**Criminal Procedure I**

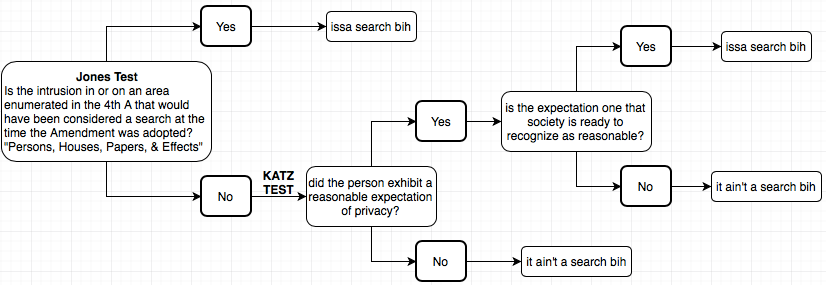
**Professor Beloof — Spring 2017**

**Part 1: The Fourth Amendment**

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

1. **The Reasonableness Clause**
   1. Persons, Houses, Papers, and Effects
      1. Warrant Preference Theory: the warrant clause modifies the reasonableness clause
         1. A warrant is a requirement for a search or seizure to be “reasonable”
            1. Warrantless searches are permitted only when so-called “exigent circumstances” or “special needs” make it impossible or impracticable to obtain a warrant in advance
            2. These are “well defined exceptions” to the warrant requirement referred to toward the end of the Katz majority opinion
         2. Warrants must be supported by probable cause and particularly describe what is to be searched or seized
      2. The Reasonableness Theory: the reasonableness clause is grammatically independent from the warrant clause
         1. Requires reasonableness determined on an ad hoc basis
         2. Warrants are not a requirement/general rule
            1. Home searches only reasonable with a warrant
            2. Warrants are not intended primarily to provide any notice to the target of the search or seizure
         3. Warrants are just a way for judges to supervise police-work
            1. Permits even searches based on invalid warrants, so long as officers reasonably relied on the warrant’s validity
         4. Every situation should get the “special circumstances” balancing test
            1. Some situations warrants are necessary, other aren’t
            2. Some situations require probable cause, some don’t
      3. *Katz v. United States*: Suspicion Katz was transmitting gambling information over the phone — Federal agents attached an eavesdropping device to the outside of a public phone booth used by Katz. Based on recordings of his end of the conversations, Katz was convicted
         1. Rule: 4th A protects people not places
         2. Prior to Katz the 4th A focused on intrusion into tangible persons or places
         3. Clearly expanded the 4th into less tangible electronic signals of the human voice.
         4. “Societally accepted expectation of privacy”
            1. **Test:** (1) Person exhibited an actual expectation of privacy and (2) that the expectation be one that society is prepared to recognize as reasonable.

If exposed to the public, no reasonable expectation of privacy

* + - * 1. With technology, efforts to stick strictly to text and history can be challenging, encouraging departure to other measures of constitutionality
        2. Dissent sticks to text and history — eavesdropping existed at the time of the founding, but the framers did not proscribe it in the 4th A = constitutional
    1. *Oliver v. United States*: Police officers found a marijuana field growing about a mile away from an individual’s home— “No Trespassing” sign
       1. Rule: “An individual may not legitimately demand privacy for activities conducted out of doors in fields, except in the area immediately surrounding the home.”
       2. 4th A only applies to home & curtilage
       3. Limits the scope of protection of the 4th A
       4. Open fields (even if posted “No Trespassing”), the Majority asserts, are not places the text, intent of the framers, or pre-Katz precedent protected.
       5. Bright line rule created: Open fields are not a place society accepts as possessing a privacy interest
       6. Dissent: if the measure is truly societal acceptance of privacy interests then surely open fields posted “NO TRESPASSING” meet that test.
    2. Balance
       1. Balance between privacy and public safety
       2. Try to create bright line rules to help this — can expand or contract rights
          1. *Katz*: expanded rights
          2. *Olive*r: limited rights
       3. While Katz is the articulated test, other factors (text, history, original intent, precedent, administrative concerns, and the balance between privacy and law enforcement clearly remain alive and well.
       4. Although, technically speaking, these factors were subsumed within the Katz expectation of privacy test. Such an arrangement is awkward at best. However awkward, it remained intact for half a century until Jones
    3. *United States v. Jones:* police granted a warrant authorizing use of a GPS tracking device on the Jeep registered to Jones’ wife (of which Jones was the exclusive driver), but failed to comply with the warrant’s deadline — still installed the device — government ultimately obtained an indictment through the info.
       1. Rule: This constituted a search and was in violation of the 4th A
       2. 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?
       3. This test before Katz — if not deemed a search, move to Katz test and analyze
    4. Summary of Jones/Katz Relationship
       1. Jones provides a “floor” of what a search is below which Katz may not go
       2. Katz issue: “reasonable” expectation declines as technology increases — changes with society — Jones prevents complete annihilation
          1. Katz Dissent: Katz can limit or expand privacy depending on which side of the “balance” they choose to prioritize (privacy v. law enforcement)
       3. Who decides societal’s “reasonable expectation of privacy” — SCOTUS
          1. 4TH Amendment text & history, court precedent
          2. Has it been exposed to a third party?
          3. Balance: Individual privacy v Law enforcement
    5. Fourth Amendment Overview
       1. Has there been a search? (We are here at this point)
       2. If so, was there a valid warrant? Was is executed properly?
       3. If not, is there an exception or special need eliminating the warrant requirement?
       4. Does the Exclusionary Rule apply?
  1. Searches
     1. “No Search” through Katz Test
        1. *United States v. White*: Government used informant, secretly recorded conversations with White — informant was not present during the trial, but the recorded conversations were admitted
           1. Rule: The secret recording of conversations between an individual and government agents, without a warrant, does not violate the 4th A
           2. Reasoning: exposed to third party = no reasonable expectation of privacy
        2. *United States v. Miller*: Miller charged of not paying taxes
           1. Rule: Bank Statements not a search
           2. Reasoning: shared with government/third party
           3. Dissent: this is stupid, can’t tell people to trust banks for privacy and then say they have no privacy from the government through them
        3. *California v. Greenwood*: Greenwood arrested for narcotics trafficking based upon evidence obtained as a result of a police search of his trash.
           1. Rule: No objectively reasonable expectation of privacy in trash
           2. Reasoning: Greenwood exposed his garbage to the public with purpose of conveying it to a third party.
        4. *Florida v. Riley:* An officer acting on anonymous tip observed marijuana in the interior of a respondent Riley’s partially covered greenhouse from the vantage point of a helicopter.
           1. Rule: An officer’s naked eye observation of the interior of a partially covered greenhouse in a residential backyard from the vantage point of a helicopter 400 feet above did not constitute a search requiring a warrant.
           2. Reasoning: “knowingly exposed to the public”
           3. **The Plain View Doctrine:** “What a person knowingly exposes to the public, even in his own home or office, is not subject to 4th Amendment protection.”

This goes for “plain view” during legal intrusions as well

Even during a lawful intrusion, can’t move things (*Hicks* — moving stereo equipment for serial numbers) — doesn’t matter what a search reveals,

Lawful vantage points include: places police lawfully are with, or without, a warrant.

* + - 1. *United States v. Jacobsen:* Employees opened a package that had been damaged by a forklift — found a tube that contained four plastic bags inside one another, and the innermost bag contained a white substance — notified DEA — determined the powder was cocaine — obtained a warrant for the address on the package and searched the location
         1. Rule: No reasonable expectation of privacy because it was exposed to public
         2. Reasoning: Package was already opened, remained unsealed, and FedEx invited the agents = no reasonable expectation of privacy
  1. Seizures
     1. Seizures are typically of people, as the term “search” dominates in the cases concerning things.
     2. *California v. Hodari*: Hodari continued to flee from police after being told to halt — threw rock of cocaine — then was tackled to the ground
        1. Rule: An arrest (seizure) occurs when physical force has been applied to a person, or when a person submits to the assertion of authority.
        2. Reasoning: No PC until rock was thrown. No seizure until he was tackled. Since tackle was after crack thrown there was PC to seize him.
        3. Dissent: The test for a seizure is “whether in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave.”
     3. *United States v. Drayton:* A police search of bus passengers revealed drugs in the defendant’s bags and on his person — they consented, but weren’t advised that they were allowed to deny consent
        1. Rule: Fourth Amendment does not require police officers to advise bus passengers of their right not to cooperate and to refuse consent to searches.
           1. Once you consent, you have no say in the scope of consent
        2. Reasoning: Although the officer did not inform the defendants of their right to refuse the search, he did request permission to search and gave no indication consent was required — didn’t block exits, calm tone, etc. so he should have known he was free to leave
        3. Dissent: “The issue we took to review is whether the police's examination of the bus passengers ... amounted to a suspicion-less seizure under the Fourth Amendment. If it did, any consent to search was plainly invalid as a product of the illegal seizure.”
     4. *Brendlin v. California:* Police stopped Simeroth's car for having expired registration tabs — Brendlin, who had a warrant out for his arrest, was riding in the passenger seat — Police found methamphetamine, marijuana, and drug paraphernalia in the car and on Simeroth's person.
        1. Rule: All occupants of a car are "seized" for purposes of the Fourth Amendment during a traffic stop, not just the driver.
        2. Reasoning: "We resolve this question by asking whether a reasonable person in Brendlin's position when the car stopped would have believed himself free to 'terminate the encounter' between the police and himself.”
           1. No seizure by show of authority unless submission to it.
           2. Car pulling over because of lights and siren is submitting to authority. This reasonably includes passengers in the car.
     5. Exclusionary Rule & Illegal Seizures
        1. *Hodari*, *Drayton*, and *Brendlin* all involve attempts to invoke the exclusionary rule and the “fruit of the poisonous tree” doctrine — exclude evidence because it came from an illegal search or seizure
        2. *Hodari* & *Drayton* — no seizure and therefore evidence was not in violation of an illegal search or seizure
        3. *Brendlin* — successful in arguing seizure, no probable cause for such search and seizure, and therefore the evidence is excluded

1. **The Warrant Clause**
   1. Probable Cause
      1. Second part of 4th A analysis — once the Court has decided there has been a search or seizure, they must decide whether the search was unreasonable and therefore unconstitutional
      2. Two main factors:
         1. Was there a warrant?
         2. Whether it was supported by “probable cause” — where warrant v. reasonableness views come into play
            1. Probable cause is required even when a warrant is not — before *Terry* always; post *Terry* “generally favored”
            2. Probable Cause: “If the facts and circumstances before the officer are such as to warrant a man of prudence and caution in believing that the offence has been committed, it is sufficient” — defined by *Stacey v. Emery*

Factors considered for PC based on this:

Officer’s experience

Known informant: reliable informant with reliable track record

Anonymous informant: far reaches of what can constitute PC

* + - * 1. Unlike “proof to the preponderance of the evidence” the Court has avoided attaching a distinct numerical probability/bright-line rule to define PC
        2. Issues to consider for PC

How much suspicion should the police be required to demonstrate before they deprive and individual of her liberty (before they arrest, search, or seize her property?

Does it matter how the police came to suspect the individual — whether they observes the suspicious behavior themselves, heard about it from a known source, or heard it from an anonymous source?

What if the police paid the person who provided them with the info?

* + 1. The Aguilar-Spinelli Test (no longer used — overruled by *Gates*)
       1. *Aguilar:* on granting search without a 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. Developed a two part test to determine whether or not sufficient evidence was presented to a magistrate to support PC:
          1. Did the affiant make clear why the information supplied to him was reliable and trustworthy?
          2. Was the magistrate told the basis of the informant’s information?
    2. *Brinegar v. United States:* Special investigators were parked in a car beside a highway — Brinegar drove by — had a lengthy record/reputation for illegally transporting alochol — agents arrested him, and found 12 cases of liquor in the car
       1. Rule: “probable cause” is the standard, not “guilt beyond reasonable doubt”
       2. Reasoning: If the "beyond a reasonable doubt" standard, officers rarely could take "effective" action in protecting the public — standard would be too high
          1. Attempt to strike balance: To require more than probable cause would harm law enforcement, while to allow less than probable cause would "leave law-abiding citizens at the mercy of the officers' whim or caprice.”
    3. *Draper v. United States:* Without a warrant, an agent arrested Draper, as he disembarked a train. PC based on an informant’s tip, which was corroborated with an accurate, predictive description of the circumstances (clothes, location of drugs).
       1. Rule: PC exists where the known facts and circumstances would cause a reasonable person to believe that an offense had been, or is being, committed.
       2. Reasoning: Informant’s past reliability, accurate description of the Petitioner’s clothing, bag, and date of arrival gave the agent PC. Hearsay is an evidentiary rule dealing with guilt beyond a reasonable doubt, not PC — would confuse the common sense standard of PC from the technical, legal standards of proving guilt beyond a reasonable doubt.
       3. Dissent: other ways to catch him, should have gone through the legal process
    4. *Illinios v. Gates:* anonymous tip about Gates plans to traffic drugs from FL to IL — details were corroborated by Gates’ actions — police obtained warrant and found drugs, weapons and other contraband in his home and automobile.
       1. Rule: Where an anonymous tip is corroborated with actual police findings, a “totality of the circumstances” approach is an appropriate way of determining probable cause instead of using the two-pronged test of “veracity/reliability” and “basis of knowledge.” \*\*overruled Aguilar-Spinelli — The 4th A requires no more than a finding by an issuing magistrate that there is a “substantial basis” that a search will uncover evidence of wrongdoing.
       2. Take factors from Aguilar-Spinelli and incorporate them into the totality-of-the-circumstances approach
          1. Informant’s veracity, reliability, and basis of knowledge are all highly relevant in determining value of report
       3. “Flexible, easy applied standard will better achieve the accommodation of public and private interests that the 4th A requires.”
       4. TEST:
          1. Not merely conclusory statements. (Example: “I have cause to believe….”)
          2. Must be “a substantial basis…” for PC
          3. “It is enough that there is a fair probability that the anonymous informant obtained info from the defendant or someone the defendant trusted.”
          4. “If an unquestionably honest citizen comes forward with a report of criminal activity” that is PC
    5. *Florida v. Harris:* Police searched the car during a traffic stop for expired registration when a drug detection dog alerted the officer — dog not trained to detect what was found. Harris argued that the dog's alert was not PC
       1. Rule: Not a search to sniff air and it's not a search to sniff air for drugs because you have no protectable privacy interest in illegal things
       2. Finding of a drug detection dog’s reliability cannot depend on the state’s satisfaction of multiple, independent evidentiary requirements; hard to challenge, but can challenge conduct of officer w/ dog (ex. Dog wasn’t cued properly)
    6. *Maryland v. Pringle:* Pringle appealed a conviction, based on lack of probable cause, when he was arrested for paraphernalia found in the back of another person’s a car, while sitting in the front.
       1. Rule: When a reasonable officer can conclude that a defendant is guilty, probable cause exists.
       2. Reasoning: Reasonable inference that any or all three of the occupants had knowledge of, and exercised dominion and control over, the drugs, and thus committed the crime of possession of drugs, either solely or jointly.
  1. Warrants
     1. Basics
        1. Key consideration in addressing the legality of government intrusion
        2. Court “holds” that non-warranted searches and seizures are automatically unreasonable, but created “exceptions”
           1. Scalia: “the ‘warrant requirement’ had become so riddled with exceptions that it was basically unrecognizable.”
     2. Particularity
        1. 4th A requires particularity with regard to both the place to be searched and the persons or things to be seized
        2. Purpose: to avoid general searches
        3. *Maryand v. Garrison:* Police had warrant to search 3d floor of apt. but mistakenly thought there was just one apartment; searched both and one of had drugs
           1. “Good Faith” Exceptions — police acted in good faith on what they thought to be a valid warrant

Validity of the warrant was assessed on the basis of the info that the officers disclosed, or had a duty to discover and to disclose, to the issuing magistrate

Officers' execution of the warrant reasonably included the entire third floor, and their conduct was consistent with a reasonable effort to ascertain and identify the place intended to be searched within the meaning of 4th A.

Mistakes happen; if made in good faith — warrant and PC valid

* + - 1. *Groh v. Ramirez*: Groh applied for a search warrant to search the Ramirez ranch for illegal weapons. On the warrant, Groh mistakenly omitted the exact items sought (though he correctly listed the items on the application itself). A federal magistrate issued the warrant.
         1. Rule:Groh's warrant was invalid because it did not meet the Fourth Amendment requirement that a warrant particularly describe the persons or things to be seized.
         2. Reasoning: "no reasonable officer could believe that a warrant that did not comply with that requirement was valid." Groh therefore did not have "qualified immunity" from suit.
    1. Neutral and Detached Magistrate
       1. Reviews conclusions of police officers whose judgement may be compromised by their role as law enforcers — requires the scrutiny of a neutral magistrate
          1. May not deliver the benefits promised

Many don’t take too much time to actually review

Warrants often issued on limited information

Hearsay okay as long as there is a “substantial basis” for believing it

Court also allows illegal searches and even outright lies on the warrant affidavit as long as PC is present

* + - 1. *Shadwick v. City of Tampa:* Shadwick was arrested for impaired driving on a warrant issued by a clerk of the municipal court — challenged because it was signed by a municipal clerk rather than a juge
         1. Rule: A court clerk is a neutral and detached magistrate
         2. Reasoning: There are no real qualifications for “detachment” other than requiring severance and disengagement from activities with law enforcement and must be capable of making a “probable cause” determination
      2. *McCommon v. Mississippi*: Marijuana discovered pursuant to a warrant issued by a judge who really relied upon the police officer’s request rather than an independent assessment of the facts to judge whether probable cause existed
         1. Denial of cert, not an opinion
         2. Says judge “rubber stamped” the police’s request for warrant — Judge repeatedly says that he relied on the officers not any particulars of the case in issuing the warrant.
         3. Neutral and detached means you must actually look at the affidavit and read it, not just side with police
    1. Need For a Warrant
       1. Basics
          1. Whether it is required depends on what purpose it serves
          2. Warrant Preference v. Reasonableness: always v. just a check
          3. Two types: warrant to search, warrant to seize
          4. Typically always need one to enter a home
          5. Major exceptions recognized: hot pursuit, surveillance, destroying evidence, public safety, danger to police
          6. Knock and announce — constitutional requirement with or without a warrant
       2. *Payton v. New York*: PC to arrest Payton and went to his apartment (without a warrant) to arrest him. Because music & light was coming from the apartment, police believed he was home but wasn’t opening the door, broke in. He wasn’t there, but they saw in plain view a shell casing that they seized.
          1. Rule: Need warrant for particular place to enter a home to arrest somebody.
          2. Very different to arrest people in public than in their home.

Freedom from intrusion into the home or dwelling is the archetype of the privacy protection secured by the 4A.

Absent exigent circumstances, a warrantless search for property in a home is unconstitutional even when there’s probable cause.

Similarly, absent exigent circumstances, a warrantless search for a person in a home is unconstitutional even when there’s probable cause.

* + - 1. *Steagald v. United States:* DEA received a tip from CI about a drug guy — got the address where the guy was staying for a day, and got an arrest warrant for that guy, and went into that house to arrest him.
         1. Rule: Can’t search a third party’s home for a person whom you have a warrant for without a warrant for the home
         2. Reasoning: 4th A prevents all warrantless searches of homes except exigent circumstances — must protect privacy interest of the third party
         3. Dissent: valid search warrant + believe the subject is in a third party’s residence = PC — arrest warrant can serve as a search warrant because it functions to limit the scope of the search. — inherent mobility of the subject.
      2. *Wilson v. Arkansas:* informant bought drugs from suspect, suspect waived a gun around & threatened to kill CI if she worked for police — got a warrant, front door was open, police opened the screen, walked in and identified themselves.
         1. Rule: Execution of warrant on a home requires knock & announce

Knock & announce: preserves privacy (gives the suspect an opportunity to surrender they can just come out the door, or to the door)

Exceptions: threats of physical violence, hot pursuit, etc. — remanded to jury to determine this

Exclusionary rule doesn’t (usually) apply to knock & announce.

1. **The Fourth Amendment in Context**
   1. Searches of Person Incident to Arrest
      1. Persons and houses receive the highest solicitude
      2. *Chimel v. California*: Police arrived at Chimel’s house to arrest him, without a warrant, wife let him in. He objected but was advised they were going to search anyway, and they seized coins to be used as evidence of a robbery.
         1. Search Incident to Arrest Doctrine: Limited search is allowed with an arrest warrant — can search the surrounding area/things within arms length — whole room is stretching it — whole house never ok without warrant to specifically do so
         2. Dissent: Arresting someone provides circumstance for a warrantless search — If you require a warrant, they can get rid of the evidence by the time a warrant is obtained — should be able to seize evidence relevant to the arrest
         3. Good example of the warrant (majority) v. reasonableness theories
      3. *United States v. Robinson:* Police saw a man driving and knew from a prior investigation that his drivers license was revoked — stopped & arrested him & searched him — felt an object that turned out to be a crumpled cigarette package with capsules of heroin inside it.
         1. Rule: The **purpose of search incident to arrest** is officers’ protection & preservation of evidence.
         2. Majority: If an individual is arrested with PC and the search is not abusive or extreme, the search requires no additional justification and does not violate the 4th A — police can go into any of your belongings on your person or in the immediate area — 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
         3. Dissent: Marshall concerned about the ability of police to abuse the ability of arrest to make a search, in the violation charged for this particular arrest isn't even something police can arrest for in many jurisdictions. **Every time you criminalize arrest you expand the police’s search to do a search incident to arrest & expand probable cause.** There are no fruits of this sort of crime & therefore this search was unreasonable.
         4. Discussion about: concern about pretext stop, abuse, which can lead to the stop of a person and search for a relatively minor thing.
      4. *Winston v. Lee*: Police tried to compel surgery to remove bullet from Lee’s body
         1. Rule: Unreasonable search — below-the-skin surgery represented such an infringement on the expectation of privacy that it must be justified by a compelling need for the evidence that might be produced — state could not demonstrate a compelling need for the bullet in order to make the case against Lee, the Court held that the intrusion on Lee’s privacy vastly outweighed any state interest.
         2. Distinguished from *Schmerber v. California —* forcing a DUI suspect to take a blood test is not a violation of the suspect’s 4A rights.
         3. Shmerber balancing test:
            1. Weighing individual interests (dignity and safety) and the community's interest in fairly and accurately determining guilt or innocence
            2. In this case, the suspect would have to undergo a serious surgery; case-by-case basis of what would be substantially intruding
         4. The fifth amendment bars against testimonial evidence (speech only)
            1. Physical objects=squarely under the 4A.
      5. *Riley v. California*: Riley’s phone searched after arrested and evidence was obtained used to charge defendants with additional offenses
         1. Rule: The digital data cannot be used as a weapon to harm an arresting officer — can seize phone to preserve evidence while awaiting a warrant — phones filled with massive amounts of private information, which distinguished them from the traditional items that can be seized from an arrestee's person — information accessible via the phone but stored using "cloud computing" is not even "on the arrestee's person.”
         2. Exception noted: some warrantless searches of cell phones might be permitted in an emergency: when the government's interests are so compelling that a search would be reasonable.
   2. Houses
      1. Sanctity of the home is one of the most important reasons the 4th A was created
      2. *Welsh v. Wisconsin*: source saw Welsh drive his car off the road and crash & called the police, Welsh walked away — Police found that the car was registered to Welsh — went over there and found him lying in bed and arrested him
         1. Rule: Hold: The 4A prohibits the police from making a warrantless night entry of a person’s home in order to arrest him for a non-jailable traffic offense
         2. For warrantless home entry:
            1. Exigent circumstances (hot pursuit or dissipation of evidence) and

Hot Pursuit: Not convincing, no pursuit from scene of accident

Threat to Public: Car was abandoned

Need to ascertain evidence: DUI is noncriminal, therefore, state's interest is not high enough to justify warrantless search

* + - * 1. Criminal offense (arrestable offense)
        2. Baseline: if there’s no criminal offense then the court will not even look to see if there’s exigent circumstances
        3. Dissent: The case here has nothing to do with 4A and therefore cert shouldn’t have been granted. Also the nature of the underlying offense should not be an important factor to be considered in the exigent-circumstances calculation.
    1. *Kentucky v. King*: Police mistakenly went to the wrong apartment to arrest a suspect who had purchased crack cocaine — officers knocked loudly on the door and announced their presence — heard occupants hurriedly moving around inside and on the belief that evidence might be destroyed, officers kicked down the apartment door and took defendants.
       1. Rule: only need PC of destruction of evidence — what constitutes that PC? yikes
       2. Police Exigency rule: police may not rely on the need to prevent destruction of evidence when that exigency was "created" or "manufactured" by the conduct of the police
       3. Dissent: "The Court today arms the police with a way routinely to dishonor the Fourth Amendment's warrant requirement in drug cases.” — There was little risk that the evidence would have been destroyed if they didn’t knock on the door in the first place and just obtained a warrant like they should have
    2. *Florida v. Jardines*: Officer and dog went on porch and alerted for drugs; got warrant to search which revealed pot plants
       1. Rule: The front porch of a home is part of the home itself for 4th A purposes.
       2. Reasoning: ordinary citizens are invited to enter onto the porch — Police cannot go beyond the scope of that invitation. Entering a person's porch for the purposes of conducting a search requires a broader license
  1. Automobiles
     1. The Automobile “Exception”
        1. Automobiles are considered an “effect”
        2. Inherently mobile, heavy regulation = relative lack of privacy as compared to the person or the home
        3. Decisions based mainly on case law
        4. *Chambers v. Maroney*: Police received a report of an armed robbery and found a vehicle and persons inside it which matched the descriptions given from victim and witnesses. Police arrested the people with probable cause and then took the vehicle back to the station and searched it there.
           1. Rule: warrantless search of car at police station does not violate 4th A
           2. Reasoning: because the car could have been searched earlier, it was okay to search it later — reasonableness case — dismissive of the warrant requirement
           3. Reasonableness Theory v. Warrant Theory

Warrant: Once the car has been immobilized and secured that eliminates the need to do a warrantless search — presumptive warrant requirement unless there is an exigency, and the exigency has dissipated — only the immobilization of the car should be permitted until a warrant is properly obtained — majority says whats the point?

Reasonableness: very easy to move into the next set of facts and say we found this was reasonable in other circumstances that was somewhat similar, so it should be here, and that expands our assessment of reasonableness.

* + - * 1. Dissent: goes too far, doesn’t think it’s unreasonable to search the car, but thinks is unreasonable that they removed the car and then searched it, especially because they just removed it for convenience. Should strictly adhere to exigency standard rather than just doing
    1. Containers
       1. *California v. Acevedo*: Officers saw Acevedo enter an apartment known to contain several packages of marijuana and leave a short time later carrying a paper bag approximately the same size as one of the packages — Acevedo put the bag in the trunk of his car and began to drive away, the officers stopped the car and searched the bag
          1. Rule: no warrant required when probable cause exists to search a container in a vehicle — If a warrantless search is deemed legal by means of probable cause, the scope of the warrantless search is the same as the scope of the search would be with a warrant (you stop a car, you can search everything in the car and the contents of everything in the car that might contain what you are looking for)
          2. Reasoning: inherent mobility of cars/automobile exigency trumps personal privacy interest in containers
          3. Scalia concurrence: warrants are not required — only invented and has so many exceptions it’s stupid anyway

You have privacy interest in luggage, etc. when carrying it, all of a sudden you don’t when you put it down in a car? doesn’t make sense

Agrees not because a closed container in a car becomes subject to the “automobile exception,” but because every container outside a privately owned building can be searched with probable cause.

* + - 1. *Wyoming v. Houghton*: Haughton's friend pulled over for traffic stop, officer noticed a needle in the driver's shirt pocket — upon learning that the needle was used for drugs, the officer searched the car and Haughton's purse, where he found more drug paraphernalia.
         1. Rule: PC to inspect belongings found in the car that were capable of concealing the object of the search because he had PC to search the car.

If driver had not admitted the purpose of the syringe, there would have been no PC to search passenger's bags

Also may have been different if she stepped out of the car with her bag on her person

Passengers are attached to the car as driver is — reasonable to believe they are no unaware of what the driver has

This sets a very low bar for PC

* + - * 1. Breyer’s Concurrence): Really likes idea of bright line rule — purse is a special container and if was on her he would have found differently

Aren’t they making a gender distinction, because if it had been a man, he would have had all his stuff in his pockets, but she happens to carry her things in a purse?

* + - * 1. Dissent: a purse is a different level of privacy than the average container — state’s interest does not outweigh this privacy concern — difference between driver and passenger
    1. Inventory Searches
       1. *South Dakota v. Opperman*: Police found pot during routine inventory search of car at the impound lot
          1. Rule: inventory searches of impounded vehicles is reasonable under 4th A — inventory searches are not “searches,” they’re “care-taking procedures”
          2. Reasoning: Cars are different than homes: inherent mobility, less expectation of privacy is less
          3. Police have to go thru cars for 3 reasons (police procedure):

Protection of owner’s property

Protection of police against claims of stolen property

Protection of police from potential danger

* + 1. Searches Incident to Arrest
       1. When a person is arrested, searches incident to arrest are allowed — what about when automobiles are present?
       2. *Arizona v. Gant*: Gant was apprehended on an outstanding warrant for driving with a suspended license — after the officers handcuffed Gant and placed him in their squad car, they went on to search his vehicle
          1. Rule: Violation of 4th A — police may search the vehicle of its recent occupant after his arrest only if it is reasonable to believe that the arrestee might access the vehicle at the time of the search or that the vehicle contains evidence of the offense of the arrest.
          2. Reasoning: searches incident to arrest are meant for safety and evidence
          3. Scalia Concurrence: doesn’t like first “unsecured/within reaching distance” officer safety thing — vehicle search incident to arrest is “reasonable” only when the object of the search is evidence of the crime for which the arrest was made, or of another crime that the officer has PC to believe occurred.
          4. Dissent: don’t agree with undermining precedent of *Belton*  when no one asked to do so — stare decisis is more important
       3. *Belton:* Officer stopped car for speeding, smelled pot, saw drug envelope on the ground, believed drug crime was being committed — this gave PC
          1. Gold Standard: police can search car incident to arrest if there is reasonable suspicion that evidence of arrest may be found in car
       4. *Knowles v. Iowa*: Knowles was stopped for speeding, given citation, then there was a search and pot was found
          1. Rule: Violation of 4th — cannot conduct search of a car incident to a citation
          2. There was no need to discover and preserve evidence because once defendant was stopped and issued a citation all the evidence necessary to prosecute had been obtained = not related to crime of traffic stop.
          3. Threat to safety from issuing a traffic citation was significantly less than in the case of a custodial arrest
    2. Summary
       1. Stops: the stop of an automobile requires only “reasonable suspicion”
          1. This is a lower bar than probable cause
          2. Can be for either a crime or a traffic violation
          3. Officer can control people in the car for “safety”
          4. A full/intrusive search of a person or car is NOT permitted
          5. Plain View Doctrine applies
          6. Warrant for search not needed because of inherent mobility of cars
       2. Stops and Searches
          1. Information gathered by a stop can lead to PC to search
          2. Dog can sniff exterior as long as its within reasonable time
       3. Searches of Cars
          1. Requires PC
          2. Exception: Reasonable suspicion that evidence of the crime the person is being arrested for is present
       4. Where to search: a “reasonable” warrantless search must have the same scope as would be provided on a warrant
          1. PC of a known object and known location: can search in that place for that object
          2. PC of known object, unknown location (i.e. “drugs” “weapons”): can search whole car until that item is found — once that item is found, search must end
          3. PC for unknown object, known location: can search only that location
          4. Specifics of object unknown, location unknown: search the entire vehicle

The more you know, the smaller the scope of the search

* + - 1. Containers in vehicles
         1. All can be search incident to arrest if no specific object or location is known
         2. If location known = only that container
         3. If object known = only container in which that object could fit
         4. Blurry lines for passengers, whether or not they step out with their purse, etc.
      2. Searches Incident to Arrest (involving vehicles)
         1. Not unless the arrestee has access to the interior of the vehicle
      3. Inventory Searches
         1. Inventory search at the impound lot is not a search under the terms of the 4th
         2. “civil administrative function” / “care-taking duty”
      4. No Search of Car or Person Incident to Citation
         1. Search of persons only incident to arrest & search of cars incident to above situations

1. **Searches and Seizures Without Probable Cause**
   1. Terry Stops
      1. Background
         1. Prior to this, the Court held PC as the presumptive level of suspicion required for all searches and seizures, whether conducted with or without a warrant
         2. This is often not followed and based more so on a “reasonableness” standard
         3. Terry stops — acknowledge police may intervene in the affairs of suspects prior to reaching PC — under some circumstances, a suspect can be briefly stopped and, if need be, frisked based on less than probable cause.
      2. “Reasonable Suspicion”
         1. *Terry v. Ohio* (1986): Officer observes two men casing (presumably) a shop window for a stick up; he follows them and asks for identification, they mumble and he pats them down and finds a weapon.
            1. Rule: “Stop and Frisk” is not a violation of the 4th A

Stop and Frisk: When officer observes conduct, has reasonable suspicion that they are armed and dangerous, can stop and frisk

Can only frisk if there is reasonable suspicion that they are armed and dangerous — officer does not have to be certain

Can search if officer has reasonable suspicion a crime is being or about to be committed

Accepts the risk that officers may stop innocent people

Very circumstantial/fact-based analysis

Standard of reasonably prudent man, not the officer’s experience — would the reasonable person think the suspect is armed/dangerous?

* + - * 1. Reasoning: It is clearly unreasonable to deny officer power to take necessary measures to determine whether person is in act carrying a weapon and to neutralize threat of physical harm

Attempting to focus narrowly on the facts of this particular case, the Court found that the officer acted on more than a "hunch" and that "a reasonably prudent man would have been warranted in believing Terry was armed and thus presented a threat to the officer's safety while he was investigating his suspicious behavior.”

The Court found that the searches undertaken were limited in scope and designed to protect the officer's safety incident to the investigation.

balance safety of police/public with right to privacy — here safety is more important

* + - * 1. Concurring (Harlan)— focuses on the facts of this situation — only because the officer was in danger — other than that, this is not okay

Search must be as least intrusive as possible

* + - * 1. Dissent: gives police way too much power — how can search and seizure be constitutional without probable cause?

If we choose the reasonableness theory and abandon the warrant requirement, we permit a much broader scope of police discretion, and loose probable cause.

In balancing there’s no constitutional restriction on the court getting rid of probable cause.

* + - * 1. Two logical corollaries

The right to frisk depends upon the reasonableness of a forcible stop.

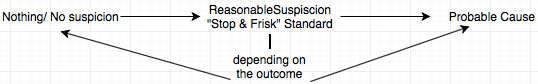
Frisk has to be immediate (to justify its for the officer’s safety)

* + - 1. *Adams v. Williams*: Officer was alone in the wee hours of the night in high crime area & received an in person tip from a CI that another person in a nearby car was armed & in possession of narcotics. Officer didn’t corroborate CI’s information before acting on the tip; approached Williams’ car, asked him to open the door. Williams rolled down his window instead, and officer reached in and pulled out D’s weapon.
         1. **Rule:** Reasonable suspicion can ripen into probable cause.
         2. Reasoning: Reasonable suspicion for the frisk and therefore got PC for arrest through the presence of the revolver — this gave PC for more thorough search, yielding narcotics.

Based on Terry, officer’s actions were reasonable, and admitted fruits of the officer’s searches.

* + - * 1. Dissenters: very concerned with expanding *Terry*

Douglas: if we’re going to extend *Terry* we should limit it to direct observation cases. Dangerous to lower the standard, if we allow informants to establish reasonable suspicion, police are going to use it as far as they can.

Marshall: not in the spirit of *Terry* as *Terry* was supposed to be an “exception”*—* attacks the credibility of the informant — no reasonable suspicion to search here. Because it was possible the gun was carried legally and wasn’t necessarily criminal activity it was less reasonable for the search.

* + - 1. Florida v. J.L.: Anonymous caller gave a tip that a young black man was standing at a bus stop wearing a plaid shirt and carrying an illegal gun.
         1. Rule: violation — Permissible frisk expanded beyond direct suspicion of armed & dangerous here
         2. Reasoning: need reasonable suspicion & it is not an anonymous tip — an anonymous tip without any corroboration or “indicia of reliability” from the informant does not provide RS. The search is unreasonable based on the observations and knowledge of the officers at the time, because tip was purely descriptive, not predictive of future behavior.

The tip pointing to respondent lacked the moderate indicia of reliability necessary because the call provided no predictive information to enable the police to test the informant's knowledge or credibility

Further, the accurate description of respondent's appearance was not enough since the reasonable suspicion at issue required that the tip be reliable in its assertion of illegality, not just in its tendency to identify a determinate person.

The reasonableness of official suspicion must be measured by what the officers knew before they conducted their search

Anonymous tips:

High degree of specificity

Predictive info

Reasonable suspicion

* + - * 1. This case equates drugs with guns: expanded the permissible frisk not just the direct suspicion that the person is armed & dangerous to associative criminal activities: which are associated with guns and drugs.
        2. Concurrence (Kennedy): there might be instances where an anonymous tip is reliable.
      1. *Illinois v. Wardlow:* In a high drug traffic area police saw a guy with a bag, who fled as soon as he saw them, they followed him and did a pat down and decide that it’s a gun, so they look and it is.
         1. Rule: Expands permissible scope of *Terry* frisk from clothes to anything closely associated
         2. Reasoning: stop and frisk is permissible with RS because of evasive behavior and neighborhood

Individuals in presence of criminal activity is not enough for reasonable, particularized suspicion that the person is committing a crime, but officers are not required to ignore relevant characteristics of a location in determining whether the circumstances are sufficiently suspicious to warrant further investigation

Reasonable suspicion is

High drug/crime area (poverty)

Sees (cops) & flees (from cops)

Noon/daylight

* + - * 1. Dissent: doesn’t like flight thing, thinks there are many different reasons to run and not all of them are suspect. Doesn’t like bright line rule that running from cops = reasonable suspicion.

So if a person in an impoverished probably minority neighborhood doesn’t want to talk to the cops, she cannot see and flee, she must ignore the police and continue going about her business, but can’t go too fast….

* 1. Consent Searches
     1. Background
        1. Due Process
           1. Voluntariness - it's a standard in Due Process because with these levels of duress the confession is not going to be reliable

Torture

Deprivation of Human Necessities

Substantial physical coercion

Threats of physical harm

Led to believe something bad will happen if you don’t consent

If consent comes pursuant to a lie about your constitutional rights

* + - 1. 5th Am. (including Miranda)
         1. Custody and Interrogation
         2. Require Miranda warnings
         3. Which may be voluntarily waived
      2. 6th Am. - Right to Counsel
         1. Triggered by commencement of formal proceedings
         2. May be waived
         3. About Preserving right to counsel, court integrity, and fair trial
      3. It is possible that all 3 violations could take place at same time = \*\*when approaching a problem go thru the analysis of each one that might apply
      4. No need to advise someone of their right not to consent
      5. Must be the person themselves or someone with the defendant’s consent or permission who waives it
    1. Voluntariness
       1. Whether consent was voluntary is done by a totality-of-the-circumstances approach — focus on characteristics of the accused and the details of the interrogation
       2. *Schneckloth v. Bustamonte*: Pulled over a car, no drivers license. 6 men in the car, only 1 had a drivers license, not the one who was driving. That man says that it’s his relative’s car and gives consent to search the car. Police find 3 stolen checks from a carwash.
          1. Rule: All that's required is that consent wasn’t coerced. Voluntariness is a judicial decision not a jury decision.
          2. Reasoning:
          3. Consent is the single greatest weapon for searches without RS
          4. Dissent (Marshall): Not truly voluntary to give up rights that you don’t know you have — mere submission to perceived authority is not a knowing waiver of rights — Need a different standard for consent — either have people articulate their understanding or have the authorities inform them of their right not to consent.
          5. Totality-of-the-Circumstances: subject’s knowledge of a right to refuse is to be taken into account, but prosecution is not required to demonstrate such knowledge as a prerequisite to establishing a voluntary consent — also:

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

* + 1. Capacity
       1. Deals with the question of who may validly consent to a search
       2. *Stoner v. California*: Armed robbery, in investigation police found a checkbook in a parking lot which led them to a hotel, suspect was out at the time but hotel clerk let them into the room. Officers found incriminating evidence which was used against Stoner in his trial.
          1. Rule: Cannot search hotel room based on hotel proprietor’s consent.
          2. Reasoning: reasonable expectation of privacy recognized by society exists in your hotel room — taking evidence out of a hotel room without the suspect being present and without a formal arrest, violates 4A: without a warrant, the search can only be reasonable if the surrounding facts brought it within one of the warrant exceptions.

It was the petitioner's rights that were subject to violation, not the clerk’s so only he could waive his right and let police search.

Not ownership dependent, occupancy dependent — doesn’t matter if you are renting or leasing or whatever. For purposes of this — he is in the hotel & has bought the right to essentially have a home there.

* + - 1. *United States v. Matlock* - Police arrested Matlock, a bank robbery suspect, in the front yard of the house where he lived, Police did not ask Matlock which room he occupied — third party gave voluntary consent to officers to search defendant’s living space
         1. Rule: Police can obtain consent for a search from a third party if that 3d party has common authority over the premises
         2. Burden of establishing that common authority rests on the state
      2. *Illinois v. Rodriguez*: Police were invited into the apartment of the respondent, Rodriguez, by a third party who was his former roommate. Without a warrant, the police entered the apartment and found drugs and related materials.
         1. Rule (expanded *Matlock*): apparent consent of a non-joint occupant is permissible

Must be reasonable to assume that under this circumstance this person has authority to give them consent to search.

Requirement that police to make some reasonable inquiry to obtain information?

Was the police’s reasonable belief that she had authority enough to create valid consent?

* + - * 1. Dissent: Basing the idea of the scope of consent search on the authority to have to keep your spaces and things and containers private.

1. **The Problem of Pretextual Searches**
   1. Background
      1. “It is very hard to imagine that either Brown or Drayton would have believed that he stood to lost nothing is he refused to cooperate with the police, or that he has any free choice to ignore the police altogether … a police officer who is certain to get his way has no need to shout.” — J. Souter in *Drayton* dissent
      2. Precedent has allowed police to leverage minor intrusions, specifically traffic stops, to conduct mass-scale “consensual” searches
   2. *Whren v. United States*: Driving in a 'high drug area.’ — undercover officers, while noticed truck at an intersection stop-sign for an usually long time then turned and sped away — Observing this traffic violation, the officers stopped the truck — When they approached the vehicle, the officers saw Whren holding plastic bags of crack cocaine.
      1. Rule: Subjective intent alone does not make otherwise lawful conduct illegal or unconstitutional
      2. Reasoning: As long as officers have a reasonable cause to believe that a traffic violation occurred, they may stop any vehicle. Since an actual traffic violation occurred, the ensuing search and seizure of the offending vehicle was reasonable, regardless of what other personal motivations the officers might have had for stopping the vehicle.
      3. While the Fourth Amendment does require a balancing test between a search-and-seizure's benefits and the harm it might cause to the individual, such a test only applies to unusually harmful searches and seizures. There was nothing unusually harmful about this traffic stop.
   3. *Ohio v. Robinette*: Police stopped Robinette for speeding, gave warning, asked if there were drugs, he said no, then he consented to search and drugs were discovered
      1. Rule: no duty to warn defendants of their right to decline request to search
      2. Reasoning: Government doesn’t need to establish knowledge of right to refuse as necessary for effective consent — 4th A test for valid consent to search is that consent be voluntary derivative from circumstances
         1. Difference between state and federal constitutional law = states can make privacy rights more private, just not less than the requirement of the federal constitution
      3. Would be unrealistic to require police to always inform ᐃs of their right to go before consent to search would be deemed voluntary
      4. Concurrence (Ginsberg): Ohio Supreme Court should be more clear on what it wants its law enforcement officials to do — they may not have been trying to make a law for the nation by relying on the Constitution as the court seems to assume they were trying to do
      5. Dissent (Stevens): Consent was a product of unlawful detainment — Reasonable motorist would not have believed he was “free to go.”
   4. *Illinoise v. Caballes*: Defendant was stopped and K9 unit sniff was performed while he was legally detained for a traffic violation
      1. Rule: The Constitution did not require police to have reasonable suspicion to use a drug-detection dog on a car during a legal traffic stop.
      2. Reasoning: length of stop was reasonable
         1. Traffic stop cannot be too long or else subsequent discovery is product of unconstitutional seizure
         2. Dog sniff reveals no info other than location of a substance that no individual has any right to possess anyway, therefore this does not violate 4th Am.
      3. Dissent
         1. Souter: The Court’s reasoning that a dog sniff does not invade privacy is incorrect — dogs are in the hands of government agents determined to discover evidence of crime, the dog sniff is the "first step in a process that may disclose intimate details without revealing contraband," and hence is a "search" within the meaning of the Fourth
            1. In the context of a traffic stop, an additional search unrelated to the initial purpose of the stop requires reasonable suspicion. In this case the police did not have such suspicion.
         2. Ginsberg: focused on the long-standing connection in the Court's Fourth Amendment jurisprudence between a traffic stop and a Terry Stop
            1. The scope of a *Terry* stop is not circumscribed merely by duration; the manner in which the stop is carried out must also be carefully controlled.
            2. Should have required reasonable suspicion for the police to transform the routine traffic stop into a more extensive search for drugs.
            3. "Under today's decision, every traffic stop could become an occasion to call in the dogs, to the distress and embarrassment of the law-abiding population.... Today's decision clears the way for suspicionless, dog-accompanied drug sweeps of parked cars along sidewalks and in parking lots.... Motorists [would not] have constitutional grounds for complaint should police with dogs, stationed at long traffic lights, circle cars waiting for the red signal to turn green."

**Part 2: Interrogations**

1. **Police Questioning**
   1. Background
      1. Intersection of 5th A, 6th A, and *Miranda*
      2. Old practices made it difficult to determine whether the defendant voluntarily confessed his guilt or if his testimony had be unconstitutionally compelled
         1. Existence: inflicting of pain, physical or mental, to extract confessions or statements is widespread throughout the country
         2. Physical Brutality
         3. Protracted Questioning
         4. Threats
         5. Illegal Detention
      3. These practices threatened the vitality of the adversarial system
   2. *Brown v. Mississippi*: Brown and other men were randomly arrested, cruelly treated, and totally coerced into confessing that they killed a man. The trial court didn’t care about the admitted evidence that the confessions, the only evidence, were clearly coerced, and the jury sentenced them to death in a one day trial.
      1. Rule: Convictions, which rest solely upon confessions that have been extorted by police officers by brutality and violence, are not consistent with due process
      2. Reasoning: Confessions are unreliable when taken in violation of Due Process
         1. confessions cannot come in under presumption of torture
         2. In consent, unless you have torture or deprivation, that consent will be valid because they are using the due process standard to measure voluntariness
      3. Due process covers several bases - torture, coercion, deprivation
      4. Notes: *Watts v. Indiana:* due process is violated when suspect is subjected to extreme conditions — protracted, systematic and uncontrolled subjection of an accused to interrogation by the police for the purpose of eliciting disclosures or confessions is subversive of the accusatorial system
   3. *Miranda v. Arizona*: This case represents the consolidation of four cases, in each of which the defendant confessed guilt after being subjected to a variety of interrogation techniques without being informed of his Fifth Amendment rights during an interrogation.
      1. Rule: Government authorities need to inform individuals of their Fifth Amendment constitutional rights prior to an interrogation following an arrest.
         1. Four procedural safeguards against the violation of DP:
            1. Right to remain silent

A warning at the time of interrogation is needed to overcome the pressures of interrogation, and to make sure the accused knows he doesn’t have to talk

* + - * 1. That any statement can be used as evidence against him

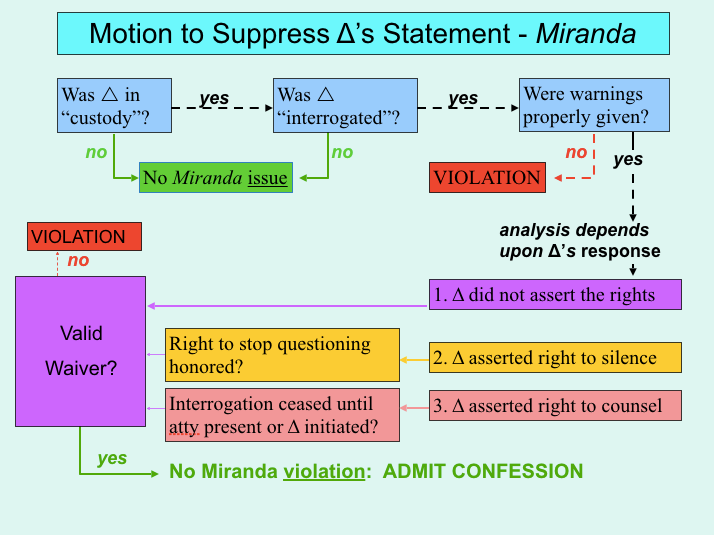
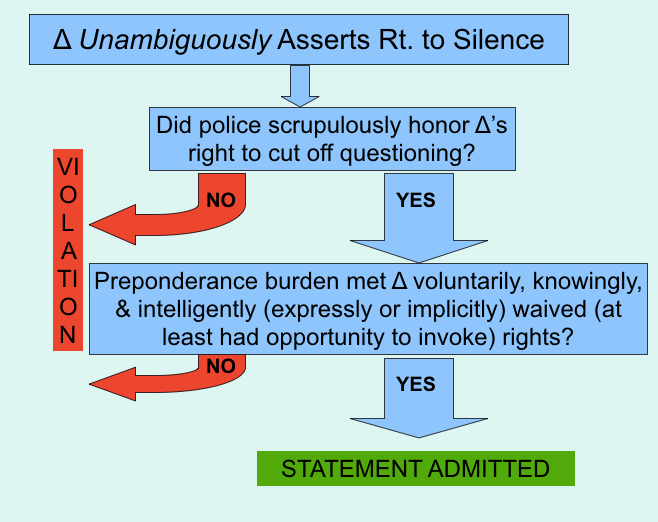
Important to let the accused know the consequence of his choice to waive the right to remain silent — makes accused more aware that he is not in the presence of people working for his interest

* + - * 1. Right to presence of an attorney

Attorney present reduces the odds of coercion by the police is irrelevant if accused asks for counsel

* + - * 1. If you cannot afford one, one will be provided for you

Ability to pay for a lawyer is irrelevant — must be told that if he cannot afford a lawyer then one will be appointed to him. If he isn't told this, then the right to talk to an attorney may be lost on poor people.

* + - 1. \*\*only applies during custodial interrogation
      2. Can waive: Knowingly, voluntarily, intelligently
         1. No Q’s once a defendant has asked for a lawyer
         2. Just because defendant may have started answering questions, he can stop at any time
         3. Silence is not a waiver
         4. High burden of proof on state to show a defendant willingly and knowingly waived these rights
    1. Reasoning: consent can’t really be voluntary unless someone knows their rights — can’t’ knowingly waive something you’re not aware you have
       1. Taking a defendant into custody deprives him of certain freedoms which jeopardizes the privilege against self-incrimination
    2. A confession in violation of Miranda can be used to impeach defendant if they testify.
    3. Not intended to find all confessions from interrogations inadmissible – any statement given freely, and voluntarily without any compelling influences is admissible
    4. Aware that this puts a burden on law enforcement – this is needed to protect constitutional rights of the accused. This is not an undue interference on law enforcement
       1. The FBI has done this for years – state and local law enforcement can emulate this practice
       2. Courts have the duty to enforce constitutional rights – states and congress can create their own rules to protect these constitutional rights as long as they are as effective of these procedures
    5. Dissenters
       1. Clark: the opinion goes too far on too little;
       2. Harlan: this is a one sided opinion, of course confessions are rarely purely voluntary. The new rules ultimately discourage any confession at all. Wants something less.
       3. White: 5A forbids only self-incrimination only if it is compelled — no grounding in common law or the text of the constitution, questioning is a necessary part of law enforcement, protects people who are innocent and suspected of a crime.
  1. *Fellers v. United States*: After a grand jury indicted Fellers, police arrested him at home. Fellers made incriminating statements during the arrest. Police officially interrogated Fellers at county jail and told him of his Miranda rights. Fellers signed a waiver of these rights and restated incriminating statements he had made at home. Fellers later argued that, when he was arrested in his home without a lawyer, police "deliberately elicited" incriminating statements.
     1. Rule: Officers violated Fellers' Sixth Amendment right to counsel by deliberately eliciting incriminating information from him after an indictment and in the absence of a lawyer.
     2. Reasoning: The Court rejected the appellate court's argument that the Sixth Amendment right to counsel was irrelevant because police did not "interrogate" Fellers at his home.
     3. The Court sent the case back to the appellate court to determine — under the Sixth Amendment — whether Fellers' statements in jail should be suppressed because they were "fruits" of his unconstitutional questioning at home.

1. **The Right to Counsel (6th A)**
   1. Background
      1. Read to require counsel in any trial where a sentence of imprisonment is ultimately imposed and any appeal that is afforded as of right.
      2. Gives right not only to have counsel present, but to the *effective* assistance of counsel — must meet objective standard of competency
      3. Entitled to counsel after “the commencement of adversary proceedings”
   2. “Deliberated Elicited”
      1. “Coercion that violates rights in order to get a confession”
      2. *Brewer v. Williams:* Little girl disappeared from YMCA. Williams, a recent escapee from a mental hospital called a lawyer & confessed, turned himself in & was arraigned before a judge on the arrest warrant (formal proceedings begun). Two lawyers told Williams not to talk in the car ride & told the police not to question him, but Officer gave the “Christian Burial Speech” — Williams to led them to the body.
         1. Rule: police cannot deliberately elicit a confession from defendant without counsel present once defendant has been arraigned and asserted his 6A right
         2. Reasoning: Once defendant has been arraigned, 6th A right attaches
            1. Waiver requires not merely comprehension, but relinquishment
            2. Defendant’s constant dealing with counsel in this case = no waiver
            3. Upholding constitutional rights is fundamental
         3. Concurrence (Marshall, Powell, Stevens)
            1. Marshall: The detective who questioned Williams knowingly set out to violate Williams’ constitutional rights. The nature of the crime was not excuse for the detective’s behavior.
            2. Powell: the record clearly showed that Williams had not waived his rights.
            3. Stevens:the state had promised not to question Williams before he reached state could not dishonor that promise made to Williams’ lawyer.
         4. Dissent (Burger, White, Rehnquist, Blackmun)
            1. Burger: Williams validly waived his right to counsel, and even if he had not, the disclosures he made were voluntary and uncoerced.
            2. White: Williams knowingly and intentionally waived his rights.
            3. Blackmun: there was no interrogation, and he would remand the case to the Court of Appeals to determine whether the Williams made the incriminating statements voluntarily.
      3. Note: if this is all so important, why not inform of 4th A right to deny consent?
         1. Because searches and seizures reveal tangible objects that are what they are regardless of coercion
      4. *Kuhlmann v. Wilson*: Suspect involved in robbery against his former employer turned himself in, said he was there but didn’t do it. Was arraigned (commencement of formal proceeding) and confined. An informer planted in a suspect’s jail cell (merely to listen) obtained incriminating information from a suspect. Another case about whether a self-incriminating statement was elicited.
         1. Rule: Listening for deliberate elicitation of incriminating remarks in cell doesn’t dispatch 6th Am. rights
         2. Defendant must demonstrate that police and informant took some action beyond merely listening that was designed to elicit remarks to enact 6th Am. protection
         3. Concurrence (Burger): There is a difference between placing an “ear” in the cell and placing a voice in the cell to encourage conversation.
2. **The Privilege Against Compelled Self-Incrimination (5th A)**
   1. Background
      1. “No person shall be held to answer for a capital … nor shall be compelled in any criminal case to be a witness against himself…”
      2. Read to prohibit only the compulsion of spoken testimony
         1. Police can draw blood, get handwriting sample, etc. without considering this “compulsion to be a witness” against oneself
         2. Can give evidence against himself, but cannot testify against himself
   2. “Compelled”
      1. *Brown v. Mississippi* = example of violation
      2. Colorado v. Connelly: Connelly approached a police officer and, without any prompting, confessed to murder — officer immediately informed Connelly that he had the right to remain silent, but Connelly indicated that he still wished to discuss the murder — later discovered that Connelly was suffering from chronic schizophrenia at the time of the confession.
         1. Rule: The taking of Connelly's statements as evidence did not involve any element of governmental coercion, therefore no violation of DP
         2. Reasoning: for a violation to exist, there must be some link between government activity and the confession
            1. Court does not have to suppress confession when mental state of defendant (at time of confession) interfered with rational intellect and free will
            2. No reason to believe the suspect was suffering from a mental illness
            3. Goal is to prevent fundamental unfairness

You’re not treated unfairly in the context of the process unless there is state action that is coercive

State action before there is compulsion

* + - 1. Concurrence (Stevens): Sees statements as involuntary, but they were not made while he was actually under arrest, it happened before and after, and therefore no rights were violated.
      2. Dissent (Brennan + Marshall): The use of a mentally ill person’s involuntary confession is antithetical to the notion of fundamental fairness of DP.
    1. *Arizona v. Fulminante*: Was in jail for an unrelated crime — befriended a paid informant for FBI while in jail. Rumors circulated about the murder, and the CI raised the subject with defendant, defendant confessed to the CI after CI said he would protect him in prison.
       1. Rule: Violation — confessions can be coercive if credible threat of violence exists
       2. Reasoning: it was fear of physical violence, absent protection from his friend Sarivola, which motivated Fulminante to confess
          1. Threat of force (you're gonna get hurt if I don’t protect you, I won’t protect you until you tell me) creates coercive confession
          2. Threats of force are due process violations
          3. Harmless Error Analysis = Admission of defendant’s confession was not harmless error because it was unlikely that he would have been prosecuted at all absent the confession, the admission of the confession led to the admission of other evidence prejudicial to defendant, and the confession influenced the sentencing phase of the trial
       3. Dissent: believed that the admissibility of a confession depends on whether it was voluntarily made and he believes it was.
  1. “Witness”
     1. Schmerber v. California: Schmerber had been arrested for drunk driving while receiving treatment for injuries in a hospital. During his treatment, a police officer ordered a doctor to take a blood sample which indicated that Schmerber had been drunk while driving. The blood test was introduced as evidence in court and Schmerber was convicted.
        1. Rule: Protection against self-incrimination applied specifically to compelled communications or testimony.
        2. Reasoning: Privilege against self-incrimination protected an accused only from being compelled to testify against himself, or to otherwise provide the State with evidence of a testimonial or communicative nature
           1. Withdrawal of blood and use of the analysis did not involve compulsion to these ends
           2. Since the blood test evidence, although an incriminating product of compulsion, was neither petitioner's testimony nor evidence relating to some communicative act or writing by the petitioner, it was not inadmissible on privilege grounds
           3. Also not a violation because of exigent circumstances — BAC decreases over time
        3. Have to balance individual vs. society’s interests
        4. Doctor performed procedure = reasonable test at hospital
  2. Limits on the Privilege
     1. *Kastigar v. United States*: defendant subpoenaed to appear before grand jury, refused to answer questions despite granted immunity
        1. Test: If so, petitioners' refusals to answer based on the privilege were unjustified, and the judgments of contempt were proper, for the grant of immunity has removed the dangers against which privilege protects
        2. If the immunity granted is not as comprehensive as the protection afforded by the privilege, petitioners were justified in refusing to answer, and the judgments of contempt must be vacated
        3. If one is going to be prosecuted, burden on prosecutor to prove evidence derived from different sources
     2. *Baltimore City Department of Social Services v. Bouknight*: court ordered removal of abused child, defendant failed to produce child and would not reveal child’s location
        1. Rule: can’t invoke privilege to avoid production of kids
        2. Mother, the custodian of a child pursuant to a court order, may not invoke the 5th Amendment privilege against self-incrimination to resist an order of the juvenile court to produce the child
        3. Orders to produce children cannot be characterized as efforts to gain some testimonial component of the act of production
        4. Signed up for State’s regulatory system which made her subject to inspections
        5. Noncriminal custodial regime
           1. Distinction between this case (noncriminal) and directly criminal case.
           2. Child welfare services is to help children not prosecute parents

1. **Administering Miranda**
   1. Custody, Interrogation, and Incrimination
      1. “Seizure” and “custody” are not the same for constitutional purposes
      2. Miranda applies to misdemeanors as well as felonies
      3. Miranda warnings are not triggered by *Terry* stops
      4. *Berkemer v. McCarty*:Officer stopped McCarty’s vehicle and asked if McCarty had been using intoxicants. He said yes, was arrested, asked again, again answered in the affirmative. Never given Miranda.
         1. Rule: Formal arrest/custody requires Miranda, Terry Stop doesn’t *—* Miranda does apply even to misdemeanors, but only a custodial interrogation.
         2. Reasoning
            1. D was not in custody until the officer arrested him.
            2. Traffic stops are presumptively temporary and in public. Therefore, because the initial stop of respondent's car, b y itself, did not render respondent in custody, respondent was not entitled to a recitation of constitutional rights.
            3. But after arrested, any statements made were inadmissible without Miranda.
         3. “Does *Miranda* govern the admissibility of statements made during custodial interrogation by a suspect accused of a misdemeanor traffic offense? [And] does the roadside questioning of a motorist detained pursuant to a traffic stop constitute custodial interrogation for *Miranda*?”
            1. Two kinds of seizures under 4A:

Full custody: requires probable cause, requires Miranda

Arrest or its functional equivalent

Terry stop: requires reasonable suspicion, no Miranda

A traffic stop starts out as a terry stop.

A brief detention for investigative purposes.

* + - 1. Concurrence (Stevens): whether the statements prior to D’s arrest are admissible was not necessary to deciding this case.
    1. *J.D.B. v. North Carolina*: 13-year-old special education student — police showed up at his school to question him about a string of neighborhood burglaries — police had learned that the boy was in possession of a digital camera that had been reported stolen — the boy was escorted to a school conference room, where he was interrogated in the presence of school officials —J.D.B.’s parents were not contacted, and he was not given his Miranda rights. — confessed
       1. Rule: Age must be taken into account when determining if someone is “in custody”
       2. Reasoning: “It is beyond dispute that children will often feel bound to submit to police questioning when an adult in the same circumstances would feel free to leave. Seeing no reason for police officers or courts to blind themselves to that commonsense reality, we hold that a child's age properly informs the *Miranda* custody analysis,”
    2. Custody Inquiry
       1. What are the circumstances surrounding the interrogation?
       2. 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?
          1. Child’s age here must be considered
    3. *Rhode Island v. Innis*: Innis arrested for a robbery that led to the murder — driver was shot, but the weapon was not found with Innis at the time of the arrest — Innis was placed in the back seat of the patrol car, and he rode back with three officers — “what a tragedy it would be if a child were to stumble upon the weapon before they found it.” The discussion moved the respondent enough to disclose the location of the weapon in order to avoid an accident.
       1. Rule: Interrogations should not be so broadly defined to include such a wide range of conduct by officers post-arrest, but rather should only include conduct that police should know would illicit a response.
       2. Different from *Brewer* — “deliberately eliciting” to “reasonably likely to elicit”
       3. Subtle compulsion is not the equivalent of interrogation
    4. *New York v. Quarles*: woman identified a man as her rapist to a police officer in a supermarket — officer frisked the respondent and found an empty shoulder holster, and thus asked the respondent where the gun was — respondent said “the gun is over there,” and the officer retrieved it and then gave Miranda
       1. Rule: The Court held that there is a "public safety" exception to the requirement that officers issue Miranda warnings to suspects.
       2. Reasoning: Overriding considerations of public safety justify failure to provide Miranda — motivation of officer irrelevant
    5. *Illinois v. Perkins*: defendant made statements to undercover agent while in jail that were incriminating
       1. Rule: ploys to mislead into false sense of security that didn’t rise to compulsion aren’t within concerns of Miranda
       2. Reasoning: Miranda warnings were not required when the suspect was unaware that he was speaking to a law enforcement officer and gave a voluntary statement.
          1. The essential ingredients of a police-dominated atmosphere and compulsion were not present when an incarcerated person spoke freely to someone he believed to be a fellow inmate
  1. Invocation and Waiver
     1. Michigan v. Mosley: defendant arrested for robberies, didn’t want to talk about them; defendant then questioned at another station about murder
        1. Rule: The re-initiation of interrogation after a suspect has invoked his right to silence is not a per se violation of Miranda rights, as long as the suspect’s invocation of his rights is honored.
        2. Reasoning: Admissibility of statements obtained after one in custody has decided to remain silent depends on his right to cut off questioning was honored
           1. Didn’t discuss subjects of earlier questioning
           2. 2 hour interval, another police officer, different location, unrelated questioning, again advised of Miranda rights
           3. Shows it was honored
     2. *Edwards v. Arizona*: Defendant was arrested and read Miranda, requested attorney, questioned stopped. Next day, different detectives from same department came to question and he confessed
        1. Rule: After asserting right to counsel under, interrogation must be stopped until counsel is provided or defendant initiates talk.waivers must be voluntary
        2. Reasoning: Defendant has to initiate if he’s asked for counsel and counsel is not there = police cannot initiate further conversation
        3. Defendant must invoke their right “clearly and unambiguously”
     3. *Maryland v. Shatzer*: A social worker suspected Shatzer (already in jail) had also sexually abused his son. Cops came to jail & questioned him. He refused to speak without an attorney & they closed the file. 2 years later social worker again thought he’d abused his son & new cops came to the jail. Shatzer was confused & at first thought they wanted to ask about the crime he was in jail for. But answered questions and submitted to a polygraph test and incriminated himself. 14 days + general prison population = no custody for Miranda
        1. Rule: Lawful imprisonment not coercive pressure identified in Miranda
        2. Reasoning: Sufficient time had passed between questioning & and second waiver of Miranda was made.
        3. Where the prosecution shows that a Miranda warning was given and that it was understood by the accused, an accused's uncoerced statement establishes an implied waiver of the right to remain silent
        4. If you don’t invoke unambiguously, left to see if Due Process is violated, otherwise confession comes in
     4. *Berghuis v. Thompkins*: A shooting occurred outside the mall & a victim died. Suspect fled, a year later found & arrested. At beginning of interrogation given form w/Miranda, D read one out loud to prove he can read, officer read others & D declined to sign the form. Officer began interrogation & D remained mostly silent (but never said he wanted to remain silent or wanted an attorney etc). 2 hrs and 45 minutes later he confessed
        1. Rule: Being quiet is not enough, must directly invoke right to counsel
        2. Reasoning: Where the prosecution shows that a Miranda warning was given and that it was understood by the accused, an accused's uncoerced statement establishes an implied waiver of the right to remain silent
           1. If you don’t invoke unambiguously, left to see if Due Process is violated, otherwise confession comes in
           2. Understanding rights + no due process violation = valid waiver; valid waiver = valid confession.
           3. Requiring D to unambiguously invoke their rights (more than silence) & reduced the state’s burden of showing waiver to a preponderance.
           4. Appeals to religious, moral, or ethical weakness are not severe psychological coercion (Police have permission to exploit certain weaknesses).
  2. Trickery
     1. *Moran v. Burbine*: D’s sister arranged a public defender, who called the police station and & asked to talk to D before he was questioned. PD said that they wouldn’t question until the next day, but went ahead & questioned him right away. Police deceived D.
        1. Rule: Even if your attorney is looking for you, police don’t have to tell you.
        2. Reasoning: Police interference was not coercive or inappropriate enough to shock their senses. So long as there has not been the commencement of formal proceedings it’s okay for the police to deceive.
        3. It was the attorney, not the defendant who was deceived
           1. Defendant could have invoked his right regardless
        4. Trickery is (only) impermissible if it is deceit of a constitutional dimension (here, that is if it involves the Miranda warnings or the doctrine itself).
        5. Dissent (Stevens): This is a slide backwards, fears the consequences of this holding, deception should have made the waiver invalid because the assumption is against waiver of rights, deception
     2. *Colorado v. Spring:* Spring shot a guy while hunting in Colorado. Informant told of Spring’s involvement in interstate transportation of stolen firearms, the ATF set up an undercover purchase of firearms from him, arrested him March 30 & gave Miranda rights. He signed a statement that he understood & waived his rights. The agents then ended up asking questions that led to his arrest & whether him whether he had ever shot anyone, & she said he had "shot another guy once." On May 26, while D was in jail, officers gave Miranda & he again signed to waive rights & then confessed to the Colorado murder made a signed statement.
        1. Rule*:* You don’t have to be informed of what police are going to ask you about for your Miranda waiver to be complete.
        2. Reasoning: 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 Am. privilege
           1. Miranda says anything you say may be used against you, so that should be good enough.
           2. Waiver was knowingly and intelligently made, that is, he understood that he had the right to remain silent and that anything he said could be used as evidence against him.
           3. Mere silence by law enforcement officials as to the subject isn’t trickery.
        3. Dissent: Using the totality test that the majority prefers, Ds knowledge of the specific topic of investigation is relevant. For a voluntary, knowing, and intelligent waiver, the suspect must be aware at least of the crime she is suspected of, this case demonstrates the relevance.
     3. *Missouri v. Seibert*: Mom lit house on fire to cover up child’s death. Police did questioning first to get confession, then Mirandized, then asked to repeat confession
        1. Rule: Not okay to question for confession, do Miranda, & repeat.
        2. Reasoning: Because midstream recitation of warnings after interrogation and unwarned confession could not effectively compel with Miranda constitutional requirement, held that a statement repeated after a warning in such circumstances is inadmissible
        3. Concurring (Kennedy): tests are too broad, wants more succinct test that keeps the clarity of the Miranda rights, and thinks you can do that by judging the subjective intent of the officer.

**Part 3: The Remedy of Exclusion**

1. **The Fourth Amendment Exclusionary Rule**
   1. Concept of the Exclusionary Rule
      1. Exclude evidence not obtained constitutionally
      2. Don’t have to police the police, all they have to do is exclude the evidence, this incentivizes police to obtain evidence legally
   2. *Mapp v. Ohio*: Mapp convicted of possessing obscene materials after an admittedly illegal police search of her home for a fugitive
      1. Rule: All evidence obtained by searches and seizures in violation of the Constitution is, by [the 4th Amendment], inadmissible in a state court."
         1. Extended the warrant requirement & exclusionary rule to the states through the due process clause & 14A — gave states citizens do not appear to have a remedy in criminal law.
      2. Reasoning
         1. Had already said privacy rights apply to the states.
         2. Tension between exclusionary rule & judicial integrity
         3. Can’t have rights without a remedy
         4. Still true that the courts themselves are a branch of government but without much else to enforce rights with (legislatures haven’t developed other tools).
      3. Launched the Court on a troubled course of determining how and when to apply the exclusionary rule.
      4. Dissent: Federalist dismay, by taking this on we limit state’s abilities to find their own remedies. While we may be frustrated by what the states are doing and their lack of response to these kinds of problems, we should not eliminate their opportunity to find other ways.
      5. Takes pressure off states, puts heaven burden on SCOTUS
2. **“Fruit of the Poisonous Tree” and Standing**
   1. Background
      1. Constitutional rights are personal rights — must show standing that personal rights have been violated
   2. *Wong Sun v. United States*
      1. Rule: Personal rights must be violated to invoke exclusionary rule
      2. Any evidence (under 4th A) 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
      3. Only those individuals who have their rights violated have standing to exclude evidence. Both physical and testimonial fruits can be excluded as “fruits” of illegal searches and seizures.
      4. What is the derivative evidence in the case? Mr. Toy has nothing to incriminate him in his apartment, but what incriminates him are the statements of others.
         1. Hold: Johnny & Wong Sun only have standing to assert their own individual rights in seeking exclusion of evidence derived from violation of their own rights.
         2. The statements of others derived from unlawful search cannot be used against Mr. Toy: in 4A (w/ knock & announce exception), derivative evidence-physical or verbal- from unlawful search cannot be used against the person who has standing to assert that their right was violated.
         3. Mr. Toy’s house was unlawfully searched so he has standing to suppress evidence from that unlawful search.
         4. Johnny does not have standing to suppress Mr. Toy’s statement & unlawful search of Mr. Toys house: the 4A violation was not against Johnny, he does not have standing to assert Mr. Toy’s right.
            1. Similarly, Wong sun does not have standing to assert Mr. Toy’s right.
         5. Rule: “[V]erbal evidence which derives so immediately from an unlawful entry and an unauthorized arrest as the officers’ action in the present case is no less the ‘fruit’ of official illegality than the more common tangible fruits of the unwarranted intrusion.”
   3. *Rakas v. Illinois*: defendants convicted for armed robbery, neither owned the car — search revealed rifle and ammo in the car
      1. Rule: Defendants have no standing over the property & no reasonable expectation of privacy in the car
      2. Reasoning: If you have a privacy interest, then we have a 4th Am. issue
         1. Have to then ask if they had probable cause for the search
         2. If not, then we don’t have to ask the other questions
         3. Analysis doesn’t change = court is just rejecting idea that there might be standing even if you don’t have a personal interest
         4. If your right wasn’t violated, it doesn’t have to be suppressed
         5. Must use Katz and Jones for standing — example of Katz being used to limit the expectation of privacy
3. **Independent Source and Inevitable Discovery**
   1. Concept
      1. Evidence first obtained unconstitutionally can still be presented at trial if it also comes to light independently of the violation
      2. If evidence will be inevitably discoverable/just about to be discovered in a legal way, the method of how it was obtained is irrelevant
   2. *Nix v. Williams*: Williams was arrested and read his rights for the murder of a child after he led law enforcement officials to the body of the child by making statements, in passing, to officials who were conducting the search. While the statements Williams made were not allowed as evidence against him at trial, the body of the child, as well as photographic and medical and chemical test information were admitted.
      1. Rule: If evidence will be inevitably discovered, the method in which it is obtained is not important.
      2. Reasoning: Under the inevitable discovery doctrine, because the evidence would have been discovered within a short period of time, the method in which it was obtained became irrelevant and it was still allowed against the defendant.
      3. Dissent (Brennan): The inevitable discovery rule relies on a hypothetical scenario in which the evidence may or may not have been found and, because it was not found by legal means, it was still unconstitutionally obtained.
   3. *Murray v. United States*: illegal entry into a warehouse — discovered marijuana — returned with a warrant.
      1. Rule: 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
      2. Reasoning: later acquisition was not the result of the earlier entry, therefore there is no reason why the independent source doctrine should not apply
         1. didn’t use evidence of illegal entry to obtain warrant
4. **Good Faith**
   1. Concept
      1. The rationale for excluding evidence matters
      2. Illegal evidence must be excluded to
         1. maintain judicial integrity = more evidence needs to be excluded
         2. deter deliberate police misconduct = less evidence
      3. If only to deter misconduct, the this creates “good faith exception” — if police act with good faith in believing their conduct is legal = evidence admissible
      4. Use of this varies by jurisdiction depending on how they view the purpose of the exclusionary rule to begin with
   2. *United States v. Leon*: judge issued the warrant — another judge concluded that the affidavit for the search warrant was insufficient; it did not establish the probable cause necessary to issue the warrant and therefore the evidence obtained under the warrant could not be introduced at Leon's trial.
      1. Rule: The exclusionary rule is not a right but a remedy justified by its ability to deter illegal police conduct.
      2. Reasoning: In Leon, the costs of the exclusionary rule outweighed the benefits.
         1. The exclusionary rule is costly to society: Guilty defendants go unpunished and people lose respect for the law.
         2. The benefits of the exclusionary rule are uncertain: The rule cannot deter police in a case like Leon, where they act in good faith on a warrant issued by a judge.What does it mean to have a good faith exception?
      3. Reasonable reliance — court highlighted that there are 3 rules
         * 1. Exclusionary rule is designed to deter police misconduct, not judges
           2. No evidence that suppression will have any deterrent effect on judges
      4. Dissent: hoe can a search be both legal and illegal?
5. **Using Suppressed Evidence to Impeach**
   1. Concept
      1. If defendant chooses to testify, he may offer an explanation of events inconsistent or contradictory to the suppressed physical evidence or statements
      2. Whether it can be used depends on why it was excluded in the first place
   2. *Harris v. New York:* Harris took the stand denied the offense— prosecution used contradicting statements made by Harris to impeach him.
      1. Rule: A defendant should not be allowed to commit perjury, and if impeachment evidence is available and admissible for that purpose, then the lack of Miranda warning should not prevent it.
         1. Can’t be used to prove facts or issues — jury is supposed to split these things off
      2. Dissent: Police may be encouraged to interrogate without proper warnings because it may be allowed to be used if the defendant chooses to testify.
   3. *Kansas v. Ventris*: defendants charged; informant in cell of D1 heard him admit to crimes, but at trial D1 implicated D2
      1. Rule: state can’t initially bring it up in their case — only if D comes up and tells a different version of events, state can bring a witness and have them recite that statement so that they can impeach the D’s statement on the stand
      2. Informant's testimony, concededly elicited in violation of the 6th Amendment, was admissible to challenge defendant's inconsistent testimony at trial
      3. Interests safeguarded by exclusion were outweighed by need to prevent perjury and assure integrity of trial progress