect warrantless arrest]

1. Issue: Whether warrantless and forcible entry into a private residence to make a routine felony arrest is violative of the 4th Amendment.
2. Rule: 4th Amendment protects individual's privacy in a variety of settings; the zone of privacy is clearly defined when in the home,

⁶ "Container" denotes any object capable of holding another object. It includes the glove box, consoles or other receptacles located anywhere in the passenger compartment, as well as luggage, boxes, bags, clothing, etc. The holding only encompasses the interior of the passenger compartment and not the trunk.

and absent exigent circumstances, warrantless entry for arrest/search or seizure is illegal and unconstitutional.

3. Holding: Absent exigent circumstances, officers may not effect warrantless and forcible entry into a suspect's home to effect a felony arrest.
4. White's Dissent: A search pursuant to warrantless arrest will be less intrusive than a search warrant (because of **Restrictions on Home Arrest**⁷). If the suspect surrenders at the front door, police may not enter other rooms. Even if the police are justified in searching the other rooms, they may seize only items in plain view or within suspect's immediate control. A warrantless home entry is likely to uncover less evidence than a search conducted under the authority of a search warrant. An arrest entry will inevitably tip off suspects and result in destruction/removal of evidence not uncovered during the arrest. Doesn't believe the police would take the risk of losing valuable evidence through a pretextual arrest entry than applying for a search warrant.

- H. **STEAGALD v. U.S.** (1981) [warrantless entry and search of a 3d party's home while trying to effect an arrest warrant on a fugitive]
1. Issue: Whether police must obtain a search warrant must before entering the home of a 3d party to effect an arrest of a suspect named in an arrest warrant in the absence of consent or exigent circumstances order to comply with the 4th Amendment.
 2. Rule: Whether police must obtain a search warrant must before entering the home of a 3d party to effect an arrest of a suspect named in an arrest warrant in the absence of consent or exigent circumstances order to comply with the 4th Amendment.
 3. Dicta: While arrest warrants and search warrants serve to subject probable cause determination of police to a magistrate, the interests protected by the two warrants differ.
 - a. Arrest Warrant: issued upon showing of probable cause exists to believe that the subject of the warrant committed and offense and the warrant primarily serves to protect an individual from unreasonable seizure.

⁷ Requirements, taken together, permit an individual suspected of a serious crime to surrender at the front door. (a) **Felony**: guards against abusive or arbitrary enforcement and ensures invasions at home occur only in the case of serious crimes; (b) **Knock & Announce** and **Daytime** requirements protect individuals from fear, humiliation and embarrassment. Requirements permit suspect to surrender at front door, thereby maintaining dignity and preventing police from entering other rooms of the dwelling and (c) **Stringent Probable Cause**: helps ensure against possibility that police would enter when the suspect wasn't home, and in searching him, frighten members of the family or ransack the house, seizing items in plain view.

would not be unreasonable under 4th Amendment when the underlying offense was extremely minor and the application of exigent-circumstances exception in home entry should be rarely sanctioned when there is probable cause to believe that only a minor offense was committed.

- L. **VALE V. LOUISIANA** (1970) [warrantless search incident to arrest of drug dealer detained in curtilage under exigent circumstances exception]
1. Issue: Whether it is permissible to conduct an exigent but warrantless search of a residence incident to lawful arrest made outside of the premises (in curtilage).
 2. Rule:
 - a. Chimel Rule: when an search of a dwelling is sought to be justified as incident to lawful arrest, it must constitutionally be confined to arrestee's immediate reach and control.
 - b. Shipley v. Calif.: a search may be incident to arrest if it is substantially contemporaneous with the arrest and is confined to the immediate vicinity of the arrest. If a search of a house is to be upheld as incident to arrest, that arrest must take place inside the house, not 2 blocks away, or on the front steps of the dwelling.
 3. Holding: Even with probable cause, it is not permissible to conduct a warrantless search of a dwelling incident to lawful arrest made in curtilage/on the street under the exigent circumstances exception to the 4th Amendment warrant requirement.
 4. Case illustrates problem how police can protect evidence necessary for prosecution if they must leave the premises to obtain a search warrant.
- M. Notes & Questions Section
1. **Illinois v. McArthur** (2001): Issue was whether officers who had probable cause to believe Δ had marijuana in his home acted in violation of 4th Amendment when they prevented him from entering the home for two hours while they obtained a search warrant. Court held warrantless seizure of the premise in this case was per se reasonable because it involved an urgent enforcement need (i.e., exigent circumstances) and the restraint was tailored to that need, being limited in time and scope.
 - a. Police had probable cause to believe the trailer contained evidence of a crime and contraband; unless restrained, Δ would destroy the drugs before they could obtain a warrant.
 - b. Police made reasonable efforts to reconcile law enforcement needs with personal privacy because they did not search the dwelling or arrest the Δ , but imposed a significantly less

restrictive restraint; they imposed the restraint for a limited period of time

- c. Court disagreed with State Supreme Court's conclusion that the 4th Amendment forbade the officers' conduct because the porch was part of Δ's home and the order not enter amounted to constructive eviction. Under U.S. v. Santana, a person standing in the doorway of a home is in a public place.

[C] Vehicle and Container Searches

Automobile Exception to Search Warrant Requirement

- N. CHAMBERS v. MARONEY (1970) [warrantless search of an automobile incident to lawful arrest of bank robber]
 1. Issue: Whether a warrantless search of an automobile may be executed incident to lawful arrest is permissible.
 2. Rule: Carroll v. U.S.: automobiles may be searched without a warrant in circumstances that would not justify the warrantless search of a house or office, provided there is probable cause to believe that the car contains articles the officers are entitled to seize.
 3. Holding: With probable cause, a warrantless search of a car is constitutionally permissible, given its inherent mobility.
- O. COOLIDGE v. NEW HAMPSHIRE (1971) [warrantless seizure and subsequent search of child murderer's car from his private driveway]
 1. Issue: Whether the warrantless seizure of a car incident to lawful arrest was justified absent exigent circumstances and subject to subsequent warranted search.
 2. Rule:
 - a. Warrantless Search-Incident Doctrine.
 - b. Warrantless seizure and subsequent search of vehicle justified under Carroll v. U.S. (police may make a warrantless search of an automobile whenever they have probable cause to do so) and under Chambers v. Maroney (whenever police make a legal contemporaneous Carroll search, they may also seize the car, take it to the station house and search it there).
 3. Holding:
 - a. The search warrant for the car was invalid because the state Attorney General was not a neutral, detached judicial officer.
 - b. Absent exigent circumstances, warrantless seizure of an automobile is unjustified and is not excepted under the Search Incident to Lawful Arrest Doctrine.

- P. Notes & Questions Section
1. **Cardwell v. Lewis** (1974): held the determinative fact in Coolidge was that the vehicle was parked on private property. Vehicles parked on private property are distinguishable and subject to warrantless search under the Chambers exception.
 2. **U.S. v. Johns** (1985): addressed White's question in Coolidge; how long may officers delay before conducting a warrantless search authorized by the automobile exception. Court did not specify a time period; it stated police may not "indefinitely" delay a warrantless vehicle search. Court held open possibility that an aggrieved person might attempt to prove a delay in the completion of a vehicle search was unreasonable because it adversely affected a privacy or possessory interest. Court concluded a three-day delay prior to warrantless search in the case was constitutionally permissible.
- Q. **TEXAS v. WHITE** (1975) [warrantless seizure (by removal to station) and seizure of check forger's vehicle]
1. Issue: Whether warrantless seizure and search of a car incident to lawful arrest absent exigent circumstances is permissible under the 4th Amendment.
 2. Chambers Rule: where police, with probable cause, search an automobile (due to its inherent mobility) at the scene where it was stopped could constitutionally do so later at the station house without a warrant.
 3. Holding: Delayed warrantless seizure and search of an automobile incident to lawful arrest and absent exigent circumstances is constitutionally permissible.
- R. **CALIFORNIA v. CARNEY** (1985) [warrantless seizure and search of drug dealer's motor home]
1. Issue: Whether warrantless search (based on probable cause) of a fully mobile motor home incident to arrest, located in a public place, is violative of the 4th Amendment.
 2. Rule: Carroll Doctrine & Chambers Rule
 3. Dicta: Factors for the Automobile Exception creating an overriding societal interests in effective law enforcement justifying an immediate search before the vehicle and occupants become unavailable.
 - a. Ready mobility of vehicles is one of the principal bases of the mobility creates exigency.
 - b. **Diminished Expectation of Privacy**: area to be searched is in plain view and because vehicles are subject to extensive gov't regulation inapplicable to a fixed dwelling.

4. Holding: A warrantless search and seizure of a fully mobile motor home incident to arrest is constitutionally permissible, given the inherent mobility of the vehicle, its location and whether it is apparently being used as a dwelling or vehicle.
5. Stevens' Dissent: Searches of places regularly accommodating a wide range of private activity are fundamentally different from searches of automobiles which serve primarily as transportation. Expectations of privacy in temporary abodes are not diminished and should be constitutionally protected.

S. Notes & Questions Section

1. Pennsylvania v. Labron & Pennsylvania v. Kilgore (1996): held the Automobile Exception requires both probable cause and exigent circumstances (ready mobility⁸). In absence of factors, police must obtain a search warrant. A further justification is the Diminished Expectation of Privacy in an automobile, owing to its persuasive regulation.
2. Florida v. White (1999): police observed Δ use his car to deliver cocaine, thereby establishing probable cause to believe car was subject to forfeiture under state forfeiture laws. Months later, after arresting Δ on unrelated charges, police seized the car without a warrant. An inventory search disclosed contraband in the ashtray. Court held the underlying principles of Carroll-Chambers Automobile Doctrine fully support warrantless seizure of a vehicle when there is probable cause to believe it is subject to forfeiture as contraband. Doctrine allows officers to conduct warrantless search because there is a need to seize contraband before it is spirited away. The need to act without a warrant is equally weighty when the car itself is the contraband. Moreover, warrantless action is permissible because the seizure of a car from a public area does not involve any invasion of privacy (U.S. v. Watson).

T. U.S. v. CHADWICK (1977) [warrantless search of a footlocker offloaded from a train and placed into a car; searched 1½ hours after arrest]

1. Issue: Whether a warrantless search of luggage is permissible under 4th Amendment, absent exigent circumstances in public places.
2. Rule: Warrantless searches of luggage or other property seized at the time of arrest cannot be justified as incident to the arrest if the search is remote in time or place from the arrest.
3. Dicta:

⁸ Change from "Inherent Mobility."

- a. Argument for rationale of applying automobile search case doctrines to warrantless searches of luggage:
 - (1) inherent mobility of luggage (destruction/removal of evidence) and
 - (2) diminished expectation of privacy; its function is transportation and seldom serves as one's residence or the repository of personal effects. It travels thoroughfares where contents are in **plain view**.
 - (3) pervasive regulation of vehicles.
- b. Factors diminishing privacy aspects of automobiles do not apply to luggage. Contents are not open to private view (except as condition for entry thru customs or common carrier travel), not subject to regular inspections and official scrutiny on a continuing basis. Vehicles may be repositories, however there is a higher expectation of privacy in luggage. Inherent mobility of luggage doesn't dispel 4th Amendment protections.
- 4. Holding: When there is no exigency to support an immediate search, the Warrant Clause forbids warrantless search of luggage in public places.
- 5. Blackmun's Dissent: Clothing, personal effects and automobiles are searched without a warrant as incident of arrest, however the Court doesn't explain why a wallet carried in an arrestee's clothing, but not the footlocker is subject to reduced expectations of privacy caused by the arrest. Court also doesn't address purses or briefcases.

U. Notes & Questions Section

- 1. **Arkansas v. Sanders** (1979) **Pre-existing Probable Cause**⁹: police had probable cause to believe a suitcase contained drugs; it was loaded into a taxicab. When the vehicle drove off, the police stopped and searched it, opening the suitcase without a warrant. Court observed it was presented with deciding whether case under the Chadwick Rule or the Carroll-Chambers Doctrine. Held there was no justification of extension of Automobile Doctrine to warrantless search of luggage merely because it was located in an automobile. The Warrant Requirement of 4th Amendment applies to personal luggage taken from automobiles as it does to personal luggage in other locations.

⁹ Attaches to the item; attached to luggage before it was placed into the car. No probable cause to search the car; only the luggage.

2. **Robbins v. California** (1981): Sanders Doctrine governed every type of container unless the contents of the container are in plain view.
3. **U.S. v. Ross** (1982): Officer pulled over a car with probable cause to believe it contained narcotics. A search of the trunk revealed a closed paper bag. Upon opening the bag, the police found heroin. Court held the warrantless search of the paper bag was reasonable because it fell within the ambit of the Automobile Exception. Court distinguished Sanders in which officers had *probable cause to search the container in the vehicle* from Ross in which the container turned up during a search of the vehicle based on *probable cause to search the vehicle*. If police possessed a search warrant for Δ's car, they would've been allowed to search the paper bag; therefore police conducting a warrantless search of the car should also be permitted to search a bag found inside.

Current Container Search Law

- V. **CALIFORNIA v. ACEVEDO** (1991) [police observe suspect put paper bag in car trunk]
1. Issue: Whether a warrantless search of a closed container in an automobile is permissible because they lack probable cause to search the entire car.
 2. Carroll- Ross Rule: police may conduct a warrantless search of all containers found in an automobile so long as their search is supported by probable cause.
 3. Holding: Where there is probable cause to search a closed container, it is reasonable to search that part of the car of where the container is located; a search of any other part of the car is impermissible under the 4th Amendment.

Current Container Search Law

- W. **WYOMING v. HOUGHTON** (1999) [warrantless search of passenger's purse on the basis of probable cause for driver's conduct]
1. Issue: Whether police may conduct a warrantless search of a car passenger's personal belongings with probable cause to believe it contains contraband is violative of the 4th Amendment.
 2. Ross Rule: a passenger's personal belongings (like the driver's), or containers attached to the car (such as glove compartments) are "in" the car and the officer has probable cause to search contraband in the car.
 3. Holding: With probable cause, police may search a passenger's personal belongings found in the car that are capable of concealing the object of the search.

[D] Inventory Searches

- X. **SOUTH DAKOTA v. OPPERMAN** (1976) [warrantless routine inventory search of owner's impounded car yielded drugs in glove box]
- ▶ Issue: Whether the warrantless inventory search of a lawfully impounded automobile is violative of the 4th Amendment.
 - ▶ Rule: Routine inventory searches are constitutionally reasonable privacy intrusions.
 - ▶ Holding: Warrantless searches conducted for the purpose of police's **routine administrative caretaking functions** are not constitutionally unreasonable.
- Y. **ILLINOIS v. LAFAYETTE** (1983) [warrantless routine inventory search of arrestee's shoulder bag as part of incarceration procedure]
1. Issue: Whether it is constitutionally reasonable for police to search the personal effects of a person under lawful arrest as part of the routine administrative procedure incident to booking and jailing a suspect.
 2. Robinson-Chimel Doctrine: immediately upon arrest an officer may lawfully search the person of an arrestee and the area within his immediate control.
 3. Holding: It is not constitutionally unreasonable for police, as part of the routine procedure incident to incarcerating an arrested person, to search any article or container in the arrestee's possession in accordance with established inventory procedures.

[E] Consent Searches

- Z. **SCHNECKLOTH v. BUSTAMONTE** (1973) [warrantless search (without probable cause) on basis of consent given by a vehicle passenger]
1. Issue: What the prosecution must prove to demonstrate that a consent to search is voluntarily given.
 2. Rule: none given; derived from pre-Miranda confessions standard.
 3. Holding: Only when the subject of a search is not in custody and the state attempts to justify search on the basis of his consent, the 4th & 14th Amendments require that it demonstrate that the consent was given voluntarily and not the result of duress or coercion, express or implied. **Voluntariness is to be determined from the totality of circumstances** and while the subject's knowledge is to be taken into account, the prosecution is not required to demonstrate knowledge as a prerequisite to establishing voluntary consent.¹⁰

¹⁰ **Schneckloth Test for Consent Searches**: (i) totality of circumstances (case-by-case consideration) and (ii) whether consent was voluntary (i.e., absence of coercion).

AA. Notes from 10/20/01 Class

1. **Hierarchy of Rights**: rights fundamental to guilt/innocence cannot be waived by consent. “Mere” violation of privacy rights doesn’t connote serious societal concern; can still have a reliable, accurate outcome with an illegal search – justification for lower standard.
2. **Totality of Circumstances Test**: examine facts and make chart of features:

Totality of Circumstances Test

Suspect	versus	Police
Age, Education, Sophisticated knowledge of law enforcement, surroundings (home, work), a <u>Terry Stop</u> or approached on the street		# of officers, were their guns drawn, what did they say, was the suspect in detention (control of the police.

BB. **OHIO v. ROBINETTE** (1996) [consent search of motorist’s vehicle without officer telling him he was “free to go.”]

1. Issue: Whether 4th Amendment requires a lawfully seized Δ must be advised he is “free to go” before his consent to search will be recognized as voluntary.
2. Rule: **Schneckloth Test for Consent Searches**
3. Holding: The 4th Amendment test for valid consent to search is that the consent be voluntary and voluntariness is the question of fact to be determine from all the circumstances.

CC. **U.S. v. MATLOCK** (1974) [warrantless search of premises on the consent of a 3d party with common authority]

1. Issue: Whether the voluntary consent of a joint occupant of a residence to a search of the premises jointly occupied is valid against the co-occupant.
2. Rule: none given.
3. Holding: To justify a warrantless search by proof of voluntary consent, it is not limited to proof that consent was given by Δ, but must show that permission to search was obtained from a 3d party who possessed **common authority**¹¹ over or other sufficient relationship to the premises or effects sought to be inspected.

¹¹ **Common Authority Standard**: not mere property interest of 3d party; rests on mutual use of 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 inspection in his own right and that others have **assumed the risk** that one of their number might permit the common area to be searched.

DD. Notes & Question Section

1. **Florida v. Jimeno** (1991): held the scope of a consent search is governed by a standard of objective reasonableness. The dispositive question is what would a reasonable person have understood by the exchange between the officer and suspect. If it is objectively reasonable to understand a person to be giving consent to search his entire home, then the entire premises may be searched. Same standard applies for consent searches of vehicles and any unlocked containers within the vehicle that could contain contraband that is the object of the search.

EE. **ILLINOIS v. RODRIGUEZ** (1990) [police conduct warrantless search and seizure of a dwelling on the reasonable, mistaken belief of 3d party common authority consent to search]

1. Issue: Whether a warrantless search of a premises is reasonable under the 4th Amendment if police reasonably believed at time of entry that a 3d party possessed common authority to consent to a search of the premises.
2. Rule:
 - a. Matlock Rule: common authority rests on mutual use of the property by persons generally having joint access or control for most purposes. Burden of establishing common authority rests on state.
 - b. Brinegar v. U.S.: because many ambiguous situations confront officers in the course of executing their duties, latitude for reasonable, honest error must be allowed.
3. Dicta: **Determination of Consent to Enter Standard**:¹² would a man of reasonable caution in the belief that the consenting party had authority over the premises. If not, then warrantless entry without further inquiry is unlawful unless authority actually exists.
4. Holding: There is no constitutional violation when officers effect warrantless entry into a dwelling at the invitation and behest of a 3d party whom they mistakenly, but reasonably believe to have common authority to apprehend a violent felon.
5. Marshall's Dissent: Baseline for reasonableness of a search or seizure in the home is the presence of a warrant. Exceptions to the Warrant Requirement must serve compelling law enforcement needs. The sole law enforcement purpose for permitting 3d party consent searches is to avoid the inconvenience of obtaining a warrant; therefore it's not justified simply because an officer

¹² Broad Standard, presuming: (i) voluntariness; (ii) 3d party consent; (iii) no right of refusal requirement; (iv) apparent authority.

reasonably believed a 3d party consented to the search of Δ's home In absence of an exigency, warrantless home searches and seizures are unreasonable under the 4th Amendment.

[F] Plain View Doctrine

FF. HORTON v. CALIFORNIA (1990) [plain view discovery of weapons in the home of an armed robber served with a search warrant particularizing the search for proceeds only]

1. Issue: Whether the warrantless seizure of crime evidence in **plain view** is prohibited by the 4th Amendment if the discovery of the evidence was not inadvertent.
2. Rule:
 - a. Coolidge v. N.H.: Extension of the the original justification is only legitimate where it is immediately apparent to the police that they have evidence before them; the plain view doctrine may not be used to extend a general exploratory search from one object to another until something incriminating emerges.
 - b. Additional conditions: (i) item must be in plain view, its incriminating character must also be immediately apparent; (ii) officer must be lawfully located in a place from which the object can be plainly seen and must also have a lawful right of access to the object itself.
3. Holding: Altho' inadvertence is a characteristic of most legitimate plain view seizures, it is not a necessary condition because the 4th Amendment prohibition against general searches and warrants protects against unjustified intrusions on privacy.

GG. ARIZONA v. HICKS (1987) [plain view discovery of stolen B&O turntable on the basis of reasonable suspicion during a warranted search]

1. Issue: Whether a warrantless search of evidence in plain view based solely on reasonable suspicion is violative of the 4th Amendment.
2. Holding: The standard of probable cause is required to invoke the Plain View Doctrine.
3. O'Connor's Dissent: The issue should've been whether the police must have probable cause before conducting a **cursory inspection** of item in plain view. Agrees with Court that probable cause is required before seizure or conduct a full-blown search of evidence in plain view. A cursory inspection will not permit exploratory rummaging. To go beyond cursory inspection would require probable cause.

IX. THE BALANCING APPROACH TO 4TH AMENDMENT REASONABLENESS

- A. Introductory Note
1. Situations in which either the gov't or the individual is claiming that the probable cause and warrant norms are not appropriate measures of the reasonableness of the gov't conduct at issue.
 2. Claims are rooted in an effort to balance society's interests against those of the individual.
 3. In most cases, the gov't contends that the balance justifies the diminution of the normal standards of reasonableness. In some cases, the individuals contend the balancing analysis should lead to an elevation of the normal standards.

[A] **Stops, Frisks and the Right to be Secure in One's Own Person, House & Effects**

[1] **Constitutional Doctrine and Its Theoretical Underpinnings**

- B. **TERRY V. OHIO** (1968) **EXCEPTION TO PROBABLE CAUSE REQUIREMENT** [policeman stopped and frisked three suspects he reasonably suspected were casing a store for robbery]
1. Issue: Whether it is unreasonable for a policeman to seize a person and subject him to a limited search for weapons (**stop and frisk**) unless there is probable cause for arrest (i.e., on the basis of reasonable suspicion).
 2. Rule:
 - a. [replacing probable cause] **Camara v. Municipal Court Balancing Test**: to assess the reasonableness of gov't conduct, it is necessary to:
 - (1) determine the gov't interest which allegedly justified official intrusion upon the constitutional protected interests of the private citizen.
 - (2) the police officer must be able to point to articulable facts, taken together with rational inferences from those facts to reasonably warrant intrusion.
 - b. Facts must be judged by **an objective standard**; would the facts available to the officer at the moment of seizure or the search warrant a man of reasonable caution in the belief that the action taken was appropriate?
 3. Dicta:
 - a. **A stop and frisk is a seizure**: Whenever a policeman accosts an individual and restrains his freedom to walk away, he has "seized" that person in the context of the 4th Amendment. A stop and frisk is a serious intrusion on the sanctity of a person, may inflict great indignity and arouse strong resentment; it is not a petty inconvenience.
 - b. **Balancing Test**

- (1) Gov't Interests: (i) effective prevention and detection; (ii) need to protect police and prospective victims in situations where they may lack probable cause for an arrest (strictly circumscribed by an exigency) (reasonable for officer to take necessary measures to determine whether a suspect is carrying a weapon and to neutralize the threat of harm); (iii) officers may use the benefit of their experience to establish rational inferences; (iv) encounter is brief.
 - c. Scope of Stop & Frisk Encounter: sole justification is the protection of the police officer and others nearby; stop and frisk must be confined in scope to an intrusion reasonably designed to discover guns, knives, clubs and other hidden instruments for assault. The officer may patdown outer garments and may not place his hands inside clothing until weapons are detected; then the officer may merely reach for and remove the weapon. A general exploratory search is not permitted.
 4. Holding: It is not unreasonable for a police officer to stop and frisk an individual without probable cause. An officer has authority to permit reasonable search for weapons and the protection of the police officer, where he has reason to believe that he is dealing with an armed and dangerous suspect, regardless of whether he has probable cause to arrest the individual for a crime. The officer need not be absolutely certain the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety, or the safety of others, was in danger. Due weight must not be given to his inarticulate hunch or suspicion, but the **specific reasonable suspicion** which he is entitled to draw from the facts in light of his experience.
- C. Notes & Questions Section
1. **Sibron v. N.Y.** (1968): Terry companion case. Officer surveilled a suspect for an 8 hour period. The officer approached the suspect in a coffee shop and told him to come outside; he reached into suspect's pocket and extracted drugs. Court concluded: (i) no reasonable grounds for suspicion; (ii) no right to frisk (narcotics addicts are not known to imperil safety) for a reasonable fear of "life and limb."
- D. **DUNAWAY v. NEW YORK** (1979) [warrantless detention and interrogation (but not arrest) of felony-murder suspect under reasonable suspicion]
1. Issue: Whether it is unreasonable for the warrantless detention of an individual unless there is probable cause for arrest (i.e., on the basis of reasonable suspicion).

2. Rule: 4th Amendment warrant requirement for probable cause.
3. Holding: It is unreasonable and violative of the 4th Amendment to warrantlessly detain and interrogate an individual without probable cause.

[2] **Seizure of Persons / What is a Seizure and When does it Occur**

- E. **U.S. v. MENDENHALL** (1980) [warrantless seizure of a drug mule in an airport concourse on hunch of criminal activity]
1. Issue: Whether being stopped by officers who do not have probable cause to believe an individual has committed a crime constitutes an unreasonable seizure.
 2. Rule: **Seizure Standard**: a person is seized within the meaning of the 4th Amendment if in view of all the circumstances surrounding the incident, a reasonable person would have believed he was not free to go.
 3. Holding: **Mendenhall Test**: Mere approach by officers and simple requests made of an individual do not constitute a seizure, when in view of all the circumstances surrounding the incident, a reasonable person would have believed he was free to go.
- F. Notes & Questions Section
1. Mendenhall address fundamental issues:
 - a. Threshold Inquiry: when is a person seized for 4th Amendment purposes?
 - b. Justification for a Terry detention: what is the objective showing required to support such a seizure?
 2. **Florida v. Royer** (1983): held no seizure occurred when officers approached a suspect in an airport concourse and asked for and examined identification and travel papers. Suspect seized when officers identified themselves, told him he was suspected of narcotics transportation and asked him to accompany them to a police room while retaining his papers and not indicating he was free to go.
 3. **Michigan v. Chesternut** (1988): man standing on the corner turned and ran as a marked police car approached. Cruiser followed, accelerating to catch up and drive alongside the suspect. Court held mere following of the suspect in a marked police car did not amount to a seizure; the officer had not used flashers or siren, displayed weapons or commanded suspect to stop or used the car to block/control suspect's movements.
- Challenge of the Mendenhall Test.
- G. **FLORIDA v. BOSTICK** (1991) [warrantless search and seizure (without probable cause) of a bus passenger/drug mule]

1. Issue: Whether an individual would feel free to decline the police's request (on the basis of reasonable suspicion) to ask him questions and/or consent to search his luggage or otherwise terminate the encounter.
2. Rule: Calif. v. Hodari D.: Seizure does not occur simply because an officer approaches an individual and asks a few questions. So long as a reasonable person would feel free to disregard police and go about his business, the encounter is consensual and no reasonable suspicion is required.
3. Holding: In order to determine whether a particular encounter constitutes a seizure, a court must consider the **totality of circumstances** surrounding the encounter to determine whether the police conduct would've communicated to a reasonable person that the person was not free to decline the officers' requests or otherwise terminate the encounter.

H. **CALIFORNIA v. HODARI D.** (1991) [police give chase of fleeing drug dealer on foot thru high crime area]

1. Issue: Whether seizure occurs when the officer, by means of physical force or show of authority has in some way restrained the liberty of a citizen.
2. Mendenhall Rule: a person is seized within the meaning of the 4th Amendment if in view of all the circumstances surrounding the incident, a reasonable person would have believed he was not free to go.
3. Holding: An arrest requires either physical seizure or, where that is absent, submission to the assertion of authority.
4. Stevens' Dissent: Court's holding might encourage unlawful displays of force that will frighten innocent citizens into surrendering privacy rights. Court defines seizure as commencing not with egregious police conduct, but with submission of the citizen; delays point at which 4th Amendment becomes relevant.

[3] Showing Needed to Stop & Frisk - Reasonable Suspicion

I. **ILLINOIS v. WARDLOW** (2000) [unprovoked flight of drug dealer at the sight of police]

1. Issue: Whether unprovoked flight can create reasonable suspicion justifying a Terry investigative stop.
2. Rule:
 - a. In Terry, Court held an officer may, consistent with 4th Amendment, conduct brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot. Reasonable suspicion is a less demanding standard than probable cause (requires a showing less than

- preponderance of the evidence), 4th Amendment requires a minimal level of objective justification for making the stop.
- b. Tex. v. Brown: An individual's presence in an area of expected criminal activity is not sufficient to support particularized suspicion that the person is committing a crime.
3. Holding: Unprovoked flight is not a mere refusal to cooperate and is not "going about one's business;" flight is consummate evasion and suggestive of wrongdoing. Therefore, an officer may make a determination of reasonable suspicion must be based on commonsense judgments and inferences of human behavior, justifying an investigative Terry stop.
 4. Stevens' Dissent: There's no definition of what "provoked flight" means. Motivation for flight depends on a number of different factors: number of people in area, character of neighborhood, whether the officer was in uniform, the way the runner was dressed, direction and speed of the flight. Many citizens believe contact with the police is dangerous and will flee on that basis.
- J. ALABAMA v. WHITE (1990) [police tipped off about the travel plans and drug possession of Δ]
1. Issue: Whether an anonymous informant's tip furnishes reasonable suspicion to invoke an investigatory Terry stop.
 2. Rule: **Modified Gates Test**: totality of circumstances test to determine whether an informant's tip establishes probable cause. Veracity, reliability and basis of knowledge factors were relevant. Reasonable suspicion is depending upon the content of information possessed by the police and its degree of reliability. Both factors of quality and weight are part of the totality of circumstances assessment.
 3. Holding: Under a Totality of Circumstances Test, an anonymous tip is sufficient to establish reasonable suspicion invoking an investigatory Terry stop so long as the police give the anonymous tip the weight it deserves in light of its indicia of reliability, established thru independent police work.
 4. Stevens' Dissent: Anyone with enough knowledge about a 3d party and wishing to effect a prank or harboring a grudge could formulate a tip; the decision subjects people to being seized and questioned by police.
- K. FLORIDA v. J.L. (2000) [anonymous tip without indicia of reliability implicating a teenager packing heat]
1. Issue: Whether an anonymous informant's tip furnishes indicia of reliability to establish sufficient reasonable suspicion to invoke an investigatory Terry stop.

2. Rule: White Rule: Tips must be corroborated and exhibit sufficient indicia of reliability to provide reasonable suspicion to justify an investigatory stop.
3. Holding: An anonymous tip lacking indicia of reliability (according to the White Standard) does not justify a Terry stop and frisk, and reasonableness of official suspicion must be measured by what the officers knew before they conducted their search.

L. Notes & Questions Section

1. How to explain the differences between probable cause, reasonable suspicion and mere hunch?
2. White is the Court's most direct and significant effort to address and explain the meaning and substance of Reasonable Suspicion Standard.
3. Cases¹³ showing constitutional justification for an investigative detention; cases raise question of relationship between profiling and reasonable suspicion. Court has not provided a comprehensive opinion on the role of profiles in reasonable suspicion inquiries.
4. U.S. v. Hensley (1985): whether Terry detentions are permissible to investigate completed criminal activity. Held: detentions are constitutional if based upon a reasonable suspicion that a person was involved with or is wanted in connection with a completed felony.

[4] Permissible Scope of Stops, Frisks & Sweeps

- M. HAYES v. FLORIDA (1985) [warrantless seizure of burglar-rapist from his home for fingerprinting at police station]
1. Issue: Whether it is permissible and reasonable to effect an investigative detention (i.e., Terry stop) of a suspect for fingerprinting on less than probable cause (i.e., on the basis of reasonable suspicion).
 2. Rule:
 - a. Davis v. Miss.: detention for the purposes of fingerprinting exceeds the permissible limits of temporary seizures authorized by Terry v. Ohio. Court indicated under narrowly confined circumstances, a detention for fingerprinting on less than probable cause might comply with the 4th Amendment.
 - b. Dunaway v. N.Y.: investigative interrogations at police stations on less than probable cause are not permissible under the 4th Amendment.

¹³ (p. 334) Reid v. Georgia (1980); Florida v. Royer (1983) & U.S. v. Sokolow (1989)

3. Dictum: Some states, in reliance on the Court's suggestion in Davis v. Miss., have enacted procedures for judicially authorized (i.e., warrants) seizures for the purpose of fingerprinting.
 4. Holding: 4th Amendment permits seizure for the purpose of fingerprinting, if there is reasonable suspicion for believing that fingerprinting will establish/negate the suspect's connection with the crime, and if the procedure is carried out with dispatch.
- N. U.S. v. SHARPE (1985) [20 minute detention of marijuana trafficker while DEA agent conducted an investigation]
1. Issue: Whether the length of detention can transform an investigative Terry stop into a de facto arrest (a per se rule).
 2. Rule:
 - a. Terry Test for reasonableness of investigative stop: (i) whether police have an articulable and reasonable suspicion that the respondents were engaged in marijuana trafficking, given the setting and circumstances when the police attempted to stop the truck and Pontiac and (ii) whether the detention was sufficiently brief to comport with Terry requirements.
 - b. If an investigative stop continues indefinitely, at some point it can no longer be justified as an investigative stop, however, Terry does not impose any rigid time limitation.
 - c. Stop Duration Test: (i) whether the police diligently pursued a means of investigation that was likely to confirm/dispel their suspicions quickly, during which time the Δ was detained and (ii) whether the police reasonably utilized the least intrusive alternative means of detention and investigation.
 3. Holding: A 20 minute investigative stop and detention is not unreasonable so long as the police act diligently to confirm/dispel their suspicions of criminal activity.
 4. Brennan's Dissent: The investigative actions violated 4th Amendment. Court evaded a further Terry requirement that the investigative methods used should be the least intrusive means reasonably available to verify/dispel the officer's suspicion in a short period of time. The gov't carries the burden of demonstrating that it was objectively infeasible to investigate in a more expeditious manner.
- O. Notes & Questions Section
1. U.S. v. Montaya de Hernandez (1985): Police had reasonable suspicion Δ was smuggling drugs in her alimentary; she refused to submit to an x-ray. She was held 16 hours while agents waited for her to poop; she finally excreted 88 balloons filled with narcotics.

Court observed the length of time exceeded a detention approved under reasonable suspicion, however the Court stipulated: (i) detention occurred at the int'l border where the 4th Amendment's proscriptions are less stringent; (ii) alimentary canal smuggling cannot be detected in the amount of time that other criminal activities can be investigated thru Terry-type stops; (iii) because Δ refused to submit to an x-ray, the only means were a lengthy detention or the release of a person reasonably suspected of drug smuggling and (iv) Δ's own "heroic efforts" to avoid pooping extended the period of detention. Lengthy detention was necessary to verify or dispel reasonable suspicion.

2. **Florida v. Royer** (1983): in a Terry detention, the investigative methods employed should be the least intrusive means reasonably available to verify/dispel the officer's suspicion in a short period of time.
3. **U.S. v. Sokolow** (1989): reasonableness of an officer's decision to stop a suspect does not turn on the availability of less intrusive investigatory techniques; such a rule would hamper a policeman's ability to make on-the-spot, swift decisions and require the court's to indulge in second-guessing.

P. **U.S. v. PLACE** (1983) [detention of an air travelling drug smuggler's luggage at destination airport over a weekend]

1. Issue: Whether the duration of a warrantless seizure of luggage (separating it from owner) with less than probable cause for the purpose of pursuing a limited course of investigation (short of opening the bag) that would quickly confirm/dispel suspicion of criminal activity is reasonable under the 4th Amendment.
2. Rule: **Terry Balancing Test** assessing the reasonableness of gov't conduct: (i) weight the gov't interest which allegedly justified official intrusion against the constitutional protected interests of the private citizen and (ii) the police officer must be able to point to articulable facts, taken together with rational inferences from those facts to reasonably warrant intrusion.
3. Random Dictum: **Canine sniffing** doesn't require opening luggage, exposing non-contraband items that would otherwise remain hidden from public view; information obtained thru this technique is much less intrusive than authorities rummaging thru a bag. It only discloses the presence/absence of narcotics. Limited disclosure minimizes inconvenience and embarrassment to suspect.
4. Holding: Absent probable cause, length of detention of luggage can be unreasonable if the duration of seizure is excessive and the police fail to diligently pursue their investigation confirming/dispelling their suspicions of criminal activity.

- Q. **MICHIGAN v. LONG** (1983) [intoxicated driver crashes car; officer sees weapon on floorboard, does a “patdown” of car and discovers drugs]
1. Issue: Whether police may effect an investigative Terry-type stop (i.e., stop and frisk) of an automobile (and containers within it) on less than probable cause.
 2. Rule:
 - a. Terry Test; assessing the reasonableness of an officer’s conduct requires a balancing the need to search/seize against the intrusion of an individual’s privacy rights.
 - b. Search of the passenger compartment of an automobile, limited to those areas in which a weapon may be placed/hidden is permissible if the police possess a reasonable belief based on specific, articulable facts which taken together with the rational inferences from those facts, reasonably warrant the officers in believing that the suspect is dangerous and the suspect may gain immediate control of weapons.
 3. Holding: In roadside encounters, where police have reasonable suspicion based on specific and articulable facts to believe a driver may be armed and dangerous, they may conduct a protective search for weapons, not only of driver’s person, but of the vehicle, being justified solely by weapons stored there could be used against police or others, and the search must be limited to those areas in which a weapon could be placed or hidden.¹⁴
 4. Brennan’s Dissent: Terry did not authorize police to search a suspect’s car based on reasonable suspicion; Terry pertains to a limited search for weapons. A patdown of a car is not a frisk and was not conducted in a limited-type fashion as a Search Incident to Lawful Arrest (i.e., full search on the basis of reasonable suspicion instead of probable cause). The intrusion in the case was the type associated with arrest; therefore the balancing test is not appropriate.
- R. Notes & Questions Section
1. **Penn. v. Mimms** (1977): held it is reasonable for officers to routinely order drivers out of their vehicles for lawful stop for traffic infraction. Officer safety is legitimate and weighty, and the intrusion on privacy interests are incremental, a mere inconvenience and de minimis.

¹⁴ If while conducting a legitimate Terry search of the interior of an automobile the officer discovers contraband other than weapons, he clearly cannot be required to ignore the contraband and the 4th Amendment does not require its suppression in such circumstances.

2. **Md. v. Wilson** (1997): extension of Mimms Doctrine to passengers. Case for privacy intrusion stronger for passengers than drivers because the passenger has not committed the offense, however, the passengers are already detained by virtue of the stop of the vehicle; therefore the stop and order to alight is minimally intrusive.

[5] Plain Feel Doctrine

- S. **MINNESOTA v. DICKERSON** (1993) [officer conducting a Terry patdown felt crack and manipulated it thru the material of suspect's jacket]
 1. Issue: Whether the 4th Amendment permits the seizure of non-threatening contraband detected through a police officer's sense of touch during a lawful protective patdown.
 2. Rule: Terry Rule: when an officer is justified in believing that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to police or others, the officer may conduct a patdown search to determine if suspect is carrying a weapon. The purpose is not to discover evidence of a crime, but to ascertain whether the officer is free to pursue his investigation without fear of violence. A protective search on suspicion less than probable cause must be strictly limited to that which is necessary for the discovery of weapons which might be used to harm the officer or others.
 3. Holding: Officers may seize non-threatening contraband detected during the course of a lawful Terry protective patdown¹⁵ of a suspect.
- T. **MARYLAND v. BUIE** (1990) [protective sweep of an armed robber's dwelling while police serving an arrest warrant]
 1. Issue: Whether it is permissible under the 4th Amendment for officers to conduct a protective sweep of a dwelling incident to lawful arrest of a suspect.
 2. Rule: 4th Amendment Balancing Test.
 3. Dictum: **Protective Sweep**: a quick and limited search of premises, incident to an arrest and conducted to protect the safety of police officers or others. It is confined to a cursory vital inspection of those places in which a person might be hiding.
 4. Holding: As an incident to lawful arrest, officers may, as a precautionary matter and without probable cause or reasonable

¹⁵ Identity of the object must be immediately apparent thru a patdown; manipulation or squeezing of the object is not permitted.

suspicion, conduct a cursory¹⁶ protective sweep of a dwelling, looking in closets and other spaces immediately adjoining the place of arrest from which an attack could be immediately launched; beyond that, there must be articulable facts, taken together with rational inferences to warrant a reasonably prudent officer in believing the area to be swept harbors an individual posing danger to those at the arrest scene.

5. Brennan's Dissent: Court's explanation of protective sweep's scope is unconvincing. The spatial and temporal restrictions are not especially limiting because the police would be able to view virtually all personal effects and papers within the house not hidden from view in a small space. Police could search every room, open every closet, armoire, chests, wardrobes and cars, peer under beds and behind furniture. Officers would be able to view journals, papers, records, tapes, toiletries, medical prescriptions, paraphernalia and pictures in plain view. Protective sweep is similar to a limited patdown for weapons or a frisk of an automobile.

X. BALANCING IN OTHER CONTEXTS: BARS, SCHOOL SEARCHES, HIGHWAY CHECKPOINTS, DRUG TESTING

[A] Balancing in Other Contexts

- A. YBARRA v. ILLINOIS (1979) [bar patron frisked and searched in the process of serving a warrant on a bar and bartender]
 1. Issue: Whether a state statute authorizing a warrantless Terry detainment and search of any person found on a premises being searched pursuant to a search warrant (to prevent attack on officers or the disposal/concealment of anything described in the warrant) is constitutionally permissible.
 2. Rule:
 - a. 4th Amendment protects legitimate expectations of privacy of persons.
 - b. N.Y. v. Sibron: A person's mere propinquity to others independently suspected of criminal activity does not, without probable cause, give rise to search that person.
 3. Holding: Altho' a warrant with probable cause gives police authority to search the what is named therein, it does not render authority to invade the constitutional protections possessed by others in the

¹⁶ Court limited search to a cursory inspection of those spaces where a person may be found; the sweep must last no longer than is necessary to dispel reasonable suspicion of danger and in any event no longer than it takes to complete the arrest and depart the premises.

vicinity by a Terry detention and search, unless police have reasonable suspicion to believe they are armed and dangerous.

B. Notes & Questions Section

1. **Mich. v. Summers** (1981): officers secured a warrant to search a home for narcotics; upon arrival, they found Δ leaving the premises, standing on the front sidewalk. Officers escorted Δ back into the house and detained him for the duration of their search. After finding narcotics in basement and determining Δ owned the house, the officers arrested him and found add'l contraband on his person. Court concluded that when the officers are searching premises pursuant to a valid warrant for contraband, they may detain an occupant or resident of the premises during the time they are conducting their search.
 - a. Court did not decide whether officers have a similar authority to detain a person during a warrantless search based on exigent circumstances or during a warranted search for evidence.
 - b. Court indicated a detention during a warranted search for contraband could be unreasonable: (i) in an unusual case; (ii) involving special circumstances or (iii) a possibly prolonged detention.

[B] Balancing in Administrative/Regulatory Warrantless Search & Seizure Cases

- C. **NEW JERSEY v. T.L.O** (1985) [principal's search of student's handbag for cigarettes]
 1. Issue: Whether the warrantless search of a student's handbag by a school official was an unreasonable search and seizure, violative of the 4th Amendment.
 2. Rule: **4th Amendment Balancing Test**: determination of reasonableness standard governing any specific class of searches requires balancing the need to search: (i) individual's legitimate expectations of privacy and personal security versus (ii) gov't's need for effective methods to deal with breaches of public order.
 3. Dicta: **Standard for School Searches**: School setting:
 - a. requires easing of restrictions to which searches by public officials are ordinarily subject. The warrant requirement is unsuited to the school environment; requiring a teach to obtain a warrant before searching a child suspected of an infraction of school rules/criminal law would unduly interfered with the maintenance of swift and informal disciplinary procedures needed in the schools.

- b. requires some modification of the level of suspicion of illicit activity needed to justify a search. Accommodation of the privacy interests of schoolchildren with the substantial need of teachers and administrators for freedom to maintain order in the schools doesn't require strict adherence to probable cause requirement for searches. Legality of search should depend upon reasonableness of the search, under all of the circumstances.
 - (1) under ordinary circumstances, a search of a student by a teacher or other school official will be justified at inception when there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated the law/school rules. Search will be permissible in scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and gender of the student, and the nature of the infraction.
 - c. Standard will not burden the efforts of the school authorities to maintain order or authorize unrestrained intrusions into privacy of students. Focusing on a reasonableness standard, teachers and administrators won't have to comprehend probable cause theory; commonsense will regulate their conduct. The reasonableness standard should ensure students' interests will not be invaded any more than is necessary to achieve the legitimate end of preserving order in schools.
4. Holding:
- a. In carrying out searches and other disciplinary functions pursuant to policies, school officials act as representatives of the state, not merely as surrogates for parents, and they cannot claim immunity from 4th Amendment strictures.
 - b. A school official's warrantless search of a student's handbag with less than probable cause is permissible so long as the search is reasonably related to the objectives of the search and not excessively intrusive in light of the age and gender of the student, and the nature of the infraction.
5. Stevens' Dissent: The new standard will permit teachers and administrators to search students when they suspect behavior will reveal evidence of the most trivial infractions. A search for curlers or sunglasses to enforce the school dress code is just as important as a search for drugs or for gang activity. The Court's standard for deciding whether a search is justified treats all violations of school rules as tho' they're fungible.

[1] **Special Needs Doctrine**

D. **MICHIGAN DEPARTMENT OF STATE POLICE v. SITZ** (1990)

[warrantless seizure at sobriety checkpoints]

1. Issue: Whether a state's use of highway sobriety checkpoints for the purpose of road safety are reasonable under the 4th Amendment.
2. Rule: **4th Amendment Balancing Test** assessing reasonableness of seizure by the least intrusive alternative means: (i) legitimate gov't interests in preventing drunk driving accidents v. (ii) measure of privacy intrusions imposed on motorists being stopped at the checkpoints.
3. Holding: Warrantless seizures at sobriety checkpoints are constitutionally reasonable because they fulfill a **special need**; in balance of the state's legitimate and compelling interest in preventing drunk driving and the degree of intrusion upon individual motorists who are briefly stopped are minimally intrusive.
4. Stevens' Dissent:
 - a. Court overvalues law enforcement interests in using sobriety checkpoints and undervalues citizens' privacy interests. Also mistakenly assumes there is virtually no difference between a routine stop at a permanent, fixed checkpoint and a surprise stop at a sobriety checkpoint. Case is controlled by precedent dealing with suspicionless, random stops of motorists for investigatory purposes (Del. v. Prouse).
 - b. Critical differences: (i) Surprise. A motorist with advance notice can avoid a checkpoint or has the opportunity to prepare for and limit the privacy intrusion; (ii) police have broad discretion in planning for the timing and placement of the roadblock; (iii) significant difference between immigration checkpoint and sobriety checkpoint; immigration checks are more routine and standardized. A sobriety check point officer has discretion to detain a motorist on the slightest basis of suspicion and (iv) sobriety checkpoints are almost always operated at night.

E. **CITY OF INDIANAPOLIS v. EDMOND** (2000) [warrantless seizure of motorists at narcotics interdiction checkpoints]

1. Issue: Whether a city's use of highway unlawful drug checkpoints for the purpose of general narcotics interdiction are reasonable under the 4th Amendment.
2. Holding: Checkpoints whose primary purpose is to detect evidence of ordinary criminal wrongdoing (i.e., not fulfilling special needs of law enforcement) is not permissible; checkpoint programs purposed

to uncover evidence of ordinary crime wrongdoing and contravenes the 4th Amendment.

[2] Suspicionless Drug Testing

- F. **SKINNER v. RAILWAY LABOR EXECUTIVES' ASSOC'N** (1989)
[warrantless mandatory drug testing of railroad employees pursuant to federal administrative regulation]
1. Issue: Whether warrantless mandatory drug testing of railway workers is constitutionally permissible.
 2. Rule: **4th Amendment Balancing Test**.
 3. Holding: Warrantless drug testing of railway workers in the absence of reasonable suspicion is constitutionally reasonable and permissible given that compelling gov't interests of safety promotion and the minimal intrusion on workers' diminished privacy expectations.
- G. Notes & Questions Section
1. **Nat'l Treasury Employees Union v. Von Raab** (1989): companion case to Skinner. Employees seeking transfers/promotions involving drug interdiction, jobs carrying a firearm or access to classified material had to submit to drug testing. Court concluded program narrowly-tailored to prevent and deter drug use among those eligible for sensitive positions. Gov't had compelling interests in safeguarding national borders and public safety that outweigh individuals' privacy expectations. Therefore, drug testing without individualized suspicion was permissible.
 2. **Vernonia School District 47J v. Acton** (1995): issue of the constitutionality of school board policy requiring drug testing among student athletes. Court concluded students' privacy interests diminished by the fact that they are under the custody and supervision of school authorities. Also, privacy interests diminished by the non-private nature of locker rooms and their voluntary choice to subject themselves to higher regulation than ordinary students. Urine tests were conducted in same circumstances as public restrooms and the urinalysis looked only for "standard" drugs and not other conditions and the results available only to a limited class of school personnel and not turned over to law enforcement, or used for internal disciplinary functions, the Court concluded the invasions of privacy were not significant. Court stipulated gov't interests furthered by drug testing do not have to be compelling, but only **important enough** to justify a particular search. However, the Court stated that suspicionless drug testing will not always pass constitutional muster; the most significant factor in this case was the nature of the gov't's roles as guardian and tutor of children.

- H. **CHANDLER v. MILLER** (1997) [warrantless drug testing of candidates for state public office]
1. Issue: Whether state statute requiring warrantless drug testing of candidates seeking public office ranks among the limited **special needs** circumstances in which suspicionless searches are permissible.
 2. Skinner Rule: In limited circumstances, where the privacy interests implicated by the search are minimal and where an important gov't interest furthered by the intrusion would be placed in jeopardy by a requirement of individualized suspicion, a search may be reasonable despite the absence of such suspicion.
 3. Holding: Where risk to public safety is substantial and real, blanket, suspicionless searches calibrated to the risk are reasonable (i.e., airport security checks), however, when public safety is not genuinely in jeopardy, the 4th Amendment precludes suspicionless searches.
- I. Notes & Questions Section
1. The goal of Administrative/Regulatory Search and Seizure Cases is to improve society through the implementation and enforcement of a regulatory scheme. Court has consistently held that administrative/regulatory searches and seizures are governed by the 4th Amendment.
 2. **Ferguson v. City of Charleston** (2001): suspicionless drug testing program in response to increasing number of pregnant women using crack. Medical University of South Carolina began routine urinalysis testing of pregnant women without their knowledge. When results were positive, the women were referred to drug counselling. Women were threatened with arrest for failing to comply with treatment programs. Gov't tried to justify program on the **Special Needs Doctrine**. Court concluded the invasion of privacy was significant. The special needs of gov't were "divorced" from state's general interest in law enforcement (i.e., similar to prohibitions in Edmonds); there was no evidence of helping the women – law enforcement was the central objective.

[C] **Higher Than Usual Standards of Reasonableness**

[1] **Deadly Force**

- J. **TENNESSEE v. GARNER** (1985) [officer's use of deadly force (shot in the back) to prevent prowler from escaping over a backyard fence]
1. Issue: Whether the use of deadly force is unreasonable and violative of the 4th Amendment.

2. Rule: **4th Amendment Balancing Test** to assess reasonableness of the constitutionality of a seizure.
3. Dicta:
 - a. Use of deadly force is not a sufficiently productive means of enticing suspects to surrender or risk being shot. The gov't interest in shooting non-dangerous, fleeing suspects does not outweigh an individual's interest in his own life; it is not better that a suspect die than escape.
 - b. Where an officer has probable cause to believe that the suspect poses a threat of serious physical harm to the officer or others deadly force may be used if necessary to prevent escape and where feasible, some warning given.
4. Holding: Shooting an unarmed, non-dangerous suspect by shooting him dead is unreasonable and impermissible.

[2] Physical Intrusion into the Human Body

- K. **SCHMERBER v. CALIFORNIA** (1966) [drunk driver's blood tested during hospitalization after accident]
1. Issue: Whether the warrantless seizure of bodily fluids on less than probable cause is unreasonable and impermissible.
 2. Dictum: 4th Amendment protects personal privacy and dignity against unwarranted intrusions by state.
 3. Rule: Preston v. U.S.: when confronted by an emergency, in which the delay necessary to obtain a warrant under the circumstances, threatened the destruction of evidence.
 4. Holding: A warrantless seizure of bodily fluids is reasonable and permissible, under the **totality of circumstances**, when they are extracted to prevent the destruction/loss of evidence and the extraction occurs in a reasonable, safe and humane manner.
- L. **WINSTON v. LEE** (1985) [court order directing the surgical removal of a bullet from suspect for evidentiary purposes]
1. Issue: Whether it is reasonable for a state to compel surgical extraction of criminal evidence from a suspect's body.
 2. Rule:
 - a. **Case-by-case approach** for cases of surgical intrusion beneath the skin.
 - b. Schmerber Doctrine: (i) whether the procedure is life-threatening to subject; (ii) whether there are reasonable medical precautions taken and performed by a physician. A search for crime evidence may be unjustifiable if it endangers the life or health of the suspect; (iii) the extent of the intrusion upon the individual's privacy interests (i.e., blood test is commonplace).

- c. **4th Amendment Balancing Test** to assess govt'l interests against the individual's privacy expectations.
- 3. Holding: The risk of uncertainty posed by the medical procedure in extracting the crime evidence is unreasonable, and in light of failure of the state to demonstrate a compelling need for the evidence, impermissible.

XI. DUE PROCESS OF LAW & CONFESSIONS [Police Interrogation & Confession]

Due Process Clause of the 14th Amendment
 No State . . . shall deprive any person of life, liberty or property without due process of law

- A. Introductory Note
 - 1. **Coerced Confessions** were excluded from evidence at common law because they were perceived as untrustworthy.
 - 2. **Brown v. Miss.** (1936): Court overturned convictions based on confessions obtained after Δ had been whipped until they agreed to confess to dictated statements.
 - 3. Between 1936-1964, Due Process was the only basis on which state Δs' incriminating statements were found to be unconstitutional. During mid-1960s, Court held 5th Amendment Privilege against Self-Incrimination and 6th Amendment Right to Counsel also governed constitutional admissibility of incriminating statements.

[A] Police Overreach

- B. **ASHCRAFT v. TENNESSEE** (1944) [husband arrested and interrogated 36 hours for wife's murder]
 - 1. Issue: Whether it is inherently coercive to question a suspect for 36 hours without a break.
 - 2. Holding: Any confession after 36 hours without rest and food must be perceived as compelled and involuntary. There is uncontradicted evidence that what the police did was inherently coercive, violative of the **Due Process Clause of the 14th Amendment**, which stands as a bar against the conviction of an individual by means of a coerced confession.
 - 3. Jackson's Dissent:
 - a. Even where there was excess and abuse of power on the part of the police, the state was still entitled to use the confession if on the whole (**totality of circumstances**) it was found that the confession was made as a result of

deprivation of his free choice to admit, deny or refuse to answer, as opposed to from coercion.

- b. Coerciveness, according to the Court, also a factor of duration of interrogation. What duration is permissible before the interrogation becomes coercive?

<p>Voluntariness of Confession assessed from <u>totality of the circumstances</u>. Confession inadmissible by:</p> <ol style="list-style-type: none">1. Force/Threatened Force: “the mob will get you;” humiliating police procedures, food/drink/facilities/sleep deprivation; questioning for long periods of time; violence; infliction of pain (penile swab).2. Psychological Pressure: time of day; incommunicado interrogation, personal characteristics of suspect (education, psychological makeup, prior experience with police -- <u>Spano</u>); non-stop interrogation (<u>Ashcraft</u>).3. Promises of Leniency4. Deception: <u>Ill. v. Perkins</u>

C. Notes & Questions Section

1. Federal gov’t and many states have rules providing that arrestees must be arraigned before a magisterial judge without delay:
 - a. FED. R. CRIM. P. 5(A): “[A]n officer making an arrest under a warrant issued upon a complaint . . . shall take the arrested person without unnecessary delay before the nearest available federal magistrate judge.”
2. **McNabb-Mallory Rule**: One approach to **curbing** prolonged interrogations of suspects in custody is to hold that confessions obtained during a period of unnecessary delay in bringing the arrested suspect to a magistrate are automatically inadmissible.
3. **New York Procedure**: (prior to 1964) procedure where the trial court submitted Δ’s confession to the jury after determining reasonable minds might differ as to whether the confessions were voluntary. Jury directed to consider each Δ’s confession as evidence against the Δ, but only if the jury concluded the confession was voluntary.
4. **Massachusetts Procedure or Orthodox Procedure**: in Jackson v. Denno (1964), the Court held the New York procedure was violative of due process. After Jackson, states following Massachusetts or Orthodox Procedures.
 - a. **Orthodox Procedure**: the judge resolves evidentiary conflicts and makes own determination as to whether the confession is voluntary. If so, then the confession is introduced into evidence and the jury is instructed to consider it along with other presented evidence.

- b. **Massachusetts Procedure:** similar to Orthodox Procedure except that if the judge admits the confession, the jury is instructed as to the definition of a voluntary confession and told to consider the confession as evidence only if it finds that it was a voluntary confession.
- D. **SPANO v. NEW YORK** (1959) [Δ beaten up by a former boxer; Δ went to apartment, retrieved a gun and shot his assailant. Δ tricked into giving confession to his friend/police officer (deliberately elicited)]
- 1. **Issue:** Whether police are permitted to undertake extraordinary measures in order not to merely solve a crime, but to secure a confession from a suspect.
 - 2. **Holding:** Police may not undertake extraordinary, coercive measures to deliberately elicit/extract a confession from a suspect through trickery and compulsion. When such intent is shown, the confession obtained under those circumstances must be scrutinized.
 - 3. **Comment:** Decision had morality tone to it because of trickery through the use of Δ's friend.
- E. Notes & Questions Section
- 1. **Mincey v. Arizona** (1978): Δ seriously wounded in a narcotics raid. Δ questioned in ICU (encumbered by tubes, breathing apparatus and IVs), expressed a wish not to be interrogated. Detective questioned him, with Δ responding by writing; finally Δ wrote he wouldn't answer any other questions without a lawyer. Court held confession inadmissible because it was involuntary. Said it was clear Δ didn't want to answer questions, but weakened by pain, shock and isolated from family and counsel, and barely conscious, he was overborne.
- F. **COLORADO v. CONNELLY** (1986) [mentally ill man confesses to murder to officer on the street]
- 1. **Issue:** Whether a confession must be the product of a rational intellect and free will, absent police coercion.
 - 2. **Holding:** Coercive police activity (i.e., state action) is a necessary predicate to find that a confession is not voluntary within the meaning of the Due Process Clause of the 14th Amendment; absent state action, a confession does not have to be the product of a rational intellect and free will. The scope of the Exclusionary Rule will not be expanded to include the right of Δ to confess to a crime only when he is totally rational and properly motivated; there must be some type of coercive police activity to find a confession was involuntary.

3. Brennan's Dissent: Use of a mentally ill person's involuntary confession is antithetical to the notion of fundamental fairness in the Due Process Clause. Fundamental inquiry was whether the confession was free and voluntary.
4. Comment: Dissent missed point that due process permits Δ to plead insanity as defense to crime. Issue of reliability is backed up by extrinsic facts; how detailed Δ's information was about the crime in his confession.

G. Notes & Questions Section

1. Surprising: rejection of reliability as a relevant consideration for determining the admissibility of confession under federal constitutional law.

XII. 5TH AMENDMENT PRIVILEGE AGAINST SELF-INCRIMINATION & CONFESSIONS

<p><u>5th Amendment</u> No person . . . shall be compelled in any criminal case to be a witness against himself . . .</p>

[A] Constitutional Basis

- A. **MIRANDA v. ARIZONA** (1966) [4 cases with salient features of: incommunicado interrogation of individuals in a police-dominated atmosphere, resulting in self-incriminating sentences without full warnings of constitutional rights]
 1. Issue: Whether confessions obtained during custodial interrogation [inherently coercive] may be obtained are admissible if the police do not utilize safeguards to protect an individual's constitutional privilege against self-incrimination as prescribed by the 5th Amendment.
 2. Rule:
 - a. **Procedural Safeguards Standard**: prior to questioning, an individual must be warned he has the right to remain silent, any statement he makes may be used as evidence against him; he has the right to the presence of an attorney (retained or appointed). The individual may waive these rights, provided the waiver¹⁷ is made **knowingly, voluntarily** and

¹⁷ Inferring waiver from silence is impermissible. The record must show, or there must be an allegation and the evidence must show, that an accused was offered counsel but intelligently and understandingly rejected the offer. Anything less is not waiver. The fact of lengthy

intelligently. If an individual indicates any manner and at any stage of the process that he does not wish to be interrogated, the police may not question him. The mere fact that he may have answered some questions or volunteered some statements on his own does not deprive him of the right to refrain from answering further inquiries until he has consulted with an attorney and thereafter consents to be questioned.

- b. Warnings are a judicial prophylactic to protect the fundamental right against compelled self-incrimination because of the oppressive nature of station house questioning.
3. **Holding**: Statements, whether inculpatory or exculpatory stemming from custodial interrogation of an individual are inadmissible, unless the state demonstrates the use of procedural safeguards effective by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom in any significant way.
4. **Harlan's Dissent**: **Due Process Clauses** provide adequate tools for coping with confessions; even if the 5th Amendment Privilege Against Self-Incrimination is invoked, its precedents do not sustain the present rules. The Rules derive analogy from precedents under the 6th Amendment.

Analyzing a Miranda Problem:

1. was there custody or an equivalent;
2. was there police questioning or an equivalent;
3. were Miranda warnings given;
4. did Δ seek to invoke his 5th Amendment rights or not;
5. how Δ invoked his rights; and
6. was there waiver invoked before/after rights were given.

- B. **NEW YORK v. QUARLES** (1984) **PUBLIC SAFETY EXCEPTION**
[suspect pursued by police tosses his gun away in a storeroom; after apprehension, the police asked him where his weapon was on the scene without *mirandizing* him]
1. **Issue**: Whether mere inquiry of a suspect by police under exigent circumstances, without notifying a suspect of his Miranda rights is violative of the 5th Amendment.
 2. **Rule**: **Public Safety Exception** to the Miranda warnings requirement be given before a suspect's answers may be admitted

interrogation or incommunicado interrogation before a statement is made is strong evidence that the accused did not validly waive his rights.

into evidence and that the availability of the exception does not depend upon the motivation of the officers involved.

- a. The underpinnings of Miranda do not require that it be stringently applied to an exigent situation which police ask questions reasonably prompted by an immediate concern for public safety.
 3. Holding: The need to answer questions in a situation posing a threat to public safety outweighs the need for the prophylactic rule protecting the 5th Amendment's privilege against self-incrimination.
 4. O'Connor's Dissent: rule will cause police confusion; they might act under what they perceive to be in the interest of public safety and a reviewing court will view the objective circumstances different and require exclusions of admissions.
 5. Comment:
 - a. Quarles is inconsistent with Miranda because it created an **exception**; suggests that Miranda is not constitutionally-based by calling the rule "prophylactic."
 - b. Because it's a prophylactic rule, it's a balancing of interests: a cost-benefit analysis.
- C. **DICKERSON v. U.S.** (2000) [district court holding that the confession made by an armed bank robber claiming he was not *mirandized* prior to FBI interrogation was inadmissible under provisions of 18 U.S.C. § 3501]
1. Issue: Whether a federal law¹⁸ (intending to overrule Miranda v. Ariz.) stipulating a rule that the admissibility of confessed statements should turn solely on whether they were voluntarily given is constitutionally permissible.
 2. Rule: 2 constitutional bases for the requirement that a confession be voluntary to be admitted into evidence:
 - a. **5th Amendment Privilege Against Self-Incrimination**: coercion inherent in custodial interrogation blurs the line between voluntary and involuntary confessions, and heightens risk that an individual will not be accorded 5th Amendment rights against self-incrimination.
 - b. **Due Process of 14th Amendment Voluntariness Test**: takes into consideration the totality of surrounding circumstances; the characteristics of the accused and the details of the interrogation.
 3. Dicta:
 - a. Congress may not legislatively supercede Court's decisions in applying and interpreting the Constitution.

¹⁸ 18 U.S.C. § 3501 used a totality of circumstances voluntariness test.

- b. Question turned on whether Miranda was an announcement of a constitutional rule or an exercise of supervisory authority in absence of congressional direction (i.e., creation of an exception in Quarles and references to the rule as “prophylactic.”)
- c. Opinion replete with indications the Court believed to be imposing a constitutional rule and invitation for Congress for legislative action to protect constitutional rights against coerced self-incrimination, and found the totality of circumstances test insufficient.
- d. Miranda also embedded in routine police practice (totality of circumstances theory difficult to apply in the field as guide for police) and American culture.
- e. Holding: Miranda is a constitutional decision and may not be overruled by an Act of Congress (which gives insufficient protections); the Miranda Doctrine governs the admissibility of statements made during custodial interrogation in state and federal courts.

[B] What is Custody and When Does it Occur?

Totality of Circumstances Test for Custody

- D. BERKEMER v. McCARTY (1984) [intoxicated motorist stopped by highway patrol, charged with a traffic offense and interrogated without being *mirandized*; suspect gave incriminating information on drug use]
 - 1. Issue:
 - a. Application to Minor Offense: Whether statements made during custodial interrogation accused of a misdemeanor offense are admissible.
 - b. Meaning of Custody: Whether the roadside detention of a motorist detained pursuant to a lawful (“Terry”) traffic stop constitute custodial interrogation requiring Miranda warnings.
 - 2. Rule: Berkemer Inquiry: how a reasonable man in the suspect’s position would have understood a situation (i.e., the functional equivalent of arrest).
 - 3. Dicta:
 - a. Police are often aware when they arrest a person whether he may have committed a felony or misdemeanor (i.e., an unarticulated plan to arrest), which is immaterial to situation.
 - b. Traffic stops (analogous to a Terry stop) are: temporary and brief; circumstances typically are not such that a motorist feels at the mercy of the police; traffic stops are public. The initial stop of a motorist’s car in itself is not custody.
 - 4. Holding:
 - a. An individual subjected to custodial interrogation is entitled to the benefit of Miranda procedural safeguards regardless

of the severity of the offense of which he is suspected or for which he was arrested.

- b. Miranda safeguards are applicable as soon as a suspect's freedom is curtailed to the degree associated only with formal arrest.

E. Notes & Questions Section

1. Stansbury v. California (1994): police questioned a witness (to a murder victim's disappearance) without *mirandizing* him; witness made an incriminating admission and then police gave him Miranda warnings. Court held an officer's subjective and undisclosed view concerning whether the person being interrogated is a suspect is irrelevant to the assessment whether the person is in custody; case remanded for evaluation under Berkemer Inquiry of whether suspect perceived himself to be in custody.
2. Oregon v. Mathiason (1977): held when a suspect comes voluntarily to the police station in response to an invitation by the police, he will not necessarily be in custody.

[C] What is Interrogation and When Does it Occur?

- F. RHODE ISLAND v. INNIS (1980) [police conversation in front of murder suspect, decrying the misfortune of the possibility of a handicapped child finding the hidden murder weapon and injuring themselves]
1. Issue: Whether an individual is interrogated by police carrying on a conversation in his presence (likely to evoke an incriminating response) is in violation of his Miranda rights to remain silent.
 2. Innis Interrogation Test
 - a. express questioning and
 - b. the functional equivalent of interrogation: any words or actions on the part of the police (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.
 3. Dicta:
 - a. Custodial interrogation is questioning initiated by police after a person has been taken into custody or otherwise deprived of his freedom in a significant way. Court was concerned over interrogation environment.
 - b. The fundamental import of 5th Amendment Privilege is the voluntariness of statements.
 - c. Police conduct is not the functional equivalent of direct questioning whether or not it is punctuated by a question mark. Dialog wasn't a harangue, comments not evocative and police not aware of Δ's susceptibility to persuasion.

4. Holding: A suspect's incriminating response must not be the product of words or action on the part of the police that should have known were reasonably likely to elicit an incriminating response.
5. Comment: Functional equivalent of interrogation focuses on the perceptions of the suspect (not the intent of the officer). The officer's subjective intent to elicit an incriminating response by his words/actions are not key. The mental state of the officer might be relevant in determining whether an interrogation has occurred. Any knowledge the police have concerning the susceptibility of a suspect to a particular form of persuasion might be an important factor in determining whether the police should've known their words/actions were reasonably likely to elicit an incriminating response.
 - a. Brewer v. Williams' "Christian Burial Speech" probably would've satisfied the Innis Test if the Court analyzed it under the 5th instead of the 6th Amendment.

- G. **ILLINOIS v. PERKINS** (1990) **EXCEPTION** [undercover officer who doesn't give Miranda warning tricks inmate into confessing to committing an unsolved murder]
1. Issue: Whether an undercover officer must give Miranda warnings to an incarcerated suspect before asking him questions that may elicit an incriminating response.
 2. Rule: **False Friends Doctrine** used to elicit a voluntary confession from a suspect doesn't violate 5th Amendment.
 3. Dicta:
 - a. Conversations between suspects and undercover agents do not implicate Miranda. The essential ingredients are a police-dominated atmosphere and compulsion are not present. Coercion is determined from perspective of suspect.
 - b. Miranda warnings are not required whenever a suspect in custody converses with an undercover agent. Miranda prohibits coercion, not mere strategic deception by taking advantage of a suspect's misplaced trust in a fellow prisoner.
 4. Holding: An undercover officer posing as a fellow inmate does not need to give Miranda warnings to an incarcerated suspect before asking questions that may elicit an incriminating response.

[D] What is a Waiver and When Does it Occur?

- H. **NORTH CAROLINA v. BUTLER** (1979) [suspect convicted of kidnapping, armed robbery and felonious assault; mirandized and said he understood his rights, refused to sign a waiver, but confessed w/o counsel]

1. Issue: Whether per se rule requirement of written waiver of Miranda rights is specifically required.
2. Dicta:
 - a. Express written/oral statement of waiver of right to remain silent or right to counsel is usually strong proof of validity of waiver, but is not inevitably necessary or sufficient to establish waiver. Question is not of form, but whether Δ **knowingly** and **voluntarily** waived Miranda rights.
 - b. Mere silence is not enough. Does not mean, however, that silence, with an understanding of his rights and course of conduct indicating a waiver, may never support a conclusion that Δ waived rights.
3. Holding: Waiver must be determined on **totality of circumstances**, including the background, experience and conduct of the accused.

Elements of Valid Miranda Waiver

"[A] defendant may waive effectuation of [his] rights, provided that the waiver is made voluntarily, knowingly and intelligently."

- Johnson v. Zerbst: strict waiver standard declaring a constitutional right may not be waived unless there is an intentional relinquishment or abandonment of a known right or privilege.
 - State must prove waiver was knowing, intelligent & voluntary by preponderance of the evidence. (Colo. v. Connelly)
 - Waiver assessed on a **Totality of Circumstances**.
1. **Voluntariness**: the product of free and deliberate choice rather than intimidation, coercion or deception. Moral and psychological pressures to confess are coercive.
 2. **Knowing & Intelligent Waiver**: Waiver must be made with full awareness both of the nature of the right being abandoned and the consequences of the decision to abandon it.
 - Rule not strictly enforced; see Oregon v. Elstad, infra.

- I. **COLORADO v. SPRING** (1987) [Δ arrested for murder; mirandized and questioning ceased. 3 months later suspect questioned on firearms charges, mirandized and confessed to murder]
 1. Issue: Whether a suspect's (knowing and intelligent waiver) awareness of all the crimes about which he may questioned is relevant to the validity of his decision to waive 5th Amendment privilege.
 2. Rule: **Moran v. Burbine Totality of Circumstances Test** to determine whether a waiver is coerced:
 - a. relinquishment of right must be voluntary by deliberate choice rather than intimidation, coercion or deception;

- b. waiver must've been made with a full awareness both of the nature of the right being abandoned and the consequences of the decision to abandon it.
- 3. Dicta:
 - a. Statement is not compelled if it's made knowingly, intelligently and voluntarily.
 - b. Instant case: Δ waived his rights knowingly and intelligently. Police did not employ trickery, therefore the waiver was also voluntarily.
- 4. Holding: Failure of law enforcement officials to inform a suspect of the subject matter of an interrogation does not impact validity of 5th Amendment privilege waiver.

J. Notes & Questions Section

- 1. Moran v. Burbine (1986): Δ's sister set up an attorney for Δ after arrest. Attorney telephone station house and was assured Δ wouldn't be questioned; police mirandized and interrogated him anyway. Δ waived 5th Amendment privilege and confessed. Court held that police's conduct was not deceptive; they're under no obligation to provide with a flow of information to help him calibrate his self-interest in deciding whether to speak or stay silent.
- 2. Conn. v. Barrett (1986): Held that waiver was valid despite the fact at the time of waiver, Δ was in a psychotic state that lend him to believe God ordered him to either confess or commit suicide. Voluntariness of waiver goes to police overreach, not "free choice" in the broader sense of the phrase. Miranda protects against gov't coercion leading the surrender of 5th Amendment rights and no further.

[E]? What Must an Accused do to Invoke Miranda's Protection?

Preponderance of the Evidence Standard

- K. MICHIGAN v. MOSLEY (1975) [suspect mirandized and interrogated on a robbery case for 20 minutes; suspect invoked rights and questioning ceased. Later that day, suspect mirandized and interrogated about a fatal shooting during another robbery attempt; Δ made statement implicating himself. Suspect never asked for a lawyer or to cease questioning]
 - 1. Issue: Whether questioning may resume after a suspect has invocation of Miranda rights.
 - 2. Rule: Admissibility of statements obtained after the person in custody has decided to remain silent depends under Miranda whether his right to cut off questioning was scrupulously honored.

3. Dicta: Interrogation must cease when the person in custody indicates he wishes to remain silent. Miranda does not stipulate under what circumstances a resumption of question is permissible.
 4. Holding: Once a suspect has invoked his 5th Amendment rights, questioning may resume only after passage of a significant period of time, provision of a fresh set of warnings and restriction of the 2d interrogation to a crime not the subject of an earlier interrogation.
- L. **EDWARDS v. ARIZONA** (1981) [suspect arrested, *mirandized*, acknowledged his rights and submitted to questioning. Δ told another suspect implicated him; Δ made a taped alibi defense and wanted to make a deal. When told officers didn't have authority, Δ asked for counsel. Questioning ceased, but resumed the next morning; Δ implicated himself]
1. Issue: Whether right to counsel is waived after invocation, when a suspect responds to further police-initiated custodial interrogation.
 2. Dicta:
 - a. Waivers of counsel must be voluntary, knowing and intelligent relinquishment/abandonment of a known right or privilege, depending upon the totality of the circumstances. Johnson v. Zerbst.
 - b. Accused may validly waive rights and respond to interrogation. NC v. Butler.
 3. Holding: When an accused has invoked his right to counsel during 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; once a desire to seek counsel is expressed, a suspect is not subject to further police interrogation unless he initiates further communication, or exchanges.
 4. Comment: **Right to Counsel Waiver Standard**
 - a. Communication initiated by the suspect and
 - b. it was a knowing and intelligent waiver.
- M. **DAVIS v. UNITED STATES** (1994) [sailor-suspect accused of beating a man to death with a pool cue ambiguously invoked right to counsel]
1. Issue: Whether an ambiguous invocation of 5th Amendment rights prohibits further interrogation of a lawfully arrested suspect.
 2. Rule: At a minimum, invocation of Miranda rights requires some statement that can be reasonably construed to be an expression of a desire for counsel. If a statement is ambiguous, so that a reasonable officer understood that a suspect "might" be invoking his right to counsel, cessation of interrogation is not required.
 3. Dicta:
 - a. Waiver of right to counsel must be made knowingly, intelligently and voluntarily. But if suspect asks for counsel

at any time during interview, he is not subject to further questioning until a lawyer is made available or suspect initiates communication. (Edwards v. Ariz.)

- b. If suspect waives right to counsel, police are free to question him (NC v. Butler).
 - c. If a suspect is indecisive in his request, the officers need not always cease questioning.
4. Policy: Edwards Rule is bright line and easily applied; if Court required questioning cease if a suspect made an ambiguous statement, it would impose a significant burden on the police's investigatory efforts.
 5. Holding: A suspect seeking to invoke his 5th Amendment right to counsel must make his request unambiguously so that a reasonable police officer in the circumstances would understand the statement to be a request for an attorney; if the statement fails to meet the requisite level of clarity (knowing and voluntary), the Edwards Rule does not require officers cease questioning.

N. Notes & Question Section

1. Oregon v. Bradshaw (1983): Addressed scope of initiation of communication. Δ asked "what's going to happen to me now?" Held altho' ambiguous, suspect's question evinced a willingness and desire for a generalized discussion about the investigation. Some inquiries do not qualify as initiation because the Δ isn't trying to establish dialog (e.g., a request for water). Once a Δ initiates communications, Miranda rights are waived.
- O. MINNICK v. MISSISSIPPI (1990) [suspect accused of murder; refused to be interrogated but was told he had to "or else." Agents mirandized suspect and he acknowledged understanding them. He refused to sign a waiver but confessed to aspects of the crime. He was reminded by agents he didn't need to speak; suspect told them he would make a more complete statement in the presence of counsel. After meeting with counsel, suspect was mirandized, and reinterrogated and confessed]
1. Issue: Whether a suspect may be subsequently reinterrogated after invocation of his right to counsel and has had the opportunity to meet with his attorney.
 2. Edwards Rule: prevents police from badgering suspect into waiving asserted Miranda rights; ensures statements made in subsequent interrogations is not compelled.
 3. Dicta:
 - a. Edwards' protection does not cease once counsel has consulted with the suspect; the requirement that counsel "be made available" to the accused refers to more than one opportunity to meet.

- b. One meeting doesn't remove suspect from persistent attempts by officials to persuade him to waive his rights or the coercive pressures accompanying custody.
- 4. Holding: Once a suspect has invoked his 5th Amendment right to counsel, interrogation must cease and officials may not reinitiate interrogation without the presence of counsel, whether or not the accused has consulted with his attorney; right encompasses right to consult prior to questioning and to have counsel present during subsequent questioning if suspect so desires.

P. Notes & Questions Section

- 1. Arizona v. Roberson (1988): Held that Edwards Rule applies even when different officers seek to interrogate a suspect about separate crimes. Invoking Miranda right to counsel as to one offense precludes police questioning on other offenses, unless communication is initiated by the suspect.

XIII. THE SIXTH AMENDMENT RIGHT TO ASSISTANCE OF COUNSEL AT TRIAL

<p><u>6th Amendment</u> In all <u>criminal</u> prosecutions, the accused shall enjoy the right . . . to have the assistance of Counsel for his defence.</p>

A. Introductory Note

- 1. Whether an indigent criminal Δ is entitled to be represented by an attorney at trial to insure that the trial will accord with fundamental fairness.
- 2. Consider attorney's role at trial and the relationship between the attorney's performance and Δ's right to a fair trial.
- 3. What is meant by the phrase "criminal prosecutions?" Should the Court be bound by the history and text of the 6th Amendment, or take into practical considerations relating to the expense of providing counsel for thousands of indigent Δs?

Scope of suspect's right to representation prior to trial

- B. GIDEON v. WAINWRIGHT (1962) [Δ forced to defend himself at misdemeanor trial because under state law right to counsel provided for indigents only for capital offenses]
 - 1. Issue: Whether a state statute denying appointment of counsel to indigent defendants in all crimes except capital offenses is violative of the 6th Amendment Right to Assistance of Counsel at Trial.
 - 2. Holding: The 6th Amendment provides in all criminal prosecutions, the accused shall enjoy right to assistance of counsel for his

defense, which is made obligatory on the states by the 14th Amendment, and that an indigent defendant in a criminal prosecution in a state court has the right to have counsel appointed for him.

3. Comment: Overturned Betts v. Brady (1942) which held that not every indigent defendant accused in a state criminal prosecution was entitled to appointment of counsel; a determination had to be made in each individual case whether failure to appoint counsel was a denial of fundamental fairness.

C. Notes & Questions Section

1. Carnley v. Cochran (1962): Held that waiver of right to counsel assistance at trial must be explicit; presuming waiver from a silent record is impermissible. The record must show, or there must be an allegation and evidence which show the accused was offered counsel, but intelligently and knowingly rejected the offer.
2. Faretta v. California (1975): altho' a Δ need not have the skill and experience of a lawyer in order to competently and intelligently choose self-representation, he should be made aware of the dangers and disadvantages of self-representation, so that the record will establish he knows what he is doing and made his choice with eyes wide open.
3. ABA Standards: before accepting a waiver of counsel, the court should inquire whether the accused apprehends the nature of the charges, the offenses included within them, the allowable punishments, possible defenses to the charges, and circumstances in mitigation thereof.
4. McMann v. Richardson (1970): Court recognized the right to counsel is the right to effective assistance of counsel.
5. Strickland v. Washington (1984): Court established standards for showing Δ deprived of effective counsel: (1) attorney's performance was deficient when measured against an objective standard of reasonableness; and (2) Δ was prejudiced in the sense there was a reasonable probability that but for counsel's deficient performance, the result of the proceeding would've been different.

D. SCOTT v. ILLINOIS (1979)

1. Issue: Whether the 6th and 14th Amendments require states provide trial counsel to an indigent defendant at the state's expense when the defendant faces a penalty of imprisonment
2. Holding: The 6th and 14th Amendments require only that no indigent criminal defendant be sentenced to a term of imprisonment unless the state has afforded him the right to assistance of appointed counsel in his defense.

XIV. CONFESSIONS AND THE RIGHT TO ASSISTANCE OF COUNSEL

A. Introductory Note

1. 6th Amendment Right to Counsel is **offense-specific**. Issue is not just whether formal judicial proceedings have commenced, but whether such proceedings are commenced in regard to the **specific crime that is at the heart of the legal dispute**.
2. regulates gov't efforts to admit suspects' incriminating statements; bars pre-trial admission into evidence statements made by Δ to a gov't agent.
3. If trial counsel is necessary to ensure a fair trial (Gideon v. Wainwright), then the presence of counsel at the pre-trial state in which police are seeking to obtain incriminating statements from a suspect is also necessary to ensure fair trial.
 - a. If police are permitted to engage in practices that would never be permitted in a courtroom, they might be able to obtain sufficient admissible incriminating statements to ensure conviction. Engaging in these types of pre-trial practices can render a trial an empty formality.
4. Extending Gideon to the pre-trial phase could also be inappropriate; admission of statement at the suspect's trial would be challenged by an attorney who can point out why the statement was inaccurate or unreliable.

B. **MASSIAH v. UNITED STATES** (1964) [merchant seaman arrested, arraigned and indicted for narcotics possession; informant cooperated with gov't and obtained a taped/bugged confession from suspect]

1. Issue: Whether authorities may use incriminating statements surreptitiously and deliberately elicited¹⁹ from a suspect after he has been indicted and in the absence of counsel.
2. Dicta: Once the pre-trial phase has commenced, it's a critical time and a Δ is no less-entitled to right to counsel than prior to booking.
3. Holding: Surreptitiously and deliberately eliciting incriminating statements from a suspect after he has been indicted and absent his counsel is constitutionally violative of the 6th Amendment Right to Counsel, and the evidence is inadmissible at trial.
4. Comment:
 - a. Case brought 6th Amendment right outside of courtroom; police (in the absence of counsel) may not elicit incriminating evidence from a suspect against whom adversarial proceedings have commenced.

¹⁹ **Deliberate Elicitation**: Occurs when gov't agent purposely elicits an incriminating statement from the accused (i.e., when it is his conscious object to obtain a statement from the defendant).

- b. 4th Amendment doesn't apply because arrest was lawful; Miranda (5th Amendment) doesn't apply because there was no custody implications.
 - c. Practical effect of Massiah Rule: in the instance of surreptitious deliberate elicitation of incriminating statements from an accused, the police must either reveal its presence and afford the opportunity to consult with counsel or suffer the exclusion of the product from the encounter at trial.
 - d. Lawyers' roles:
 - (1) provide assistance in encounters where suspect's weakness, ignorance or inertia threatens in an unjust conviction;
 - (2) provide "preventive" assistance, ensuring gov't power doesn't "crush" the hapless Δ, ensuring a fair chance of winning and
 - (3) provide adversarial assistance (i.e., "guardian of the fortress") – presumed Massiah justified on this basis.
- C. **BREWER v. WILLIAMS** (1977) [suspect murdered child and was arraigned; detective elicited confession of where child's body was secreted in the "Christian Burial Speech"]
- 1. Issue: Whether custodial interrogation continue once the suspect has been arraigned and the right to counsel invoked.
 - 2. Holding: Once the right to counsel has been invoked and the suspect has refused to answer, any evidence obtained through continued custodial interrogation is inadmissible.
 - 3. Comment:
 - a. the **functional equivalent of deliberate elicitation**.
 - b. case could've also been analyzed under RI v. Innis.
- D. Notes & Questions Section
- Waiver of 6th Amendment Right to Counsel**
- 1. **Michigan v. Jackson** (1986): Held that the Edwards Rule (which applies when a Δ has been given Miranda warnings invokes his right to an attorney) also applies to a Δ who requests an attorney after being formally charged with a crime. Edwards Doctrine applied because the reasons for prohibiting the interrogation of an uncounseled prisoner who requested an attorney's help are even stronger after formal charging than before.
 - a. (i) 6th Amendment Right to Counsel is offense-specific; Jackson Rule applies when formal judicial proceedings have been commenced; (ii) Δ requested counsel at a judicial proceeding (but Edwards applies if the request for a lawyer can be reasonably construed to be an expression of a desire in dealing with custodial interrogation); (iii) there may be

restrictions as to when a suspect may request an attorney in the Edwards context, whereas under Jackson, a request can be made anytime.

2. Patterson v. Illinois (1988): Held an accused who has been mirandized has been sufficiently apprised of the nature of his 6th Amendment rights and the consequences of abandoning those rights, so that his waiver on this basis is regarded as knowing and intelligent. In a footnote, the Court indicated that in some situations, the standards for waiver of Miranda and 6th Amendment would be different:
 - a. waiver of Miranda where suspect was not told his attorney was trying to reach him; and self-incrimination to an undercover policeman (no custody), however, once the accused is indicted, such questioning is prohibited.
3. Moran v. Burbine (1986): Court rejected an uncharged suspect's right to counsel claim. The 6th Amendment becomes applicable only when the gov't's role shifts from investigative to accusation. Right to counsel doesn't attach until the initiation of formal charges.
4. Texas v. Cobb (2001). Court addressed scope of offense-specific entitlement to counsel. Burglary suspect denied involvement with disappearance of robbery victims and was indicted for that crime. His father informed police his son admitted to murdering the woman and child. Police arrested Δ and mirandized him; Δ confessed. Findings:
 - a. 6th Amendment attached only to offense-specific crimes and formal charges for those offenses. Therefore, Δ 's right to counsel did not attach for the murders;
 - b. (i) suspects aren't left unprotected because authorities must honor Miranda Doctrine and (ii) Constitution must be construed with the recognition that society has an interest in police's ability to talk to witnesses and suspects;
 - c. an offense is limited to "four corners" of the charging instrument; two offenses are the same only when all of the statutory elements of one offense are included within the statutory elements of the other offense (Blockburger v. U.S.).

- E. UNITED STATES v. HENRY (1980) [suspect indicted and jailed (pending trial) for armed robbery makes incriminating statements to informant who was told not to initiate the conversation]
1. Issue: Whether deliberate elicitation of incriminating statements by an indicted suspect by a false friend constituted interference with 6th Amendment Right to Counsel.
 2. Dicta:

- a. Consideration for informant's deliberate elicitation: (i) informant was paid; (ii) informant was a false friend and (iii) Δ was indicted.
- b. Altho' agent said he did not intend the informant to take affirmative steps to secure incriminating evidence, the agent must have known that such contact would lead to that result.
3. Holding: Deliberate elicitation occurs when the police undertake activity that they know will lead to the self-incrimination of an indicted suspect; such conduct unlawfully interferes with a suspect's 6th Amendment right to counsel.
4. Comment: Elicitation in this case was less than purposeful, but Court found that gov't intentionally created a situation likely to induce the suspect to make incriminating statements without assistance of counsel (i.e., **knowledge**, but appears to be more like **reckless**).

Current Law

- F. **KUHLMANN v. WILSON** (1986) [suspect arraigned and jailed for the murder makes incriminating statements to a false friend/passive listener]
 1. Issue: Whether self-incriminating statements made by an arraigned suspect to a false friend who is a passive listener (i.e., did not deliberately elicit) is violative of the 6th Amendment Right to Counsel.
 2. Holding: Mere listening by a passive listener of incriminating statements made by an arraigned suspect is not deemed deliberate elicitation, violative of a suspect's 6th Amendment Right to Counsel.
 3. Comment: Elicitation can be "subtle" and passive.

Elements of Valid 6th Amendment Right to Counsel Waiver

"[A] defendant may waive effectuation of [his] rights, provided that the waiver is made voluntarily, knowingly and intelligently."

- Johnson v. Zerbst: strict waiver standard declaring a constitutional right may not be waived unless there is an intentional relinquishment or abandonment of a known right or privilege.
 - Waiver requires not merely comprehension, but relinquishment (contra Brewer v. Williams when Δ spoke with 2 attorneys before confessing). Once 6th Amendment Right to Counsel attaches, gov't may no longer deliberately elicit information until suspect has consulted with an attorney unless the suspect initiates communication; extension of Edwards v. Arizona (see Michigan v. Jackson).
 - Same as for Miranda:
- 1. **Voluntariness**: the product of free and deliberate choice rather than intimidation, coercion or deception. Moral and psychological pressures to confess are coercive.
- 2. **Knowing & Intelligent Waiver**: Waiver must be made with full awareness both of the nature of the right being abandoned and the consequences of the decision to abandon it.

[NOTE: need to correct and update Chart]

Right to Counsel Summary: 6th Amendment v. Miranda: Policies underlying the constitutional protections are distinct. In some instances, <u>Miranda</u> right to counsel may apply when the 6th Amendment does not and vice-versa.		
	6th Amendment	<u>Miranda</u>
When Right to Counsel Attaches	- (i) only <u>after</u> adversary judicial criminal proceedings have been initiated against accused; (ii) can attach in circumstances in which <u>Miranda</u> doesn't apply; (iii) prohibits deliberate elicitation;* (iv) applies to deliberate elicitation by undercover agents.	- (i) 5th Amendment may attach earlier; (ii) doesn't attach unless accused is in <u>custody</u> ; (iii) applies when custodial suspect is interrogated;* (iv) does not apply to undercover agents.

Waiver	(i) bar to police questioning during a judicial proceeding or while in police custody preceding or during interrogation; (ii) because 6th Amendment is offense-specific, invocation of right to counsel does not bar questioning on unrelated charges.	(i) police do not have to cease interrogation of a suspect who requests a lawyer unless the request occurs under circumstances which can be reasonably be construed to be an expression for assistance in dealing specifically with custodial interrogation; (ii) once right is invoked, suspect may not be questioned on any other charges in absence of counsel.
Exclusionary Rule	Applies to 6th Amendment	Rarely applies to <u>Miranda</u> .

* Miranda focuses on the suspect, and the test is objective based on a finding of negligence by the officer. 6th Amendment right focuses on the intentions of the officer and requires proof of deliberate misconduct.