**The 4th Amendment**

1. **Competing Theories:**
   1. **Warrant Preference Theory:** Posits that the 4th Amendment’s Warrant Clause modified its reasonableness clause
      1. Searches are generally unreasonable unless authorized in advance by a warrant
      2. Warrantless searches are permitted ***only*** when so-called “exigent circumstances” or “special needs” make it ***impossible*** or ***impracticable*** to obtain a warrant in advance
      3. These are “well defined exceptions” to the warrant requirement referred to at the end of the *Katz* majority opinion
         1. Warrants must be supported by PC and particularly describe what is to be searched or seized
            1. Need PC and an oath or affirmation describing the place to be searched, persons or things to be seized
   2. **Reasonableness Theory:** Postulates that the Reasonableness Clause is grammatically independent of the Warrant Clause
      1. Under this readingof the 4th- requires ***reasonableness***
         1. Search of homes- generally need a warrant
         2. Seems to conceive of warrants as a way for judges to supervise police work, as it permits even searches based on invalid warrants, as long as officers ***reasonably relied*** on the warrant’s validity
      2. Evaluates every search with the ***balancing test*** that the Warrant Preference Theory reserves for “special needs” cases
   3. **Structure**
      1. The doctrine is that the warrant clause is preferred, and there are many exceptions to the warrant clause
      2. Significant minority believe that all is required is that a search be reasonable, not that a warrant is required
2. **Reasonableness Clause** 
   1. **Is there a search?- Persons, houses, papers, and effects**
      1. ***Katz v. US*-** What is not a “search”
         1. “What a person knowingly exposes to the public, whether in their own home or office is not subject to the 4th Amendment protection
            1. “Public” is any other person
            2. Any other person means ANY and ALL other persons
            3. Thus, the 4th Amendment protection has little scope, begin with a ***narrow*** privacy interest. 4th also ***only applies*** to ***state action***.
         2. Tapping conversation in phone booth is a search
         3. **Power to make things private:** “Protection of a person’s general right to privacy is largely left to the law of individual states”
         4. **Who Decides what society recognizes as a “reasonable expectation of privacy?”**
            1. SCOTUS. No polling, empirical study, etc. SCOTUS uses assessment of what society would recognize as private
         5. ***Katz* examples: No Search**
            1. Wired informant, open fields, bank records.
         6. **Test:** (1) A person must have exhibited an actual ***expectation of privacy*** and (2) that expectation must be one that society is prepared to ***recognize as reasonable***
            1. **Impact-** Two huge limits on 4th Amendment Privacy:

Person must exhibit a subjective privacy interest (rarely at issue)

Exception is reasonable (almost always at issue- Decided by SCOTUS)

Note: If you expose it to another person there is no 4th amendment privacy, thus, not a search (***Katz***)

* + - * 1. Established by Justice Harlan

From the living constitution theory of thought- SCOTUS making stuff up. Originalists just look at history and text of 4th itself.

* + - * 1. ***Katz*** makes it clear that the 4th Amendment protects ***people not places***
        2. ***The Problem with Katz*** is that it tracks societal shifts, it isn’t frozen in line.

Not the reasonable expectation of privacy when written, reasonable expectation in 2017

Trajectory of 4th A. Privacy in the face of technology is to obliterate most privacy. ***Jones prevents complete annihilation***.

* + 1. ***Oliver v. US*-** Open Fields Case
       1. ***Open fields are not houses or effects***
       2. Using text, majority cannot see how framers meant to include open fields under the 4th Amendment. Open fields do not provide the forum to conduct private activities outside the view of the government
          1. Ex. Of SCOTUS applying history to interpretation of 4th Amendment.
       3. Administrative Convenience of the Court: Cannot look at whether privacy in open fields is protected by the 4th. If it were true, Police would have to guess before each analysis whether or not an open field is protected sufficiently by fences and such to establish right to privacy under the 4th
       4. **Test:** Established a bright line rule that ***open fields*** are ***not a place society accepts as possessing a privacy interest***
          1. Weighed intention of framers (in regard to 4th), uses which individual has put a location, societal understanding that certain areas deserve protection from government invasion
          2. ***Open fields are*** ***not the same as curtilage*** (part of sanctity of home)

Even if “No Trespassing” is posted. Not places in text. Contrary to societally recognized place of privacy. (Laws against Trespass)

* + 1. ***Katz*: Person/Property Relationship**
       1. 4th Amend. Protects persons, things, and certain places (e.g. the home). ***Prior to Katz*** the 4th doctrine ***focused on*** intrusions into tangible persons or places
       2. ***Katz*** clearly expanded the 4th into less tangible electronic signals of the human voice
          1. Declaration that the 4th protects people not places is misleading. Places, property & people, remain important and are often ***inextricably linked***
    2. **Modern Problems & Technology**
       1. See GPS below.
       2. Such issues provide a conundrum of sorts. Cars and carriages can be credibly analogized. What about phone calls? With technology, ***efforts to stick strictly to text and history*** can be challenging. Encouraging departure to other measures of constitutionality. E.g. The ***Katz*** societally accepted exception of privacy.
    3. **The Balance:**
       1. Balance between privacy and public safety. Sometimes is expressly articulated by Court, sometimes implicit.
          1. ***Oliver-*** Expressly present. Open fields never protected by 4th. Never enumerated. Law enforcement considerations in favor of bright line. Implicit administrative benefit to Court that there is no need to examine factually distinct open fields cases.
       2. **Bright Lines-** Note that Bright Lines can either expand or contract potential scope of privacy. In ***Oliver***, the Bright Line contracted the scope of privacy
       3. ***Katz*** is the articulated test. Text, history, original intent, precedent, administrative concerns, and the balance between privacy and law enforcement are ***all factors to be balanced***.
    4. ***Jones v. US***- GPS Search & Floor for Search
       1. Here, Jones is running a “largescale drug op” and the feds attach a GPS tracker to his car. Majority does not use the ***Katz*** test because the convicted ***does not have*** a reasonable expectation of privacy to the exterior of his car.
       2. Court: this was a search because it would have been a search in the 1700’s when the 4th was written
          1. Distinguishes between cases where beepers are put in barrels with consent of a 3rd party before the barrels are transferred to a person the beeper is used to spy on
          2. This case turns on an issue of trespass. Had the GPS been put on the car before Jones possessed it with the consent of the previous owner/possessor, would not have been a search.
       3. **GPS-** cheap and effective by design, avoids ordinary checks that constrain abusive law enforcement practices. Consider the implications and characteristics.
       4. **Test:** Is the intrusion in or on an area enumerated in the 4th Amendment that would have been considered a search ***at the time*** the Amendment was adopted?
          1. Done first, if the thing was proscribed at the time the 4th was written, it’s a search. If its agreed it’s a search, its done. No need to do a ***Katz*** analysis

Pertains to history and text. If you can analogize Car-Carriage good, if not just try.

* + - * 1. The test used before ***Katz***. If not deemed a search, move to ***Katz test and analyze***
        2. Note: ***Jones test*** in this instance provides a bright line rule which establishes a search with a far lower bar than ***Katz***
    1. **Overview**
       1. **Areas Enumerated-** Persons, houses, papers, effects
       2. **Searches in late 1700’s-** Historical inquiry into what founders thought was search & what was actually done then. Then, analogize to today.
       3. **Who decides view of society & how?**
          1. Who- SCOTUS majority
          2. How- 4th Amendment text & history. Court precedent

Has it been exposed to a third person?

By balancing the value of individual privacy with needs of law enforcement

* + - 1. **Marriage of *Katz & Jones***
         1. ***Jones*** provides a “floor” of what is a search below which ***Katz*** may not go. Thus, ***Jones*** analysis comes first and only if it is not a ***Jones*** search there is a ***Katz analysis***, if not a search under ***Jones or Katz***, it is ***not a search*** at all under the 4th Amendment
      2. **Broad 4th Amendment Analysis:**
         1. Is there a search (or seizure)?
         2. If so, is there a valid warrant, if so was it executed properly?
         3. If no warrant, is there an exception or special need eliminating the warrant requirement?
         4. Does the exclusionary rule apply?
      3. **Paths after *Katz*:**
         1. Make a generous societal expectation of privacy. This path is based on valuing privacy highly.
         2. To make a miserly societal expectation of privacy. This path is based on valuing public safety highly
         3. **Chosen Path:** Court has generally chosen the miserly path, valuing public safety highly. However, liberal justices viewed ***Katz*** as an opportunity for privacy to expand or, evolve beyond the language of the 4th Amend. The moderate (no liberals left) justices cling to this hope and fear a return to textualism.

Different brands of conservatism (Jones):

**Alito:** Concerned about abandoning 50 years of precedent

**Scalia & Co:** An opportunity to return to text and history and secure original intent of 4th A. from devolution by ***Katz***

* + - 1. **Federalism:** The Bill of Rights provides a floor below which state courts may not rule. State Courts may, under state constitutions, provide more individual privacy protections, as well as more protections for individuals for other rights
      2. **State Action:** Constitutional protections do not apply unless there has been state action. ***State Action may occur*:**
         1. By Direct State Action;
         2. Through agents (e.g. informants) working for the state
         3. No 4th A. Search without state action
      3. **Plain View:** The police act of observing something from a lawful vantage point ***is NOT a search*** under ***Jones*** or ***Katz***. Lawful vantage points include:
         1. Places police lawfully are with, or without, a warrant
  1. **Searches**
     1. ***State v. White*-** Body wire
        1. White talks to a friend wearing a wire in the home of a friend who has allowed an agent to conceal himself and listen to the conversation
        2. No search in sense that 4th ***doesn’t protect anything you reveal to someone else***
           1. If wrongdoer trusted informant, the law gives him no protection under the 4th
        3. Electronic surveillance involved here did not violate White’s right to be free from unreasonable search and seizures
           1. Can be done in person, can do it electronically
        4. **Takeaway:** ***Amendment provides no protection for wrongdoer’s misplaced belief-*** therefore, no warrant needed
           1. 4th Doesn’t protect things said to third parties. Electronic-In person relation.
        5. **Douglas Dissent-** Strict Constitutional construction. Eavesdropping not protected by 4th but the Framers version is very different from electronic surveillance
        6. **Harlan Dissent­-** Judges should not merely recite expectations (of societal privacy) and risks without examining the desirability of saddling them upon society
     2. ***Miller*-** Bank Records (no search)
        1. Miller is bootlegging and the authorities round up some of his boys and then make a move to request documents form 2 bank accounts he has
           1. Bank Security Act, records of member’s transactions are required to be kept by bank, therefore the Government requested records, which court allowed, stating that you ***willingly give information*** to the Bank, you do ***not have a 4th Amend. Privacy interest***
        2. Depositor takes risk, in revealing his affairs to another, that the info will be conveyed by that person to the government
        3. **Takeaway-** 4th does not prohibit the obtaining of info revealed to a third party and conveyed by him to government authorities, ***even if*** the info is revealed on the assumption it will be used only for a limited purpose
           1. Documents in third person control that they care for (no 4th Amend. Interest). States can create broader privacy interests however.
        4. **Brennan Dissent-** Impossible to participate in economic life of contemporary society without a bank account. Depositor reveals many details about private life. Allowing a subpoena to give access to all this info opens door to abuses of police power
     3. ***California v. Greenwood*-** Plain View Search (Garbage)
        1. Police suspect illegal activity at Greenwood’s house, get trash collector to give them Greenwood’s trash, which occurs. Evidence of drug use found in trash. Use this evidence to get a warrant, enter his home and arrest Greenwood. He posts bail and decides to run the same op again. Police use the same method to arrest him… again.
        2. Garbage searched- could’ve been observed by any member of the public
        3. 4th Amend. Analysis must turn on factors such as “our societal understanding that certain areas deserve the most scrupulous protection from govt invasion”
           1. No understanding here passed onto garbage
        4. Federal law trumps state law. CA law that state officials can’t go through garbage
        5. **Takeaway-** 4th ***does not prohibit*** the warrantless search and seizure of garbage left for collection ***outside the curtilage*** of a home
           1. Warrantless search and seizure of garbage would violate the 4th ***only if*** respondents manifested a subjective expectation of privacy in their garbage that society accepts as ***objectively reasonable***
     4. ***Florida v. Riley*-** Aerial search of a property by police not a search
        1. Police use a helicopter to look down into Riley’s greenhouse and see marijuana
        2. Airspace is public- you should expect planes to fly over- doesn’t interfere with owner’s use of his greenhouse
           1. If the helicopter is not violating FAA laws (inspection from fixed wing aircraft at 1000 ft.) it is not a search

Note: You can fly a helicopter legally at any height as long as not in restricted airspace

* + - 1. **Takeaway-** What a person knowingly exposes to the public, even in his own home or office, is not a subject of 4th Amend. Protection. Home and curtilage are not necessarily protected from inspection that involves no physical invasion
         1. **Ask** whether helicopter was in the public airways at an altitude at which a member of the public travel with sufficient regularity that Riley’s expectation of privacy from aerial observation was not “one that society is prepared to recognize as reasonable”
      2. **Note-** Case could have been different if “any intimate details connected with the use of the home or curtilage had been observed”
         1. Issue is “how tightly the 4th permits people to be driven back into the recesses of their lives by the risk of surveillance”
    1. ***US v. Jacobsen*-** Plain View Search (packages)
       1. **Plain View Doctrine**
          1. The police act of observing something from a lawful vantage point is ***not a search*** under Jones or Katz
          2. Lawful vantage points include: places police lawfully are with, or without, a warrant
       2. Fed ex employees damaged a package, and when opening it for insurance purposes discovered what was later confirmed to be coke. Agents going through ***already opened*** package ***is state action***
       3. **Takeaway-** Court compares this to a K9 sniff test. If all dogs do is sniff for drugs and alert on it, it is not a 4th search because you cannot lawfully possess what they are detecting. ***You have no privacy interest in illegal contraband***
          1. Run a balancing test of the interest of law enforcement and the privacy interest of cocaine. Because the obviousness of powder being coke, privacy interest is low.
       4. Observing something in plain view is not a search. However, as soon as you turn something or open something, even if the exterior is visible, the 4th kicks in
  1. **Seizures:** Seizures are typically of people, as the term “search” dominates the cases concerning things
     1. **Overview**
        1. Seizures are typically of people
        2. Sufficient police behavior to prevent a reasonable person from believing they were free to leave
     2. **Hodari D.-** Physical force or submission to show of authority required for seizure
        1. In totality of circumstances analysis, a reasonable person would not feel free to leave. This is a necessary, but not sufficient condition for seizure in a “show of authority” situation
        2. Kid who runs from police and drops a crack rock. No PC until the rock was thrown. No seizure until he was tackled. Since tackle was after the crack rock was thrown, there was PC to seize him.
        3. **Takeaway-** No seizure unless there is physical force or show of authority and submission to it.
     3. **Drayton-** Fear if the police being near you is not sufficient for show of authority
        1. On the bus. Officers at each end of the bus and right by passenger asking for consent to search. Not a seizure of the person.
        2. Totality of circumstances: Insufficient police behavior to prevent a reasonable person from believing they were free to leave
        3. Not necessary to advise citizens of a right to refuse consent to search
     4. **Brendlin-** No seizure by show of authority unless submission to it
        1. Car pulling over because of lights and siren is submitted to authority. This includes passengers in the car.
        2. Done without reasonable suspicion, ***therefore illegal stop***
        3. Exclusionary rule applies- evidence obtained here is suppressed (excluded at trial)

1. **The Warrant Clause**
   1. The 4th Amend. Expresses strong preferences for searches conducted pursuant to judicially approved warrants; all searches (whether subject to warrant requirement or not) must generally be supported by PC; and the ***ultimate constitutional test*** for every search ***is reasonableness.***
   2. **Probable Clause** 
      1. **Probable Cause:** A ***reasonable person*** under the circumstances would believe a crime has been committed and that the person committed it or evidence of the crime is present. Court looks at two Categories: (1) Info directly known by police and (2) info provided by informants. The cases in the test examine the outer limits of each category
      2. **What PC is NOT**
         1. ***Reasonable suspicion*-** This is a lesser evidentiary level than PC. **RS *is required for a stop***
            1. Crime is about to occur, is occurring, etc. Does not need to be complete
            2. Ex. Police see men loitering and looking into store. RS, stop and frisk. Turns out they’re buying the building, RS dissipates to Nothing. Turns out one of them has gun, no good explanation why they are there, RS increases to PC
            3. Police are essentially walking around with no suspicion but always thinking “how can I get to their stuff” to get RS or PC
         2. ***Mere Encounter*-** Anything short of a stop and does not implicate the 4th Amend.
         3. ***Not a numerical probability***
      3. **Is there PC to support a search?**
         1. Officers use their own personal experience
         2. ***Known informant***- reliable informant with a track record of reliability
         3. ***Anonymous informant*-** Far reaches of what can constitute PC
         4. **Test-** Bar for PC usually very low.
      4. **SCOTUS Definition of PC:** “If the facts and circumstances before the officer are such as to warrant a man of prudence and caution (reasonable officer) in believing that the offence has been committed, it is sufficient”
         1. **Kind of a reasonable person test**
         2. “If the facts and circumstances” -Totality of circumstances analysis
            1. Who judges these circumstances?

The police officer-

It is the experience of the ***particular*** (subjective) officer

A man with the experience of this officer believe a crime has been committed

* + - 1. **What Does This Mean?**
         1. 0 SCOTUS justices have been police officers. Still making determination on a reasonable police officer without any knowledge of the street or police work
         2. Trial court decides facts

Just ask the officer on the stand

By the time the SCOTUS gets a case the facts have been determined (from the officer on the stand)

* + - * 1. Reliance on the police as experts- this means PC becomes even easier for the police (PC skewed towards interests of law enforcement)
    1. **Fluidity of Facts:** Noting (no suspicion)🡪 Reasonable Suspicion (Stop and Frisk Standard)🡪 PC
    2. ***Carroll***- Under the 4th, a valid search of a vehicle moving on a public highway may be had without warrant, but only if PC exists. ***Carroll*** lies on the border between suspicion and PC. The suspects had agreed to sell liquor to police 3 months earlier, traveling on one of the most active routes for distributing booze. “Under circumstances indicating no other probable purpose”
    3. ***Brinegar v. US*-** Totality of circumstances is PC
       1. Brinegar convicted of smuggling liquor across state lines. Seen by officer driving through known location of liquor smuggling, officer had also previously arrested Brinegar for the same offense. Gave officer PC to pursue Brinegar, catch him, ask him how much alcohol was in the car (answer- “not too much”) = arrested.
       2. **Takeaway-** PC is characterized by less evidence than would justify a conviction
          1. Here, officer took into account the person, location, appearance of car (weighted down), coming from wet to dry state, to establish PC
       3. **Burton Dissent-** Known criminal driving car = rolling PC
          1. PC did not exist until the car was pulled over.
    4. ***Draper v. US***-Evidence for PC based entirely on known informant
       1. Known informant with strong track record of being correct informs Agent that narcotics peddler Draper was going to Chicago to get Heroin. Tells agent what Draper looks like, how he walked, what he would be wearing and carrying. Agent stakes out train station and sees man identical to description of Draper, takes him into custody, finds Heroin
       2. **Takeaway-** The informant being reliable and highly accurate in description accounted for PC. Known informant’s word is good enough for PC a lot of the time
       3. **Dissent-** Relying on informant’s word alone is dangerous. PD had no personal knowledge of Draper outside of info provided by informant.
    5. **Aguilar Spinelli Test for Informants** 
       1. ***Aguilar***- On granting search without warrant based on information: “Judge must be informed of some underlying circumstances from which informant concluded narcotics were where he claimed they were and underlying circumstances where officer deemed information credible”
       2. ***Spinelli***-In absence of statement dealing with how info is gathered, informant’s tip must be in sufficient detail enough to be beyond rumor
       3. **Two-part Test:**
          1. Did affiant make clear why the info supplied to him was reliable or trustworthy?
          2. Was the judge told the basis for the informant’s info?
    6. ***Illinois v. Gates-*** Aguilar-Spinelli Test abandoned for determining PC in actions involving informants
       1. Totality of circumstances approach substituted in its place
       2. Gates replaces Aguilar Spinelli.
       3. **Gates “Totality of Circumstances” test.**
          1. Flexible and easily applied
          2. Result: Warrant issued, anonymous letter is not enough for PC, but when corroborated by subsequent conduct.
       4. **Limit of Gates**
          1. No merely conclusory statements. EG. “I have cause to believe…”
          2. Must be “a substantial basis…” for PC
          3. Jones (different Jones case than return to property case) hearsay is OK as long as there is a “substantial basis for crediting hearsay.”
       5. **Substantial Basis in Gates**
          1. “It is enough that there is a fair probability that the anonymous informant obtained information from Gates or someone Gates trusted”
          2. Future actions are not easily predicted, shoring up corroboration
    7. ***Florida v. Harris***- Dog search is not a “search” under the 4th/don’t test Aldo the Sheppy
       1. Aldo, a sheppy, alerted on the side of defendant’s car after being pulled over for an expired plate.
       2. **Takeaway-** A dog search is not a ***search*** because it is not a ***search*** to sniff the air for drugs because you have no protectable privacy interest in illegal things. Police K9 Drug Dogs only search for illegal things (drugs…)
          1. Records of a dog’s field performance is not the gold standard in evidence. Finding of a drug detection dog’s reliability ***cannot depend on*** the State’s satisfaction of multiple, independent evidentiary requirements (current cert., etc.)
          2. As long as the State introduces evidence as to the dog’s proficiency and training it is very hard to challenge the competency of a K9 to exclude evidence
          3. Can still challenge the conduct of the officer and dog, officer didn’t cue dog properly, training wasn’t rigorous or complete
    8. ***Maryland v. Pringle*-** Car passengers are often in common enterprise and have a shared aim to conceal illicit activities. Officer’s inference of common enterprise reasonable for PC
       1. Defendant was passenger in a car stopped for speeding. Cash was viewed in glove box, car was searched and drugs found in the back-seat arm rest. None of the 3 passengers admitted to ownership of the drugs
       2. Entirely reasonable inference that any or all 3 of the occupants had knowledge of, and exercised dominion and control over, the drugs, and thus a reasonable officer could conclude that there was PC to believe the defendant committed the crime of possession of drugs, either solely or jointly. Also, reasonable for officer to infer a common enterprise among the 3 occupants, in view of the likelihood of drug dealing in which an innocent party was unlikely to be involved
       3. **Takeaway-** Car passengers are often in common enterprise and have a shared aim to conceal their illicit activities. Officer’s inference of common enterprise was reasonable.
  1. **Warrant Clause:** “No warrants shall issue, but upon PC, supported by Oath or Affirmation, and particularly describing the place to be searched, and the person or things to be seized”
     1. “The mandate of the 4th requires adherence to judicial process, and the searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the 4th- subject to only a few specifically established and well delineated exceptions.”
     2. With the exception of stop and frisk, all seizures, all searches (under 4th) require PC
     3. Requires a specific description of what government is after- reinforces PC requirement and can limit scope of a search
     4. Must be issued by common-law judicial officer. Oath requirement is satisfied in practice by an affidavit, typically from law enforcement officer, setting forth enough info to establish PC
        1. Info for PC must be found within the 4 corners of the warrant
     5. **Particularity**
        1. 4th requires particularity in regard to both the place to be searched and the persons or things to be seized. Make general searches impossible and prevents seizure of one thing under a warrant describing another. As to what is to be taken, nothing is left to discretion of officer executing warrant
        2. History- Crown used to roll into people’s home and search without any justification
     6. ***Maryland v. Garrison***- Good faith exception to the Warrant Clause
        1. Police applied for warrant to search 3rd floor of a place but were mistaken in thinking there was 1 apartment. Actually, 2. Both were searched. One had heroin.
        2. Police reasonably believed that there was only 1 apartment on premises described by warrant. Warrant was valid when issued and executed in reasonable manner.
        3. Reasonable effort to ascertain and identify place intended to be searched within meaning of 4th
        4. **Takeaway-** Mistakes happen. If made in good faith and reasonable actions, the warrant and PC are valid
        5. Note: Looking for marijuana, found Heroin. Plainview doctrine. Heroin is admissible
        6. **Dissent-** Words of the warrant. Evidence obtained should be excluded.
     7. ***Groh v. Ramirez*-** Particularity requirement. Must specify what is to be searched.
        1. Warrant was improperly granted. Did not specify what was to be searched. Search occurred nonetheless.
        2. Search was unreasonable because the warrant was invalid
        3. Warrant did not meet acceptability threshold/standard because it did not lay out what items were subject to the search. Failure to appraise Ramirez’s to the intent of the search doomed it.
        4. **Takeaway-** Officer’s that execute bad warrants, even unintentionally, are not subject to qualified immunity. The search pursuant to the warrant is invalid. By the book enforcement of ***particularity*** requirement of warrants.
        5. **Test:**
           1. Warrant (valid)
           2. Reasonable Search?
        6. **Or:**
           1. Warrant invalid (flawed)
           2. Under totality of circumstances, is it a reasonable search anyway? Include in reasonableness- effort
     8. **Overview**
        1. **Anonymous Informant Case:** Predication of future behavior indicative of drug trade that is realized is enough for PC. Officers observed no criminal conduct.
           1. **Also:** “IF an unquestionably honest citizen comes forward with a report of criminal activity” that is PC

Basically, if anyone the police know the identity of and trust

Falsifying a police report is a crime.

* + - 1. **What PC is not:**
         1. RS. (required for a ***stop***), this is lesser level of evidence than PC
         2. Mere encounter- anything short of stop and does not implicate 4th
      2. **PC is no longer a separate 2 prong test (Aguilar/Spinelli)**
  1. **Neutral & Detached Magistrate** 
     1. SCOTUS has held that a warrant affidavit is sufficient though based only on inadmissible hearsay- including statements of undisclosed informants- as long as there is a “substantial basis” for believing the hearsay
     2. Court also countenances surreptitious, illegal searches by law enforcement and even outright lies in the warrant affidavit, as long as PC independent of the police misconduct justifies the search
     3. ***Shadwick v. City of Tampa*-**Clerks can be independent magistrates
        1. An impartial and detached magistrate must be from the judicial branch
        2. Whether Clerks qualify as neutral and detached magistrates?
           1. No requirement in the term “magistrate” or “judicial officer” that all warrant authority must reside exclusively in a lawyer or judge
           2. Issuing magistrate must be neutral and detached, capable of determining whether PC existed
        3. **Takeaway-** Substance of Constitution’s warrant requirements did not turn on the label of the issuing party. Court held that the requisite detachment was present because the record showed no connection with any law enforcement activity or authority that would distort independent judgment the 4th required
     4. ***McCommon v. Mississippi*-** detached magistrate may not have to read warrant to grant
        1. Judge who granted the warrant literally just granted it because the person asking was a police officer
        2. **Takeaway-** Neutral and detached means you actually ***must look at affidavit*** and ***read it***
  2. **Need for a Warrant** 
     1. Must be particularity
     2. Has to be PC in the 4 corners of the affidavit
        1. Unless…
           1. The police are operating in good faith and judge signs it
           2. Presumption of validity
     3. Must be granted by neutral and detached magistrate
        1. Must be someone in the judicial branch, can be a clerk or another agent of the court
        2. Unclear if a magistrate even needs to ***look at*** the warrant
     4. **When do you need a warrant?**
        1. Two Theories
           1. Reasonableness Clause Adherence

Don’t need warrants, search just needs to be reasonable

* + - * 1. Warrant Clause

You need a warrant

* + - 1. Two Types
         1. Warrant to search: Warrant to search and take stuff
         2. Warrant to seize: Usually talking about people
    1. ***Payton v. NY*-** Need warrant to enter home absent exigent circumstances
       1. 2 cases. 1st, police established PC against defendant, went to his apartment to arrest him, entered without a warrant and found incriminating evidence in plain view that was admitted at trial. 2nd, police entered defendant’s house to arrest him without search warrant and found narcotics in the dresser
       2. **Takeaway-** Court held that to be arrested in the home involved not only invasion attendant to all arrests, but also invasion of the sanctity of the home. Too substantial, absent exigent circumstances, even when it was accomplished under statutory authority and PC was present
          1. Cant enter the home of murder suspect the day after without a warrant
       3. **Implications:** Majority relies on point of warrant clause. Basis is privacy
          1. It is ***really easy*** to get a warrant.
          2. If you don’t want to get a warrant you can (exigent circumstances)-

Surveillance, hot pursuit, destroying evidence, public safety

* + - * 1. Police entering home can do a ***protective sweep*** to ensure own safety

Execute a search warrant. Do a protective sweep, find shit

In a house lawfully, they can look anywhere for people sized things. Plain view? Boom.

* + 1. **Difference between Search Warrant and Arrest Warrant:**
       1. PC to find evidence of a crime (search)
       2. PC that a person ***committed*** a crime (arrest)
    2. ***Wilson v. Arkansas*-** Absent exigent circumstances, police must **knock and announce** when serving a warrant
       1. Defendant was convicted of delivery and possession of drugs after police, in executing a search warrant, entered through an unlocked screen door without first knocking to announce their presence
       2. Search or seizure of a dwelling might be constitutionally defective if police entered without prior announcement. Must determine whether unannounced entry was reasonable under the circumstances
       3. **Takeaway-** 4th requires police to announce themselves when executing a search warrant. Knock and announce, subject to exceptions (exigent circumstances)
          1. Hot pursuit, danger, destruction of evidence
          2. Officer safety considerations mean that in some circumstances, entry does not require knock and announce
    3. ***Steagald v. US*-** Search of third party home for suspect. Need a search + arrest warrant.
       1. Based on info received from confidential informant, DEA agents entered petitioners’ home with an arrest warrant in an attempt to locate a federal fugitive. Agents did not have a search warrant. Fugitive was not found, but cocaine was observed. After obtaining a search warrant, agents uncovered more incriminating evidence.
       2. Arrest warrant was not adequate to protect 4th Amend. Interests of petitioner, who was not named in the warrant, and whose home was searched without consent, in the absence of exigent circumstances
       3. **Takeaway-** In the absence of consent and exigent circumstances, police cannot enter a person’s home and search for subject of an arrest without first obtaining a search warrant
          1. Difference between search and arrest warrant displayed here.
       4. **Note:** If there is an arrest warrant out for you, police can go into your home and arrest you. Incident to the arrest, they can conduct a ***protective sweep***. Everything found in the protective sweep is legally searched.
          1. ***Changes*** when police enter a third-party home. ***Location*!**

Need a ***search warrant*** and ***arrest warrant*** to enter third party home in search of a suspect.

* + - * 1. Regardless of how reasonable the belief is that a suspect is in 3rd party home, without a search there is no protection for 3rd party

Stops the police from running around town knocking down doors in search of suspects with only an arrest warrant as justification

* + 1. **Need for warrant overview**
       1. Assuming no consent or exigency/exception to warrant requirement
       2. Can arrest suspect in their own home with arrest warrant
       3. Need arrest and search warrant to arrest suspect in another home
       4. Arrestable Offence: A crime subject to a jail term
       5. Minor Offence: Offence that does not have jail time associated with it

1. **Exceptions to the Warrant Clause** 
   1. **Exceptions to the Warrant Clause**
      1. **Exigent Circumstances**
         1. To Search a Person
            1. Danger to officer

Concealed weapons

* + - * 1. Potential for suspect to effectuate an escape

Concealed items (including weapons) that suspect may use to effectuate an escape

* + - * 1. Destruction/concealment of evidence

Normal reason

* + - 1. To Search a Home
         1. Protective Sweep

Police need to locate weapons in the immediate area of suspect

* + - * 1. Destruction of evidence

Officers can only search arrestee and areas within immediate control of arrestee. Under the pretext of a protective sweep (see above)

* + - 1. To Enter the Home:
         1. Hot Pursuit

Need to be in continuous pursuit

* + - * 1. Threat to Public

If you’re in your home there’s not a lot of reasons you will be a threat to the public

An exception to this would be if you’re threatening individuals within the home

* + - * 1. Need to ascertain/prevent destruction of evidence

A normal reason

* + 1. **Note:** Absent PC and exigent circumstances, warrantless arrests in the home are prohibited by the 4th (***Payton v. NY***)
  1. **Search of Persons and Things Incident to Arrest**
     1. ***Chimel v. California*-** Search of home incident to arrest
        1. Police arrive at home of suspected burglar, wife lets them in, they serve Husband with arrest warrant, then ask to search home, suspect says no, police search anyway
           1. Had suspect’s wife open drawers and physically remove things for them. Seized evidence later used to convict
        2. When an arrest is made, it is ***reasonable for the officer*** ***to search*** the ***person arrested*** in order to remove any weapons that may be used to resist or escape. Also applies to ***immediate area of suspect*** (gun in drawer).
           1. Search of arrestee’s person and ***area within immediate control*** is permissible
        3. **Takeaway-** Search of home incident to arrest. Can perform protective sweep. Area within immediate control of arrestee. Cannot search the whole home. It is outside the immediate area and beyond the scope of preventing a person from destroying evidence or protecting the police
        4. **White Dissent:** Likes the old rule of search incident to arrest that extended to those areas under the control of the defendant and where the items subject to constitutional seizure may be found. Arrest may create exigent circumstance which makes it impracticable to obtain a warrant.
           1. If police have to leave and come back, people may remove evidence
     2. ***US v. Robinson*-** Search of container incident to arrest
        1. Officer sees car which he knows is being driven by a person without a driver’s license. Arrestable offence. Officer arrests Robinson and begins to search him. Feels a square package that turns out to be a cigarette package, which he then searches and finds heroin.
        2. Officer had PC to arrest defendant. Here, the search was permissible under the 4th because it was incident to a lawful arrest.
        3. **Takeaway-** When an officer has PC for an arrest, a more extensive exploration of suspect’s person is authorized. This is to protect the officer but also to ***preserve evidence***.
           1. In the case of a lawful arrest a full search of the person is not only an exception to the warrant requirement of the 4th, but it is also a reasonable search under the 4th.
        4. **Note:** Search incident to arrest means that police can go into any of your belongings on your person or in immediate area. Court has generally said that if officer has PC outside the home, they can go into the container.
           1. Whether the search and seizure was “unreasonable”: Whether the officer’s action was justified at its inception, and whether it was ***reasonably related*** in scope to the circumstances which justified the interference in the first place
           2. Search Incident to Arrest (2 Functions)

Removal of weapons that the arrestee might use to resist arrest or escape

Seizure of evidence or fruits of crime for which the arrest is made, as to preserve their concealment or destruction

* + - 1. **Marshall Dissent:** Always possible that a officer lacking PC to obtain a search warrant will use a traffic arrest as a pretext for searching the arrestee
    1. ***Winston v. Lee*-** Search incident to arrest: Going into someone’s body
       1. Shopkeeper and burglar get into shoot out, both get hit. Shopkeeper goes to hospital and burglar calls soon after saying he was shot in an attempted robbery, goes to hospital and they are both in the same room where suspect is accused.
       2. Trial judge says go get the bullet out of suspect, seems quick and low key. Turns out surgery would be more intense and invasive. Prosecution believes removal of the bullet from suspect’s chest will link him to crime. Suspect says it was a substantial violation of his rights under the 4th.
       3. **Takeaway-** Reasonableness of surgical intrusions beneath the skin depends on case-by-case approach, in which individual’s interests in privacy and security are balanced against society’s interest in conducting the procedure.
          1. **Here,** operation would ***substantially intrude*** on respondent’s protected interests. Court affirms injunction against surgery.
       4. ***Shmerber* balancing test:** Weigh ***individual interests*** (dignity and safety) and the ***community’s interest*** in fairly and accurately determining guilt or innocence.
          1. In ***Shmerber,*** the suspect had his blood drawn
    2. ***US v. Riley*-** Can’t search a person’s digital info on phone incident to arrest
       1. Defendant’s cell phones were searched ***after*** defendants were arrested and evidence obtained from phones was used to charge defendants with additional offences.
       2. **Takeaway-** SCOTUS held that police generally could not, without a warrant, search digital information on cell phones seized from defendant’s as incident to the defendant’s arrests. Can seize phone just not access digital data.
          1. Officers ***can*** examine phone’s physical aspects to ensure it will not be used as a weapon, but digital data stored on phones could not itself be used as a weapon to harm arresting officers or effectuate defendant’s escape.
          2. Potential for destruction of evidence by remote wiping or data encryption is not prevalent and could be countered by disabling the phones. Immense storage capacity of modern cell phones implicates ***privacy concerns*** about extent of info which could be accessed on the phones
       3. **Note:** Officers ***could access digital info*** on phone under ***exigent circumstances***
  1. **Houses**
     1. ***Welsh v. Wisconsin*-** Absent exigent circumstances, can’t enter home, even with PC
        1. Suspect crashed his car, witnesses stated he was intoxicated, suspect fled on foot to his home where the police entered and arrested him for DUI
        2. **Exigent Circumstances to Enter the Home (here)**
           1. Hot Pursuit: Not convincing, no pursuit from scene of accident
           2. Threat to Public: Car was abandoned
           3. Need to ascertain evidence: First offence for DUI is noncriminal, therefore, state’s interest is not high enough to justify warrantless search
        3. **Takeaway-** Absent exigent circumstances, warrantless entry of suspect’s homes violates the 4th, even if the police have PC.
           1. ***Application of exigent circumstances exception*** in the context of home entry was ***rarely appropriate*** when there is ***PC*** to believe only a ***minor offence*** had been committed
        4. **White Dissent:** Here, petitioner is asking for a remedy for losing his license for driving drunk. Why is the SCOTUS involved in this?
     2. ***Kentucky v. King*-** PC + Exigent Circumstances = Police can enter a home.
        1. Chasing a suspect into an apartment, the police didn’t know what door to knock on. They knocked on one smelling of marijuana and announced themselves. Officers heard noise inside and suspected people were destroying drugs. Announced they were coming in. Entered and found every drug under the sun. Arrested people inside. ***Original suspect*** ***was in the other apartment***.
        2. **Takeaway-** If there is ***PC***, officers can go into the house if there is an ***exigent circumstance*** (safety of those inside, destruction of evidence, danger to officers of announcing themselves).
           1. ***In this case****,* the police had PC (marijuana smell, noise), ***exigent circumstance was*** ***destruction of evidence***
        3. **Note:** Here, the police were in hot pursuit. Suspects could have stood on their constitutional rights and just not opened the door or tried to destroy evidence
           1. ***Exigent circumstances*** rule applied when the police did not gain entry by means of an actual or threatened violation of the 4th Amend. Knocked and announced. No demand which amounted to threat to violate the 4th.
        4. **Police Exigency Rule:** Under this doctrine, police may not rely on the need to prevent destruction of evidence when the exigency was ***“created”*** or ***“manufactured”*** ***by the conduct of the police.***
           1. Requires more than simple causation
           2. Warrantless searches are allowed when the circumstances make it reasonable, within the meaning of the 4th, to dispense with warrant requirement
           3. Exigent circumstances rule ***justifies a warrantless search*** when the conduct of the police preceding the exigency is reasonable in the same sense. ***(Kentucky v. King)***.
        5. **Ginsburg Dissent:** Doesn’t like the premise that police may knock, listen, and then break down the door without a warrant. Evidence would not have been destroyed if police had got a warrant. People don’t destroy valuable drugs unless they think the police will find them.
     3. ***Florida v. Jardines*-** Introducing K9 to curtilage of home to gather evidence violates the 4th
        1. Police took drug dog to defendant’s front porch, resulting in positive alert for narcotics. Officers obtained a search warrant, found marijuana plants, charged Jardines with trafficking in cannabis.
           1. Can a drug sniffing dog be used on a homeowner’s porch (curtilage) to gather evidence for a search warrant?
        2. **Takeaway-** An officer not armed with a warrant can approach a home and knock, because a private citizen may do so, but introducing a trained K9 drug dog to explore the area in the hopes of discovering incriminating evidence is not allowed.
           1. **This case** was decided under the ***Jones Test***. Police exceeded their license to be on the citizen’s property

Doesn’t matter what tools the police use. ***Justice Scalia*** applied the property rules of the time the 4th was created. Believes that the inside of the house is ***private*** and that if you’re using heat seeking tech or a sniffer dog, it achieves the same purpose of alerting what is in the home, which Scalia believes violates the 4th.

* + - 1. Within the 4 corners of the affidavit there must be PC, because Scalia is striking the info obtained illegally by Franky the drug dog, the warrant is defective and the subsequent entry was unlawful.
      2. **Note:** Curtilage enjoys protection as part of the home. Police can be there legally as any private citizen can, but introducing tools to gather evidence exceeds this license
      3. **Alito Dissent:** Personalizes Franky the drug dog. Believes Franky and officer were doing what any visitor with a dog would do. Dog alerted and went home. No unreasonable invasion of homeowner’s privacy rights under the 4th.
  1. **Cars:** 
     1. **Automobile Exception:** As an effect, it is specifically covered by the 4th Amend.
        1. Lesser constitutional protection than home.
     2. ***Chambers*-** Warrantless search of a car at the police stations does not violate a person’s 4th Amend. rights
        1. Based on descriptions by a robbery victim and witness, police stopped a car in which petitioner was riding in. He and other occupants were arrested and the car was taken to the station where officers conducted a warrantless search producing guns and stolen property.
        2. **Takeaway-** If there is PC, ***a car***, because of its mobility, ***may be searched*** without a warrant ***in circumstances*** ***that would not justify a warrantless search of house or office***
           1. **Here,** the police had PC to arrest the car’s occupants and search the car for fruits of the crime. Immediate warrantless search of the car at time and place of arrest would have been permissible, that the PC factor still existed at the station and it was reasonable for the police to take the car there before making the search
        3. **Exigent Circumstance:** Cars are highly mobile
           1. **PC** here because the officers are looking for a glove & gun which are small. Look everywhere.
           2. Given PC, ***there is no difference under the 4th between***: (1) seizing and holding a car before presenting the issue of PC to a magistrate, and (2) carrying out an immediate warrantless search
     3. ***California v. Acevedo*-** Containers *within* car are searchable if search is supported by PC
        1. Police observed Acevedo entering the apartment of a known drug dealer and returning with a package that was the same as known shipments of marijuana. Police stopped him and searched the trunk and bag, finding marijuana
           1. Court held that marijuana found in the bag was admissible
        2. **Takeaway-** Fourth does not compel separate treatment for an automobile search that extended only to a container within the vehicle. Police could search containers found in a car without warrant ***if their search was supported by PC***
           1. **Here,** police had PC to believe Acevedo was carrying marijuana in the bag put in his trunk
           2. 4th does not require police to obtain a warrant to open the sack in a ***moveable*** vehicle simply because they lacked PC to search the whole car. Same PC to believe container held drugs allowed police to arrest person transporting the container and search it.
        3. **Inquiry:** What if you know the contraband and evidence is ***in one particular place*** in the car? Can you search the whole vehicle?
           1. Can the police search the bag in trunk of the vehicle?

***US v. Ross*:** Search entire car (probing search)

***Sanders***: People may have a heightened privacy interest in containers within cars. Personal luggage- personal items

* + - * 1. Repeatedly held that there are less privacy interests in cars than in the home.
        2. **General Rule:** Search all containers in car
    1. ***Wyoming v. Houghton*-** PC to search car includes PC to search containers in car
       1. Car which appellee was riding in was stopped by police officer. Officer noticed a syringe in driver’s shirt pocket. Driver admitted the syringe was used to take drugs. Officer began a search of passenger compartment of the car for contraband, found a purse which appellee claimed was hers. Inside the officer found two containers containing meth.
          1. SCOTUS: Officer was entitled to inspect appellee’s belongings found in the car that were capable of concealing the object of the search because he had PC to search the car

**Note-** If driver had not admitted purpose of the syringe there would not have been PC to search passenger’s bags

* + - 1. **Takeaway-** If officer has PC to search a car, he can search all containers within the vehicle that are capable of concealing the object of the search
         1. **Cars = almost no privacy interest**
    1. **Inventory Searches:** Reasonable under the 4th. Exigency does not apply to caretaker searches. Police can conduct these searches for their own protection and for the protection of your belongings. **Rule-** Don’t leave or have anything illegal in your vehicle. The police ***will*** find it.
    2. ***SD v. Opperman*-** **Inventory searches** of impounded vehicles is reasonable under the 4th
       1. Police found marijuana in Opperman’s car during a routine inventory search at the impound lot
       2. Petitioner had left his car illegally parked for an extended period of time and it was thus subject to impoundment. He was not present to make other arrangements for the safekeeping of his belongings
       3. **Takeaway-** Evidence found during an inventory search by police at the impound lot is ***not unreasonable*** under the 4th amendment
          1. **Here,** inventory was prompted by the presence (in plain view) of a number of valuables inside the car***. No suggestion*** whatever that the ***standard procedure of an inventory search*** was a ***pretext concealing investigatory police motive***
       4. Again, warrantless examinations of cars have been upheld in circumstances in which a search of a home or office would not
          1. **Two Reasons:**

Inherent mobility of cars creates circumstances of such exigency that, as a practical necessity, rigorous enforcement of warrant requirement is impossible

Court has upheld warrantless searches where no immediate danger was presented that the car would be removed from jurisdiction

***Expectation of privacy*** with respect to ***one’s car*** is ***significantly less*** than that ***relating to one’s home or office***

Cars are ***subject to pervasive government regulation***

Seldom serves as a repository for people’s personal effects

Keep that stuff ***out of your car***

* + - 1. **Three Reasons for Inventorying Impounded Cars**
         1. Protection of the owner’s property while it remains in police custody
         2. Protection of the police against claims or disputes over lost or stolen property
         3. Protection of police from danger
      2. **Note:** Exigency ***does not apply*** to caretaker searches
      3. **Dissent:** Logic that searching someone’s property is actually protecting it is not justification for a warrantless search.
    1. ***Arizona v. Grant*-** Search of car incident to arrest not allowed when arrestee is detained
       1. After respondent was arrested for driving with a suspended license, handcuffed, and locked in back of a patrol car, police searched his car and discovered cocaine in the pocket of a jacket on the backseat.
          1. SCOTUS: Grant could not have accessed his car to retrieve weapons or destroy/hide evidence at the time of the search (he was handcuffed in the patrol car). Therefore, ***the search-incident-to-arrest exception*** to the 4th Amend. Warrant requirement (defined in ***Chimel***) and applied to vehicle searches in ***Belton*** did not justify the search in this case.
       2. **Takeaway-** Search-incident-to-arrest exception to the 4th Amend. Warrant clause ***does not apply*** to searches of cars after the occupants of the vehicles have been safely detained.
          1. Safety and evidentiary justifications underlying ***Chimel’s*** rule determine ***Belton’s*** scope

***Belton*** does not authorize a vehicle search incident to a recent occupant’s arrest after the arrestee has been secured and ***cannot access*** the interior of the vehicle

* + - 1. **Note:** Search incident to arrest ***may only include*** “the arrestee’s person and area ‘within his immediate control’- construing the phrase to mean the area from within which he might gain possession of a weapon or destructible evidence”
         1. If there is ***no possibility*** an arrestee could reach into the area law enforcement officers seek to search, the ***rule does not apply*** (no safety or destruction of evidence justification).
    1. ***Belton*-** Gold standard for search of car incident to arrest
       1. Lone officer stopped car for speeding, smelled burnt marijuana, saw drug envelope on the ground, believed a drug related crime was being committed (PC), ordered 4 occupants out of car and separated them. Searched car. Found coke in back seat.
       2. **Different from *Grant***
          1. Grant had no access to his car at the time of the search
          2. ***After Belton***, courts have treated search of a car incident to arrest as a type of “police entitlement” rather than an exception based on the twin rationales of ***Chimel***

It is ***reasonable*** to search a car incident to an arrest if there is a reasonable belief that evidence of arrest might be found in the car

* + - 1. **Note:**
         1. Stops are justified by RS which is a lower standard than PC. Generally, Constitution says we need PC to search. Search of cars incident to arrest requires a lower level of proof.
    1. **Two Ways to get into a car**
       1. **PC:** If police know where the contraband is in the car, limited to looking there
          1. General PC contraband is somewhere, search whole car
       2. **RS to believe there is evidence related to crime for which *person has been arrested***
          1. Search of car incident to arrest doctrine
       3. **Can:**
          1. Impound car, administrative search
          2. Plainview Search

Something in the car, go in and seize it

* + 1. ***Knowles v. Iowa*-** Cannot conduct a search of a car incident to a citation
       1. Defendant was stopped by officer for speeding and issued a citation rather than arrested. Officer then conducted a full search of the defendant’s car, ***incident to citation***. Marijuana and paraphernalia were found. Defendant was then arrested.
       2. **Takeaway-** Issuance of a citation does not authorize an officer, consistent with the 4th Amend, to conduct a full search of the car
          1. **Here,** there was no need to discover and preserve evidence because once defendant was stopped and issued citation, all evidence necessary to prosecute had been obtained. Threat to safety from issuing citation ***significantly*** less than in the case of a custodial arrest
       3. **Note:** Here, could get respondent out of car, just not search the car. The crime of a traffic stop is ***not related*** to search for drug paraphernalia
    2. **Overview of Cars**
       1. **Stops:** The stop of an automobile requires ***only RS***. RS is a ***lesser burden than PC***. A stop can be a crime or a traffic infraction
       2. **Officer Safety:** An officer can control people in the stopped vehicle. For ex, occupants of the stopped car may be required to stay in the car or get out and not leave scene of stop.
          1. **However,** a full ***intrusive search of a car*** or ***person*** is not permitted in a stop. If the officer has reason to believe an occupant is armed they can frisk him ***(Terry v. Ohio)***
       3. **Plain View Doctrine:** Anything an officer can perceive with his 5 senses from outside the car ***can be seized*** if it is contraband or evidence
          1. Once in car for that purpose, officer is lawfully present and ***any other contraband*** perceived ***once in car*** may also be sized
          2. **Dogs:** Can sniff exterior of car as long as it occurs within the period of time reasonably required to issue the citation
       4. **Stops and Searches**
          1. Information gathered by police after a stop can mean that PC now exists for a search of the car.

**Ex. Covered:** Admission by occupant, alert by drug dog, plain view observation of contraband, inebriation of diver (There are more)

* + - 1. **Searches of Cars: *Requires PC UNLESS*** there is reasonable suspicion that evidence is in the car ***of the very crime defendant was arrested for***; or there is ***consent*** in which case ***no PC or RS required***
      2. **Where to Search:**
         1. PC of known object & location in car: Can search in ***that place*** for that object
         2. PC of known object, but location unknown: May search for known object. ***Once found, search must end***.
         3. Specifics of object unknown (e.g. “drugs” no other info) but location known: Can search in known place for that object
         4. Specifics of Object unknown, location unknown: Search entire vehicle
         5. **Note:** Searches in sense of car is contained by the thing the search is for and where it is located. The less you know, the more you can search
      3. **Location of Search:** At the scene of the stop or after car taken to police station
         1. Separate from inventory search
         2. Just search: Even though the exigency is gone, you can still bring the car to the station
      4. **Containers:** All containers in a vehicle may be searched ***assuming no specific object*** and ***location unknown*** 
         1. If ***specific container known***, only that container may be searched
         2. **Potential Exam Question:** What if passenger steps out of car with purse?

If purse is left in car, if you have PC to search the car, everyone’s containers left within car can be searched

Remember, an individual walking down the street cannot just be searched

If person steps out with purse, can’t really search them. Maybe frisk them.

* + - 1. **Search Incident to Arrest:** Almost never upheld because the rationale is officer safety if the suspect is loose. Therefore, to conduct a search incident to arrest ***need to have suspect in car or outside and un-cuffed***.
         1. ***Unless arrestee can access the interior of the vehicle***, the interior ***cannot be searched*** incident to arrest
      2. **Inventory:** An inventory of a car taken to police impound is ***not a 4th Amend. Search.*** Rather it is a civil administrative inventory. There probably must be a written policy requiring an inventory of all vehicles impounded.
      3. **No Search of Person or Car incident to Citation:** Search of person only incident to arrest. Search of car pursuant to options above.

1. **Searches & Seizures Without Probable Cause**
   1. **Stop and Frisk (Terry Stops)**
      1. ***Terry v. Ohio*-** Stop and Frisk if **RS** suspect is armed and dangerous to officer or others
         1. Officer observed Terry and an accomplice while on patrol. Something didn’t look right to the officer. He observed them repeatedly casing a shop and feared that they may be armed. He confronted the two and a third, *Katz*. The officer conducted a stop and frisk, finding two concealed weapons (one on Terry and one on his accomplice). The officer then arrested them for carrying concealed weapons.
         2. **Takeaway-** When an officer observes conduct, has RS that suspects are armed and dangerous, he ***can stop and frisk***.
            1. Can ***only*** frisk if there is RS that suspects are ***armed and dangerous***
            2. Can search if officer has RS a crime is being or about to be committed
         3. 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 the officer or to others, it is ***clearly unreasonable to deny*** the officer the power to take necessary measures to determine whether the person is in fact carrying a weapon and to neutralize the threat of physical harm
            1. Officer ***need not be absolutely certain*** that 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 that of others was in danger
         4. **Douglas Dissent:** Believes that seizures ***should always need PC***
      2. ***Adams v. Williams*-** Requirements to conduct a limited search
         1. Officer was alone on patrol when a known person informed him that an individual in a nearby vehicle had a gun and narcotics. Officer went to investigate, asked respondent to roll down his window and pulled a loaded gun from respondent’s waistband. Gun had not been visible but was precisely in place informant told Officer it would be. Williams was arrested, search incident to arrest revealed heroin, a machete, and a second gun hidden in the car.
         2. **Takeaway-** Officers having reasonable belief that a suspect is armed and dangerous may conduct a limited protective search for weapons despite the weapon not being visible
            1. The ***purpose of the limited search*** is not to discover evidence of crime, but to allow the officer to pursue his investigation without fear of violence, and thus the frisk for weapons might be equally ***necessary*** and ***reasonable***, whether or not carrying a concealed weapon violates any applicable state law
         3. **Note:** ***Terry*** creates ***two tests***:one for brief investigative stops and one for frisks for weapons
      3. ***Florida v. J.L*-** Standard for anonymous tip providing RS for Terry stop
         1. Officer received anonymous tip that respondent was carrying a gun. Officer responded, went to the location and observed 3 men just hanging out there. Officer did not have any reason to suspect them of illegal conduct other than the tip. No weapon was seen and none of the men made threating movements. Officer nonetheless frisked JL and discovered a gun. JL was subsequently arrested.
         2. **Takeaway-** A Terry “stop and frisk” search of a person ***based only on*** an ***anonymous tip*** was ***invalid*** under the 4th Amend. The reasonableness of official suspicion ***must be measured by what the officers knew before they conducted their search***.
            1. Here, the anonymous informant call provided no predictive information to enable the police to test the informant’s knowledge or credibility

Anonymous tips are generally less reliable than those from ***known informants***. They ***can only form the basis for RS*** ***if accompanied by*** ***specific indicia of reliability*** (ex. Correct forecast of subjects “not easily predicted” movements)

* + - 1. **No firearm exception** **in *Terry* standard:** Roves too far from court’s established reliability analysis
      2. **Anonymous tips:** For RS need to be ***accompanied by specific indicia of reliability***
         1. High degree of specificity. An accurate description of suspect is useful for identifying suspect but ***does not show*** that the tipster has knowledge of concealed criminal activity
         2. Predictive information required.
         3. Reasonable suspicion: Requires that a tip be reliable in its assertion of illegality, not just in its tendency to identify a determinate person
    1. ***Illinois v. Wardlow*-** RS based on commonsense judgment and inferences of officer
       1. Defendant was in an area known for heavy narcotics trafficking. He fled upon seeing police officers patrolling. The officers caught up with him and conducted a protective pat-down for weapons. This revealed a .38 caliber handgun. Defendant was subsequently arrested.
          1. Court found that ***nervous, evasive behavior*** was a ***pertinent factor*** in determining ***RS*** for a ***Terry Stop***, and that ***headlong flight*** was the ***consummate act of evasion***.
       2. **Takeaway-** RS has to be based on commonsense judgements and inferences about human behavior. Officers are justified in suspecting criminal activity based on totality of circumstances
          1. **Here,** heavy narcotics trafficking area and defendant’s unprovoked flight upon noticing the police
  1. **Consent Searches**
     1. ***Schneckloth v. Bustamonte*-**Voluntariness
        1. Officer stopped a car with a headlight out and asked occupant if he could search the car. One of the men gave the officer consent to search and even helped. Officer found 3 checks previously stolen from a car wash. Respondent was arrested.
           1. SCOTUS: When the subject of the search is not in custody and State attempts to justify a search on basis of consent, 4th and 14th require that it demonstrate that consent was ***voluntarily given***, and ***not the result*** of ***duress*** or ***coercion***, express or implied.
        2. **Takeaway-** Consent searches require that consent is voluntarily given. Individual consent can only be ascertained by analyzing all of the circumstances.
           1. **The traditional definition of voluntariness** does not require proof of knowledge of a right to refuse. (subject’s knowledge of right to refuse ***is a factor*** but is not alone determinative)
           2. ***Voluntariness*** is a question to be determined by all the circumstances
        3. **In determining whether defendant’s will was overborne** (totality of circumstances)
           1. **Factors:** Lack of education, age, low intelligence, lack of evidence to accused of constitutional rights, length of detention, repeated or prolonged nature of questioning, use of physical punishment
        4. **Note:** Consent is the single greatest weapon for searches without RS
           1. **Interest in Law Enforcement:** Consent searches are a standard tactic of law enforcement. “If the search is conducted and proves fruitless, that in itself may convince the police that an arrest with its possible stigma and embarrassment is unnecessary or that a far more extensive search pursuant to a warrant is not justified”

**Search pursuant to consent** may result in considerably less inconvenience for the subject of the search

* + - * 1. **Substantial Psychological Coercion**

Threats to others, threats of arrest

* 1. **Capacity**
     1. ***Stoner v. California*-** Reasonable expectation of privacy in hotel rooms. Employees cannot let the police into suspect’s hotel rooms to gather evidence.
        1. Defendant was a suspect in an armed robbery. After police found out he was staying in a hotel, they went to the hotel and received permission from a hotel clerk to enter the defendant’s room, where they seized evidence without a warrant.
        2. **Takeaway-** Suspects have a ***reasonable expectation of privacy*** in their hotel rooms. Hotel clerks do not have the authority to give permission to officers to search a suspect’s room. Evidence discovered in a search like this is inadmissible at trial.
           1. **Here,** defendant’s arrest occurred two days later in another state, and therefore, the arrest could not be the basis for the warrantless search of the defendant’s hotel room.
     2. ***US v. Matlock*-** Third party with *common authority* can consent to a search
        1. A third party gave voluntary consent to officers to search the defendant’s living quarters. Materials seized from the search were used as evidence at defendant’s trial for bank robbery. Defendant was convicted.
        2. **Takeaway-** Police can obtain consent to search from a third party if the third party has ***common authority*** over the premises.
        3. **Douglas Dissent:** Police have the duty to obtain a warrant even with PC. Here, they had the opportunity to obtain a warrant but chose not to.
     3. ***Illinois v. Rodriguez*-** Officer’s reasonable belief of common authority = valid search
        1. Defendant’s former roommate gave consent to police to search defendant’s apartment. ***Government argued*** that the ***roommate*** still retained control over defendant’s apartment and, therefore, ***had common authority*** over the premises ***to consent to the police search***
        2. **Takeaway-** Common authority rests on mutual use of the property and if there is sufficient proof that a third party had joint access or control over a premises (usually an apartment) then the third party can consent to a search
           1. ***Officer’s reasonable belief*** that a third party has common authority ***can validate a search***.
           2. **Here,** court failed to render a decision on the issue. Court held that State failed to satisfy its burden that defendant’s roommate had joint access or control over the apartment to establish common authority and ability to consent to a search.
  2. **Problem of Pretextual Searches** 
     1. ***Whren v. US*-** Subjective intent alone does not make otherwise reasonable stop unreasonable
        1. Plainclothes vice-squad officers were patrolling a “high drug area” in an unmarked car. An officer who had observed traffic violations approached a vehicle occupied by defendants. When the officer approached the driver’s car window, he observed 2 large plastic bags of what appeared to be crack cocaine in passenger’s hands. Occupants were arrested and illegal drugs were retrieved from the vehicle.
           1. Court held that officer’s motive for stop does not apply outside the context of inventory or administrative inspections. PC existed for a traffic stop out of uniform did not qualify as an extreme practice.
           2. The defendants tried to get the court to engage in a ***balancing test*** to determine whether the officer’s conduct deviated materially from usual police practices, so that a reasonable officer in same circumstances ***would not*** have made the stop

Claim officer’s intentions for approaching the vehicle (to issue traffic warning) were ***pretextual***

* + - 1. **Takeaway-** The subjective intentions of the officer do not make the continued detention of respondent illegal under the 4th Amend.
         1. If officers have PC to believe suspects have violated traffic code, stop is reasonable. Any evidence discovered thereafter is admissible.
      2. **Note:** Subjective intentions play no role in ordinary PC 4th Amend. Analysis
         1. **Here,** officers clearly hoped to use the traffic stop as a “in” to discover if the occupants of the car were doing anything illegal. Still, there was PC for the traffic stop. Drugs were in plain view. PC for arrest.
    1. **Problem with using subjective intent of police**
       1. Court’s will generally reject doing this
       2. Courts are willing to accept any stop, for any legitimate reason. If the police have other reasons for stopping the person, ***the court doesn’t care***
          1. Problem of enforceability
          2. How to enforce that the police must stop you ***for the reason you’re ticketed***, and not for another reason
       3. **Court rejected objective test proposed by defendants in** ***Whren***
          1. National standard of reasonable police officer
          2. Whether a reasonable police officer would have pulled over defendant for reason the officers in ***Whren*** did. If not- stop is pretextual.
    2. ***Ohio v. Robinette*-** No duty to warn suspects of their right to decline a request to search
       1. Police stopped defendant for speeding, defendant was issued a verbal warning. Officer then asked if defendant was carrying illegal contraband, to which defendant answered “no.” Defendant then consented to search of car, drugs were discovered. Defendant was charged with possession.
       2. **Takeaway-** The 4th Amend. Test for ***valid consent to search*** is that the consent be ***voluntary*** and “voluntariness is a question of fact to be determined from all the circumstances
          1. **Here,** court determined the touchstone inquiry was reasonableness measured in objective terms by examining the totality of the circumstances. It would be unrealistic to require police to always inform detainees that they were free to go before consent to a search could be deemed voluntary
       3. **Note:** Court values law enforcement over personal privacy
          1. Displays difference between federal and state constitutional laws

State courts can make ***more expansive privacy rights*** than federal constitution, ***just not less***

* + 1. ***Illinois v. Caballes*-** Length of stop (reasonable/unreasonable)
       1. Defendant was stopped and a K9 sniff was performed on the exterior of respondent’s car while he was lawfully seized for a traffic violation. The use of a K9 search was not performed with any specific or articulable facts to suggest drug activity.
          1. SCOTUS: The use of a well-trained narcotics-detection dog- one that did not expose non-contraband items that otherwise would have remained hidden from public view- during a lawful traffic stop, generally did not implicate legitimate privacy interests.

Defendant was lawfully seized. Any intrusion on respondent’s privacy expectations did not rise to the level of a constitutionally cognizable infringement

* + - 1. **Takeaway-** Traffic stop cannot be too long or else subsequent discovery is product of unconstitutional seizure. Dog sniff reveals no info other than presence of illegal substances. No person has any recognizable privacy right to these substances under the 4th Amend.
         1. **Here,** defendant claimed that the stop was pretextual and he was delayed until the K9 could be brought in to sniff his car. Court disagreed. Legally seized. Stop was not unreasonable in length. Dog sniff was not infringement on privacy rights under the 4th Amend.
      2. **Ginsburg Dissent:** Court diminishes 4th’s force by abandoning the second ***Terry*** inquiry (was the police action “reasonably related in scope to the circumstances” justifying the initial inference). Under this analysis, every traffic stop could become an occasion to call in dogs to distress and embarrassment of law-abiding population

**Interrogations**

1. **Police Questioning**
   1. **Due Process**
      1. Existed in the federal constitution
      2. After the civil war, 2 provisions were added
         1. Equal protection
         2. Due process to the states
         3. **Note:** SCOTUS has been responsible for due process in the states since this amendment
   2. ***Brown v. Mississippi*-** Confessions cannot come in under the presumption of torture
      1. A lot of bad shit happened to Brown (lynched, beat, hung, whipped, taken across county lines and abused, etc.) after he was accused of murder. He later testified during trial that his and co-defendant’s confessions were false and have been ***procured by physical torture***. Sheriff’s deputy and 2 other participants admitted the allegations, defendant was nonetheless convicted of murder and sentenced to death.
         1. SCOTUS: Overturned conviction. State’s freedom to regulate the procedure of its courts was limited by the requirements of due process and ***did not include*** the freedom to ***obtain convictions*** that rested solely upon ***confessions obtained by violence***.
      2. **Take-away:** Use of confessions obtained by violence is a clear denial of due process, rendering any subsequent conviction and sentence void.
      3. **Note:** ***Traditional voluntariness*** means due process standard
         1. In consent, unless you have torture or deprivation, that consent will be valid because the due process standard is used to measure voluntariness
         2. Due process ***covers several basis-***torture, coercion, deprivation
            1. ***Psychological coercion*** in traditional due process is a ***high standard***

Crazy stuff

***Extreme Psychological Pressure***

**Other lesser pressure**🡪 is this a problem for reliability of confessions?

**Yes:** Court must do something

**No:** Due process is enough

* 1. ***Miranda v. Arizona*-** limitation on confessions extracted by custodial interrogation
     1. Confessions extracted by suspect interrogation methods. There was a police guide that referred to suspects as “quarry” or “prey.” Examples of how to extract confessions out of suspects included: buddying up and helping suspect with legal conclusions) while admitting guilt), good cop-bad cop (Mutt and Jeff), fake witness routine (picking defendant out of lineup), being overly friendly. The Wickersham report stated that police used tactics to extract confessions without crossing the line into ***extreme psychological coercion***.
     2. **Takeaway-** Prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of defendant ***unless*** it demonstrates the use of procedural safeguards effective to secure the privilege ***against self-incrimination***.
        1. Suspect has the right to remain silent, right to be warned that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed.
        2. ***Defendant may waive*** any of these rights, provided the waiver is made ***voluntarily, knowingly, and intelligently***
        3. If at any time suspect indicates in any manner and at any stage of the process he wishes to consult an attorney before speaking, ***there can be no questioning***
        4. If individual is alone and indicates he does not wish to be interrogated, ***police cannot question him***
        5. Mere fact suspect has volunteered statements or answered questions ***does not deprive*** him of the right to refrain from answering further questions until he has consulted with an attorney
     3. **Note:** The need for counsel to protect 5th Amend. Privilege comprehends not merely a right to consult with counsel prior to questioning, but also to have counsel present during any questioning if defendant so desires
        1. **Custodial Interrogation:** Could elicit innocent confessions. So hostile that a person who would normally assert their rights may not. ***Miranda*** is an assertion of rights in an interrogation context
        2. **Requirement everyone be *Mirandaed*** (Arrested officer, law professor)
           1. Too speculative to assume people would know. Can’t be a voluntary confession if there is ***custody and an interrogation*** unless you know of your rights. Pressures of the situation. Voluntariness (not DP voluntariness)
        3. **Self-Incrimination Clause:** No right to attorney (there is a right in the 6th Amend.), No doctrine of Miranda has this included
        4. **Waiver:** Knowing and intelligent= heavy burden on state
     4. **When Does Miranda Apply?** Only in ***custodial interrogation***. Incentive to do interrogation outside custody.
  2. ***Fellers v. US*-** 6th Amend. Applies when there has been an indictment
     1. Fellers was indicted by grand jury for conspiracy to distribute meth. Officers went to his home to arrest him, advised him of his ***Miranda*** rights at the jailhouse.
     2. **Takeaway-** 6th Amend. Violations can happen when there has been a formal charge (indictment). If officers deliberately illicit a statement under the 6th Amend. It is suppressed unless the defendant waives
        1. Waives with counsel present or initiates communication himself
     3. **Note:** 6th Amend. Is stricter than ***Miranda*** in application
  3. **Right to Counsel** 
     1. ***Brewer v. Williams*-** Police cannot deliberately illicit a confession from defendant without counsel present (once defendant has been arraigned)
        1. Williams obtains 2 attorneys and has mental disabilities and is religious. While in route from where he was arraigned to Des Moines, 160 miles, police won’t let either of his attorneys in the car. Begins the ***Christian burial speech***. Williams subsequently leads police to his victim’s body.
           1. SCOTUS: Suppress the connection between what he said and the crime. Not the body because of the ***inevitable discovery rule (Nix)***
        2. **Takeaway-** Williams was arraigned for murder before he was moved- commencement of formal proceedings. ***Police can’t deliberately illicit a confession*** without informing a suspect of his rights to have counsel present.
           1. Prosecution has the burden of showing defendant waived his right
           2. Once a suspect has been arraigned, 6th Amend. Right to counsel has been attached.
     2. ***Kuhlman v. Wilson*-** Listening for vs. Deliberate elicitation of incriminating remarks
        1. Defendant made statements to a police informant who shared his cell but the informant had not tried to deliberately elicit the statements.
           1. SCOTUS: trickery/deceit is permitted. Putting an informant in a cell for the purpose of listening is ok
        2. **Takeaway-** 6th Amend. Right to counsel is ***not violated*** whenever- by luck or happenstance- the state obtains incriminating statements from the accused after the right of counsel has attached, a defendant does not make out a violation of that right simply by showing that an informant, either through prior arrangement or voluntarily, reported his incriminating statements to the police
           1. Defendant must demonstrate police and informant took some action ***beyond merely listening***, and that was designed to ***deliberately elicit incriminating remarks***
  4. **Privilege Against Compelled Self-Incrimination**
     1. ***Colorado v. Connelly*-** Link between coercive activity and resulting confession
        1. Defendant approached a police officer and, without any prompting, confessed to a murder. Was advised of ***Miranda*** rights and defendant stated he understood. Was ***Mirandaed*** again by another officer. Then held in custody and proceeded to confess to child’s murder. Next day, defendant stated that voices told him to confess.
        2. **Takeaway-** Absent police coercion, defendant’s confession is not barred by ***Miranda*** or Due Process Clause
        3. **Note:** Need the essential link between coercive activity by the state, on one hand, and a resulting confession by the defendant, on the other
           1. About voluntariness- was there torture or extreme psychological duress?
           2. Court does not need to suppress confession when mental state of defendant (at time of confession) interfered with rational intellect and free well.
           3. Aim of DP is to prevent ***fundamental unfairness*** in the use of evidence, whether true or false. ***Here***, police had no idea suspect was suffering from a mental illness
     2. ***Arizona v. Fulminante*-** Confessions can be coercive if credible threat of violence exists
        1. Defendant confessed to the murder of his stepdaughter to a fellow prisoner while he was incarcerated on other charges. There was a credible threat of violence to defendant unless he confessed.
           1. SCOTUS: Admission of a coerced confession ***did not automatically*** require reversal of a conviction but was ***subject to harmless error analysis*** because it involved a trial error that could be assessed in the context of other evidence

Held it was not a harmless error because it was unlikely he would have been prosecuted absent the confession

* + - 1. **Takeaway-** Confession is coercive if it was offered in return for protection from prison inmates (and credible threat of violence). A finding of coercion ***can rest on*** a credible threat of violence
         1. Threats of force are DP violations
    1. ***Schmerber v. California*-** Drawing of blood not violation of privilege against self-incrimination
       1. Petitioner contended that the drawing of his blood for an alcohol analysis test without his consent denied him DP of law under the 14th Amend. And violated his privilege against self-incrimination under the 5th, his right to counsel under the 6th, and right not to be subjected to unreasonable searches and seizures in violation of the 4th and 14th.
       2. **Takeaway-** Withdrawal of blood a use of the analysis does not involve compulsion to testify.
          1. Blood test evidence, although an incriminating product of compulsion, was neither petitioner’s testimony ***nor*** evidence relating to some communicative act or writing by petitioner. Therefore, not inadmissible on privilege grounds
       3. Constitution does not forbid State’s minor intrusions into an individual’s body under stringently limited conditions
          1. ***Can*** take blood from suspects. 5th Amend. ***Applies*** to speech: oral or written

5th Amend. Does not apply to physical things

* + - 1. **Search and Seizure Claim:** Exigent circumstances. Alcohol dissipates in blood stream. This is a seizure. Allowed because it is a reasonable test, done by doctor in hospital/professional at station. ***Here,*** petitioner ***refused breathalyzer***. Minimally intrusive. ***Balancing*** of state interest in stopping crime v. minimal intrusion.
  1. **Confession Law**
     1. **Due Process:**
        1. Confession taken: By torture; deprivation of human necessities; extreme psychological pressure
        2. All about reliability; danger of false confessions
     2. ***Miranda***
        1. Custody and interrogation
        2. Require ***Miranda*** warnings, may be voluntarily waived
        3. About dissatisfactions with limitations of DP; concern over reliability of confessions & desire to establish bright line
     3. **6th Amend. Right to Counsel**
        1. Triggered by commencement of formal proceedings (e.g. arraignment)
           1. May be waived
        2. About preserving ***right to counsel***, ***court integrity, and fair trial***
           1. Integrity matters a lot to the court. Concerned it may be eroded by ruling one way or another, ***court will always rule towards integrity***
     4. **No “either or” limits:** It is possible that all 3 violations could take place at the same time
     5. ***Kastigar v. US*-** Whether conferring immunity on someone who invokes 5th Amend. Privilege against self-incrimination is enough to compel testimony
        1. Petitioners were subpoenaed to appear before federal grand jury. Refused to answer questions, asserted privilege against compulsory self-incrimination, despite a grant of immunity proffered by US
        2. **Takeaway-** ***If immunity granted is coextensive*** with scope of 5th Amend. Privilege, a person with the immunity ***must testify or be found in contempt***, regardless of their invoking of 5th Amend. Privilege
        3. **Test:** Whether the immunity granted under statute is coextensive with the scope of privilege:
           1. ***If So***, petitioner’s refusals to answer based on the privilege were unjustified, judgments of contempt proper, for grant of immunity has removed dangers against which privilege protects
           2. If immunity granted is ***not*** as comprehensive as the protection afforded by privilege, petitioners are justified in refusing to answer, judgments of contempt must be vacated
        4. **Note:** Burden is on prosecutor to prove evidence derived from different sources. Neither a grant of immunity nor a wrongfully obtained confession should bar a future prosecution, so long as the government can demonstrate it did not use the tainted information
     6. ***Baltimore City Dept. v. Bouknight*-** Can’t invoke privilege to avoid production of children
        1. Juvenile court ordered removal of abused child from Bouknight, she failed to produce the child or reveal where the child could be found. Invoked 5th Amend. Privilege against self-incrimination to resist the order to produce the child.
        2. **Takeaway-** Order to produce children cannot be characterized as efforts to gain some testimonial component of the act of production. Can’t invoke privilege against Self-Incrimination to avoid production
        3. **Note:** By accepting the care of the child, Bouknight signed up for the State’s regulatory system which made her subject to inspections. Since the state enforced the obligation as part of a broad noncriminal regulatory regime, Bouknight could not invoke the self-incrimination privilege to resist the order for production.
  2. **Administering *Miranda***
     1. ***Berkemer v. McCarty­-***No need for ***Miranda*** during traffic stops. Only arrests.
        1. Officer stopped respondent’s vehicle and asked if respondent had been using intoxicants. Respondent responded in the affirmative. Was arrested. Respondent was then asked again about the use of intoxicants and again responded in the affirmative. Never advised of constitutional rights.
           1. SCOTUS: Initial stop of respondent’s car, by itself, did not render respondent in custody, respondent was not entitled to recitation of constitutional rights.

***However,*** after respondent was arrested, any statements made without being ***Mirandaed*** are inadmissible. Because it couldn’t be determined ***which statements were relied upon*** in convicting respondent, conviction was vacated.

* + - 1. **Takeaway-** ***Miranda*** is a bright line. Does ***not need to be administered*** during a ***traffic stop***.
         1. **Stops-** No ***Miranda***
         2. **Arrest-** ***Miranda***
         3. Major debate between prosecution and defense over whether incident is stop or arrest
    1. ***JDB*-** Child’s age is a factor to be considered in custodial inquiry of ***Miranda***
       1. Uniformed officer removed 13-year-old student from his classroom and escorted him to a closed-door conference room where he was questioned by the police for at least half an hour regarding home break ins. ***Miranda*** was not administered prior to questioning. Student confessed.
          1. SCOTUS: Child’s age property informed the ***Miranda*** custody analysis.

A reasonable child subjected to police questioning would sometime feel pressured to submit when a reasonable adult would feel free to go

Child’s age differed from other personal characteristics that, even when known to police, have no objectively discernible relationship to a person’s understanding of freedom of action

* + - 1. **Takeaway-** So long as a child’s age is known to officer or it would be objectively apparent to a reasonable officer, its inclusion in ***custody analysis*** is consistent with the objective nature of the test.
      2. **Custody Inquiry:**
         1. First, what are the circumstances surrounding the interrogation
         2. Second, given those circumstances, would a reasonable person have felt he or she was at liberty to ***terminate the interrogation*** and ***leave***
         3. **Note:** Once the scene is set and actions reconstructed, court must apply an objective test to resolve ***the ultimate inquiry*:** Was there a ***formal arrest*** or ***restraint on freedom of movement*** of the degree associated with formal arrest

Children’s age must be considered in this inquiry

* + 1. ***Rhode Island v. Innis*-** Whether questioning amounts to interrogation
       1. Respondent was convicted of kidnapping, robbery, and murder of a taxicab driver after the trial court denied respondent’s motion to suppress the weapon and statements made by respondent to police about the weapon.
          1. SCOTUS: Respondent was not interrogated within the meaning of ***Miranda*** when the police voiced safety concerns about children finding the weapon from the crime and respondent interrupted them to say he would show them where the gun was located
       2. **Takeaway-** ***Miranda*** is whittled a bit. Even though the suspect was in custody, what happened here is not an interrogation. Subtle compulsion does not equal an interrogation
          1. **What is an interrogation?**

Administrative questioning is not an interrogation.

How old are you? Can I have your driver’s license?

Ex. Stop a drunk driver, ask a bunch of questions to see if their speech is slurred.

***Practice*** police should know would ***reasonably evoke*** an ***incriminating response*** from a suspect ***amounts to interrogation***

* + - 1. **Note:** Felons have a code that children are off limits. In this situation, the fact the police are talking about small children ***was*** an attempt to elicit a response
         1. **Standard:**

***Brewer*:** Deliberately eliciting. Looking at totality of circumstances to determine if the officer was deliberately eliciting

***Miranda*:** Likely to elicit. Whether a reasonable officer would know that his words or actions were likely to elicit an incriminating response

* + 1. ***NY v. Quarles*-** Public safety exception to ***Miranda*** warnings
       1. Police officer pursued respondent suspect into a supermarket after a woman identified suspect as the man who raped her. Officer frisked respondent and discovered he was wearing an empty shoulder holster. After handcuffing respondent, officer asked him where the gun was. Suspect said, “the gun is over there.” After officer retrieved the loaded gun, he placed respondent under arrest and read him his ***Miranda*** rights.
       2. **Takeaway-** There is a ***“public safety”*** exception to the requirement that ***Miranda*** warnings be given before a suspect’s answers may be admitted into evidence, and that the availability of the expectation ***does not depend*** upon motivation of individual officer involved.
          1. Exception ***lessens the necessity*** of on-the-scene balancing. Court believes the police can properly distinguish a public safety exception and impermissible question without ***Miranda***
    2. ***Illinois v. Perkins*-** Ploys to mislead suspects into talking to undercover agents does not implicate ***Miranda*** concerns
       1. Prisoner made statements to an undercover agent while in jail. Was not ***Mirandaed*** by the undercover agent. State alleged the statements were voluntary and not coerced, and that ***Miranda*** warnings were not required when an undercover agent was asking questions that could elicit an incriminating response.
       2. **Takeaway-** Conversations between suspects and undercover agents do not implicated the concerns underlying ***Miranda***
          1. ***Essential ingredients*** of a police-dominated atmosphere and compulsion were ***not present*** when an incarcerated person speaks freely to someone he believes is a fellow inmate. Coercion is to be determined from the prospective of the suspect.
          2. ***Ploys to mislead*** a suspect or lull him into a false sense of security ***that did not rise to the level of compulsion or coercion*** to speak were ***not within the concerns of Miranda warnings***
          3. Miranda is not meant to protect suspects from boasting about criminal activities
       3. **Note:** Talking to “fellow inmates” eliminates all the psychological pressures generally associated with interrogation under ***Miranda***
       4. **Marshall Dissent:** If there’s custody, there is an interrogation. Conversation was not a conversation, rather an attempt to get info out of the suspect.
  1. **Invocation & Waiver**
     1. ***Michigan v. Mosley*-** Right to remain silent must be honored. Time and subject of questioning are factors.
        1. Defendant was arrested in connection with the investigation of robberies. Was advised of his rights, stated he did not want to talk about the robberies. Defendant was thereafter questioned at another police station about a homicide and confessed to the murder.
        2. **Takeaway-** The right to remain silent encompassed within ***Miranda*** was not a right to permanently remain silent, ***but was*** a right that had to be scrupulously honored by the police.
           1. **Here,** questioning of the defendant about a different crime, at a different station, by a different officer, after an extended period of time ***without questioning*** demonstrated that the request of the defendant to remain silent ***had been scrupulously honored***.
           2. Resumption of questioning after defendant exercises right to remain silent is ***not permissible***. “Right to cut off questioning” must be “scrupulously honored.”
        3. Court in ***Moseley*** states that officers were permitted to re-***Mirandize*** the defendant and obtain a waiver and confession from him, even though he had asserted his right to remain silent
     2. ***Edwards v. Arizona*-** Waiver must be voluntary
        1. Petitioner was arrested and read his ***Miranda*** rights. He then requested an attorney. Police ceased questioning him but detectives from the same police department returned the next day and interrogated him. Petitioner confessed to the crimes during the second interrogation.
        2. **Takeaway-** When a suspect asserts their right to counsel and right to remain silent and police, without furnishing him with counsel, return and secure a confession, the suspect’s 5th and 14th Amend. Rights have been violated
           1. **Here,** petitioner did not validly waive his right to counsel and having requested counsel, he was not subject to further interrogation until counsel had been made available or petitioner himself initiated further communication with police
        3. **Procedure:**
           1. If accused indicates he wishes to remain silent- interrogation must cease
           2. If accused requests counsel- interrogation must cease until an attorney is present
        4. ***Edwards* Rule:** If someone invokes right to counsel under ***Miranda***, only 2 ways to continue questioning. Either bring in a lawyer or the suspect must initiate conversation.
           1. Waivers of counsel must be voluntary
           2. Not the same as consent under 4th Amendment
           3. Voluntariness of consent or an admission on the one hand, and knowing and intelligent waiver on the other, are discrete inquiries
     3. ***Maryland v. Shatzer*-** 14-days + general prison pop. = not custody for ***Miranda***
        1. In 2003, detective tried to question the inmate, who was incarcerated at a Maryland prison pursuant to a prior conviction, about allegations that he had sexually abused his son. Inmate invoked his ***Miranda*** right to have counsel present during interrogation, so interview was terminated. Inmate was released back into general population, investigation was closed. Was reopened in 2006 by another detective who attempted to interrogate inmate (still incarcerated). Inmate waived his ***Miranda*** rights and made inculpatory statements
        2. **Takeaway-** 14-day break-in-custody provided plenty of time for a suspect to get reacclimated to normal life, consult with friends and counsel, and shake off any residual coercive effects to his prior custody.
           1. **Here,** 2-and-a-half-year break was enough for ***Edwards*** rule to be inapplicable
           2. Being in general prison population ***is not custody*** for ***Miranda***
        3. **What is Custody for Miranda?**
           1. Arrest, handcuff, questions, police car, etc.- custody for ***Miranda*** purposes
           2. If you are in jail, pretrial, etc.- Custody for ***Miranda*** purposes
           3. When you look at a situation where a person has been convicted and put in jail, ***must distinguish*** between custody and custody for ***Miranda*** purposes.
           4. Can still have ***Miranda*** custody in prison:

Interrogation, detective in jail cell with suspect.

* + 1. ***Berghuis v. Thompkins***
       1. Inmate did not say he wanted to remain silent or that he did not want to talk to police. No basis to conclude he did not understand his rights, followed that he chose not to invoke or rely on them when he spoke to detective. Answered a question of whether he prayed to god for forgiveness for shooting a victim. Made the statement 3 hours after being ***Mirandaed.***
       2. **Takeaway-** Being quiet is not enough, must directly invoke right to counsel.
          1. Where prosecution shows that a ***Miranda*** warning was given and that it was understood by the accused, an accused’s un-coerced statement establishes an implied waiver of the right to remain silent
          2. DP as the standard for waiver. State’s burden:

Not heavy. Don’t torture the guy.

* + - 1. **If you don’t invoke *unambiguously***-
         1. Left looking to see if DP standards are violated
         2. Otherwise, confession comes in
         3. Preponderance of evidence as applied to DP standard of voluntariness
  1. **Trickery**
     1. ***Moran v. Burbine­*-** Deceiving an attorney not requested by defendant has no bearing on ***Miranda***
        1. Respondent confessed to and was convicted of the murder of a young woman. Later challenged his conviction, claiming his confessions should have been suppressed because the police deceived him by failing to inform him that a public defender had called to speak with him while he was in custody, but prior to arraignment
        2. **Takeaway-** How the police treat an attorney has no relevance at all to the degree of compulsion experienced by a suspect in an interrogation
           1. **Here,** it was the attorney who was deceived, not the client. As a result, Burbine was still able to give a voluntary, knowing, and intelligent waiver. He never ***requested*** an attorney. At any time, he could have shut up and requested one.
        3. **Purpose of *Miranda* warnings**is to dissipate the compulsion inherent in custodial interrogations and guard against the abridgment of suspects 5th Amend. Rights.
           1. That the police did not tell a suspect that a public defender requested to speak with him had no bearing on his decision-making process because he never had requested an attorney.
        4. **Note:** ***Miranda*** is becoming less of a bright line. This case most likely could have been decided by DP. Since there was not a prosecution here, 6th Amend. Does not apply.
     2. ***Colorado v. Spring*-** Police don’t need to tell all the things you may be charged with/suspected of
        1. Defendant was arrested by ATF agents for firearms violations in Kansas. Defendant signed a waiver of his ***Miranda*** rights, and ATF agents questioned him about a murder in CO as well as the firearms violations. CO police then went to KS, re-***Mirandaed*** suspect, questioned him about the murder. Defendant confessed.
        2. **Takeaway-** Officers are not obligated to tell suspect all the things he may be charged with
           1. **Mere silence** by law enforcement to the subject of an interrogation ***is not trickery*** sufficient to invalidate suspect’s waiver of ***Miranda*** rights
           2. Additional information could only affect wisdom of waiver, not it’s ***essentially*** voluntary and knowing nature
        3. **Note:** A suspect’s awareness of all the possible subjects of questioning in advance of interrogation is not relevant to determining whether the suspect voluntarily, knowingly, and intelligently waived his 5th Amend. Privilege
     3. ***Missouri v. Seibert*-** ***Miranda*** does not involve fruits of the poisonous tree
        1. After mother’s child died she feared being charged with neglect. Had her other children and their friends burn down the family mobile home with a mentally ill child inside of it. Thought that with the mentally ill child dying in the fire, it would make the other child’s death look like the child was not left unattended. Police employed a tactic called “question first” where they arrested defendant but failed to give her ***Miranda*** warnings. Elicited a confession, ***Mirandaed***, and then had defendant repeat her confession.
        2. **Takeaway-** Because midstream recitation of warnings after interrogation and unwarned confession could not effectively comply with ***Miranda*** constitutional requirement, a ***statement repeated after a warning in such circumstances is inadmissible.***
           1. **Essentially-** Confessions elicited through the “Question First” tactic are inadmissible

**Remedy**

1. **Remedy of Exclusion**
   1. Exclusionary rule is not constitutionally mandated
   2. ***Mapp*-** 4th Amend. Exclusionary rule
      1. All evidence obtained by searches and seizures in violation of the Constitution is, by the 4th Amend., inadmissible in a state court
   3. ***Wong Sun*-** To achieve benefit of exclusionary rule defendant’s personal rights must have been violated.
      1. Any evidence (under 4th Amend.) taken in violation that leads to anything else derivatively is suppressed, there is a doctrine about attenuation, but this is pretty direct
         1. Can’t be used against the person whose right was violated, ***but can be used against anyone else***
   4. ***Rakas v. Illinois*-** 4th Amend. Rule for standing
      1. Petitioners were convicted for armed robbery because their motion to suppress a sawed-off rifle and shells seized by the police during the search of a vehicle in which petitioners were passengers was properly denied.
         1. SCOTUS: The 4th protects only those places in which petitioners ***themselves*** have a reasonable expectation of privacy
            1. **Here,** the petitioner’s rights were not violated where they had no legitimate expectation of privacy in areas of a car in which ***they claimed no*** property or possessory interest
      2. **Takeaway-** The ***Basic Rule of Standing for the Exclusionary Rule*** is that the concept of standing discussed in ***Jones*** focuses on whether the person seeking to challenge the legality of a search as a basis for suppressing evidence was ***himself a victim of the search or seizure*** 
         1. Use ***Katz & Jones*** for standing
            1. Jones: Anyone legitimately on the premises where a search occurs may challenge its legality
            2. Katz: The capacity to claim protection of the 4th depends ***not*** upon a property right in the invaded place, ***but upon whether*** the person who claims the protection has a ***legitimate expectation of privacy*** in the invaded place
         2. **Dark Cloud:** Not a lot left for you in automobiles unless you have a possessory interest
   5. **Independent Source and Inevitable Discovery**
      1. Information first discovered through a constitutional violation can be presented at trial if it also comes to light independent of the violation. i.e. if the authorities have another source for the same info (***Silverthorne Lumber***)
      2. Court has extended the independent source rationale to also apply when the circumstances demonstrate that the authorities were just about to discover the information in another, legal way, at the time the violation occurred
      3. ***Nix v. Williams*-** inevitable discovery exception to exclusionary rule
         1. Respondent made incriminating statements, which led the police to his victim’s body. The evidence was the product of unlawful questioning by the police and was ***excluded***. The evidence of the body’s location and condition were allowed on the theory that the body would have been discovered, even if the incriminating statements were not elicited from the respondent.
         2. **Takeaway-** Inevitable discovery exception to the exclusionary rule. No requirement of “good faith.” If a body or other evidence would have been discovered in any event, even without inadmissible statements from a defendant, the evidence is allowed.
            1. **Independent Source:** Inevitable discovery is a type of independent source
         3. **Note:** Knowing there is a body out there somewhere, know your officers can violate the 4th, what to do?
            1. ***Create the broadest search plan possible*** in order to ensure that you’ve covered your bases for the inevitable discovery doctrine. Then have your detectives beat on suspect (not literally), violate the 4th, discover the body, dodge the exclusionary rule with inevitable discovery doctrine
      4. ***Murray v. US*-** Application of exclusion sometimes puts police in worse place than if violation had not occurred
         1. Petitioners motions to suppress were based on claims that evidence was seized illegally because agents did not inform the magistrate about a prior warrantless entry to the premises where bales of marijuana were eventually seized. Petitioners contended that the independent source doctrine only applied to evidence obtained for the first time during an independent and lawful search.
         2. **Takeaway-** When challenged evidence has an independent source, exclusion would put the police in a worse place than they would have been if no violation had occurred.
      5. **Exclusionary Rule**
         1. 4th Amend. Search Doctrine
            1. Two ways to reduce the amount of evidence suppressed or excluded

Shrink what is a search

Lower the bar on PC

* + - * 1. Another way: Eliminate the exclusionary rule
      1. Substantial privacy rights have shrunk because courts are reluctant to suppress murdered little girls and mass quantities of drugs
         1. Hydraulic pressure to eliminate suppressions
    1. ***US v. Leon*-** Good faith exception to the warrant requirement
       1. Officers obtained evidence used to convict Leon while acting in reasonable reliance on a search warrant issued by a detached and neutral magistrate but ultimately found to be unsupported by PC
       2. **Takeaway-** The marginal or nonexistent benefits produced by suppressing evidence obtained in objectively reasonable reliance on a subsequently invalidated search warrant ***could not justify*** the substantial costs of exclusion
          1. ***Good faith exception*** will not deter police officers from making sure they have PC

Can’t deter someone who in good faith is wrong

Good faith exception to warrant requirement is a big deal

* + - 1. **Stevens Dissent:** Assumption that PC is required. There is an issue if there is no PC but the search is constitutional anyway. Circumvents the whole Affidavit🡪 Magistrate review for PC🡪 Warrant process.
  1. **Using Suppressed Evidence to Impeach**
     1. ***Harris v. NY*-** Impeachment of defendant
        1. During cross examination at his trial, defendant was questioned regarding specified statements made to the police immediately following his arrest. The statements partially contradicted his direct testimony and the state sought to impeach defendant with his statements. State made no effort to use the statements in their ***case in chief***, conceding that the statements were ***inadmissible under Miranda***.
           1. SCOTUS: ***Miranda*** did not prevent state from using defendant’s statement to police to confront defendant with ***prior inconsistencies***

Defendant’s credibility was appropriately impeached by use of his earlier conflicting statements

* + - 1. **Takeaway-** If you take a statement from defendant unlawfully and they take the stand and testify in a manner that contradicts the previous statement, you may bring the statement into evidence for the ***limited purpose of impeachment***
         1. Integrity of the court outweighs the value of the 5th Amend. In this case
         2. A statement taken illegally is suppressed in state’s Case in Chief
         3. When defense case comes in and defendant takes the stand and tells a different version of events, state can bring in a ***police officer*** to the stand to impeach (diminish credibility) of defendant by reciting originally illegally taken evidence
    1. ***Kansas v. Ventris*-** Almost all inadmissible evidence is available for impeachment
       1. Defendant and co-defendant were charged with murder and other crimes. Prior to trial, an informant planted in defendant’s cell heard him admit to shooting and robbing the victim, but defendant testified at trial that his co-defendant committed the crimes. State sought to impeach.
          1. SCOTUS: Interests safeguarded by such exclusion were outweighed by the need to prevent perjury and to assure the integrity of the trial process
          2. Informant’s testimony, concededly elicited in violation of Sixth Amend., was admissible to challenge defendant’s inconsistent testimony at trial

Jailhouse informants are not allowed

* + - 1. **Takeaway-** Defendants rarely take the stand because the impeachment process. Almost all inadmissible evidence is available for use in impeachment process.