Criminal Procedure Outline:

1. Is the 4th amendment implicated?
   1. Government actor (Burdeau v. McDowell) AND
   2. Search or seizure
      1. **Search** – Katz = REP
         1. Undercover
            1. RULE: Misplaced Trust = no search

Lewis

Hoffa

On Lee

* + - * 1. TECHNOLOGY – smith v. Maryland
      1. Open Field – Oliver
         1. RULE: Lawful vantage point + curtilage w/ unaided eye = no search

Dunn

Dow (Scalia TECHNOLOGY)

Ciraolo – unaided eye

Riley – O’Connor concurring: ordinary people [Bond also. See: Container searches]

* + - 1. Container
         1. Greenwood
         2. Bond
         3. Place
      2. Enhancement devices
         1. RULE: merely enhancing the senses is OK (Dow Chemical)
         2. Beepers – de minnimis intrusion inside or out of can

Knotts – public navigable roads good

Karo – Inside the house is bad

* + - * 1. Place – Dog is ok.
      1. **Standing**
         1. RULE: Rakas – only aggrieved party can challenge the search and only exists when the movant’s reasonable expectation of privacy (Katz) is intruded upon.

Possessory Interest = privacy

Rakas – passengers in a car = no REP

**Rawlings** = SEE FACTORS PAGE 11.

Keys

Jeffers – Key + possessory interest = REP

Overnight Guesting

Olson

Business Guesting

Minnesota v. Carter – no standing no REP. Think commercial interest. Host is not automatically lending you privacy/ possessory interest of the home.

FRUITS EXAMPLE:

your drugs inside your friend’s bag which is searched in your home = you have standing. Fruits of unjustified search.

Telephones in your house

Alderman TECHNOLOGY

* + 1. **Seizure**
       1. Seizure of Chattles/ Things
          1. RULE: seizure of a chattel occurs whenever there is a substantial and or meaningful interference with a possessory interest (Jacobsen).

Containers

Karo – outside of can = no seize: de minnimis

**Arizona v. Hicks** – NOT A SIEZURE (but a search) when police lift a STEREO

**Dilligence**

Place – Police pick up luggage with RS – 90 minutes unreasonable and not diligent.

Van Leeuween

Temp seizures of effects are justified by RS as long as NARROWLY TAILORED to gov’t need. (page 13)

* + - 1. Seizure of Persons
         1. Govt acts intentionally (Brower v. County of Inyo)
         2. Submits of govt authority (Hodari; Place)

‘ok ok you got me’ = submission

* + - * 1. Reasonable innocent person not free to leave **OR**

Mendenhall – does not take ticket/ id

Royer – takes ticket/ ID

* + - * 1. Does not feel free to terminate (page 14-15)

COERCIVE

Drayton – officer on bus asks nicely (no coercion/ no seizure)

Bostick – officer on bus gives chance to refuse so no seizure despite gun at head.

Delgado – not a seizure if you’re at work anyway.

Kaupp – handcuffing and changing locations is always a seizure.

* + - * 1. Mena, Ybarra, Summers see Execution below
    1. **Probable Cause**
       1. warrant a reasonable person to conclude a fair probability (50%+) that individual in question has committed a crime (for AW) or that specific evidence will be found at the particular place (SW). (**page 17**)
          1. TOTALITY OF THE CIRCUMSTANCES

Gates

aguilar/ spinelli prongs (veracity and basis of knowledge)

LETTERS/ TIPSTERS

Gates Policy – police warrants are easier to get and not hypertechnical to avoid having the police go nuts and hope for the best at a ***suppression hearing***.

Warrant under totality of circumstances (Ybarra, pringle) AND

Supression hearing assesses substantial basis of fair probability must find plain error.

**CAR:** Pringle – distributive property of probable cause to all passengers in a small car. Acting in concert.

HOUGHTON – “I’m an IV drug user” probable cause for the car doesn’t extend to search the passenger’s purse.

Ybarra v. Illinois – NOT like Pringle. Random dude in a bar is loosely associated with the bar.

Judges cannot be investigators

Loji sales case

* + 1. **Particularity (warrants)**
       1. Good faith mistake is ok.
          1. Maryland v. Garrison (page 21 for rule statement [apartment case 3 floor])

Did the police act reasonably enough while executing?

Was the warrant application written in good faith?

HILL V CA – if the police arrest the wrong person that person can suppress because he isn’t **the party of interest.**

* + 1. **Execution** (warrants)
       1. execution of warrant based on probable cause (GATES) has to be reasonable (narrowly tailored to the justification in the warrant and diligent under SHARPE) to satisfy the 4th am.
          1. Mistake – Maryland v. Garrison
          2. Staleness – 10 days after it is issued
          3. Timing – judge can say only show up during day and if the cops show at night it is unreasonable.
          4. **Knock and Announce** – preserve property (no kicking in door) of suspect and prevent violence (police ambush). (Richards. Page 25)

Only negated if police think evidence is quickly destroyed or suspect expects the police.

Ker v. California - 15 seconds is long enough to wait after knocking. No photographers either – must be state actors (FRUITS – if non-state actor finds something it is suppressed).

**NOTE – KERR – FRISBE says arrests on PC are good no matter where they take place**

* + - * 1. **Force and Collateral Acts (Page 22/23)**

Present at a Search but not subject

**YBARRA -** Mere presence in a place does not give rise to justification/ suspicion for frisk or seizure (FRUITS).

**MICHIGAN V SUMMERS –** summers lived at the place search and was intimately connected to it so its ok to seize/ detain him. NOTE MERELY TALKING TO PEOPLE IS NOT A SIEZURE.

**Muehler v Mena** – handcuffed 2-3 hours is ok to protect the officers.

* + - * 1. **Plain View Doctrine (Page 24)**

Allows warrantless seizure of tims not mentioned in the warrant when the spot anything in plain view they have PC to believe is evidence of a crime. (remember particularity req). ELEMENTS:

lawful 4th am. Activity is under way (COOLIGE V HORTON)

the new items must be in PLAIN VIEW while the police are within the scope of the ORIGINAL search.

Can’t **enlarge the scope unless:**

Robinette – can ask consent to enlarge the scope

**CAR** Wilson – can order people out of the car.

Kolbais – k-9 can enlarge

New items must be readily identifiable and immediately apparent as evidence [PC](COOLIGE V. HORTON)

**ARIZONA V. HICKS**

Hicks shoots through floor cops lift stereo – NO PLAIN VIEW/ BAD SEARCH.

If you leave after executing an arrest you can’t go back to double check the pot plant you saw.

* + - * 1. **Pretext**

It doesn’t matter why the police stop a car. Ulterior motives are fine. Whren v. U.S.

**muehler v. mena**

* + 1. **Warrantless Action: exceptions to PC and/or Warrant (page 26)**
       1. justified/ reasonable/ constitutional warrantless seizures (plain view kind of falls here)
       2. **Searches requiring PC**
          1. Search Incident to Arrest [elements]

Probable cause to arrest (Pringle)

Lawful Arrest (Knowles – must be custodial)

Watson – Public are always allowed

**Payton –** need AW in their own home. If in 3rd person’s home need SW and AW.

**Private arrest**

**Warrant**

**Consent**

**Emergency (see below)**

Arrestable offense (Gustafson v. FLA – anything, even traffic infractions, can be arrestable)

atwater v. lago vista – anything can be arrestable

**Robinson/ Chadwick – grab area of the person expands to opening up and prying open closed containers.**

Contemporaneous search and arrest

chatwick – police pry open locker 90min after arrest – NOT DILIGENT

Rawlings – contemporaneous just means close in time. Search is ok before arrest here due to weird nature.

Location:

PERSON

GRAB AREA

Krispen – GRAB AREA IS PORTABLE CAN FOLLOW YOU TO YOUR DORM.

PLACE (page 25)

Public – always

**CAR –** Belton case

**Grab area** of recent occupant is whole cab.

**ARIZONA V GANT** – police can only search for evidence of the crime incident to arrest or search everything if the subject isn’t neutralized (rare) **CAR**

* + - * 1. **Various Ways to Get Into a Car w/o a Warrant**

Vehicle exception (quick note: prouse says all traffic stops are seizures requiring RS per Terry)

Because cars are mobile and cars have a reduced expectation of privacy creates allowing searches on PC for evidence of crime.

Carrol – Exigence (car w/ booze)

Coolige v. new Hampshire – if car can drive it is exigent

**Chambers** – does not have to be immediate, just remain in police custody. Don’t have to get pasted by traffic.

**Acevedo** – police can search closed containers in your car. PC follows the object of interest though. Can’t toss whole car if you know its in the trunk.

**Houghton** – can search containers of people in the car. Not their personal effects though. Containers = part of the car.

Inventory Requires less than PC

Opperman

lawful impoundment/ custody

need defined procedures AND

bertine

pretext is forbidden

Ill v. Lafayette extends Opperman to people too

* + - 1. ADMIN Searches (no PC or warrant) page 35
         1. Camara-See – if place is not a PRI you need an admin warrant. These are always granted.
         2. PRI Exception –

must be a PRI by legislation

legislated scheme of inspection

consent can be coerced.

* + - * 1. Admin search of PERSON

individualized – TLO rule – need some individualized suspicion so that it is reasonable to think they are breaking a rule. Scaled for level of schooling.

Non-individualized – Skinner – drug tests for worker safety.

Universal – martinez/fuerte – SPECIAL NEED to be regulated and stop everyone. This was for immigration but applies to DUI checks.

Random – randomly searching every 10th person is ok.

* + - 1. **CONSENT – waiver of 4th am rights. (page 40)**
         1. Three prongs to consider whether the consent is valid

Voluntary (cannot be coerced)

Bustamonte – don’t have to tell the accused of their right to refuse. Voluntariness depends on TOTALITY OF THE CIRCUMSTANCES. (this case has the Suspect helping police search for stolen checks)

Cannot be obtained through acquiescence to a show of authority

Bumper v. North Carolina (‘don’t make me get a warrant’)

Robinette – ‘can I search’ is not coercive and minimally prolongs the search.

SCOPE: Can only search what the officer reasonably infers the suspect consented to

Florida v. Jimeno – no prying things open in a consent to search a car.

NOTES on 3rd party consent

Stoner – hotel clerk can’t consent (too strained)

**Matlock** – 3rd party can consent if they have **COMMON AUTHORITY –** mutual privacy interests but you assume the risk.

**Frazier** – duffle bag common authority

Rodriguez – key case w/ apparent common authority. Just needs to reasonably appear the officers that 3rd party has common authority and can consent.

* + - 1. **Reasonable Suspicion: Terry Stop = stop and frisk. .25 chance crime is afoot.**
         1. Limited to finding weapons (armed and dangerous).

Minnesota v. Dickerson – **plain feel** doctrine – can’t digitally manipulate lump that isn’t a weapon.

* + - * 1. TIME

MPC says terry stop can only be 15 minutes.

**SHARPE – if your actions extend the stop (refusing to stop) it doesn’t prolong the action.**

* + - * 1. If cop finds a gun that is PC to look for contraband and conduct an SIA.
        2. Wardlow

Unprovoked flight from police AND high-crime area is sufficiend for RS.

* + - * 1. Sibron

Café drug deal could have been talking about the world series – no RS. Also- no suspicion armed and dangerous – no RS for Terry.

* + - * 1. Arrest factors per La Fave see page 46.

Generally – different investigative measures will constitute and arrest but

Cabelles – 10 minutes for a drug dog is diligent and ok per Place.

* + - 1. **Other Emergencies**
         1. Life or limb – Mich. V. Tyler
         2. Warrantless search of home due to imminent destruction of evidence

Vale v. Luisiana.

Rubin – cops have to beat brother back to house.

* + - * 1. **Emergency**

Welsh – DUI is not an emergency

Santana – can’t step back into your house, gets covered by **HOT PERSUIT**

Medical Emergency

MIDTERM

Miranda and the 5th Amendment Approach

Has to be knowing, intelligent and voluntary.

1. Interrogation
   1. *Innis* – Handicapped kids speech – Words or actions likely to elicit (functional equivalent of interrogation reasonably foreseeable, not the same as Massiah which is narrower) a criminal response SPLIT RULE AND HOLDING
      1. RULE: Ferro – Police drop furs outside cell – action eliciting a criminal response
      2. HOLD: Lewis – showing security footage – strength of case
      3. Psychological interrogation has to be exploited by the police
         1. Wilson – Christian burial speech
         2. Az. v Muro – put his wife and a recorder in a room with him.
   2. Routine biographical information during booking isn’t an elicitation
      1. Pennsylvania v. Muniz - asking ‘what is the date of your 6th birthday’ is an elicitation because it is eliciting criminal information instead of biographical.
   3. Boasting to an inmate isn’t an interrogation because it doesn’t have to do with the pressures of police custody.
      1. ***Perkins*** *v. Illinios –* talking to a cellmate and boasting kills his case
2. Voluntary
   1. RULE: Cannot be coercive and against overcoming the will and is judged by the totality of the circumstances: would a reasonable person feel coerced.
      1. Colorado v. Connelly – mental person confesses to murder.
      2. PROMISES are not good
         1. Arizona v. Fulmenente – protection from other inmates. Playing off fear.
      3. Apprising of the strength of the case is ok.
         1. U.S. v Orso and U.S. v. Gallordo-Marquez
3. Custody
   1. Restraint on Freedom of Movement
      1. *Quarles*
   2. Custody can occur in the home (although it often doesn’t)
      1. *Orozco* – In his room at 4am
   3. There must be police pressure
      1. *Beckwith* - IRS agents in the home performing an audit isn’t consistent with the pressures of police custody described in Miranda
      2. RULE: If there is no formal arrest **the totality of the circumstances** are taken into consideration
         1. *Beheler –* at the station but not arrested and left so no pressure
         2. ***Thompson v. Keohane –* TOC**
         3. *Berkener v. McCarthy –* traffic stop is not police pressure
   4. Jail is not necessarily custody for the purposes of Miranda b/c its all about police pressure. The person’s familiarity and comfort is important.
      1. *Yarborough v. Alvarado*
      2. ***Perkins*** *v. Illinios –* talking to a cellmate and boasting kills his case
      3. *Mathis* – The IRS questioning the person in jail IS custody requiring Miranda.
4. Adequacy of Warnings
   1. There is no ‘talismanic incantation’ of the Miranda language.
      1. *California v. Prysock* – did not explicitly advice a juvenile of his right to counsel and suggested a lawyer would only be available at trial.
      2. *Duckworth v. Eagan* – “if and when you go to court” but was advised of **all his rights**. Deemed OK.
   2. No Question First; Mirandize Later rule
      1. *Missouri v. Seibert* – Suspect questioned till confession then mirandized and asked to sign a confession deemed not ok.
5. Waiver of Warnings
   1. 1st waiver
      1. Voluntariness of the waiver is different from the voluntariness of the confession.
      2. Waiver MUST be **knowing, intelligent, and voluntary** – *Smith v. Duckworth.*
      3. If a **benevolent 3rd party** sets a suspect up with an attorney they can still waive their rights.
         1. *Moran v. Bourbine –* Sister gets an atty and suspect waives anyway.
      4. Implied waiver is good waiver
         1. *Butler v. North Carolina* – suspect indicates they understand their rights then acts in as if they waived by blabbing.
      5. Awareness of all topics of questioning is not necessary
         1. *Colorado v. Spring* – arrested on firearms asked if he ever killed anyone. “yes, in a hunting accident.”
      6. LIES will not automatically invalidate a waiver
         1. *U.S. v Velasquez* the court found her will was not overcome when cops lied about her companion testifying against her.
         2. *Hart v. AG of Florida -*  “it wouldn’t hurt you to be honest” flies in the face of Miranda warnings and invalidates the waiver.
      7. Same as the voluntariness standard pre-waiver: government coercion overcoming the will of the defendant. – Colorado v. Connelly.
   2. Waiver After Invocation
      1. SCRUPULOUSLY HONOR the first invocation – no badgering
         1. *Michigan v. Mosley -*  Robbery suspect given Miranda, invoked, given Miranda again for a different crime and its OK.
6. Waiver After Invocation
   1. Scrupulously Honored
      1. *Michigan v. Mosely* – Mirandized – invoked. 2hours. Mirandized for something else and waived – good. Facts killed by Roberson
      2. *Az v. Roberson* – Cannot interrogate about different crimes if the suspect already invoked. “MADE AVAILABLE” = during questioning.
   2. Suspect initiated with the police waives
      1. ***Edwars v. Arizona* –** Edwards waived then invoked . The police badgered him with more warnings and he waived which was bad
      2. ***Oregon v Bradshaw*** – “whats going to happen?” showed a willingness to talk about the crime. POLICE CANNOT BRING UP THE CRIME.
   3. Cannot Equivocate
      1. *Smith v. Ill* – ‘yeah, maybe I’d like to do that’
      2. *Davis v*. U.S. – MUST BE UNAMBIGUOUS
   4. 6th amendment invocation for confrontation no good for Miranda
      1. *McNeil v. Wisconsin* – Miranda cannot be invoked in an anticipatory manner.
7. IMPEACHMENT
   1. Shield provided by Miranda isn’t a license to commit perjury
      1. ***Harris v NY*** *-*  The confession is not to show he confessed, but to show he is lying when he says he didn’t do it.
      2. ***Doyle v. Ohio* – Silence is not a PIS**
8. Public Safety Exception
   1. Cops can ask questions in the interest of public safety
      1. *Quarles* – rape suspect with an empty holster “where is your gun?”
9. MIRANDA HAS NO FRUITS
   1. *Elstad* – if a mirandized confession is not part of the *Seibert* ‘shoot first then mirandize’ scenario then its ok.
   2. Miranda only suppresses TESTIMONIAL EVIDENCE
      1. *States v Petane* – Gun found as a result of bad confession is OK.

# Massiah Doctrine and the 6th Amendment (TRIGGERED BY CHARGES)

1. Once **1) adversary judicial proceedings have commenced** against an individual, government efforts to **2) deliberately elicit** statements from him without his attorney violate the 6th amendment. – *Massaih v. U.S.*
   1. *Williams* – CHRISTIAN BURIAL SPEECH – reversal b/c this happened after adversarial proceedings had begun
2. Deliberately Elicit Standard
   1. Emphasis is on the deliberate and intentional nature of the police
      1. *Fellers v. United States*
      2. *Williams (Christian burial)*
   2. Jailhouse **Snitching must be passive**
      1. *Kuhlman v. Wilson* – Mere listening posts are OK.
3. Waiver
   1. Equated with Knowing, Intelligent and Voluntary standard from Miranda
      1. *Patterson v. Ill*
   2. Invocation
      1. Not competent to deal with the pressures of trial without a trained guru.
      2. Invoking for the 6th at trial does NOT invoke for the 5th
         1. *McNiel*

# Eye Witness ID

1. Compelling accused is ok
   1. *U.S. v Wade –* no testimony is compelled. Blood, looks, urine, whatever isn’t testimonial.
      1. ATTORNEY SERVES 2 PURPOSES at a line up
         1. avoid intentional or inadvertent prejudice at the line up
         2. ensure counsel is sufficiently familiar with what happened to mount a meaningful confrontation of the witnesses at trial.
   2. Counsel is not required at line ups held prior to indictment or other formal charges
      1. *Kirby v. Ill*
   3. INADMISSIBLE if 1) unnecessarily suggestive and 2) likely to lead to a mistaken ID (totality of the circumstances)
      1. *Sovall v. Denno* – any ID is subject to this rule before or after the initiation of formal charges
      2. Still admissible if Identification of unnecessarily suggestive procedures is notnetheless admissible if it posseses certain indicia of reliability that reduce the possibility of mistake ID. Factors to be considered by the court include 1) the opportunity of the witness to view the perpetrator at the time of the crime, 2) the Witnesses' degree of attention, 3) the accuracy of his prior description of the prepetratr, 4) the level of certainty demonstrated at the confrontation, and 5) the elapsed time between the crome and the confrontation. **These factors are weiged against the 'corrumpting effect of the suggestive ID itself'**.
         1. ***Manson v. Brathwaite***

# FRUIT OF THE POISONOUS TREE AND ATTENUATION

1. Where the secondary evidence was discovered by exploitation of the initial illegality, it must be suppressed.
   1. *Wong Sun* – connection to the initial illegality was ATTENUATED – wong sun was released and had voluntarily returned days later to make the statement. The taint of Toy’s unlawful arrest dissipated.
2. LIVE WITNESSES CANNOT BE SUPPRESSED
   1. US v. Ceccolini – betting slips lead to a clerk who blabs. People aren’t guns tucked under a couch. Witnesses can and often do come forward.
3. Attenuation Factors
   1. Time period between the illegality and the acquisition of the evidence (Ceccolini – 4 months)
   2. Occurrence of intervening events (Wong Sun – decision to make a statement)
   3. Flagrancy of the initial illegality
4. Independent Sources
   1. No Causal connection
      1. *Silverthorne* – evidence of lumber company frauding the US didn’t come from the search.
5. Inevitable Discovery
   1. Police are headed right for it – the police absolutely would have found it.
      1. *Nix v. Williams* – The police were looking for the body and would have found it anyway.