**Exclusionary Rule**

1) **Evidence** 2**) collected or analyzed** 3) in **violation** of the defendant's **constitutional rights** is sometimes **inadmissible** for a criminal prosecution in a court of law 4) in order **to deter** future 4th Amendment violation.

- **Good-Faith Exception**: "When the police act with good faith or isolated negligence, the deterrence rationale loses much of its force and exclusion can not pay its way."

- Must weigh significant social factors – deterrence benefits must outweigh substantial costs of suppression

- Not a constitutional right and not designed to redress injury.

- Designed to prevent further constitutional violation, restriction on police, not a benefit to the people

- Where suppressing evidence will not yield deterrence, exclusion is clearly “unwarranted.” Deterrence is necessary (not sufficient) for exclusion.

"When the police exhibit "deliberate," "reckless," or "grossly negligent" disregard for 4th Amendment rights, the deterrent value of exclusion is strong and tends to outweigh the resulting costs."

- weigh costs and benefits of applying – suppression of evidence always exacts a social cost

**Knock & Announce Exception**

*Hudson v. Michigan* – exclusionary rule **does not apply to fruits** of a **search** conducted pursuant to a **valid warrant** executed in **violation** of the **“knock and announce”** rule.

- Exclusionary rule is a last resort

- Violation of knock and announce was not a but-for cause of obtaining the evidence

- weigh costs and benefits

- knock and announce is hard to apply/gauge in court

***Attenuation Connection Doctrine***: Exclusionary rule only applies when “**interest protected** by **constitutional guarantee** that has been violated” would be **served by suppression** of the evidence.

- Specific to knock and announce:

1) protection of human **life and limb**

2) protection of **property from damage** caused by forcible entry,

3) protection of **privacy interests** so occupants could **“prepare themselves”** for visitors.

- If the interest does not include shielding evidence from the government, court deemed ecxlusion inappropriate.

**Leon Good Faith Exception**

If a “**reasonably well trained officer** would have known a search warrant was obtained illegally despite the magistrate’s authorization” the exclusionary rule applies. If not, it doesn’t. **Make 3 arguments**: 1) exclusion exists to **prevent misconduct, not prevent errors**, is the situation a mere error?, 2) Does the **actor’s** **conduct warrant extreme action** of suppression?, 3) **Will suppression deter** the misconduct in the future?

- Good Faith Exception **Does not apply when**:

1) officer supplies magistrate with **bad information**

2) magistrate’s behavior is **lacking of in neutrality** reasonable officer would know

3) a warrant is based on **so little indicia** of p.c. that belief in its validity is unreasonable

4) warrant is so **facially deficient** in describing with **particularity** place to be searched and things to be seized

- exception does not apply to improperly executed warrants

- ***Krull*** if authorized to conduct a search pursuant to **a not-yet unconstitutional state law**, the act is in good faith and not unconstitutional – according to Leon, there would be no deterrent effect in suppressing the evidence

- however it is my own personal opinion that it may prevent congress from passing a poorly constructed law

- so many are lawyers, they should know – court relied on outside remedies to conclude Leon, why not extend that to upholding exclusionary rule?

- ***Evans*** – applied good faith exception to clerical error and extended it to arrests

- ***Herring*** – error by law enforcement agency – did not apply exclusionary rule, 3 pronged argument

**Fruit of The Poisoins Tree Doctrine**

In general, when exclusionary rule is applied, it extend not only to the direct products of government illegality but also to secondary evidence that is “fruit of the poisonous tree.”

- EX: You search a house illegally, everything found therein is suppressed

Exception to this doctrine:

**1) Independent Source Doctrine**

a. Threshold Issue: Is the challenged evidence the product of illegal government activity?

- Evidence not causally linked will be admitted

b. However, if later obtained pursuant to lawful search, same piece of evidence may be admitted

- if illegal search leads to p.c. for legal search this may not apply

- most important fact to prove is no causation between independent source and illegal search

**2) Inevitable Discovery**

Evidence linked to a previous illegality is admissible if prosecutor proves it would be found anyway – preponderance of evidence

**3) Attenuated Connection Principle – *Wong Sun***

- if the connection between the illegality and the evidence is attenuated, it dissipates the taint, the evidence may be admitted.

- at some point down the road the tree becomes unpoisoned, sorta like proximate cause in torts

**Factors:**

- temporal proximity

- intervening act of free will, such as witness testimony – consider how willing the witness is in testifying

- flagrancy of constitutional violation

- nature of derivative evidence – if it is likely to surface anyway

**Miranda’s Poisonous Fruit**

A noncoercive Miranda violation results in testimony that police did not coerce, and is still voluntary on part of the interrogated, police must act in good faith – then it may be admitted.

- does not require suppression of physical fruits either

- at least a few justices think there is no violation until a compelled statement is used at trial

- focus on coercion, duress aspects and whether a statement is compelled

**Miranda**

**Miranda v. Arizona**

Prosecution may not use statements, exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. The procedures required are:

1) to inform person of their right to remain silent

2) to inform person that any statement made can be used against them

3) to inform person of their right to an attorney, retained or appointed

Defendant may waive these rights through clear knowing, intelligent and voluntary waiver. If, at any stage of the process, the defendant wishes to consult with an attorney, there can be no questioning.

- “in-custody interrogation of persons accused or suspected of crime contain inherently compelling pressures which work to undermine the individual’s will to resist and to compel him to speak where he would not otherwise”

- presence of counsel reduces coercion, aids defendant in giving full statement, can be a witness to any coercion

***DISSENT***

- 5th Amendment never meant to relieve all pressures

- These new rules do little to prevent the policemen set on lying from the start

**Berkemer v. McCarty**

Holding that **Miranda needed** to be recited to question/interrogate person pulled over for **misdemeanor** traffic offense. “It would be unreasonable to expect police to make guesses as to the nature of the criminal conduct at issue before deciding how they may interrogate the suspect.”

**Public Safety Exception (to Miranda)**

**New York v. Quarles**

There is public safety exception to the requirement that *Miranda* warnings be given before a suspect’s answers may be admitted into evidence – This exception is not dependent upon the motivation of the independent officers involved.

- Court did not see *Miranda* as so rigid it could not allow for an officer to ask questions reasonably prompted by a concern for public safety

- FACTS: Police caught up to a suspect in a grocery store, frisked him, found an empty holster, asked him where the gun was, he told them. Moved to suppress the gun, because not read Miranda.

- DISSENT: Unnecessarily blurs the lines of Miranda, requires post hoc inquiry, police will be able to coerce statements w/o reading *Miranda*

**What Is Meant By Custody?**

Miranda warnings are required where **“only where there has been such a restriction on a person’s freedom as to render him ‘in custody’”** (Oregon v. Mathiason 429 U.S. 492, 425 (1977)). “Custody” arises when a person is “taken into custody or otherwise deprived of his freedom of action in any significant way.”

- For Miranda purposes, **“there is a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest.”** California v. Beheler 463 U.S. 1121, 1125 (1983).

-- Objective reasonable person standard, not through the viewpoint of the person or detainer. **2 Part Analysis: 1) What were the circumstances surrounding the interrogation? and 2) given those circumstances, would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave?”**

--- Should take all factors and circumstances under consideration

- Not a factor is the police officer’s stated or unstated intent

- does not apply to a *Terry* stop

- being the *focus* of an investigation is not *in custody*

- *Miranda* can be required anywhere, even the home

**Berkemer v. McCarty – The Traffic Stop & Custody**

Person pulled over for traffic offense not “in custody” until formal arrest is made. Court reasoned that traffic stop is 1) **“temporary and brief”** lasting only a few minutes and 2) **traffic stops done publicly** and **mitigate chances for coercion**. Motorist will be less afraid and is not constrained in same fashion as formal arrest.

- Police officer can question detained motorist, but motorist is not obligated to answer

- Unless motorist’s answers create probable cause to arrest, police must release

- Just because officer does not inform driver/person of the brevity of the stop, does not create a coercive environment (common sense says a traffic stop will be brief)

**J.D.B. v. North Carolina – Age Is A Factor (to otherwise objective standard)**

Though determining whether someone is in custody is an objective determination, court found that a subjective factor, age, could be a factor when determining whether a person reasonably believed they were at liberty to terminate the interrogation.

- objective test avoids burdening police with the task of anticipating the idiosyncrasies of every individual suspect and divining how those particular traits affect each person's subjective state of mind.

- officer must know the child’s age, or be reasonably aware of it

***DISSENT***

- Claims that it is going to make Miranda’s bright line attributes and turn them into highly-intensive fact based inquiries that Miranda specifically sought to avoid.

**What Is Meant By Interrogation?**

Interrogation refers to express questioning and its **“functional equivalent,”** such as “any words or actions on the part of the police that the police (other than those normally attendant to arrest and custody) should know are **reasonably likely to elicit an incriminating response** from the suspect.”

- Should the officer have realized his actions and words would lead to an incriminating response?

- Officer’s intent only a factor to be considered

- brevity or length of comments is a factor (how court distinguished the handicap children comments from the “Christian Burial Speech”

- if preying upon suspect’s specific sympathies is a factor

- suspect’s state of mind factor, disoriented? Upset? Etc.

**Rhode Island v. Innis**

Officer commented to a suspect that a lost gun could be found by handicapped children, suspect fessed up and told them where the gun was, motion to suppress. Court held that: Officer’s comments were “offhand” in nature and that the police can’t be held responsible for unforeseeable results, can only be responsible for what they should have known would elicit an incriminating response.

***DISSENT***

- “if the rationale for requiring *Miranda* is to be respected, any police conduct or statements that would appear to a reasonable person in the suspect’s position to call for a response must be considered ‘interrogtion.’”

- Another said it creates incentive for police to ignore an invocation of rights

- Also, thinks majority requires a question mark to be an interrogation, which is unreasonable

**Illinois v. Perkins – Assuming the Risk**

Since coercion is determined from the perspective of the suspect, conversations between suspects and undercover agents do not implicate the concerns underlying *Miranda.* The essential ingredients of a “police dominated atmosphere” and compulsion are not present when an incarcerated person speaks freely to someone that he believes to be a fellow inmate.

- **when the suspect does not believe the person to be a cop, there is no need for *Miranda*, no risk of coercion**

- Concurring opinion thinks this deception is violation of Due Process, 14th Amend.

**When Has Miranda Been Conveyed?**

Variations of the recitation of rights are available so long as the fourt protections are reasonably conveyed.

**Has The Suspect Waived His Rights?**

Whether a waiver has occurred is based “on the particular facts and circumstances surrounding the case, including the background, experience and conduct of the accused.

Burden of proof is on the government that the suspect validly waived *Miranda* rights, but “in at least **some cases waiver can be clearly inferred** from the **actions and words** of the person interrogated” after *Miranda* is given.

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

- Prosecutor carries heavy burden proving rights have been waived – that burden is based on a totality of the circumstances, preponderance of the evidence standard that the waiver is valid.

**Voluntariness**

A waiver must be voluntary, i.e., “the product of a **free and deliberate choice** rather than intimidation, coercion, or deception.”

- if moral and psychological pressures emanate from a source other than official coercion, the waiver is likely voluntary

**Knowing and Intelligent Waiver**

To be valid, a waiver “must have been made with a full awareness of both the **nature of the right** being abandoned and **the consequences of the decision** to abandon it.”

- don’t necessarily have to be aware of all the charges against you

- *Miranda* designed to help suspect choose between silence and speech, therefore, you don’t necessarily have to know everything you’re going to be charged for

- more concerned with knowledge of the nature of the rights relinquished, and consequences of such relinquishment, not the subject matter of questioning

***DISSENT***

- would add the requirement that either through circumstances or specific advisement, suspect should know what he is being charged for

**Waiver Law – Assertion Of Rights**

**Right to Silence**

**Michigan v. Mosley**

If suspect asserts his right, it must be followed scrupulously, interrogation must cease, but not permanently. *Miranda* does not create a per se proscription of indefinite duration upon any further questioning by any police officer on any subject.

- The **two hours** elapsed time and fact that police did not ask him about subjects upon which he declared his right to silence, showed that police did scrupulously respect his assertion of rights.

- a blanket prohibition against the taking of voluntary statements or a permanent immunity from further interrogation would transform the *Miranda* safeguards into wholly irrational obstacles to legitimate police investigative activity

- time and place and officer questioning are important factors (for whatever reason)

**RIGHT TO COUNSEL**

Once a person has requested counsel, the police may not interrogate the suspect further about *any* crime, unless 1) the defendant’s counsel is present and a valid 5th Amendment waiver is obtained; or 2) the defendant initiates further communication/exchanges/conversation with police, after which a police MUST obtain a waiver.

- government must reveal themselves or suffer exclusion

- 6th Amendment “guarantees the accused the right to rely on counsel as ‘medium’ between him and the State.” Mainve v. Moulton (we did not read, found in supplement)

**Right to Counsel Principles:**

I. Right to Counsel is personal, can only be raised by person denied counsel

II. Only applies once criminal proceedings have begun – includes preliminary hearing, indictment, information, indict, interrogation

- begins when judicial machinery signals commitment to prosecute – occurs at either arrest or filing of criminal charge, it’s disputed

III. Right to Counsel is only violated when agent “deliberately elicits” incriminating statements from accused – does not include mere contact between accused and police or prosecutors

IV. Offense Specific – does not extend to unindicted offenses because factually related to offense that has been charged – not charge specific, but offense specific – as in prove same facts, no different facts

V. Right may be waived through voluntary, knowing and intelligent waiver

VI. A violation generally requires exclusion of the improperly obtained evidence – however, if the involuntary statement is used to impeach, it is not excluded

**Edwards v. Arizona – When Question Can Recommence Under Miranda**

After a suspects expresses his desire for counsel questioning **may not recommence until counsel has been made available**, UNLESS the accused himself initiates further communication exchanges, or conversations with the police.

- purpose is to prevent police from badgering suspect to waive his rights

- bars interrogation even about other offenses

- When does a suspect initiate communications/exchanges/conversation? When the suspect can be fairly said to represent a desire to open up a generalized discussion relating directly or indirectly to the investigation – request for food and water does not qualify.

- related to investigation has been interpreted broadly

***CONCURRING***

- Should be able to waive any right at any time, and should be under the “knowing, voluntary intelligent standard”

**Davis v. United States**

Invocation of the *Miranda* Right to Counsel “requires at a minimum, some statement that can reasonably be construed to be an expression of a desire for the assistance of an attorney.” If the officers conducting interrogation reasonably do not know whether the suspects wants a lawyer, requiring the immediate cessation of questioning would be an obstacle to legitimate police investigations activity**. Good police practice (not required) will clarify** the statement. **However,** right to counsel **must be affirmatively invoked.**

***DISSENT***

- When a suspect makes a statement that could reasonably be construed as a request for an attorney, interrogators questions should be limited to verifying whether the individual meant to ask for a lawyer.

**Massiah v. United States**

Any secret interrogation, from and **after the finding of the indictment**, without the protection afforded by presence of counsel contravenes the basic dictates of fairness in the conduct of criminal causes and violates the fundamental rights of person charged with a crime.

- Federal agents secretly but deliberately elicited statements from suspect already involved in criminal process – these statements are inadmissible against him. However, they could be admissible against his co-conspirators!!

- The most critical part of proceedings is prior to trial. To deny accused counsel at early stages would deny effective representation at only time when legal aid would actually help.

***DISSENT***

- If the suspect is furthering his criminal operations, the evidence should be admissible

**Sixth Amendment, Right to Counsel – Deliberate Elicitation**

Deliberate Elicitation occurs when a government agent **purposefully elicits** an incriminating statement from the accused, when it is her conscious object to obtain a statement from the defendant.

- Ex: **“Christian Burial Speech”** in Brewer v. Williams

- different than interrogation because delib. elicit. **Focuses on the agent’s intent** and not the accused’s perception and is based on **finding that the agent’s actions/words will likely result in incriminating information.**

- Deliberate Elicitation is usually what triggers a 6th Amend violation

- **passive listening not likely to trigger 6th Amend**. Violation – “defendant must demonstrate that the police and their informant took some action, beyond mere listening, that was designed deliberately to elicit incriminating remarks.”

***when is deliberate elicitation applicable? 6th amend***

- easy answer after formal charges

- Brwer, there had been an arraignment

- indictment, information, arraignment all sufficient to trigger

- whether a criminal complaint could trigger it is unclear

- just being a suspect is not

- **objective standard**

- formal charging document or arraignment

- arraignment is a bit unclear

- has to be done by a government actor

- so interrogation ends when it gets formal, after it gets formal you can’t deliberately elicit anything

- specific to offenses you’ve been charged with

**U.S. v. Henry – Inmate Paid by Gov.**

An inmate 1) **paid by the government**, 2) and acting **secretly**, elicited incriminating statements from an inmate 3) under indictment by **engaging him in conversation**. These three factors led the court to hold that the government induced Henry to make incriminating statements without the assistance of counsel, violating The Right to Counsel.

- Elicitation in this instance did not involve elcitation but instead the mere creation of a situation likely to elicit an incriminating information.

***DISSENT***

- “’Deliberate elicitation’ after formal proceedings have begun is thus not by itself determinative…If the event is not one that requires knowledge of legal procedure, involves a communication between accused and attorney concerning investigation of his case, or otherwise intereferes with the attorney-client relationship, there is simply no constitutional prohibition against the use of the incriminating evidence.

- Once the accused is aware of his rights, it is up to him to exercise them

**Right to Counsel Miranda v. Sixth Amendment**

***When the Right Attaches***

6th – When adversarial proceedings commence

Miranda – When the person is seized

***Offense Specific***

6th – Yes

Miranda – Not necessarily. Applies to all offense once custodial interrogation begins.

***Fruit of Poisonous Tree***

6th – Applies fully

Miranda – Far more limited application

**F O U R T H A M E N D M E N T**

**Was there a search or seizure?**

**What is a “Search?”**

**From Katz v. U.S. (Concurring Opinion): Subjective-Objective Test**

First, the individual must have exhibited an actual **(subjective**) **expectation of privacy**.” Second, he must prove that the expectation he exhibited is one that “**society is prepared to recognize as ‘reasonable’** or “legitimate” or “reasonable.”

- police conduct is not a search if either prong is missing

- “what a person knowingly exposes to the public, even in his home or office, is not a subject of 4th Amendment Protection,” whereas “what he seeks to preserve as private, even in a public area, may be constitutionally protected.” – good language for subjective aspect of search

**Subjective Prong**

Court more often than not finds claimant possessed an expectation of privacy. However, in one case it cited that a mere “hope” for privacy is not an expectation.

**Objective Prong (PMD)**

*Analyze 3 Factors:*

**1. Site or Nature of Property** – though 4th Amend. Protect people and not places, the extent of the privacy expectation is tied to the person’s location

- open fields are not protected

- “curtilage” of a person’s home has somewhat greater protection

- activity within home strictly protected

**2. Extent to Which Person Has Taken Measures To Keep Information, His Property or An Activity Private Is Vital** – Two Rules, 1) a person cannot possess a reasonable expectation of privacy in that which he knowingly exposes to public and 2) One who voluntarily conveys information or property to another person “assumes the risk” that latter individual is gov. agent

**3. The Degree Of Instrusion Experienced Is Relevant.**

- low flying helicopter example

- police surveillance that provides only limited information not likely to be a search

Overall Issues to Watch For:

- Distinctions between “reasonable,” “legitimate” and “justifiable” expectations of privacy

- Mode of government intrusion (camera v. GPS v. Thermal Imaging)

**Kyllo v. United States -**

Police used thermal imager to detect abnormal measures of heat possibly indicative of growing marijuana in the home. Court found that thermal imager was officer’s using more than naked eye surveillance of their home. HELD that obtaining information regarding the interior of the home that **could not otherwise be obtained without physical intrusion constitutes a search**, at least where the **technology is not in general public use.**

- It says “at least” – leaves door open that “more” could be found and that technology in general use may still constitute search

- “**In the home, all details are intimate details**…entire area is safe from prying eyes”

- level of sophistication has nothing to do with “intimacy” of details observed

DISSENT

- no intimate details found in house, just details that required an inference to discern their meaning

**What Is a “Seizure?”**

***Generally:*** Whether police conduct constitutes a seizure is a matter of threshold significance: unless the police action is seizure (or a search) the 4th Amendment does not apply.

- If the police conduct does constitute a seizure, the remaining constitutional issue is whether the seizure was reasonable.

- With property this means police must have a warrant or justification for not having one. With people, police must have probable cause to seize the individual, if in the home, this usually requires a warrant.

- If the police action is only a seizure and not a full arrest, a lesser standard of “reasonable suspicion” is satisfactory. And, in some very narrow circumstances, the police may briefly seize with no suspicion at all.

**I. Seizure of Property**

Property is seized when there is **some meaningful interference** with the individual’s **possessory interest.**

- Seizure also occurs when officer **destroys or removes** property

- House or office is seized when officer **secures premises**, i.e. prevents people from entering and/or taking awat or destroying their own personal property

- Merely picking up an object and moving it a small distance is not a seizure

Installation of Electronic Device – Seizure?

As long as the police do not interfere with a possessory interest they may install an electronic device on or in personal property.

- Can’t break open a suitcase or car, since these would damage the objects

- In relevant case, officers had consent to install a “beeper” in a can of drugs

**II. Seizure of Persons (Combo of *Terry* & *Mendenhall*)**

A person is seized by police when the officer through **intentional physical force**, **or show of authority**, terminates or **restrains a person’s freedom of movement**.

- thus unintended person could be seized as long as done by intentional acts

When the actions of police do unambiguously intend to detain through physical force or show of authority, a seizure occurs if, in view of all the circumstances, **a reasonable person would have believed he was not free to leave and terminate the encounter.**

***A. Terry* Definition of Seizure**

A person is seized when the officer through physical force of show of authority terminates or restrains an individuals freedom of movement through means intentionally applied.

- according to this definition, **seized when ordered to be stopped** to be **frisked or questioned** on the street, **shot**, taken into **custody**, **ordered to pull off highway** for traffic stop, roadblocks

- not seized if police officer unintentionally strikes your vehicle in pursuit of other suspect

***B. Mendenhall* “Reasonable Person” Test – Ambiguity**

Totality of Circumstances, D’s POV – A person has been seized if, in view of all circumstances, a reasonable person would have believed he was not free to leave.

- subjective intent of officer is irrelevant

- subjective perception of suspect is irrelevant

- both subjectivities are factors to be accounted for

- age and gender “not irrelevant”

**EXAMPLES:**

**Seizure by Questioning – *Terry* Case**

Brief questioning in a public place, by itself, is not a seizure, even if questioned about criminal activity.

- if so, would impose unrealistic restrictions upon law enforcement

- can ask for identification, request consent to search luggage

- factor in coercive factors – uniforms, display of weapons, physical touching, public/private nature of location, language or tone used, demand v. request

- FL v. Royer – court found seizure – officers held on to ticket and luggage of suspect throughout questioning, can’t leave without those items, made no effort to inform suspect he did not have to consent to search

**Factory Sweeps – Seizure**

INS agents entered en masse displaying badges and walkie-talkies searching for undocumented workers. Search lasted 1-2 hours and employees continued working and were free to move about factory, but the INS agents blocked the exit.

Not a seizure of employees. Freedom to move about at work restricted by employer, not INS agents. 2nd, workers were allowed to move about freely. 3rd, individual employees subjected to nothing more than brief encounter.

- were they really free move about? Weren’t free to leave.

- unrealistic to think reasonable person would feel free to leave this situation when entrance is blocked

**Bus Sweeps – Seizure**

FL v. Bostick – Armed deputies dressed in “raid” jackets boarded bus while it was temporarily stopped. Deputies requested and received permission to search suspect’s bag and found drugs. Fact that officer’s **asked permission**, **did not unholster weapon** and **informed suspect** he could refuse led court to hold he was not seized and that reasonable person in his position would have felt free to refuse.

- cramped bus, about to depart, plays a factor, not the only factor

- bus passenger’s freedom of movement restricted on their own accord, their choice to board bus

- US v. Drayton – officer’s **did not inform** suspect of right to refuse, held there was **not a seizure**

**P R O B A B L E C A U S E (To Obtain a Warrant)**

4th Amendment states that no warrant shall be issued but upon probable cause. Probable cause is an essential precondition for a valid warrant to search or seize. Probable cause is also a norm of reasonableness for searches and seizures without warrant,s but there are exceptions to this rule.

- ALL warrants require P.C.

- ALL arrests require P.C.

**Probable Cause To ARREST** – exists where the (1) facts and circumstances within the officer’s knowledge and of which (2) they have reasonably trustworthy information are (3) sufficient in themselves to warrant a man of reasonable caution in the belief that an (4) **offense has or is being committed** by person arrested.

- time is a factor, subject of search must have reasonably likelihood to be there at time searched

- more probable than not

**Probable Cause to SEARCH** – exists if the (1) facts and circumstances within the officer’s knowledge and of (2) which they have reasonably trustworthy information are (3) sufficient in themselves to warrant a man of reasonable caution in the belief that an (4) **item subject to seizure will be found** in the place to be searched. (Assume you have to then analyze whether something is subject to seizure).

- subject to seizure, i.e., contraband or fruits or instrumentalities, or evidence of a crime

- time is a factor

- more probable than not

**ARREST v. SEARCH - Differences**

Method is the same, however, you can have probable cause to arrest but not to search.

- EX: May suspect drugs in car, but may not suspect person knows about it.

- Evidence justifying a search goes “stale” sooner, where information for arrest stays valid longer

**WITH and WITHOUT WARRANT**

Probable cause is required for both, however, a warrant ensures that a “neutral and detached” magistrate, rather than a police officer engaged “in the often competitive enterprise of ferreting out crime.” If an officer acts without a warrant, whether his actions were reasonable is determined by whether he had probable cause. (i.e. whether a magistrate would have granted a warrant at that very instance).

**P.C. Is An Objective Standard**

- An officer’s subjective belief, by itself, does not constitute probable cause. Moreover, lack of such belief does not foreclose finding P.C. Also, subjective motivations, no matter how racist, malicious, pretextual, are irrelevant.

- However, when considering what a “person of reasonable caution” would believe, court **considers expertise** of officer whose actions are under scrutiny

- Officer familiar with area, smell/look of narcotic, account for what “person of reasonable caution” would do

**- P.C. and Pretext (Being Racist Doesn’t Change Objective Stand.)**

As long as officers have a reasonable cause to believe that a traffic violation occurred, they may stop any vehicle. Car traveled at “unreasonable” speed and was full of young African-Americans, seemed likely police were at least a bit racist. Subsequent search was based on probable cause, how racist the cops were was inconsequential.

**Determining Probable Cause – Types of Info**

2 Types of Information get presented to a magistrate, 1) direct information and 2) hearsay information. Can not rely on “bald and unilluminating” statements but must, instead, rely on direct information. (I saw this, I heard that.)

**Direct Information**

Unless court suspects officer is being untruthful, they can consider all direct information provided by law enforcement. Based on this information, then consider whether P.C. exists.

**Hearsay Information – Gates “Totality Of The Circumstances” Test**

Whether hearsay information should be relied upon is based on “a balances assessment of the relative weights of all the various indicia of reliability (and unreliability) of informant’s tip. “Highly relevant” to this inquiry is the sufficiency of two big factors: (1) (VERACITY) the underlying circumstances that led informant to conclude criminal activity was occurring and (2) (RELIABILITY) underlying circumstances why the magistrate should find the informant credible.

- preferable that informant obtained information first-hand, overhearing or participating in criminal activities

- richness of detail

- demonstrating informant’s veracity is difficult, corroborating the information helps

- honesty of informant is considered (not being a fellow criminal)

**Basis of Informant’s Knowledge**

Informants aren’t always trustworthy, may be passing along good or bad information. Magistrates need to determine what the basis for the informant’s knowledge is to mace accurate ruling of whether P.C. exists.

- Best satisfied by informant’s direct knowledge “I bougth drugs from X”

- **Self-Verifying Detail – Draper v. U.S.**

Informant tip described accused’s criminal activity with sufficient detail that magistrate may know information being relied upon is something more than casual rumor or general reputation. Police observed the behavior informant described with accuracy.

- case where accused was found carrying drugs in train station, described as walking fast, would be on a particular train, would be wearing specific clothing, carrying a tan zipper bag. Police observed the truth of this.

**- Veracity of Informant**

Even if informant claims direct information, he may be lying. Reliability cannot be proved on ground of mere assertion. Veracity often aided by “track record” or “batting average” of informant.

- Veracity may be aided by reliability factor

**- Corroboration**

Extent to which police can corroborate informant’s information can bolster his reliability.

**P.C. in Administrative Searches (Camara Principle)**

**Probable cause** exists **to issue a warrant** to inspect premises **for administrative code violations** as long as there are **“reasonable legislative and administrative standards** for conducting an area inspection that are satisfied with respect to a particular dwelling.”

- traditional P.C. tests could be deviated from because of the ultimate balancing of need to search v. level of intrusion – which is different in this case than it would be in a criminal framework

- public has long accepted need for inspections – level of intrusion is slight

- level of intrusion slight because not personalized, and not criminal evidence

- trad. P.C. based on individualized suspicion of criminal conduct

- housing inspectors wanted to conduct a routine inspection of dwelling to ascertain whether municipal housing code was being honored

**A R R E S T S & W A R R A N T S**

All custodial arrests must be founded on probable cause. An arrest not founded on probable cause constitutes an unreasonable seizure of the person, violating the 4th Amend. Unlawful searches do not necessarily nullify conviction but only raise evidentiary issues and result in the suppression of evidence obtained through the seizure.

In theory, the above is true, in reality a police officer: 1) may arrest a person in a public place without a warrant, even if it is practicable to secure a warrant, 2) may not arrest a person in their home w/o an arrest warrant, absent exigent circumstances or valid consent and 3) absent exigent circumstances or valid consent, may not arrest a person in another person’s home, absent exigent circumstances or valid consent with a search and perhaps a warrant.

**Arrest In A Public Place: The No-Warrant Rule**

Suspect arrested in a public place (restaurant) in a warrantless arrest based on probable cause where the suspect “has committed or is committing a felony” is not a 4th amend. violation.

- reasoning based largely on history and common law rule that permitted warrantless felony arrests and this rule “survived substantially intact”

- CONCURRING – agreed but noted the anomaly of needing a warrant to search and seize property but not an individual

- DISSENT – Noted that modern day felonies were for serious crimes that result in lengthy jail time and think this should require a warrant

**Arrest in Arrestee’s Home**

*Payton v. New York*, 4th Amendment prohibits warrantless nonconsensual entry into a suspect’s home in order to make a “routine”– non-exigent—felony arrest.

Even with Probable Cause, 1) **warrant is required** to enter a person’s home and 2) must be **reasonable belief** the suspect is within. If officer has warrant, officer has implicit authority to search anywhere in the home that the named person might be until that person is taken into custody.

**- Home v. Public Place**

- this includes temporary residence (such as motel or trailer)

- includes commercial facility open to general public, unclear whether it applies when facility is not open to general public

- standing in open doorway of your home – PUBLIC. Thershold of home is the threshold.

**Exigencies Justifying Warrantless Entry**

**Hot Pursuit**

Warrantless entry of a home is permitted in hot pursuit of a fleeing felon. U.S. v. Santana, it does not have to be in and out of public streets, just a chase will do.

**Other Exigent Circumstances (E.S.H.)**

If police believe that if they do not enter immediately:

1) evidence will be destroyed,

2) suspect will escape,

3) harm will result to police or others inside or outside dwelling.

- **Gravity and likelihood** are the factors to be weighed when considering these exigencies.

- crime that would result in $200 fine lacks the requisite gravity

**Arrest In A 3rd Person’s Home – *Steagald***

A person whose home is searched for the presence of a guest is entitled, absent emergency or consent, to a prior judicial determination of probable cause to search the premises for the person to be arrested.

- Without a warrant, significant potential for abuse

- Could search all of home for evidence with pretext of searching for guest

- where two people are co-residents, Payton applies

- if they are not co-residents, Steagald applies

**Executing An Arrest Warrant**

Valid arrest warrant carries limited authority to enter dwelling when reasonable belief subject of warrant is inside. Absent that, no justification to enter home.

- Should **knock and announce presence** and wait to be admitted

- may **not use excessive** or unreasonable force to make arrest

- if **other are present**, they can be **detained but not searched**

**S E A R C H E S**

**Search Warrants**

Must particularly describe the place to be searched and the persons or things to be seized.

**Particular Place**

- must be described w/ sufficient clarity that officer executing can identify w/ reasonable effort

-- street address is usually sufficient

-- multiple unit search, must be based on information

- cars must be described so officer can determine which car it is

**Particular Person or Things to Be Seized**

- must be described so something else is not seized

- should be little discretion (other than plain view)

**Automobile Exception to Search Warrant**

Today, in most instances, a person who enters an automobile seizes the right to have probable cause determined by a magistrate.

**- At the Scene** – a police officer may conduct a warrantless search of an automobile that he has probable cause to believe contains contraband if 1) **stops the car** on the highway and 2) vehicle is **readily capable** of use.

**- Away From The Scene** – Based on probable cause and **must take place shortly thereafter** the arrest/detain/seizure of person. The delay can last a day, a few days, but not a year.

**- Scope of Search** – Limited to object looking for and places it may be found. P.C. to search does not always apply to entire automobile – based on what gives rise to P.C. Also, once they discover what they are looking for the search must cease.

-- Can **search containers**, including purse

-- Can search the trunk – looking for evidence

**- Rationale:** Lesser Expectation of Privacy. Car is exposed to public. It’s not the home. Loss of Evidence

**Searches Incident to Lawful Arrest**

A police officer who makes a lawful full custodial arrest may conduct a contemporaneous warrantless search of: 1) the arrestee’s **person** and 2) the **area within** the arrestee’s **immediate control.**

- If the arrest occurs within the home, the police may also conduct a search of “closets and other spaces immediately adjoining the **place of arrest from which an attack could be launched**.

- If police arrest an **occupant of a vehicle**, they may search the passenger compartment, even if arrestee does not have immediate access to it, if the officers have **reason to believe that evidence relevant to the crime** of arrest might be discovered there.

- Custodial arrest gives suspect incentive to destroy evidence or try to resist or flee arrest, therefore, custodial search allowed

- May conduct this search regardless of P.C.

- Can only seize what is reasonably a fruit, instrumentality or evidence of a crime, any crime

- does not include the trunk

**A. The Arrest**

**1. Full Custodial Arrest, Defined**

Applies to suspects taken into full custody which includes being transported to station for booking

- this includes full custodial arrests for minor offenses, misdemeanors, such as not having on seatbelts,

- Lawful arrest means “constitutionally lawful,” evidence found violating state law procedures may still be admitted

**B. Contemporaneousness of The Search**

**1. Area Within Arrestee’s Immediate Control**

An officer’s right to conduct a search of the area within the immediate control of an arrestee is limited to searches conducted contemporaneously with the arrest.

- if you wait to search suspect’s car until it is towed, invalid search – no risk of grabbing weapons or destroying evidence

**2. Closets and Other Spaces Adjoining the Place of Arrest**

Once a person arrested in home is removed from their home, a search of the closets and immediately adjoining areas of arrest is no longer justifiable.

**3. Of The Person**

Allowed, not necessarily as incident to arrest. More as a combination of various other warrant exceptions, these instances are rare anyway – don’t expect to see this on the exam.

**C. Scope of the Search**

**1. Search the Person**

Can not penetrate into body and the search of the pockets and “immediately associated” containers (purse).

- ***Automobiles*** – ***Gant*** – searches incident to arrest to circumstance where it is reasonable to believe that: 1) the arrested individual might access the vehicle at the time of the search; or 2) the arrested individual's vehicle contains evidence of the offense that led to the arrest.

**2. Area Within Immediate Control**

Scope of the grabbing area depends on the circumstances. Consider: handcuffed, size and dexterity, open or shut containers, locked or unlocked containers

***- Automobiles***

May search passenger compartment and all containers therein, whether open or closed. Pertains to occupants and recent-occupants. Distinguish between searching a vehicle incident to lawful arrest & whether a warrantless search of a car has occurred. (if suspect handcuffed and away from car, it’s a warrantless search) (if still near car, incident to arrest – time and proximity).

**Inventory Searches - *Opperman***

A routine inventory search of a lawfully impounded automobile is reasonable under the 4th Amendment even if it is conducted without a warrant and in the absence of probable cause. Consequently, if police discover criminal evidence during a valid inventory, they may seize it pursuant to the “Plain View” doctrine, and introduce it to a criminal prosecution.

- not part of a criminal investigation, but instead an administrative act

- since not a criminal investigation, probable cause does not apply and therefore no warrant is required

- reasonability of search based on 3 needs: 1) protect police and public from **dangerous items in car**, 2) protect police against **claims of lost or stolen items**, 3) **protect owner’s property** while in police custody

- these interests outweight expectations of privacy – which is lesser w/ respect to automobile

***- PRETEXT***

If an officer’s sole reason for conducting the inventory is pretext for investigating crime, it may be unreasonable

- inventories should be “routine” or “standard” and should fulfill purposes above

- police officer should have little discretion in how to conduct the inventory, but are allowed some discretion in whether to conduct the inventory as long as that discretion is based on standard criteria (Colorado)

- five justices seem to accept principle that containers may only be opened if there is standard or routine practice that *mandates* that practice

- five justices suggested private papers could be off limits

- trunk seems ok to search

***Plain View* Doctrine**

An object of an incriminating nature may be seized without a warrant if it is in “plain view” of a police officer lawfully present at the scene.

Must have 1) lawful vantage point to observe the object, 2) right of physical access to it, 3) object must be subject to seizure (fruit, instrumentality, evidence).

- can only move or search for objects pursuant to what you are there for – AZ v. Hicks – searching for a weapon, weapon can’t be found under a record player, probably.

- don’t have the right to move objects to put them in plain view or to view their serial numbers

- if you touch something it’s a search and it no longer can be argued to be in plain view

**1. Lawful Vantage Point**

Generally speaking, 4 ways to observe evidence from a lawful vantage point: 1) may discover article during execution of valid search warrant, 2) object may come into view during an in-home arrest pursuant to arrest arrant, 3) during a search justified as an exception to a search warrant, or consent search 4) view of an object may arise from activity that does not constitute a search (just seeing a pot plant in a window).

**2. Right of Access to Object**

Pot plant in window example – still don’t have right to access. Other 3 ways of viewing contraband will lead to right of access, as well, most of the time.

**3. Right to Seize Is Immediately Apparent**

Seizure of an article in plain view is legitimate when it is immediately apparent to the police they have evidence before them.

- really nice stereo equipment in crappy apartment not “immediately apparent” as evidence – AZ v. Hicks

**Plain Touch or Plain Feel**

Officer lawfully performed a *Terry* stop and frisk, and during the frisk felt a lump, that could have been crack. He then *searched* the pockets and that suspicion was confirmed. Held to unlawful search, because nature of object was not “immediately apparent.” Had it been a gun, which would be easier to discern by shape, it may have been lawful. MN. v. Dickerson.

**Consent to Search**

**Validly obtained consent justifies** an officer in conducting a **warrantless search**, with or **without** **probable cause**. To be valid consent must be 1) granted **voluntarily**—totality of the circumstances test, 2) obtained from someone **with real or apparent authority** to give consent and 3) the ensuing search **must not exceed the scope** of consent granted.

***EXCEPTION***: Permission to conduct a search of a residence does not give the police authority if another person, 1) with common authority over the property, is 2) physically present and 3) expressly refuses consent.

- not justified on waiver terms because then police would have to notify person of freedom being surrendered AND it would not justify the invasion to another person’s property

- one who voluntarily consents no longer has an expectation of privacy, so really a “search” is not occurring

- undercover officers posing as private citizens find evidence in plain view – valid consent can be given, otherwise there would no undercovers

-- also consider, can be no coercion if they think you’re John Q. Taxpayer – similar to “assuming the risk” of talking to informants

**Voluntary Consent**

Consent is legally effective when given voluntarily and not as “the result of coercion duress, express or implied.” Burden of proof is on the prosecution – preponderance standard. Totality of the Circumstances Test.

***Factors to Consider:***

- Show Of Force by officer

- Presence of large number of officers

- repetitive requests after initial refusal

- person’s age, sex, level of education, emotional state, or mental condition that suggests will was overborne by officers

**Awareness of 4th Amendment Rights (Factor of Voluntary)**

Person’s awareness of their right to not consent to the search is one factor to be considered, among the totality of the circumstances when determining voluntariness of the search. Officer is **NOT** obligated to inform.

**Scope of Search**

Can’t exceed the scope of granted consent. Standard for measuring the scope of a suspect’s consent is that of “objective reasonableness”—what would the typical reasonable person have understood by the exchange between the officer and the suspect?

**3rd Party Consent**

*Matlock* – It is reasonable to recognize that a **co-habitant has the right to permit inspection** in his own right and that **a co-habitant assumes the risk** that one of their housemates may permit an area to be searched. – That is, UNLESS another housemate is physically present and does not consent. A subsequent search is therefore unreasonable in that scenario.

- Both have an interest to privacy

- home is sacred

- social expectations – you would not walk into a house if 1 of 3 people was saying “stay out”

**TERRY STOPS & STOPS and FRISKS**

Where an officer has specific and articulable reasons to believe that a person that a person may be involved in criminal activity and armed and presently dangerous, an officer that identifies himself, is entitles to protect himself and others through a limited search of the outer clothing of the suspect in order to discover weapons.

The inquiry is a dual one, 1) whether the officer’s action was **justified at its inception** and 2) whether it was **reasonably related in scope to the circumstances** which justified the interference in the first place.

- balance he intrusion with the need for a search

- police officer must be able to point to specific and articulable facts that, taken together with reasonable inferences, reasonably warrant the intrusion

- general interest of crime prevention

- immediate interest in assuring suspect does not have a weapon

- suspects interest was being on the streets unimpeded

*- CONCURRING*

- officer should first have legal authority to conduct the stop and frisk – circumstances should lead that specific officer to conclusion that person was about to engage in criminal activity

- also, the frisk should be immediate and automatic if its aim is to find weapons

**Terry Searches**

Terry authorizes two police actions: 1) **brief seizure** of a person for **investigatory purposes** and 2) **a “pat down” or frisk for weapons**, if and only if, certain conditions are met: 1) officer must suspect person is armed and presently dangerous, 2) (it has been suggested) that officer should use least intrusive means possible.

**The Pat-Down**

Outside the clothes, and looking for weapons. If the officer feels something that may reasonably be considered a weapon, there is probable cause and the search may continue.

- After the Pat Down, if search does not lead to probable cause, then no further search is justifiable.

**Reasonable Suspicion**

Less than probable cause, considerably less than preponderance standard. However, cannot act on an inchoate and unparticularized suspicion or hunch. Prefer that there are specific and articulable facts to point to that justify intrusion.

- police can draw on their experience and specialized training

**Types of Information (that leads to “reasonable suspicion”)**

**Hearsay: What Is And Is Not Sufficient**

Based on same factors as P.C. but may be satisfied by a lesser quantum. Those same factors are 1) the informant’s basis of knowledge and 2) the veracity of that knowledge

- does not need to satisfy probable cause, as long as a few indicia of reliability exist, “reasonable suspicion” exists

- some further investigation can save otherwise insufficient hearsay information

- corroboration does not have to be perfect, just generally correct

- *FL v. J.L.* – anonymous tip that a young black male with a plaid shirt had a gun was insufficient – boys made no suspicious movements or acts – “apart from the tip there was no reason to suspect boys of criminal conduct”

- must be more than describing a particular person at a particular location

- had no *predictive information*

**Drug Courier Profiles**

An officer’s observations may properly be supplemented by “consideration of the modes or patterns of operation of certain kinds of lawbreakers.” One example is the drug-courier profile which is a set of characteristics of drug-couriers compiled by the DEA.

- without more this does not constitute “reasonable suspicion” – still need “specific and to some extent, individualized information of particular characteristics.”

- *Reid v. GA* found “reasonable suspicion” where suspect 1) arrived from a “source city,” 2) arrived early in the morning when law enforcement activity is reduced, 3) tried to conceal the fact that he was traveling with another person, and 4) had no luggage except for a shoulder bag.

- other than the 3rd factor, the above 4 factors probably describe a large number of passengers

- *FL v. Royer* – temporary detention justified where person 1) was traveling from a source city, 2) paid for ticket in cash w/ large number of small bills, 3) traveled under assumed name, 4) and appeared to be nervous. – 4 justice plurality.

- *US v. Sokolow* – reasonable suspicion found where passenger 1) paid for $2100 ticket with 20’s, 2) traveled under different name than listed telephone number, 3) original destination was Miamo, major source city, 4) stayed for only 2 days and round trip to HI was 20 hrs, 5) appeared nervous, and 6) did not check luggage. #2 gave reasonable suspicion, 1-4 out of ordinary.

**Flight in High Crime Areas**

Without more the fact that a person is in a neighborhood frequented by drug users is not a basis someone may be involved in criminal conduct.

Unprovoked headlong flight, coupled with other factors, does result in reasonable suspicion of criminal conduct.

- unprovoked flight in a high crime area is enough for reasonable suspicion – *IL v Wardlow*

- 5-4 ruling – can be innocent reasons for flight – consider role of race in a neighborhood like this, however, Terry stops are based on real life experiences and inferences, and evasion of law is no. 1 sign of guilt

**Extending Terry – Protective Sweeps**

A protective sweep of a residence is a quick and limited search of a premises, **incident to arrest** and conducted to protect the safety of police or others. Can search spaces immediately adjoining the place of arrest and, if there is reasonable suspicion to do so, may search other areas.

- officer not on home turf, and at a disadvantage

- as for individual’s interest, search of home is a major intrusion, but the sweep is limited to cursory inspection of where a person may be found

-- can’t last longer than necessary,

-- or longer than it takes to arrest person and take them out of home

- applies to automobiles

-- can search glove compartment

-- probably anywhere else that fits with principles of protective sweep

**S P E C I A L B A L A N C I N G C O N T E X T S**

**Int’l Border Searches And Seizures**

*US v. Flores-Montano* – The government’s interest in preventing the entry of unwanted person and effects is at its zenith at the international border.

- search of gas tank was not an especially intrusive search – should only be gas there – however, I think the time and trouble is what the suspect’s were referring to

- had no reasonable suspicion

- court ruled unanimously

**Sobriety Checkpoints**

Grave government interest found in curbing drunk driving problem. Intrusion considered to be slight since it lasted for a short while and involved minimal questioning.

- held these checkpoint to be “reasonable alternative means of enforcing the law.”

**Drug Checkpoint**

*City of Indianapolis* – Stopping vehicles to look for drugs – primary goal of checkpoint was to look for drugs and not protect highway safety – “when law enforcement…pursuer primarily general crime control purposes…without some quantum of individualized suspicion – notice word “primarily.”

- also consider amt. of consent officers have to do the checks – standardless and unconstrained discretion will not work during checkpoint searches

- questioning all traffic would be unlawful for general crime protection

- could be different at airports and gov’t buildings

- though subjective intent of officers shouldn’t matter, purposes of a program do

**School Searches**

A search conducted by a school official will be lawful if done under **reasonable suspicion**, and if the method of search is reasonably related to the object(s) searched for. Consider age and sex of student and the **nature of the infraction**. The relevant interests to balance here are the student’s legitimate interests to bring lawful items to school and not have them intruded upon against the substantial interest of school officials in maintaining discipline, order and safety of EVERY student.

- 4th Amendment applies at school.

- School officials act in loco parentis, but do not enjoy the same immunity as parents.

- Requiring a teacher to obtain a warrant to search is not req’d, would interfere with swift and informal disciplinary procedures required in schools.

*CONCURRING*

- one justice not entirely convinced the 4th applies – lesser expectation of privacy

- one justice thinks there is a need for P.C. – school official is government official – just fucking stupid.

**Drug Testing**

Upheld warrantless blood, breath and urine testing of some public employees, conducted pursuant to administrative regulations, in the absence of individualized suspicion, in order to detect drug and alcohol usage.

**Intrusion – Drug Testing**

We have long recognized that a “compelled intrusion into the body for blood to be analyzed for alcohol content must be deemed a 4th Amendment search. This physical intrusion, penetrating beneath the skin, infringes an expectation of privacy that society would recognize as reasonable. A chemical analysis of bodily fluids is a further intrusion.

- breath test implicates concern of bodily integrity

- urine test – meaningful disruption of possessory interest in bodily fluids

**Special Needs Exception to Warrant – Drug Testing**

Warrant exception granted for 3 reasons: 1) testing was only done after serious train accidents and done pursuant to regulation where minimal discretion could be used, virtually no facts for a neutral magistrate to evaluate, 2) evidence of drug and alcohol use is eliminated from the body quickly, imposing a warrant would significantly hinder objective of testing programr, 3) unreasonable to impose warrant procedures on railroad companies – could use similar reasoning as teachers, they aren’t law enforcement and have other objectives, such as ensuring safety of these machines for general public, other employees, etc.

**Probable Cause**

Did not find significant intrusion through blood, breath and urine test and therefore, the **testing did not require probable cause.**

- Court was most troubled by urine testing since the expectation of excretion is so high

- employees not observed urinating

- urine was collected in medical environment

- privacy expectation further diminished by participation in an industry known for heavy regulation

**Use of Deadly Force**

*TN v. Garner* – Intrusiveness of a seizure by means of deadly force is unmatched. Interest of police is catching a felony suspect. However, **where the suspect poses no immediate threat** to the officer and **no threat to others**, the **harm resulting** from not catching the suspect **does not justify** the use of deadly force.

Use of deadly force **is justified** where there is probable cause to believe suspect has committed a crime involving infliction or threatened infliction of **serious physical harm**, deadly force may be used ***if necessary* to prevent escape,** and, where feasible, if warning is given.

- common law deadly force more justified because of hand to hand combat

- trend is moving away from deadly force, it does not help stop crime

**Bodily Intrusion for Evidence**

**Schmerber v. California**

Long recognized right fo law enforcement to search person accused after lawful arrest to discover and seize contraband (F, I, E of C). However, these searches did not go into a human body. A warrant is not required because the evidence (of drunk driving) was time sensitive, the prevention of such activity is a grave interest to government. Blood sample is highly effective means of testing this inquiry. It was done in a reasonable fashion, in a hospital, by a physician, such tests are commonplace and there is little to no risk of pain, trauma or risk.

**Winston v. Lee**

State court compelled surgery to extract a bullet from a man’s leg. Have to balance the intrusion into the person’s body with the government’s interest in investigating crime. Because the government has a compelling interest in fairly solving the crime, the inquiry is the extent of the intrusion.

- use of general anesthesia represent total loss of control of suspect’s body and total control of government, citizen is not yet convicted of a crime.

- uncertainty of medical risks, even though widely believed to be small, render the operation unreasonable, operation represent severe intrusion

- state failed to show compelling need for operation

**S T A N D I N G**

4th Amendment right are personally and may be asserted vicariously, i.e., fact that X has home searched unconstitutionally which uncovers evidence to convict D, D does not have the right to raise 4th Amendment issues. Those rights must be asserted by X.

**Rakas v. Illinois**

Standing should not be considered “distinct from the merits of a defendant’s 4th Amendment claim.” Issue of standing collapses into Katz-ian matter of **whether the defendant had a reasonable or legitimate expectation of privacy in the area searched.**

***New Test:***

Capactiy to claim the protection of the 4th Amendment is “whether the person who claims the protection of the Amendment has a legitimate expectation of privacy in the invaded place.

- Rafas defendant failed to prove he had a legitimate expectation of privacy in the car owner’s glvoe compartment and area under the passenger’s seat.

**Impact of Rakas**

***When the Owner or Lessor Is Absent***

Can no longer challenge under 4th Amendment by merely being legitimately on the premises. Must show a legitimate expectation privacy.

- expectation of privacy found where non-resident defendant was sole occupant of apartment, had a key, only stayed for a night or two and had some significant connection with the premises.

***When the Owner or Lessor Is Present***

**Any overnight guest may challenge a search** in the host’s home – its looked at as your home for the night. However, in another case, where a guest was only at the home for a short period of time and for a purely commercial purpose (bagging cocaine), the court found no legitimate expectation of privacy – had no meaningful tie or connection to the owner, owner’s home, or owner’s expectation of privacy.