1. **The Protections of and Rationale for the 4th Amendment**
   * 1. **Brinegar v. U.S.**
        1. Police just have to have probable cause, factual error doesn’t make it an invalid search
        2. dissent—if we assume child kidnapped and officers throw a roadblock about the neighborhood and search every outgoing car it would be drastic, should strive hard to sustain such an action, executed in good faith b/c might be reasonable to do this to save a life
        3. Known bootlegger pulled over on suspicion of bootlegging
        4. No proof of any crime being committed at time of pulling him over
        5. Probable Cause is evidence that "need not be sufficient to prove guilt in a criminal trial."
        6. PC to arrest “exists where the facts and circumstances within the officer’s knowledge and of which they have reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution…”
     2. **Draper v. U.S.**
        1. detail provided by informant good b/c he stated with minute particularity the details of the information (i.e. clothing that Draper would be wearing); The doubts raised by the Aguilar test doesn’t resolve the allegations of the FBI’s independent efforts—these allegations at most indicated he could have used the telephones specified by the informant for some purpose…this doesn’t support the inference that the informer was generally trustworthy
        2. The police don’t have P/C, nor do they have an arrest warrant. H/w b/c this is a public place, an arrest warrant is not required
        3. **Difference between Draper and Gates- draper says we no longer require proof of a basis of knowledge.**
        4. In gates- white says the simple fact of the totality of the circumstances is enough, no need for basis of knowledge and veracity. Just look at totality and whether a magistrate could make a rational finding
2. **Probable Cause**
   * 1. **Brinegar v. U.S.**
     2. **Draper v. U.S.**
     3. **Spinelli v. U.S.**
        1. informants tip not sufficient for PC b/c does not contain sufficient statement of underlying circumstances and not sufficiently corroborated when FBI says well he probably used these phones
        2. **test: can it fairly be said that the tip, even when certain parts of it have been corroborated by independent sources, is a trustworthy as a tip which would pass *Aguilar’s* test w/o independent corroboration?**; **Tip does not contain sufficient statement of the underlying circumstances from which the informer concluded Spinelli was running a bookmaking operation**
        3. D convicted of trailing to STL from IL for gambling; This affidavit is ample…it contains a report from an anonymous informant but also contains independent FBI report which corroborates the tip
     4. **Illinois v. Gates**
        1. ***anonymous tip says he will fly down, meet wifey, both come back with drugs—they corroborate the first half, the court says based on TOC the informant’s tip produced a substantial chance fair probability that there will be evidence***
        2. **the two prong test is really about an intertwined issue—the totality of the circumstances approach is more consistent with the treatment of probable cause than the specific tests…probable cause is a fair probability that they will find contraband or evidence of a crime in the place they are searching** 
           1. ‘practical, nontechnical conception’ (Brinegar v. US);
           2. particularized suspicion is also applicable (US v. Cortez)—thus probable cause is **a fluid concept—totality of the circumstances—substantial chance of a fair probability there will be a crime…or substantial chance that you’ll find something**
     5. **Mass. v. Upton**
        1. probable cause where under TOC there’s a fair probability for crime even without basis for knowledge and veracity independently
        2. Probable cause for arrest—substantial probability that crime has been committed, and person arrested committed it
        3. Probable cause for a search—substantial probability that certain items are the fruits, instrumentalities or evidence of crime and that these items are presently to be found at a certain place
     6. **Commonwealth v. Upton**
     7. **Maryland v. Pringle**
        1. arresting everyone when you know it’s one of them is okay when in a car, not an illegal arrest
        2. Police found drug in a car, arrested the driver and the passengers, 3 persons total, even though there was only one person who had knowledge of the drug
           1. How much error we are tolerating?
           2. What about innocent people in another’s car, not knowing there are illegal substance in that car? The person can be legally arrested
3. **The Need for a Warrant**
   1. Warrant Requirements:
      1. Probable cause.
      2. Reliability through oath and affirmation requirement through neutral and detached magistrate.
      3. Particularity describe place to be searched and items to be seized.
   2. **Mobility Exception**
      1. Since Automobiles are inherently mobile, Courts have found a per se exigency to search without warrant fear of losing evidence
         1. If vehicle appears to be in process of being used as a home it is NOT within the exception
         2. If vehicle is in your garage/curtilage it is NOT in exception b/c it isn’t public place.
         3. If vehicle is being used in a crime, it can be seized as contraband and DON’T need warrant.
   3. **Is The Warrant Requirement the Exception or the Rule?**
      1. **Vale v. Louisiana** -police may not create an exigency situation and then take advantage of it as a warrant exception - the officers here showed up w/o a warrant when they had an opportunity to procure a warrant
         1. initial sweep of house followed by a second moments later when family arrived home – procured exigency through first search
         2. officers already had 2 arrests warrants, therefore they could have procured a search warrant as well.
         3. Contrast with preservation of evidence argument
         4. **Held:** Search may be incident to an arrest only if it is substantially contemporaneous with the arrest and is confined to the immediate vicinity of the arrest
            1. If search of a house is to be upheld as incident to an arrest, the arrest must take place inside the house, not somewhere outside
         5. actually sides with dissent; officers couldn’t have gotten a warrant. B/c D’s mother and brother arrived home during arrest, the police couldn’t leave and let them destroy the evidence.
         6. Court says police *cannot create their own exigency*. Here they already had Δ in custody, and could’ve gotten a search warrant at same time they got arrest warrant. Search of house is no good.
         7. **ISSUE**: Was the search of the back room of the house incident to a lawful arrest?
         8. **HOLDING**: No
         9. **REASONING**: The court ruled that a search is incident to a lawful arrest "only if it is substantially contemporaneous with the arrest and is confined to the immediate vicinity of the arrest." The court ruled that since the defendant was arrested outside his house, the back room of the house was not within the immediate vicinity of the arrest and also since the officers did not have exigent circumstances, or the consent of the defendant, they had no right to search the house. The conviction was reversed.
         10. **NOTES**:
             1. In the case of houses, a warrant is always (or nearly always) required

There are exceptional circumstances

Houses are the top of the 4th Amendment Pecking Order

* + 1. **Chambers v. Maroney**  - An impounded car could be searched w/o a warrant, even though it was secure in the police lot and a warrant could easily have been obtained. Numerous other cases hold that the impossibility of flight or tampering does not alter the automobile exception
       1. **ISSUE**: Once an accused is under arrest and in custody, is a search made at another place without a warrant incident to that arrest?
       2. **HOLDING**: Once an accused is under arrest and in custody, a search made at another place without a warrant is not incident to that arrest.
    2. **U.S. v. Chadwick** - Drugs in big trunk on Amtrak train. Train folks see talcum power around trunk and notify authorities. Police arrest Chadwick, seize trunk and take it to station and open it there.
       1. Court says NO. No footlocker exception for mobile PP. Containers don’t have same exigency as automobiles, and there’s no diminished expectation of privacy here.
       2. Court said police could always seize and then get a warrant.
       3. Ct. didn’t have inventory searches yet.
       4. **Holding**: The government has the authority to seize the footlocker to preserve evidence, but has to obtain warrant to open and search the footlocker
       5. Counter-argument: degree of intrusion – which represents greater intrusion: to open your luggage right away (you get to go in a few minutes if there is nothing in the luggage), or to seize and retain the luggage while waiting to get search warrant
  1. **The Anatomy of a Warrant**
     1. **Groh v. Ramirez**  - fact that application provides adequate description of things to seize DOES NOT save warrant from facial invalidity - warrant needs to use appropriate words of incorporation
        1. **Good faith exception- doesn’t apply to a lack of specificity in affidavit to get warrant.**
  2. **Who Can Issue a Warrant?**
     1. P. 70 : In order to issue a warrant and be neutral, can't have stake in the venture. (No pay for warrants).
     2. **The Neutral and Detached Magistrate Requirement**
        1. Have to be Neutral and Detached
           1. ***Coolidge v. New Hampshire*** (1971) – Court strikes down as unconstitutional a procedure where the Attorney General issues search warrants

This violates a fundamental principle of 4A and 14A because the state official (who was also the chief investigator in the case) was *“not the neutral and detached magistrate required by the Constitution”*

* + - 1. BUT – don’t have to be a magistrate
      2. ***Shadwick v. City of Tampa*** (1972) – says that issuing magistrate must:
         1. Be neutral and detached
         2. Must be capable of determining whether PC exists
         3. Upheld warrants issued by city clerk
         4. **Basically "you don't need a law degree to issue warrant"**
    1. And – Can’t pay based on whether warrant is issued
       1. ***Connally v. Georgia*** (1977) – Court strikes down system where issuing justice of peace was unsalaried, but paid $5 if he issued a warrant, but nothing if he denied the application
    2. Lower Court decisions have held:
       1. Judge has to actually read the affidavit – can’t just act as a rubber stamp
       2. Magistrate cannot issue a warrant on an affidavit when the exact same affidavit has been rejected as insufficient by another magistrate

1. **Arrests**
   1. Definition: The seizure of a person for the purpose o initiating criminal proceedings.
      1. What it is not:
         1. more than mere custody,
         2. more than brief detention,
         3. more than stop-and-frisk
      2. Factual Determinator
   2. Warrant: NO warrant required, except:
      1. When a suspect is arrested in his or her own house
      2. Note: If foot is over the threshold of one’s house, it is NOT enough to constitute being at home
   3. Three general rules:
      1. Officer may arrest a person in a public place without a warrant, even if it is practicable to secure one
      2. May no arrest a person in his home without an arrest warrant, absent exigent circumstances or valid consent; and
      3. Absent exigent circumstances or valid consent, officer may not arrest a person in another person’s home without a search, and perhaps an arrest, warrant.
      4. Exigent
   4. Arrests in a home
      1. **Watson** – arrest ordinarily doesn’t require a warrant
      2. **Vale** – arrest in a home DOES require a warrant
2. **Arrests In the Home** p. 75
   1. **Warrantless Entry Into Residence to Arrest is presumptively Unreasonable–** 
      1. **United States v. Santana**  - permitted the police to attempt a warrantless arrest of the D when she was found standing directly in her doorway
         1. Court reasoned she was in a public place – exposed to public view as if standing completely outside of house
         2. Under hot pursuit rule, police could pursue here without a warrant when she sought refuge within
      2. ***Payton v. New York* (1980)**
      3. Officers need ONLY an arrest warrant to go into your home and arrest you and NOT a search warrant. This is to protect home and privacy interest. However, a search warrant isn’t necessary when PD enter your home to arrest you. Arrest warrants protect liberty while search warrants protects privacy. You can arrest a person with a search warrant but its standard is higher than an arrest warrant so courts allow arrest warrant to pierce privacy rights of the home.
      4. **Held**: Police officers may not, without a warrant, forcibly enter a residence to make a routine felony arrest – such conduct is presumptively unreasonable
         1. Refuse to make a distinction between entry to arrest and an entry to search and seize – in either case a warrant must be obtained, absent exigent circumstances
      5. Arrest warrant founded on PC carries with it the authority to enter a dwelling in which suspect lives when there is reason to believe the suspect is within
         1. *Dissent* (White) – doesn’t like a rule that requires police to make subtle distinctions about exigent circumstances – says we should adopt common law rule where knock and announce was enough to enter the home for all felony arrests
         2. **STATEMENT OF THE CASE**: The D challenged the constitutionality of N.Y. Penal Law '' 140.15(4) and 120.80 authorizing police officers to enter private residences without a warrant to make routine felony arrests. It violated U.S. Const. amends. IV, XIV prohibition against illegal searches and seizures.
         3. **PROCEDURE BELOW**: Judgment in two separate criminal cases was appealed from the Court of Appeals of New York, on the basis that N.Y. Penal Law '''' 140.15(4) and 120.80.
         4. **STATEMENT OF THE FACTS**: There were two different cases consolidated in one action. In the first case, six New York City police officers went to Payton's (D) apartment at 7:30 A.M., without a warrant, to arrest him for murder. They knocked, but D wasn't home. Since they could see light and hear music coming from the apartment, the police broke in and seized a shell casing that was out in plain view. The shell casing was later used as evidence against D at trial. D was convicted. In the second case, New York City policemen went to Riddick's (D) apartment at noon without a warrant to arrest him for two robberies. When D's three year old son opened the door, the police barged in and arrested D, who was in bed. The police also searched around the house, finding drugs, etc. in a bedroom drawer. D was later convicted on drug charges. Both Ds appealed their conviction, claiming that the arrests were unconstitutional for lack of warrant.
         5. **LEGAL ISSUE**: Is an arrest warrant required for an in-house arrest under the 4th Amendment's right to privacy?
         6. **HOLDING**: Absent exigent circumstances, the 4th Amendment bars warrantless, nonconsensual entry into a home to make a routine arrest.
         7. **REASONING**: (Stevens, J.) Yes. Absent exigent circumstances, the 4th Amendment bars warrantless, nonconsensual entry into a home to make a routine arrest. A warrantless home entry is the chief evil against which the 4th Amendment is directed. Both arrest warrants and search warrants implicate the same interest in preserving the privacy and sanctity of the home and justify the same level of constitutional protection. Reversed, for D.
         8. **DISSENT**: (White, J.) The four common law felony home arrest requirements are sufficient to protect privacy interests. These requirements are: 1. serious felony, 2. knock and announce, 3. stringent probable cause, and 4. entry during daylight hours. Forcing police to obtain arrest warrants will severely hamper law enforcement. It will also clog the courts, forcing adjudication of endless cases.
         9. **CRITICAL SUMMARY**: A search and seizure in a home without a warrant is presumed to be unreasonable and the burden is on the prosecution to prove otherwise. One of the key elements that always seems to be lacking in these cases is the time it takes to get an arrest warrant. How long does it take; five minutes, five hours, etc.?
         10. **CLASS NOTES** - Court did not adopt the "stringent probable cause" standard
             1. **Making point that warrantless felony arrests can be made in public, but can't barge into homes without a warrant just to make a felony arrest**
      6. Reasoning (Stevens):
         1. An entry to arrest and an entry to search for and to seize property implicate the same interest in preserving the privacy and sanctity of the home, and they deserve the same level of constitutional protection.
         2. Rule: Absent exigent circumstances, the threshold of the home may not be crossed without a warrant. Unequivocal constitutional demand.
         3. Ct noted that an arrest warrant founded on PC implicitly carries w/ it the limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within.
      7. Dissent: Majority ignores common law exceptions. Rule will hamper law enforcement.
   2. **When it is still allowed**
      1. ***United States v.*** ***Santana* page 73(1976)** – permitted the police to attempt a warrantless arrest of the Δ when she was found standing directly in her doorway
         1. **FACTS:** Was one foot out one foot in the house
         2. **HOLDING:**
            1. Santana, while standing in the doorway of her house, was in a "public place" for purposes of the Fourth Amendment, since she was not in an area where she had any expectation of privacy and was not merely visible to the public but was exposed to public view, speech, hearing, and touch as if she had been standing completely outside her house. Thus, when the police, who concededly had probable cause to do so, sought to arrest her, they merely intended to make a warrantless arrest in a public place upon probable cause and did not violate the Fourth Amendment. United States v. Watson,
            2. By retreating into a private place, Santana could not defeat an otherwise proper arrest that had been set in motion in a public place. Since there was a need to act quickly to prevent destruction of evidence, there was a true "hot pursuit," which need not be an extended hue and cry "in and about [the] public streets," and thus a warrantless entry to make the arrest was justified, Warden v. Hayden, as was the search incident to that arrest.
         3. Court reasoned she was in a public place – exposed to public view as if standing completely outside of house
         4. Under hot pursuit rule, police could pursue here without a warrant when she sought refuge within
      2. **What are the exceptional circumstances required by *Payton*? –** Court in that case relied on the *Dorman* factors:
         1. Grave offense is involved – generally means a crime of violence
         2. Suspect is reasonably believed to be armed
         3. Exists more than the minimal showing of PC – reasonably trustworthy information that suspect committed crime involved
         4. Strong reason to believe the suspect is in the premises being entered
         5. Likelihood that the suspect will escape if not swiftly apprehended
         6. The entry, though not consented, is made peaceably
         7. Also – entry made at night raises a particular concern about reasonableness
   3. **When it is NOT Allowed**
      1. ***Welsh v. Wisconsin*** (1984)
         1. Court focused on first *Dorman* factor – gravity of the offense
         2. Says that application of exigent circumstances exception for home entry should rarely be sanctioned when there is PC to believe that only a minor offense has been committed (in this case a possible DUI)
         3. Only potential emergency was need to ascertain BAC – not good enough
         4. **Facts:** Evening of April 24, 1978, the defendant was seen driving a car erratically, and the car eventually swerved off the road and came to a stop in an open field. A passerby called the police, and before the police arrived the driver walked away. The officer identified the driver from the registration of the abandoned car. Without a warrant the officer went to the defendant's home. The D's daughter let them in. the officer found the D upstairs and arrested him for driving while under the influence of an intoxicant.
         5. **Issue:** Whether the warrantless arrest violates the Fourth Amendment protection against unlawful search and seizure.
         6. **Holding:** The warrantless, nighttime entry of petitioner's home to arrest him for a civil, nonjailable traffic offense, was prohibited by the special protection afforded the individual in his home by the Fourth Amendment.
         7. **Analysis:**
            1. When the government’s interest is only to arrest for a minor offense, that presumption of unreasonableness is difficult to rebut, and the government usually should be allowed to make such arrests only with a warrant issued upon probable cause by a neutral and detached magistrate.
            2. An important factor to be considered when determining whether any exigency exists is the gravity of the underlying offense for which the arrest is being made. Exception to a home entry should rarely be sanctioned.
            3. Evidence of petitioner’s blood-alcohol level may dissipate is not sufficient here since the minor offense is insufficiently substantial to justify warrantless in-home arrests under exigent circumstances (where dissent disagrees).
      2. ***Minnesota v. Olson*** (1990)
         1. Warrantless entry into residence (of suspected driver of getaway car) not justified because, despite gravity of offense, no exigent circumstances because police knew where suspect was and he posed no danger to those with him
         2. invalidated a warrantless entry and arrest when driver of getaway car from armed robbery was thought to be in apt surrounded by police. On the theory that escape was virtually impossible—and that there was no evidence that the suspect was a danger to anyone in the apt—Ct held that police should have waited for warrant; no exigent circumstances.
         3. **Issue:** 1. Did the defendant have reasonable expectation of privacy in the apartment? (Katz Test) 2. Were there exigent circumstances?
         4. **Holding:** 1. Yes 2. No
         5. **Key Facts:** In order to have exigent circumstances, the police must show that they were arresting a fleeing felon, or there was probable cause to believe that evidence of the crime was going to be destroyed, or there was imminent danger to the police or others posed by the felon.
         6. **Legal Reasoning:** The court ruled that since the defendant was an over night guest, he had reasonable expectation of privacy under Jones v. United States. The court further ruled that since the police had already surrounded the apartment, there were no exigent circumstances and the police should have waited for the defendant to come out of the house. The court ruled that under Payton v. New York, the police officers need a warrant when arresting someone in his house and since the police officers in the current case did not have such warrant, the ruling of the lower court was affirmed.
         7. **CLASS NOTES -** 
            1. Suppose police DID have warrant for Olson's arrest, but lacked a warrant to enter the Bergstroms' residence. Would Olson have valid defense by relying on Steagald?
            2. NO because HIS 4th Amendment rights would not be violated only the Bergstroms' rights would have been violated by the entry
      3. ***Steagald v. United States*** (1981)
         1. Facts: In the course of executing a warrant for L, police entered S’s home (which they did not have a specific warrant to enter). They didn’t find L, but discovered drugs in plain view. S arrested and convicted. SC rev’d.
         2. DEA got a tip from an informant that a federal fugitive, Lyons, could be reached at a phone number for the next 24 hours.  The number correlated to a house in GA.  2 days later, federal agents reached the house of Gary Steagald.  Officers apprehended him and his friend, then, realizing neither was the wanted man, raided Steagald’s house, and found cocaine instead.  They then got a warrant for the house and found 43 pounds of cocaine
         3. Reasoning (Marshall):
            1. Agents sought to do more than to use warrant to seize L in public place. They relied on it as authority to enter home of 3rd person based on belief that L might be there. This use was never subjected to the detached scrutiny of a magistrate. ’s privacy interest was violated.
            2. If we allowed this, the police, armed solely w/ an arrest warrant, could search all houses of any of that individual’s friends and acquaintances. Or arrest warrant could be used as pretext for entering home in which police have a suspicion, but not PC to believe, that illegal activity is taking place
         4. Absent exigent circumstances, arrest warrant for X does not make it permissible to search Y’s house (police had arrest warrant for Lyons, but while looking for Lyons in Steagald’s house, found drugs (Lyons was a guest in Steagald’s house))
         5. **Holding :** An arrest warrant, as opposed to a search warrant, is NOT adequate to protect the 4th amendment interests of persons not named in the warrant, when their homes are searched without their consent and in the absence of exigent circumstances.
         6. But appears that with exigent circumstances, police could search third party’s house
         7. **CLASS NOTES** -
            1. Why does it make a difference that Lyons was a guest there?
            2. When cops went in to get Lyons,
            3. Because it is so difficult to determine someone's residence
            4. They have not violated the rights of Lyons, but have violated the rights of Steagald…therefore under the hypothetical of finding him under the bed and drugs on his person, he would have no recourse since it was not his rights that have been violated
         8. **NOTES:**
            1. Just because have warrant for someone, doesn't mean that you can enter ANY house to arrest
   4. **Force in Effectuating an Arrest**
      1. **Tennessee v. Gardner (page 103)**
         1. Can only use deadly force when the officer has PC to believe that the suspect poses a threat of serious physical harm, either to the officer or others – in that situation it is not constitutionally unreasonable to prevent escape by using deadly force
         2. Shooting a person is a seizure for purposes of 4A
         3. NOTE – private citizens still retain right under many state’s laws to use deadly force on a fleeing felon
         4. 4A Reasonableness standard applies to all claims that law enforcement officers have used excessive force – deadly or not – *Graham v. Connor* (1989)
         5. If police conduct causing death or bodily harm was not a search or seizure, then 14A shocks the conscience (*Rochin*) test applies
         6. **Facts**: At about 10:45 p.m. Officers were dispatched to answer a "prowler inside call." Upon arriving at the scene they saw a woman standing on her porch and gesturing toward the adjacent house. She told them she had heard glass breaking and that "they" or "someone" was breaking in next door. Officers heard a door slam and saw someone run across the backyard. The fleeing suspect, Garner, stopped at a chain link fence. With the aid of a flashlight cops saw no sign of a weapon, and, though not certain, was "reasonably sure" and "figured" that Garner was unarmed.  While Garner was crouched at the base of the fence, police called out "police, halt" and took a few steps toward him. Garner then began to climb over the fence. Convinced that if Garner made it over the fence he would elude capture, cop shot him. The bullet hit Garner in the back of the head, and he died. Ten dollars and a purse taken from the house were found on his body.
         7. **Legal Issue(s)**: Whether Tennessee statute under authority of which police officer fired fatal shot was unconstitutional insofar as it authorized use of deadly force against apparently unarmed, non-dangerous fleeing suspect?
         8. **Court’s Holding**: Yes
         9. **Procedure**:  The U S D Ct after remand, rendered judgment for dfs, and father appealed. The Ct of App reversed and remanded Judgment of Ct of App affirmed and case remanded.
         10. **Law or Rule(s)**: The right of the people to be secure in their persons ... against unreasonable searches and seizures, shall not be violated....
         11. Tenn St. If, after notice of the intention to arrest the defendant, he either flee or forcibly resist, the officer may use all the necessary means to effect the arrest.
         12. **Court Rationale**:   Deadly Force may be used to prevent escape when the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others. This statute section is invalid because it does not put sufficient limits on the use of deadly force; it is too disproportionate, and it does not make distinctions based on gravity and need nor on the magnitude of the offense. Whenever an officer restrains the freedom of a person to walk away, he has seized that person.  The suspect's fundamental interest in his own life need not be elaborated upon. The use of deadly force also frustrates the interest of the individual, and of society, in judicial determination of guilt and punishment. It is not better that all felony suspects die than that they escape. The fact that the police arrive a little late or are a little slower afoot does not always justify killing the suspect.
         13. **Common Law** – allowed the use of whatever force was necessary to effect the arrest of a fleeing felon, though not a misdemeanant
      2. **Graham v. Connor (page 110)**
         1. **Facts:** Graham suffered from insulin reaction and went to store to buy orange juice.  But due to long lines, he came right out and asked the friend to drive him to another friend’s house.  An officer observed the quick entry and exit of Graham from the store and because suspicious. Officer made and investigatory stop and the events that pursued gave rise to the use of excessive force claim by Graham against individual officers.
         2. **Issue:** What constitutional standard governs a free citizen’s claim that law enforcement officials used excessive force in the course of making an arrest, investigatory stop, or other seizure of his person?
         3. **Holding:** 4th Amendment Reasonableness test
         4. A reasonableness standard 1) applies to all claims that police have used excessive force in course of an arrest, investigatory stop or other seizure; 2) requires careful attn to facts and circumstances of each particular case; 3) must allow for the fact that police officers are often forced to make split-second judgments; and whether the officers actions are reasonable in light of all the facts & circumstances
         5. **Rationale:**  The appellate court erred by applying the 4 step substantive due process test.  4th Amendment is the most appropriate place to start in this type of cases.  The reasonableness of a particular seizure under 4th Amendment not only depends on when the seizure was made, but also on how it was made.  In considering the reasonableness of the actions of the officers, the court is required to balance the nature and quality of the intrusion on the individual’s 4th Amendment interests against the countervailing governmental interests at stake.  Court can consider factors such as whether the suspect poses an immediate threat, whether suspect is actively resisting arrest, etc.  Also, in judging the reasonableness of officer’s action, an objective standard will be used.  The subjective thoughts of the officers are irrelevant.  Furthermore, in this objective test, the court cannot use the benefit of 20/20 hindsight, but must judge form the perspective of a reasonable officer on the scene
   5. **Detention of Persons Pursuant to a Search Warrant**
      1. **Main Rule:**
         1. IF cops have warrant to search a home,
         2. THEN they can detain home’s occupants
      2. **Use of Handcuffs** - ***Muehler v. Mena*** (2005)
         1. Cops search alleged gang house w/ swat team; handcuff sleeping occupant, detained and questioned in garage
         2. **Maj** (Rehn): Violence of crime, safety, risk of flight made handcuffs reasonable
         3. **Conc** (Ken): Use of force must be objectively reasonable under circumstances;
         4. **Dis** (Stvn): should give deference to jury determination of excessive force; Should use *Graham Test*: (a) severity of crime; (b) is detainee subject of investigation;
      3. **Chimel v. California (page 135)**
         1. Statement of the Case: Chimel, arrested coin stealer, argued that the warrantless search of all rooms in his home, right after arresting him with a warrant, including the searching of desk drawers and other closed or concealed areas of the home was unreasonable, and therefore violated his Fourth Amendment rights.
         2. Procedure: appealed decision from the Supreme Court of California, affirming judgments of conviction for burglary from the lower court.
         3. Issue: Whether a warrantless search of a person’s house violates the 4th amendment when the person was lawfully arrested with a warrant.
         4. Holding: A warrantless search of a person’s house violates the 4th amendment when the person was lawfully arrested with a warrant, BUT only once the search reaches beyond the area from which the arrested person could obtain a weapon or evidence.
         5. **Reasoning**:
            1. A warrantless search incident to arrest is unconstitutional if it is beyond the arrested suspect's person and the area from which he could obtain a weapon or evidence.
            2. The general rule allowing warrantless search of the person of an arrestee and of the area "within his control" is based upon a policy judgment.
            3. The reasons behind this choice was that police officers have an interest in protecting themselves against violence and that the State has an interest in the preservation of evidence for trial.
            4. However, searches beyond this limited scope are unconstitutional. Otherwise, it would lead to the absurd conclusion that one's papers are safe only so long as one is not at home.
            5. The privacy interest in one's home is more important than the law enforcement interest in expedient searches for evidence. Thus, Rabinowitz and Harris are overturned.
         6. **Dissent**: (J. White, w/ J. Black) If probable cause to arrest in the home with a warrant was present, the ability to search the rest of the home without a warrant should exist, since the arrest itself supplies the exigent circumstances to do so.
         7. CLASS NOTES:
            1. As it is now, officers search areas within someone's control even after they have been removed from the area
         8. EXAM- question about legitimacy of searches after someone is removed given the reasoning behind the search
            1. Point of Chimel is to say that at least when talking about homes, you're supposed to have a warrant
      4. **Protective Sweep – *Maryland v. Buie* (1990)**
         1. **Held:** Incident to an arrest officers can, as a precautionary matter and without PC or reasonable suspicion, look in closets and other spaces immediately adjoining the place of arrest from which an attack could be immediately launched
            1. Beyond that, there must be articulable facts which, taken together with the rational inferences from those facts, would warrant a reasonable prudent officer in believing that the area to be swept harbors and individual posing a danger to those on the arrest scene
         2. Even if a protective sweep is justified, it must be limited to cursory inspection of those places where a person could be found
         3. Limited **sweeps of a home are allowed if there is a reasonable belief based on specific and articulable facts that there may be an individual posing danger**. Scope narrowly confined to visual inspection of places where person may hide and may not be longer than necessary to complete arrest and depart from premises. Recovery of clothes ok b/c of plain view doctrine during valid search.
3. **Plain View**
   1. If officers inadvertently come across contraband in plain view during course of search, evidence can be seized (avoid general search)
   2. Example: If a police officer is walking down the street, and he knows that the mona lisa has been stolen. The cop looks to his left as he is walking, and he sees the mona lisa wrapped in Met. Mus of Art. Is this plain view doctrine?
      * 1. No, because there is no prior valid intrusion. This was an open view sighting. The cop is using his senses to see a crime. Seeing the mona lisa only gives probable cause to get a warrant, absent an exigency. If while going inside the premises to get the mona lisa, and he then sees marijuana, this is a plain view sighting of the marijuana.
      1. **Horton v. California (page 151)**
         1. valid seizure so long as in plain view b/c of exigency. Inadvertence *not* required.
         2. advertent vs. inadvertent on the part of officers (police honesty issue – the police office’s state of mind is to find other stuff than those specified by the warrant)
         3. Is inadvertent a requirement under plain view seizure doctrine? No
         4. If you demand inadvertent, it will be the easiest thing to testify for (police can always lie about their real motive)
         5. the authority for the entry is the warrant (probable cause alone is insufficient)
         6. To be a lawful plain view seizure:
            1. exigency
            2. seizable nature of the item has to be immediately apparent (probable cause to believe that item in plain view is seizable evidence)
            3. lawful right of access (you wouldn’t need another warrant to get in to seize the item)
         7. **ISSUE:** Whether LaRault's finding of the disputed evidence is allowed under the "plain view" doctrine even though he did not see it inadvertently.
         8. **HOLDING:** The Fourth Amendment does not prohibit the warrantless seizure of evidence in plain view, even though the discovery of the evidence was not inadvertent. Although inadvertence is a characteristic of most legitimate plain view seizures, it is not a necessary condition.
         9. **ANALYSIS:** 
            1. The Court had previously ruled that the item must not only be in plain view but also must be obviously incriminating in character. In addition, the Court found that the search warrant must authorize the police to search a specific place and area from where the evidence is conspicuous and the police must discover it inadvertently. However, Justice Stevens, writing for the majority, disputed this last condition, that the discovery must be inadvertent, for two reasons. First, the majority argued that just because the police expect to find more evidence during a search than the warrant specifies should not invalidate the search, providing that the search remained confined to the area and the duration specified in the warrant or constituted a valid exception to the warrant.
            2. Second, the Court reasoned that other requirements of the Fourth Amendment safeguard against the police using specific warrants as general warrants, thus rendering the inadvertence requirement unnecessary. Because the police must always have a warrant specifying the person, the place, and the items, they can only search a limited area for a limited amount of time, as authorized by the warrant. The Court felt that if the police followed these rules, the inadvertence policy did not provide any further protection of Fourth Amendment rights, because once the police strayed outside of the specified area of search, they would already have violated the Fourth Amendment and any evidence they obtained would be inadmissible, whether found advertently or inadvertently. The Court hoped this requirement would replace attempts to judge the admissibility of evidence based on trying to determine what a police officer's expectations were while performing a lawful search.
         10. **DISSENT:** (Brennan and Marshall) Dissented maintaining that the Fourth Amendment explicitly requires search warrants to describe the specific contents to be seized, which the majority overlooked. Nonetheless, despite the apparent liberties taken with the Fourth Amendment, Justice Stevens's view received the most support, and *Horton v. California* eliminated the inadvertence requirement. The majority argued that the new "plain view" doctrine relied on objective grounds for judging whether evidence not mentioned in a warrant can be permissibly seized, instead of on subjective grounds of trying to read the minds of the police to determine if the discovery of such evidence was truly inadvertent.
             1. In this case the items seized from petitioner's home were discovered during a lawful search authorized by a valid warrant. When they were discovered, it was immediately apparent to the officer that they constituted incriminating evidence. He had probable cause, not [only] to search for the stolen property, but also to believe that the weapons and handguns had been used in the crime he was investigating.
         11. **CLASS NOTES**
             1. Plain view exception should be viewed as an exception to seizures because there isn't a search if it is seen out in the open
             2. Court eliminated any distinction between inadvertent and purposeful looking for items not on warrant as long as in plain sight
4. **Automobiles**
   1. Rule and its Rationale
      1. Mobility is an exigent circumstance and therefore search of auto is permissible
      2. Mobility of the auto
         1. Auto must actually be mobile at time of stop for the mobility exception to apply
            1. Therefore exception did not apply when the police approached stopped vehicle
      3. It is no longer required that the auto actually be moving at the time of the stop for exception to apply
         1. ***California v. Carney*** (1985, Burger) – agent observed Δ approach youth and then they go into a motorhome. Talked to youth who said that it was MJ for sex. Agent entered the motorhome w/o consent or warrant
            1. B/c it is mobile and subject to regulations and though it may have attributes of a home, nevertheless it fits into the exception.
            2. Dissent (Stevens, Brennan, Marshall)

Automobile exception applies to mobile homes because lesser expectation of privacy. “When vehicle is being used on the highways, or if it is readily capable of such use and is found stationary in a place not regularly used for residential purposes…the two justifications for the vehicle exception come into play.

* + 1. Searches at the scene
       1. An officer may conduct an immediate at the scene warrantless search of an automobile that he has probable cause to believe contains contraband, or fruits, instrumentalities, or evidence of a crime if : 1. he stops the car on the highway or 2. the vehicle is readily capable of use on the highway.
    2. Search away from the scene
       1. Police can seize the car and remove it to some other area and then search it there without a warrant.
  1. **Cars and Containers**
     1. Probable cause requirement
        1. **California v. Acevedo**
           1. Police saw ∆ place bag in the truck and had probable cause to believe that bag contained contraband. On these facts, the police had probable cause to search only the trunk to look for the paper bag.
           2. Also, once the police discover the criminal evidence, the search must STOP! So in Acevedo, once bag found, police can’t continue searching for other evidence.
           3. Police may not search any portion of the vehicle that could not contain the object of the search.
           4. Therefore, police may wait for package to enter car and then search w/o warrant

**California v. Acevedo** (1991, Blackmun) – CA police received call from Hawaii that package was seized containing MJ and that they were going to send it to the police. Police sent it to FedEx and when the Δ came to pick it up and threw it into his car, arrested him and searched the trunk and the package.

The search was permissible and therefore inadvertence is no longer required

Dissent (White, Stevens, Marshall)

* + - 1. **Carroll v. United States**- Court held that Police can search car without warrant because car, unlike home, is mobile.
      2. **Chambers v. Maroney**- Police seize the car so no exigent circumstances. But later search allowed because ct. said that exigent circumstances are to be determined at the scene of the seizure
  1. Search Incident to Arrest in an Automobile
     1. **Arizona v. Gant**
        1. Issue: Usually a warrantless search incident to arrest is okay because person being arrested could destroy evidence or harm the officer. But here, the guy was already secured in a police car and there was back up at the scene. So no such justification. Exists here because guy already secure. Is a search incident to arrest okay without a warrant when the arrested person is secure?
        2. Holding: NO. Does not make sense if the person is already secure to do a warrantless search. Police can search only if person within reaching distance of the car and they have reason to believe that evidence in the car will be destroyed.
        3. Dissent: says that prior precedent from Belton should not be overlooked. Thus, all warrantless searches incident to an arrest should be okay. The dissent also says that reliance by police officers on the rule from Belton ought also to be considered. Also says that the Belton court did not reason poorly so no justification for changing the rule set out in that case.
        4. CLASS NOTES
        5. Brennan used to tell law clerks that the most important word to know was "five" (as in FIVE votes needed to have majority rule) LAAAAAAME!
        6. Most police thought they could search areas that were within reach even after suspect was removed under Chimel
        7. Under Gant though it appears that it is not allowed
        8. Won't give True/False question about whether Chadwick was overruled
  2. **Suspicionless Highway Stops**
     1. Roadblocks are seizures, so they must be reasonable (need either PC or RS)
     2. DWI checkpoints = reasonable
        1. State interest = protecting safety on roadway by removing unsafe drivers, which is unrelated to general law enforcement
        2. Can’t do a roving roadblock, just a fixed roadblock
        3. Also can have drug dogs there to sniff cars if it doesn’t make check take longer
           1. If it does, then have to look at whether continuation of seizure was reasonable
     3. Fixed border patrol checkpoints = reasonable
        1. Courts generally approve checkpoints w/in 250 miles of border
     4. Theft checkpoints = NOT reasonable
        1. Don’t have immediacy of state’s interest of removing unsafe drivers/people at that very minute
     5. General law enforcement/crime control checkpoints = NOT reasonable
     6. **Delaware v. Prouse** - Random checkpoint stops of motorists by police
        1. **Supreme court says that Delaware law that makes it permissible to pull over a car solely to check if they have a valid drivers license or registration, is not permissible. Need RAS to stop a car (here expired tags would give RAS but law just says they can randomly pull over)**
           1. In this case they had neither PC nor RAS
        2. Chance of finding someone doing something wrong is probably a lot less than 1 out of 5. There are plenty of other ways to find out if people have their licenses and registration as opposed to pulling them over (where in martinez, there weren’t many other options)
        3. Court does balancing of state’s interest in providing highway safety and check of licensing/registration, v. Major Individual Interests: objective intrusions (time/movement) and subjective intrusions (fear & surprise).
        4. In this case, Individual interest wins, b/c low amount of good the stops do, and mainly b/c of too much police discretion. The Court ultimately ruled that “random, suspicionless stops” are Unconst under the 4th.
        5. R/S must exist for Terry stop.
        6. Checkpoints reduce the fear & surprise b/c you see it coming up and everyone is doing it
     7. **Mich. Dept of State Police v. Sitz**: checkpoints set up for sobriety
        1. court upheld this because state interest was strong and privacy intrusion minimal. Also this policy advanced state interest.
        2. **Drunk Driving Checkpoints**- Here, the checkpoints move around, they aren’t permanently, just put up every once and awhile. So this is kind of roving and kind of fixed
           1. **it is a serious problem**
           2. **can be detected through investigation using other methods**
           3. **success rate**: 2 cars out of 143 stopped had drunk drivers- this is a 1.6 success rate (unlike martinez which had 20%). If police see a weaving driver, the success rate is really high. When police zero in on one person, they are right much more than 2 or 3% of the time
        3. **Court says this fits into a Martinez type situation- serious problem, brief stop, not that intrusive**
           1. **It is NOT proper to stop a car that turns around to avoid the check point**
           2. this Martinez analysis is applicable for a few questions until they can get RAS or PC. It will not apply if they, for example, just want to smell your breath
        4. Keys: special needs doctrine
           1. checkpoint for safety/sobriety/border control/license/registration doesn’t require reasonable suspicion and is ok under the 4th as long as specific guidelines are in place to limit intrusion and quell the discriminatory possibilities
     8. **City of Indianopolis v. Edmond -** cites Martinez, Stilz, Delaware
        1. **Checkpoint to search for drug possession is NOT acceptable, this is an unconstitutional stop, it is not a public safety question.**
           1. illegals and drunk driving ok but stopping for drug possession is not a public safety questions
           2. if this was allowed, police could stop for anything without RAS or PC
           3. **sup crt, over recent years has been more willing to validate the possibility of a roadblock for things that public safety, but not general criminality**
           4. have to wait and see if they’ll say its ok for for licenses one day arguing that that is for public safety
        2. SCT said 6-3 that this was unconstitutional, because it was not based on “special needs” but was ordinary crime-fighting.
           1. things such as border-patrol, sobriety, have **nexus with highway safety** and are so important that an exception to R/S is allowed. Here, drug activity doesn’t pose special highway safety problems to other motorists, and evidence shows only small % of stops catch anyone.
           2. This is an exercise in nomenclature: If police had called this something else (sobriety checkpoint, for ex.), it might’ve survived.
        3. The SOP reduced their discretion b/c they had to pull a certain number of cars over, and drug dog checked.
        4. This is outside Wren because it is not a pretext stop (however a pretext stop here would be Unconst).
           1. **Pro-gramatic Pretext** (When the actual reason of the stop is concealed or false) is Unconst.
        5. Border searches of luggage and searches of person and baggage in airports allowed b/c compelling gov’t interest.
        6. If police develop R/S they may detain in these cases for some time.
           1. Border Stop: no R/S necessary, because of “special needs”. To detain further, need R/S, to arrest, need P/C.
           2. Near border (say 100 miles):  *Prouse* dicta prohibits random stops, must have R/S. Checkpoints however can be conducted for appropriate “special needs” purposes under *Edmund*.
           3. Fear and surprise are not so important in border checkpoints because of expectation to be stopped at boarder and illegal immigration is different and you can’t guess if someone is smuggling illegals like you can for DUI
     9. Illinois v. Lidster
        1. Stopping drivers to hand them leaflet to help cops find perpetrator of past crime
           1. This is reasonable b/c the primary purpose is informational
           2. They’re not expecting to find the suspect at the roadblock
        2. Facts: D’s minivan was randomly stopped during an information-seeking highway checkpoint stop of vehicles, and D was found to be drunk and convicted of drunk driving. He argued that in the absence of any individualized suspicion of crime, the stop was without reasonable cause and violated the 4th amendment.
        3. Rule: Information-seeking highway stops do not per se violate the 4th amendment.
        4. HOLDING: No. This checkpoint was information-seeking and was not the same as the crime-control checkpoints reviewed in Edmond.
        5. Majority opinion:
           1. In City of Indianapolis v. Edmond, 531 U.S. 32 (2000), ruled that police checkpoints set up for the purpose of "general crime control" were unreasonable under the Fourth Amendment. Although the Illinois Supreme Court ruled that *Edmond* required the trial court to suppress the evidence of Lidster's stop, the Court disagreed.
           2. Unlike the checkpoint in *Edmond*, the "primary law enforcement purpose" of the stop in this case was to "ask vehicle occupants, as members of the public, for their help in providing information about a crime in all likelihood committed by others." *Edmond* was directed solely at roadblocks whose purpose was general crime control; however, not every activity undertaken by law enforcement falls under the rubric of general crime control. Ordinarily, a brief investigatory stop requires individualized suspicion. In the case of seeking information from the public, the Court reasoned, "the concept of individualized suspicion has little role to play. Like certain other forms of police activity, say, crowd control or public safety, an information-seeking stop is not the kind of event that involves suspicion, or lack of suspicion, of the relevant individual."
           3. The law allows the police to seek the voluntary cooperation of members of the public in investigating crime. The importance of doing so is "offset to some degree by the need to stop a motorist to obtain that help—a need less likely present where a pedestrian, not a motorist, is involved." Although such a stop is a "seizure" in Fourth Amendment terms, it is not an unreasonable one. The stop is hardly more onerous than ordinary traffic congestion, and the resulting cooperation with the investigation would prove just as fruitful as stopping pedestrians on the street. Accordingly, it would be "anomalous" to allow the police to stop pedestrians and ask for their help in solving crimes but forbid them to stop motorists for the same reason.
           4. The Court stressed that this does not mean that the roadblock in this case was presumptively constitutional. Each roadblock must be evaluated on its own merits. In this case, the "relevant public concern was grave" in that the police were "investigating a crime that resulted in a human death." The roadblock advanced the police's "grave public concern," yet it "interfered only minimally with liberty of the sort the Fourth Amendment seeks to protect." **The stops were relatively short in duration. They "provided little reason for anxiety or alarm" on the part of the motorists. And there was no indication that the police acted in a discriminatory manner. For all these reasons, the Court ruled that the checkpoint stop was constitutional.**
        6. **Concurring opinion**: Justice Stevens pointed out that pedestrians are free to keep walking when they see a police officer handing out flyers or seeking information, while "motorists who confront a roadblock are required to stop, and to remain stopped for as long as the officers choose to detain them." At the same time, the "likelihood that questioning a random sample of drivers will yield useful information about a hit-and-run accident that occurred a week earlier is speculative at best." Yet neither of the lower courts had balanced the relative factors weighing in favor of and against finding the seizure reasonable, because they believed that the per se rule of *Edmond* dictated the outcome of this case. Consequently, Justice Stevens opined he would remand the case to the Illinois courts so that they could perform this balancing in the first instance
        7. Analysis:
           1. Special law enforcement concerns will sometimes justify highway stops w/out individualized suspicion.
           2. Court held this was okay because it was reasonable because the purpose wasn’t to lessen crime, it was to check on this accident.
           3. Court must judge its reasonableness, hence its constitutionality, on the basis of the individual circumstances.
        8. 3 factors the court looks at to determine reasonableness:
           1. Gravity of public concerns
           2. Degree to which the seizure increase public interest.
           3. Severity of the interference with individual liberty.
        9. Need to have a narrow purpose...not a broad general one.
        10. Laundry list of what we **do** get to look for...not a laundry list of what we can’t do.
            1. Specific: Aliens, driver’s license, sobriety.
        11. If while checking for a drivers license, they are too drunk to get it out....then that is okay.
        12. Professor’s concern is we can do this but it leads to profiling.
        13. List of questions that they have come up with?
            1. Are all motorist stopped?

If you are and are going to ask the same initial questions you are okay.

* + - * 1. How long are they stopped for?
        2. How intrusive are the police?
        3. Have they acted in a discriminatory manor? (goes to #1 as well)
        4. Was it Publicized?
  1. Inventory Search of Vehicle
     1. Here there is no criminal investigation, so no warrant is needed; P/C preferences: Balancing test
        1. State’s interest
           1. Protect police from false claims of property loss
           2. Concerned with police danger (booby traps/explosive)
           3. Protect the property itself
           4. Need to ID person (might find real name) and see if any other warrants issued.

NOT generalized crime fighting.

* + - 1. Privacy interest of D:
         1. Diminished expectation in a vehicle
         2. Diminished privacy of your effects (possessions/containers).
    1. the State interests win if:
       1. Police acted in good faith
       2. Limited discretion pursuant to regulation.
          1. PD must have standard operating procedures for the inventory
          2. How could you attack an inventory search?

Unlawful arrest may be a creative move, but for fruit of the poisonous tree (Doesn’t always work).

Don’t need pc but need to have a lawful reason for taking a person to jail...inventory, etc.

SLA needs PC for the arrest, can only search in passenger compartments.

Auto exception—can search entire car, including trunk—need pc to search the vehicle.

* + - 1. In inventory searches, police are essentially acting as clerks and NOT as crime fighters/investigators
    1. Colorado v. Bertine
       1. On a DUI stop, while waiting for tow truck the PD inventoried his car and found drugs and money in a backpack. Ct found this was a valid inventory search b/c they were standard inventory procedures. (even though impound lot was private and thus no state interest in dangerous weapons at PD Bldg or claims of theft)
       2. **ISSUE**:  Are inventory searches lacking a warrant based upon probable cause allowed as an exception to the warrant requirement of the Fourth Amendment?
       3. **HOLDING**: Yes.  An inventory search may be “reasonable” under the Fourth Amendment even though it is not conducted pursuant to a warrant based upon probable cause.
       4. **REASONING**:  By securing the property, the police protect it from unauthorized interference.  Knowledge of the precise nature of the property helps guard against claims of theft, vandalism, or negligence.  Such knowledge also helped to avert any danger to police or others that may have been posed by the property.
       5. **RULE**:  Exceptions to the Warrant Requirement – Inventory Searches:
          1. Reasonable police regulations relating to inventory procedures administered in good faith satisfy the Fourth Amendment, even though courts might as a matter of hindsight be able to devise equally reasonable rules requiring a different procedure.
       6. CONCURRING:  It is permissible for police officers to open closed containers in an inventory search only if they are following standard police procedures that that mandate the opening of such containers in every impounded vehicle.
       7. DISSENT:  Where the vehicle itself is not evidence of a crime, as in this case, the police apparently have unbridled discretion as to which procedure to use. The court overstates the justification exception to the 4th amendment
       8. protect police from false claims of theft
       9. Protect owner from theft
       10. Don’t need PC to do an inventory search!\*\* (comes from South Dakota v. Dole).
       11. If police are going to take custody of a vehicle, they need to do an inventory of contents for 2 reasons (see above).
       12. This isn’t (?) different than when a person is (arrested) and at the jail (station house search)
           1. Contents of a van were inventoried before the car was impounded. The court held that this was ok even though it was inventoried in the field.
           2. The court noted that the reasonableness of police conduct is NOT dependant on less intrusive needs (i.e. have the wife drive the car away).
       13. Dissent: is getting at do people have expectations of privacy in certain things in their vehicle. Are we impounding solely to do searches?
    2. Florida v. Wells
       1. Court concluded that an inventory search of a locked suitcase found in the trunk of an impounded vehicle violated the 4th Amendment BECAUSE the FHP had no policy regarding closed containers during an inventory search
          1. BUT ALSO, held that there was no need to either search every container in the car, or none of them.  It was not all or nothing, but left to the officers’ discretion
          2. There must be some sort of policy related to the search of closed containers
       2. Dissenter's said that the search must be mandated

1. **Limited Searches on Less than Probable Cause**
   1. Protection of the Officer
   2. Police have the authority to detain a person briefly for questioning even w/o PC to believe that person has committed a crime. THIS IS A SEARCH AND A SEIZURE. Such a stop does NOT constitute an arrest and is permissible when prompted by 3 factors:
      * 1. Observation of unusual conduct
        2. Leading to a reasonable suspicion that crim activity would be afoot (“in determining whether the officer acted reasonably in such circumstances, due weight must be given to the specific reasonable inferences which he is entitled to draw from the facts in light of his experience.”)AND
        3. Ability to point to specific and articulable facts to justify that suspicion
   3. Did police have "reasonable suspicion" (not necessarily amounting to probable cause), based on "objective facts," that D was engaged in criminal activity?
   4. No-The "stop and frisk" exception to the warrant and probable-cause requirements does not apply. Look to Consent
   5. Yes - Was the search (at least initially) limited to a "frisk" or "pat-down" of D's outer clothing, in an attempt to discover whether D had a weapon?
      1. No-Look to consent
      2. Yes-The search was not a Fourth Amendment violation, because it was justified under the "stop and frisk" doctrine.
   6. **Stop Established** – You only need RS That Criminal Activity is Afoot
      1. **Terry v. Ohio** (p. 239) - Basically holds that a stopping of a person can be done without probable cause to arrest-just need to have a reasonable suspicion that a person has committed a crime, committing a crime, or will commit a crime. For their own protection, police can frisk a person if he has reasonable suspicion that the person is armed. But that suspicion must be based on specific and articulable facts.
         1. Terry stop vs. Terry frisk (same event, but conceptually distinct)
            1. Stop is justified by reasonable suspicion (individual’s inconvenience out-weighed by governmental interest in preventing crime)
            2. frisk is justified by police safety

the authority to frisk with the apprehension of danger given the proximity (apprehension of danger – cop thought defendants were up to armed criminal activity)

* + - 1. What makes it reasonable for the cop to frisk without probable cause? *Camara* balancing reasonableness test – methodology comes from *Camara v. Municipal Court*
         1. Warrant Court argument: enable police to prevent crime
      2. Holds that the stop and frisk is a 4th Amendment event (could have hold that it is not 4th Amendment event) – but police needs only reasonableness to conduct stop & frisk –probable cause not necessary
      3. The court moves the line of 4th Amendment event down (from search & arrest to stop & frisk), but approves it with less justification (from probable cause to reasonable suspicion)
      4. Harlan Concurring in *Terry*
         1. *\*untangling stop and frisk (not blur the two things together): justification for the stop is analytically separated from the justification of frisk
         2. frisk issue: companion case is *Sibron v. New York*
      5. Douglas dissent – predict Terry is the demise of 4th Amendment (civil libertarian position)
      6. Stop and Frisk & Reasonable Suspicion
      7. Generally, under the 4th Amendment:
         1. stop is a seizure, if you don’t feel free to leave
         2. frisk is a search, intimate touching of body (invasive)
      8. Majority says you need a less quantum of suspicion stop and frisk (a per se exigency) and thus no warrant is required. As a brief stop and frisk is much less intrusive than full search or full arrest, so no probable cause needed—only **reasonable suspicion**. The test for whether reasonable suspicion exists is
         1. objective R/S
         2. totality of circumstances
         3. particularized to a person
         4. articulable facts/reasons
      9. Officer can now **stop** when he has reasonable **suspicion that criminal activity is afoot** (stop)
      10. Officer can search when he has reasonable suspicion that Δ may be armed (search)
      11. This stop and search is limited however to confirm or deny the suspicion. Officer’s search should not be full search, simply a pat down minimal search to find weapons.
      12. **Policy**: balancing interests between individual’s privacy and state’s interest in crime control
          1. States interests: Crime control—we want to allow police to act proactively as well as retroactively. With establishment of reasonable suspicion, police can now confront suspects and foil crimes. §1983 actions and exclusionary rule exist to help protect citizens from harassment
          2. Personal interests: privacy is key. Police may use this lesser standard to harass minorities and citizens in general. Also, with the lower standard, it will make it harder to show discrimination and harassment

In Sum:

1. Stop & Frisk can be done w/o warrant and less than PC
2. You must only need reasonable suspicion or articulable suspicion.
3. To frisk for weapons, you must have reasonable suspicion that a person is armed and dangerous.
   * sufficient if reasonably prudent man in circumstances would be justified in belief that own and/or others safety was in jeopardy.
   * Allows factoring in of PO experience
   * but not “hunches”
   * Left questions as to scope of frisk vs. full search AND what info was sufficient to show RS
     1. **Sibron v. New York**, 1968 p. 250
        1. Police did not have probable cause to believe Defendant had heroin, but approached Defendant, and reached his pocked and grabbed packets of heroin
        2. Court: heroin should be suppressed, because the seize was not justified by probable cause, and not a Terry frisk – not justified by safety concern
        3. Officer who observes a shady character repeatedly conversing w/ drug addicts but doesn’t hear what they discuss or see anything passed between them may *not* stop and frisk the suspect. “For all he knew, they might ‘indeed have been talking about the World Series.’ The inference that persons who talk to narcotics addicts are engaged in the criminal traffic in narcotics is not the sort of reasonable inference req’d to support an intrusion by the police…”
     2. **Minnesota v. Dickerson** p. 252
        1. Cocaine found
        2. Court holds that officer overstepped the bounds of the strictly circumscribed search for weapons allowed under ***Terry*** by manipulating a lump in a guys pocket until he determined that it contained drugs (after he knew it was not a weapon)
        3. When you pat someone down protectively, you can get to anything from your PLAIN FEEL; you pat it down and say, that’s drugs! Then you have probable cause to know it’s drugs and go in, but you CANNOT manipulate your feel.
        4. **If you feel it at that moment and you know it’s drugs, then you have probable cause to go in. but during the pat-down if you manipulate it to feel, it’s not a plain feel**
     3. **Michigan v. Long**
        1. TERRY extends beyond the person to include protective examinations
        2. L was stopped by officers who saw him driving erratically before he swerved into a ditch. When the officers stopped, L was out of his car appearing to be under the influence of something. L failed to respond to initial requests, and then began to walk toward passenger part of car. PO shined flashlight in car, and saw a hunting knife. Protective search was conducted in passenger compartment and MJ was found
        3. **Legal Issue(s)**: Whether the protective search of vehicle compartments is valid under Terry v. Ohio, and is the State S. Ct. ruling adequate and independent of Federal law?
        4. **Court’s Holding**: The protective search was valid under *Terry* and the State S. Ct. was **not** adequate and independent of Federal law.
        5. **Law or Rule(s)**: Absent probable cause police may search “to neutralize the threat of physical harm.”  If judgment of the State Ct. rests upon two grounds, one of which is federal the other non-federal, S. Ct. jurisdiction fails if the non-federal is independent of federal ground and adequate to support judgment. Fox Film v Muller.
           1. If police have lawfully detained an auto and have an “articulable suspicion” that an occupant may gain immediate control of weapons, then the police may – before the suspect reenters the auto – search those parts of the passenger area that may contain weapons
        6. **Court Rationale**: Apart from two citations to the State Constitution, the state court exclusively relied upon Terry v. Ohio and other federal cases.  Not a single state case was cited.
        7. **Conclusion:** This was okay because TERRY permits ltd examination of an area from which a person who PO’s reasonable believe is dangerous might gain immediate control of a weapon
        8. Note: APPLIED TO SITA
           1. Q. What’s the problem w/trying to get the search incident to arrest under **BELTON**?
           2. A. The problem here, is that PC is based on what he found in search incident to the arrest. He was never arrested for DUI (no PC for this), He’s arrested for possession of MJ only AFTER search. They also had no reason to arrest, since he was pulled over for a citation only traffic violation; they only arrested him after search. So it was a search PRIOR to arrest
     4. **Hypo:** Let’s suppose PO’s have RS that A will rob 7-11. They see her then outside 7-11 and she has a shopping bag over her arm. They go up, do a Terry stop. What kind of search if any can they do under Terry
        1. They can do a pat down of the person for weapons. Can they look in the shopping bag?
           1. No because they don’t have PC to go into shopping bag. They can’t arrest her based on this, and if they don’t have a weapon based on this. If the concern is officer safety, then the bag may contain a weapon. LOWER COURTS, have allowed search of bag and falls w/in **LONG** rationale that she could gain immediate access to the bag
        2. Let’s suppose there’s nothing on her or in the shopping bag, she has a car parked far away, and there is another shopping bag in the car? Would this fall under **LONG**?
           1. No, they can’t take her wherever they want. The car is a block away, and though outside, TOO far away. She doesn’t give consent. You meet the first part, shopping bag could contain a weapon, but this is to show that you can AUTO search people’s cars, it’s much more limited.
     5. **Ybarra v. Illinois**, 1979, p. 261
        1. **we stated a person’s propinquity (nearness?) to others who are independently suspected of criminal activity does not give rise to prob cause to search that person**
        2. Ct refuses to uphold the frisk of a bar patron who happened to be present when PO’s arrived to conduct a search of the bar pursuant to a valid search warrant. Ct noted that patron’s mere presence in bar was not enough to provide RS that he posed a risk of harm to PO’s, and no specific facts indicated he was armed and dangerous
        3. Tip re: bartender selling drugs. Cops had warrant to search a bar. Police executed warrant in bar in late afternoon. Cigarette package containing heroin was located and retrieved from *customer* Y’s pocket
        4. Ct: Warrant was to search bar only. No PC to search all of the customers. Terry v. Ohio (p. 291) doesn’t extend to evidence-gathering. “A person’s mere propinquity to others independently suspected of criminal activity does not, without more, give rise to PC to search that person.”
        5. “A person’s mere propinquity to others independently suspected of criminal activity does not, without more, give rise to probable cause to search that person”
        6. But – does not consider situation where warrant authorizes search of unnamed persons in a place and is supported by PC to believe that persons who will be in the place at the time of the search will be in possession of illegal drugs
        7. Protective Sweeps-

When you have a lawful arrest of person, you can auto (no suspicion is needed at all), look in areas that immediately adjoin the site of arrest IF a person could be hiding in those areas. Limited to a cursory, visual inspection for person who could pose danger to police or others. \* in addition to grab area

They can look anywhere else in the house they have RS that a dangerous person could be on the premises. This is limited to cursory visual inspections of areas where a person could be. In ***Buie***, they’re looking elsewhere in the home. The RATIONALE is strictly officer safety

* 1. What is Reasonable Suspicion? How Is it Different From Probable Cause?
     1. **Adams v. Williams**
        1. **Facts:** PO saw W in a parked car, approached and asked W to open door. W opened window, PO reached into car and took gun from W’s waistband. Arrested W for illegal possession of gun, did SITA of W and car. He founds drugs and other weapons (machete & gun).
        2. **Main Point**: A reliable informant’s tip may give officer reasonable suspicion to frisk the suspect for weapons.
        3. **Dissent:** (Brennan, & Marshall & Douglas)
           1. Brennan - Informer was unnamed, not shown to have been reliable with respect to guns or narcotics, and gave no information which demonstrated personal knowledge or even worse could not readily have been manufactured by the officer after the event.

Said that it reasonable suspicion shouldn't be applied to possessory offenses

* + - * 1. Marshall & Douglas - Said that this case treats warrantless searches as the rule rather than the "narrowly drawn" exception
      1. Court upheld the admission of the gun. The Court treated a car stop as a *Terry* stop
         1. There is support for argument that police can frisk someone because of a fear of danger to themselves – *Adams v. Williams* (officer had ample reason to fear for his own safety after being told that Δ had a gun at his waist)
      2. Should we allow officer safety to trump 4th amendment rule when dealing with non violent crime?
         1. YES, the PO can investigate drug dealing as well as potential armed robbery, and if they have R/S which is something less than P/C then in order to protect PO, unlike Sibron, have as much reason to protect self, assuming the need to investigate, the CT yes, it is, and consequently does allow the frisk and does allow the gun to come in under P/C.
      3. **Conclusion:** Ct holds this was a valid stop & frisk. The combination of facts: he asked him to open door, only opened window, reliable informant told about gun, was in car by himself in high crime area.
         1. Facts lead to🡪 RS 🡪detention🡪 gun 🡪PC arrest for gun violation 🡪 arrest 🡪 SITA
      4. Bright lines:
         1. If a PO makes a lawful traffic stop, they may make driver get out of car w/o PC or RS. (Intrusion into individual’s privacy is *de minimus*
    1. **United States v. Cortez**
       1. ***in assessing particularized suspicion must be based on TOC and ALL of the circumstances and the assessment must raise a suspicion that the particular individual is engaged in wrongdoing***
       2. Idea that whole picture must yield a particularized suspicion contains 2 elements each must be present: 1) **assessment must be based on totality of circumstances** 2) **process must raise a suspicion that the particular individual being stopped is engaged in wrongdoing**; Show some deference to police
       3. **FACTS**: Border Patrol officers believed a person whom they designated as "Chevron," helped smuggle people across a part of the border known for alien traffic. The agents ascertained that the illegals met at a predetermined point and were picked up. Their information also pointed to the likelihood that their suspect traveled around on weekends, early in the morning. The officers stationed themselves close to the area they suspected and observed a truck with a camper pass and then return within the approximate time it would take to make a round trip from the pick-up spot. The officers stopped the vehicle, driven by Jesus Cortez, in which a passenger was wearing shoes suspected of making prints observed at the pick-up spot. Cortez voluntarily opened the door of the camper, and the officers discovered the aliens. Respondents were charged with six counts of transporting illegal aliens and convicted.
       4. **ISSUE**: Can the Border Patrol stop a car if the stop is based on reasonable suspicion?
       5. HOLDING: Yes
          1. Court says that what is sufficient to stop a person depends on the totality of the circumstances – based on the whole picture, the officers must have a particularized and objective basis for suspecting the particular person stopped of criminal activity
          2. Inquiry made from the perspective of the police officer
       6. **RATIONALE**: "The 4th Amendment applies to seizures of the person, including brief investigatory stops such as the stop of the vehicle…"
          1. "The totality of the circumstances-the whole picture-must be taken into account. Based upon that whole picture the detaining officers must have a particularized and objective basis for suspecting the particular person stopped of criminal activity…"
          2. The totality of the circumstances must be considered and officers must have articulable, particularized, objective basis for suspecting a particular person stopped of criminal activity.
          3. "The limited purpose of the stop in this case was to question the occupants of the vehicle about their citizenship and immigration status and the reasons for the round trip in a short span in a virtually deserted area. No search of the camper or any of it's occupants occurred until after respondent Cortez voluntarily opened the back door of the camper; thus, only the stop, not the search is at issue here. The intrusion upon privacy associated with this stop was limited and was 'reasonably related in scope to the justification for [its] initiation…'"
          4. We have recently held that stops by the Border Patrol may be justified under circumstances less than those constituting probable cause for arrest or search…[T]he question is whether, based upon the whole picture, they, as experienced Border Patrol officers, could reasonably surmise that the particular vehicle they stopped was engaged in criminal activity. On this record, they could so conclude."

**Rhenquist** says that "of course, an officer may stop and question a person if there are reasonable grounds to believe that person is wanted for past criminal conduct."

* + 1. **Florida v. Royer** 1983
       1. Δ arrived at the airport and DEA believed Δ was a drug courier and asked for ID. Δ provided for ID and there was a discrepancies b/t ID and plane ticket. When the DEA ID’d self as DEA, Δ became nervous. Did not return tickets and asked to accompany them and submit to search. Consented.

Issue of consent – was not constitutional, b/c a reasonable person in that situation would not have felt as if they were free to leave (b/c tickets and ID were not returned)

Dissent (Rehnquist, CJ, O’Connor)

* + - 1. **Issue**: - Whether consent to a search invalid if tainted by unlawful confinement without probable cause? **Answer** = Yes.
      2. **Rule**: - Consent to a search is invalid without probable cause if tainted by unlawful confinement.
      3. **Concise Rule**: - Consent to search without probable cause must be voluntary. Consent to a search is invalid if tainted by unlawful confinement without probable cause
      4. **Holding**: - Reversed in favor of Royer.
      5. **Reasoning**: - The 4th Amendment is not violated by officers approaching an individual in a public place, and identifying themselves. An investigative stop must be temporary and last no longer than necessary to effectuate the purpose. Removal of the detainee without his consent, involuntarily, from a public area to a police room in the airport converted the Terry stop to an arrest, where probable cause is necessary. Probable cause did not exist when Royer consented to the search of the luggage. Statements made during illegal detention are inadmissible even if voluntary.
      6. Questions:
         1. Failed to find PC because there was no greater probability that he was a drug courier. Gates did more to manifest guilt because his actions were more peculiar than Royer's mere 'look'
         2. I would have found neither probable cause nor reasonable suspicion because all Royer did was simply meet a generalized profile. This doesn't rise to reasonable suspicion needed for an investigatory stop, but they still could have approached him and asked him voluntary questions to gain reasonable suspicions
      7. Background:
         1. Royer's ticket or his license, they asked him to accompany them to a small police room adjacent to the concourse. (Essentially the Police had placed Royer under arrest, because Royers involuntary detention exceeded the limited restraint permitted by Terry v. Ohio, thus the search was unlawful.) (In an investigative stop, the police may not carry out a full search of the person or his effects.) (The search must be limited in scope to the place to be searched. In this case it was a pat-down of Royer, or the least intrusive.) One of the detectives retrieved Royer's luggage and brought it to the room. Royer did not respond to the detectives' request for consent to search his luggage. However, Royer (under duress i.e., and arrest for nothing and without probable) produced a key and unlocked one suitcase, in which marijuana was found. Royer claimed he did not know the combination to the other suitcase, but did not object to it being opened. The officers pried it open and found more marijuana. .
         2. Defendant had characteristics that fit a drug-courier profile – amounts only to reasonable suspicion, but not probable cause

Drug-courier profile: a checklist

* + - * 1. Police took his ticket & license and asked him to go to a small room and asked his consent to search luggage, which turned out marijuana
        2. Defendant moved to suppress. State claimed that the detention is a Terry type, and therefore reasonable suspicion is sufficient.
      1. Court: marijuana should be suppressed
         1. Not a Terry problem – no safety reason, not a brief encounter/duration too long (police took Defendant’s stuff away, moved him to another room
         2. Consent was not freely given – defendant was under detention, was not told that he was free to go if he so choose, police did not return Defendant’s license & ticket
      2. Info:
         1. Investigative detention must be temporary and last no longer than is necessary to effectuate the purposes of the stop
         2. Investigative means should be least intrusive means reasonably available to verify or dispel officer’s suspicions
         3. It is State’s burden to demonstrate that the seizure it seeks to justify on basis of RS was sufficiently limited in scope and duration to satisfy the conditions of an investigative seizure
         4. In this case held that the removal of detainee without his consent from public area in airport to police room in airport (after 15 minutes) converted “stop” to “seizure”
      3. But there is no rigid time limit imposed by *Terry* – common sense and human experience must govern over rigid criteria – *U.S. v. Sharpe* (1985)
         1. Should look to whether police diligently pursued a means of investigation that was likely to confirm or dispel suspicions quickly
         2. Here 20 minute delay when stopped on highway was upheld – reason for delay was police trying to stop his companion in another car
    1. **United States v. Sokolow** p. 283
       1. **Facts**: DEA agents stopped S after they learned he had paid $2100 for 2 tickets w/ a roll of $20 bills. He traveled under a name that didn’t match phone listed name, he traveled to Honolulu from Miami and stayed only 48 hrs through round trip took 20 hrs. He appeared nervous, and checked no luggage.
       2. **Conclusion**: Any factor by itself is not proof of illegal conduct, but it is the degree of suspicion and said PO’s had RS based on articulable facts even though these may lead to a “profile,” doesn’t reduce their evidentiary significance.
       3. **Dissent**: These characteristics could fit anyone (e.g. most people get on phone right after de-planing esp. w/cell phones these days). We want something more narrowly tailored otherwise gives PO’s too much discretion too.
       4. when factors lead to conclusion that he looks like a profile of a drug courier (travels in specific ways) the officer is still making an individualized RAPS decision
       5. “Reasonable suspicion” defined as a level of suspicion “considerably less than proof of wrongdoing by a preponderance of the evidence.” Police had reasonable suspicion that Δ was drug courier where he paid $2,100 for two tickets from Honolulu to Miami from a roll of $20s, traveled under fake name, stayed in Miami only 48 hours, seemed nervous, and checked no luggage
       6. D stopped on reasonable suspicion (considerably less than proof of wrongdoing by POE), officers knew he’d paid 2.1k for airplane tickets with 20s, traveled under an assumed name, original destination was Miami, stayed only 48 hours even though flight was 20, appeared nervous, didn’t check anything
       7. Marshall dissent: highly significant that PO stopped him b/c he matched a profile…a PO’s application of profiling can only dull ability to make sensitive and fact-specific inferences
       8. **FACTS**: Drug Enforcement Administration agents stopped Sokolow in Honolulu International Airport after his behavior indicated he may be a drug trafficker: he paid $2,100 in cash for airline tickets, he was not traveling under his own name, his original destination was Miami, he appeared nervous during the trip, and he checked none of his luggage. Agents arrested Sokolow and searched his luggage without a warrant. Later, at the DEA office, agents obtained warrants allowing more extensive searches and they discovered 1,063 grams of cocaine.
       9. **ISSUE**: Did the stop violate the Fourth Amendment?
       10. **HOLDING**: NO. The Court upheld the stop and reasoned that the agents had a "reasonable suspicion that respondent was engaged in wrongdoing." Chief Justice Rehnquist argued that the validity of such a stop should be based on the "totality of the circumstances," (United States v. Cortez, 1981), which, in this case, gave agents a clear reason to suspect Sokolow of drug trafficking.
           1. As said in Cortez, "The process does not deal with hard certainties, but with probabilities. Long before the law of probabilities was articulated as such, practical people formulated certain common-sense conclusions about human behavior; jurors as fact-finders are permitted to do the same--and so are law enforcement officers."
    2. **Alabama v. White** p. 290
       1. anonymous tip only gives RAPS when police observed the woman doing what the tipper said she’d do
       2. Issue: reasonable suspicion
          1. water-downed version of *Gates* (probable cause)
       3. Tip plus investigation (observation) case: police received tips about drug trade, and proceeded to follow Defendant. Some events matched the description by informer, but some other events did not match the description by informer. Police stopped Defendant’s car while he was driving, got Defendant’s consent to search car & container, and found drug.
       4. a traffic stop only requires reasonable suspicion – therefore, the stop is legal if police had reasonable suspicion
       5. White Majority – there was reasonable suspicion
          1. *Spinelli*/*Gates* factors for probable cause are relevant in the reasonable suspicion contest

Veracity/reliability of informant

Informant’s basis of knowledge

* + - * 1. however, a lesser showing of above factors is sufficient to show reasonable suspicion

Although in this case, informant’s tips are not as detailed/correct as in Gates, reasonable suspicion is a lower standard than probable cause

Why do we reasonable suspicion, even thought not everything matched the description by informer?

The ability to predict shows that it is a insider informant

* + - 1. **What is reasonable suspicion?** Articulateable suspicion balanced with burden of mistake (if the suspect turns out to be innocent)
      2. Court characterized this case as a “close case” of reasonable suspicion – anything less than facts here would show no reasonable suspicion
    1. **Florida v. J.l**., p. 293
       1. Anonymous informant – a young black male standing at a particular bus stop wearing a plaid shirt was carrying a gun. Police seized Defendant, and found gun on him.
       2. Unanimous opinion – there was no reasonable suspicion
          1. There is no prediction in the tip (what’s the difference between this case and Alabama v. White??)
          2. no indicia of informant’s reliability
       3. This is a push back case, retreating from Alabama v. White. The Court looked more rigorously in police’s claim of suspicion. The issue of racial profiling and pretentious tips came to notice
       4. **Issue**: Did the officers have reasonable suspicion to frisk the defendant?
       5. **Holding**: No
       6. **Reasoning**: The Court held that a tip from an anonymous caller is not enough to create reasonable suspicion of criminal wrongdoing. The Court reasoned that an anonymous tip, the only source of information regarding criminal activity that officers had before the search, provided no predictive information that would provide police with means to test informant’s knowledge or credibility, so that all police had to rely on was bare report of an unknown, unaccountable informant who neither explained how he knew about gun nor supplied any basis for believing he had insider information. Thus, the Court held that the search was repugnant to the Fourth Amendment.
       7. **Main Point**: Police cannot simply rely on a tip provided by an anonymous informant for reasonable suspicion. Police must observe something more than just the legal acts in order to confirm the anonymous person’s tip
    2. **Illinois v. Wardlow**, p. 297
       1. **Issue:** Whether an individual who suddenly and without provocation flees from identifiable police officers patrolling a high crime area creates reasonable suspicion under the Fourth Amendment for the police to stop him.
       2. **Holding: Yes. In an opinion delivered by Chief Justice William H. Rehnquist, the Court held, 5 to 4, that the police officers did not violate the Fourth Amendment when they stopped Wardlow, because the officer was justified in suspecting that the accused was involved in criminal activity and, therefore, in investigating further. Chief Justice Rehnquist wrote for the majority that, "[n]ervous, evasive behavior is a pertinent factor in determining reasonable suspicion" to justify a stop. The Chief Justice noted that "flight is the consummate act of evasion." Stevens, joined by three other justices, concurred in avoiding a per se rule but dissented from the majority holding.**
       3. **Dissent:** Justice John Paul Stevens argued in dissent that the government did not articulate enough facts to establish reasonable suspicion and that there were not enough facts in the record to corroborate the government's claim
       4. ***you can look at whether it’s a high crime area, whether the dude runs away in establishing RAPS***
       5. PO sees guy in bad neighborhood, guy starts running away, PO stops him finds gun; **Officers not required to ignore the relevant characteristics of location in determining whether the circumstances sufficiently suspicious to warrant further investigation**…high crime area is among the contextual considerations in Terry analysis…**unprovoked flight upon seeing PO help establish reasonable suspicion** flight could be innocent, could not be, PO can obtain to resolve the ambiguity
    3. **Ornelas v. United States**, p. 305
       1. **Issue**: Should questions of reasonable suspicion and probable cause to make a warrantless search be reviewed de novo?
       2. **Holding**: Yes.
       3. **Reasoning**: (Rhenquist, C.J.) Articulating precisely what "reasonable suspicion" and "probable cause" mean is not possible.  They are commonsense, nontechnical conceptions that deal with "'the factual and practical considerations of everyday life on which reasonable and prudent men, not technicians, act.'"  Illinois v. Gates, 462 U.S. 213, 231 (1983) (quoting Brinegar v. United States, 338 U.S. 160, 175 (1949)).  The principle components of a determination of reasonable suspicion or probable cause will be events which occurred leading up to the stop or search, and then the decision whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to reasonable suspicion or to probable cause.  Finally, de novo review tends to unify precedent and will come closer to providing law enforcement officers with a defined "'set of rules which, in most instances, makes it possible to reach a correct determination beforehand as to whether an invasion of privacy is justified in the interest of law enforcement.'"  New York v. Belton, 453 U.S. 454, 458 (1981).  Our cases have recognized that a police officer may draw inferences based on his own experience in deciding whether probable cause exists.  An appeals court should give due weight to a trial court's finding that the officer was credible and the inference was reasonable.  We therefore hold that as a general matter determinations of reasonable suspicion and probable cause should be reviewed de novo on appeal.  We vacate the judgements and remand the case to the Court of Appeals to review de novo the District Court's determinations that the officer had reasonable suspicion and probable cause in this case
    4. **U.S. v. Arvizu**, p. 312
       1. A is driving van on AZ road not far from MX border. Women and 3 children are in car w/driver, children wave as if being told to wave, their legs looked as if they were propped up on something under the van, van activates magnetic sensors in road which indicate traffic. Border patrol alerted, alert comes at the change of a guard shift, and agent follows van and does registration check. He stops van, Arvizu gives name and consent to search. They find 100K of MJ
       2. Based on totality, there was RS to stop the van. Agent relies on his experience and all these suspicious factors, and it’s fine
          1. Idea that whole picture must yield a particularized suspicion contains 2 elements each must be present: 1) **assessment must be based on totality of circumstances** 2) **process must raise a suspicion that the particular individual being stopped is engaged in wrongdoing**; Show some deference to police

must use a totality of the circumstances approach, don’t go through reasons one by on

* 1. **Limits on *Terry*-Type Stops**
     1. **Florida v. Royer**, p. 317
        1. moving suspect who you have RAPS with to an interrogation room made it an arrest, had he consented to search his bag in the terminal, it would have come in, but after placing him in an investigation room it b/came a fruit of an unlawful arrest
        2. D questioned royer on airport concourse then asked him to accompany them to small room, luggage was retrieved from airline and brought to that room, he consented to search, 15 minutes had elapsed
        3. **Issue**: Whether the police lawfully detained Royer based on their reasonable suspicion of running drugs
        4. **Holding**: Not a lawful detention because it was an investigatory stop and had no probable cause. Reasonable suspicion of a crime is insufficient to justify custodial interrogation even though the interrogation is investigative. Could have found a less intrusive means such as drug dogs to see if there were drugs in his bag. The dogs would not have constituted a "search" and therefore wouldn't have violated the authority for an investigative stop
     2. U.S. v. Place, p. 323
        1. **ISSUE:** Whether the 4th Amendment prohibits law enforcement authorities from temporarily detaining personal luggage for exposure to a trained narcotics detection dog on the basis of reasonable suspicion that the luggage contains narcotics.
        2. **HOLDING:** No it does not violate it. A sniff by a police dog specially trained to detect the presence of narcotics is not a "search" under the meaning of the Fourth Amendment. The Court reasoned that the sniff of a dog is *sui generis*, intended to reveal only the presence or absence of narcotics. Because a dog sniff is so limited a test, the Court carved out this exception from the broad category of "searches" for which a warrant is generally required.
        3. **But in this case the police exceeded the bounds of a permissible investigative detention of the luggage.**
     3. U.S. v. Sharpe p. 329
        1. ***look at common sense in terms of how long the guy is stopped via Terry, appropriate to look if the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly; if there were alternative means available did the police act unreasonably by failing to pursue them?***
        2. Drug agent sees 2 cars, he radios for assistance, stops one, the other keeps driving but patrol car eventually stops the other, drug agent can’t get someone to come watch the first guy to go see about the second guy, second guy detained 20 min; **No rigid time limitation on Terry stops, in evaluating whether an investigative detention is unreasonable, common sense and ordinary human experience must govern**…consider it appropriate to look at whether police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the D
     4. **Hibel v. 6th Judicial Dist. Court** p. 339
        1. ***police can demand your name when they stop you—this has a relation to the purpose of Terry***
        2. NV stop-and-identify law, where if police can stop you under Terry they can demand identification; immediate relation to purpose of terry stop

1. Seizures
   1. X
      1. **U.S. v. Mendenhall**, p. 345
         1. Δ arrived at airport and DEA believed that Δ was a drug courier and asked for ID. Δ provided for ID and there was a discrepancies b/t ID and plane ticket. When the DEA ID’d self as DEA, Δ became nervous. Gave her back the tickets and asked to come w/ them and do a strip search. Δ consented. Drugs found
         2. **Where Royer was stopped because he fit drug courier profile, DEA takes his stuff, asks him if he will come to a back room for a search, find drugs- not valid consent** (reasonable person would have felt detained/not free to leave or that they were going to have to follow along to get their stuff back)
         3. **Where Mendenhall was stopped because he fit drug courier profile, DEA takes his stuff, gives it back, asks him if he will come to back room for a search, find drugs- consent is valid** (reasonable person would have known when the guy gave the stuff back that they were free to leave- Goldman says this is questionable)
      2. **Florida v. Royer**, p. 352
      3. **I.N.S. v. Delgado**, p. 356
         1. Police go into factory on a warrant to look for illegal immigrants but they do not have PC to believe any one person in the factory in particular is an illegal immigrant. They are still allowed to go in and talk to them because it is **social intercourse**
         2. **There are 3 potential categories of police stops**
            1. **arrest**- most extreme, doesn’t require handcuffs, Miranda, fingerprint or even the word arrest. You can be arrest in the same way as socolo’s suit case, by being detained for long enough so that we view it as constitutional equivalent of arrest
            2. **Brief detention based upon RAS**- we know 3 hours is too long, a couple of minutes is just fine. A brief detention of either an object OR a person, can be based on RAS, can’t just be a hunch like in Brown, has to be reasonable and articulable
            3. **Social intercourse**- this comes from Delgado. – just because police come up to you anywhere (airport, work, on the street) and start talking to you, this doesn’t necessarily trigger a 4th amendment problem. 4th amendment is only triggered by seizures- Brown was seized, Mendenhol was not seized, Delgado was not seized.
            4. - what’s the difference- in effect the court is telling that there are many times when police go up and start talking to people as social intercourse

**Its social intercourse when a reasonable person would think they could walk away**

* + 1. **Florida v. Bostick**, p. 375
       1. ***no that’s not right b/c the reasonable person test presupposes a reasonable innocent person***
       2. In response to D’s contention that ‘no reasonable person would freely consent to a search of luggage that he or she knows contains drugs, court said that’s not right b/c the reasonable person test presupposes a reasonable *innocent* person
       3. **Issue**: whether there was a seizure?
       4. Police, uniformed with gun, got on a bus which was in at a stopover, identified themselves as narcotics agents, and asked Defendant permission to search bag. Police advised Defendant his right to refuse consent. Defendant consented. Police searched and found drug.
       5. No probable cause, no reasonable suspicion either
       6. **Court**: there is no seizure – a reasonable person would feel free to decline consent or leave the encounter
          1. police didn’t show force (didn’t threaten didn’t with gun)
          2. police advised Defendant’s right to refuse consent
       7. ***Bostick* test**: would a reasonable person feel free decline the request or to leave the encounter
          1. Court is deeply fracture on whether a reasonable person would feel free to refuse encounter in a given circumstance
       8. what’s the argument from Bostick side that he was seized for 4th Amendment purpose?
          1. He wasn’t free to go, because he had to stay on the bus anyways (freedom to leave work in pedestrian context, but not in bus rider context)
    2. **3 levels of justification** –
       1. Probable cause: arrest, full blown seizure of a person
       2. Reasonable suspicion – Terry stop & frisk
       3. No justification required: 4th Amendment is not involved; non-seizure event
    3. **California v. Hodari** D., p. 366
       1. **it’s a stop if there’s a show of authority, intimidating, threat, authoritative tone (stop! Police!)**
       2. Non-seizure case: issue – when was the defendant seized?
          1. if he was seized, there was no probable cause
       3. Scalia Majority – defendant was not seized at the time he threw away the cocaine, so the cocaine was not fruit of illegal seizure (since police had not probable cause to seize Defendant before he tossed away the cocaine)
          1. Seizure means actually bringing Defendant within police’s physical control (therefore Defendant was not seized until arrested/taken into custody)
          2. To hold otherwise would mean that there is a “continuing arrest: during the period of fugitivity
          3. A seizure does not occur when Defendant does not yield to “a show of force”
       4. Take Away point: for a show of authority:
          1. Application of force
          2. Brandishing weapon
          3. Stop-police
          4. Intimidating
          5. Threat
          6. Show of force
          7. Authoritative tone
       5. Inverse Hordari: what if the police yelled “halt” and the defendant complied?
          1. no Supreme Court case yet, but lower courts held that there is a 4th Amendment issue
          2. Police shouting “halt” is an “order” –not voluntary, different from request
          3. Submission to a show of authority is a hallmark of a seizure
    4. **Brendlin v. California** p. 374
       1. The **issue** before the Court was whether a passenger in a vehicle subject to a traffic stop is thereby "detained" for purposes of the Fourth Amendment, thus allowing the passenger to contest the legality of the traffic stop
       2. **Holding:** all occupants of a car are "seized" for purposes of the Fourth Amendment during a traffic stop, not just the driver
       3. **Reasoning**
          1. A person is "seized" for purposes of the Fourth Amendment when physical force or a show of authority terminates or restrains his freedom of movement. If the police's intent to restrain an individual is unclear, or if an individual's submission to a show of authority takes the form of passive acquiescence, a seizure does not occur unless a reasonable person would not feel free to leave in light of all the circumstances. If, however, the person has no desire to leave for reasons unrelated to the traffic stop, there is no seizure
          2. A traffic stop necessarily curtails the freedom of movement of all within the vehicle, and a reasonable person riding in a stopped vehicle would know that some wrongdoing led the police to stop the vehicle. At the same time, any occupant of the vehicle cannot be sure of the reason for the stop. "If the likely wrongdoing is not the driving, the passenger will reasonably feel subject to suspicion owing to close association; but even when the wrongdoing is only bad driving, the passenger will expect to be subject to some scrutiny, and his attempt to leave the scene would be so obviously likely to prompt an objection from the officer that no reasonable passenger would feel free to leave in the first place." Moreover, no passenger could expect an officer to allow him to move around in ways that might jeopardize the officer's safety

1. Searches
   1. The divining rod theory of the 4th Amendment
      1. The 4th Amendment as a device for protecting the innocent
   2. X
      1. U.S. v. Place, p. 384
         1. **Conclusion:** Dog sniff of closed luggage for drugs was not a search because search is very limited and relatively non-intrusive in MANNER and SCOPE. Dog only barks for illegal things. He has a reasonable expectation of privacy for things in bag, not for odors emanating from bag
         2. **Note:** the 90 minutes he was held was an ILLEGAL seizure.
            1. Also, dog alerts are generally not enough for PC since cocaine traces are on almost all money supply etc, so poor reliability.
         3. If police have reasonable suspicion that a person’s luggage contains narcotics, they may detain the unopened luggage temporarily to investigate the circumstances
         4. Court says that same standards as for investigative stop of a person should apply
         5. Relying on fact that they have never upheld a 90 minute stop of the person, Court says that 90 minute detention of luggage was unreasonable under the circumstances
         6. HYPO: Narco Dog is hungry
            1. What if Narco dog chews through suitcase and finds cocaine.
            2. This is still not a search, because this is w/in the natural and instinctive behavior of the animal. This is only an illegal search if PO’s wrongly trained etc
         7. FACTS:
            1. Raymond J. Place first aroused the suspicion of law enforcement officers as he was standing in line at the Miami airport waiting to buy a ticket to New York's LaGuardia Airport. The officers approached him on his way to the gate and asked him for identification. Place also agreed to let the officers search the luggage he had checked, but they declined to do so in light of the flight's imminent departure. Discrepancies between the two luggage tags on Place's two suitcases further aroused the officers' suspicions, and they confirmed that the addresses were false. The Miami officers alerted DEA agents at LaGuardia to their suspicions about Place.
            2. The DEA agents waited until Place had retrieved his luggage and called a limousine before approaching him in New York. The DEA agents again asked Place for his identification, which he produced. The agents discovered that Place had no outstanding warrants. They then asked to search Place's luggage, but Place declined to allow the agents to do so. The agents then told Place they were going to take the luggage to a federal judge to obtain a warrant to search the luggage, and that Place was free to accompany them if he chose to. An hour and a half later, the agents had taken Place's bags to Kennedy airport and allowed a trained narcotics detection dog to perform a "sniff" test. The dog detected the presence of narcotics. This was late on a Friday afternoon; the agents retained the luggage over the weekend until Monday, when they obtained a warrant to search the luggage. They discovered over a kilogram of cocaine.
            3. Place was indicted for possession of cocaine with intent to distribute. In the district court, Place moved to suppress the cocaine, arguing that the warrantless seizure of the luggage violated his Fourth Amendment rights. The district court disagreed, reasoning instead that the police only needed reasonable suspicion to seize Place's bags, which they had. Place pleaded guilty to the possession charge, but reserved the right to appeal the denial of his suppression motion. On appeal, the Second Circuit reversed, holding that the prolonged seizure of Place's bags violated the principles of Terry v. Ohio. The U.S. Supreme Court then agreed to hear the case.
         8. **ISSUE**: Whether the 4th Amendment prohibits law enforcement authorities from temporarily detaining personal luggage for exposure to a trained narcotics detection dog on the basis of reasonable suspicion that the luggage contains narcotics.
         9. **HOLDING**: No it does not violate it. A sniff by a police dog specially trained to detect the presence of narcotics is not a "search" under the meaning of the Fourth Amendment. The Court reasoned that the sniff of a dog is *sui generis*, intended to reveal only the presence or absence of narcotics. Because a dog sniff is so limited a test, the Court carved out this exception from the broad category of "searches" for which a warrant is generally required.
            1. But in this case the police exceeded the bounds of a permissible investigative detention of the luggage.
      2. U.S. v. Jacobsen, p. 385
         1. Where police lawfully come upon white powder in package originally opened by private parties, an on the spot chemical test of the powder to determine of the power is cocaine is not a search
            1. when police lawfully come upon white powder in a package originally open by a private party, an on-the-spot chemical test of a trace of the powder which reveals whether it is coke is NOT A SEARCH. (relies on Place)
         2. **Facts:** Fed Ex opens a package because it is damaged and they find cocaine. They re-package and turn over to cops. PO’s test substance and find it is cocaine
         3. **ISSUE:** Whether the DEA agent needed a warrant to conduct a field test of the drugs.
         4. **HOLDING:** No. a chemical test that merely discloses whether or not a particular substance is cocaine does not compromise any legitimate interest in privacy.
         5. **Conclusion:** This is not an illegal search, it’s a field test that is very narrowly tailored in its purpose like dog sniffs
         6. **Note:** Blood, breath urine tests ARE searches although chemical testing because they are more invasive
         7. **Note also**: there is no seizure here because although some cocaine is destroyed to do test, it’s a reasonable amt
      3. Illinois v. Caballes, p. 389
         1. Dog-sniff for drugs and search implications
         2. **FACTS**: Police pull over car for speeding and suspect drug possession. Police calls in dog unit to sniff for drugs
            1. When he called it in second trooper heard him call it in and he had a special drug dog w/ him
            2. Walked dog around car and dog alerted officer to trunk in trunk weed was found
         3. **Issue**: Must officer have articulate suspicion to use dog sniff at traffic stop?
         4. **Rule:** Ct said dog sniff ok as long as dog sniff itself isn’t unreasonable
            1. i.e. hold him for 2 hours to wait for dog when he’s pulled over for speeding
            2. automobile exception🡪 if you have probable cause you get to get in car – drug sniffing dog alerts to drugs, probable cause
            3. ct distinguished Kalyo by saying heat indicator could find legal activity too which invades privacy expectation of home

vs dog who could only find illegal activity

* + - * 1. a drug sniffing dog can provide probable cause in a traffic search for automobile exception
      1. Court: Dog-sniff is not search and valid. If dog is only going to reveal presence or absence of contraband, then no search has occurred. If you can see or find other things, then it is a search. The amount of time for holding ∆ was reasonable for the application – no improper extention of duration
      2. **NOTE**: When a dog does sniff luggage, the person is being detained, BUT it is proper *as long as detention is brief* and least intrusive means
    1. Lewis v. U.S., p. 396
       1. Focuses on fact that the home was converted into a commercial center – people were invited there to carry out unlawful business so home does not have any more sanctity than if the transaction were carried out elsewhere
       2. Pretense merely encouraged the suspect to say things he was willing and anxious to say to anyone interested in purchasing marijuana
       3. If we didn’t allow this kind of deception, Court would come close to a rule that use of undercover agents is unconstitutional *per se*
       4. **Facts**:- An undercover officer set up a meeting with the petitioner for the purposes of buying marijuana. The petitioner invited the undercover officer to his home and the meeting took place and the petitioner sold the officer five bags of marijuana. The petitioner also told the officer that in future dealings, he will give the officer a special deal and give him a bag of marijuana for free. Another meeting took place at petitioner's house and the petitioner did sell to the officer 5 bags of marijuana with 1 extra bag for free. This evidence was used to convict the petitioner for violation of narcotics laws. Now the petitioner argues that his 4th Amendment rights were violated when the undercover officer deceived him and entered his house.
       5. **Issue**:- Are the 4th Amendment rights violated when a government agent misrepresents his identity and enters the house of a person with the purpose of buying narcotics?
       6. Holding:- No
       7. **Reasoning**:- Prohibiting the police from conducting such undercover tactics will severely limit their crime controlling effectiveness. "Were we to hold that deceptions of the agent in this case constitutionally prohibited, we would come near to a rule that the use of undercover agents in any manner is virtually unconstitutional *per se*." Furthermore, the petitioner used his house to conduct commercial illegal transactions and the undercover officer entered the house with the sole purposes of buying marihuana. So the petitioner's house can not be given the regular 4th Amendment protection because the petitioner used his house for illegal COMMERCIAL TRANSACTIONS. The conviction was affirmed. (COMPARE TO GOULD THAT IS CITED IN CASE)
    2. Hoffa v. U.S., p. 398
       1. ARGUMENTS:
       2. 4th Amd Challenge: ∆ says having a federal agent trick you and report back to police about what you say violates 4th Amd. protection against illegal search.
          1. USSC: NO! There was no privileged conversation, no surreptitious eavesdropping without warrant.
       3. 5th Amd Challenge: ∆ asserts privilege against self-incrimination b/c federal agent was spying on him.
          1. USSC: NO! There is no coercion. All conversations were voluntary.
       4. 6th Amd. Challenge: ∆ claims conversations overheard were conversations with his lawyer.
       5. Court: NO! None of the conversations informant heard involved the attorney in confidence
       6. Partin, a jailed teamster official and paid government informer, visited Hoffa while Hoffa was on trial – while in hotel room Partin heard conversations between Hoffa and others about attempts to bribe a juror
       7. **Held** – 4A does not protect a wrongdoers misplaced trust that a person in whom he confides will not reveal his wrongdoing
       8. Focuses on fact that Partin was in the hotel suite by invitation – so Δ was not relying on the security of the hotel room, rather on his trust in Partin
       9. Use of informer does not violate DP by offending basic decency and fairness
       10. Basically holds that Hoffa assumed the risk that one of his colleagues might turn out to be a stool pigeon
       11. NOTE – Hoffa had not been indicted for bribery charge yet – if he had, *Massiah* would have applied
       12. *Kamisar* – points out here we want a tape recording because we don’t trust Partin
           1. Brennan’s argument in *Lopez* comes back to haunt him – no use of electronic equipment here
       13. Post-*Hoffa*, police cannot search your house without a warrant, but they can induce your friends to report your illegal activities or employ agents to encourage you to take part in criminal activities
    3. Katz v. U.S., p. 401
       1. **FACTS**: Person making a telephone call in an enclosed phone booth. There was a bugging device attached to the phone in which the police could hear Katz’s call without his knowledge
       2. **ANALYSIS**: An ordinary person would reasonably expect that his phone was not going to be bugged
       3. **RULE**: If there is a REP, then police intrusion constitutes a search and vice versa
       4. Was there a search and seizure
          1. 4th amendment protects indiv privacy from certain types of govt intrusion BUT goes beyond this! not just a “right of privacy”

Katz entered booth seeking privacy from uninvited ears!

4th amendment protects not only tangible items, but oral statements as well!

DON’T need a physical intrusion!

* + - 1. Is the public booth constitutionally protected?
         1. Not an issue if phone booth is protected

It’s about people not places!

What a person knowingly exposes to the public in his own home and office not subject to 4th amendment, but what he seeks to pursue as private, even in a publicly accessible area may be constitutionally protected

* + - 1. Were the boundaries of privacy penetrated?
         1. Must be narrowly circumscribed
         2. Authorized by a magistrate w/ a
         3. Proper need for investigation
         4. Specifically informed of basis on which it was to proceed and
         5. Clearly apprised of precise intrusion it would entail w/ appropriate safeguards
         6. this search was ok – didn’t begin until strong probability he was using phone to transmit gambling, limited in scope and duration
         7. note electronic surveillance is NOT exempt from needing a warrant!
      2. Does Katz have a constitutional right of privacy in a public telephone booth?
      3. Rule:
         1. A search is defined as: Must be a legitimate expectation of privacy (is this possible when running an illegal operation)
      4. Outcome:
         1. Agents listening is a search.
         2. Police required a warrant for that search.
         3. Evidence suppressed
    1. U.S. v. White, p. 404
       1. **FACTS**: ∆ (White) had his conversations with informant recorded. four conversations took place in informants’s home and 4 took place elsewhere (one in ∆’s home).
       2. Note: People though this case was going to limit ***On Lee*** after the decision in ***Katz***
          1. On Lee (1952) – No trespass b/c informant was invited and given consent
          2. Katz (1967) – can’t eavesdrop before getting a warrant b/c ∆ had a REP
       3. USSC: 4th Amd. does NOT apply. Like in On Lee, the informant’s consent is good enough. (informant’s consent or ∆’s consent??)
       4. No reasonable expectation of privacy when you talk to someone else. If they are a snitch or they are wearing a bug, you assumed that risk by talking to them
       5. **Conclusion:** D had not reasonable expectation of privacy in the conversations since one contemplating illegal activities must take the risk that associates may turn to the police
    2. Smith v. Maryland, p. 410
       1. **Facts**: Lady robbed. Then she starts receiving obscene phone calls from a person identifying himself as the robber. The police had focused in on a suspect and asked the phone company to install a device that recorded all numbers that he dialed. They did not have a warrant. The phone company complied and when the victim’s number was called from his house, the police got a warrant to search his house. They found evidence connecting him to the crime including a phone book with a page turned down to her number.
       2. **Issue**: Is a warrantless placement of a device that records what numbers are dialed a search?
       3. **Holding**: No, it is not. The device was installed on the property of the telephone company and did not intrude into any of the defendant’s property. The thing only recorded what numbers were dialed and did not record any of the actual communications. Therefore, there is no expectation of privacy about what numbers you dial. Also, the court thought that he did not have a subjective expectation of privacy and even if he did, society would not regard it as reasonable.
    3. Oliver v. U.S., p. 416
       1. **Facts**: Acting on a tip that defendant was growing marijuana, police went onto his property into an open field and saw that he was growing it. Defendant challenges the evidence saying that it was a search-he had an expectation of privacy for his field.
       2. **Issue**: Is the open field doctrine still good law meaning that things in an open field are not private and searches of them do not constitute a “search” under the fourth amendment??
       3. **Holding**: Yes. The police did not violate the defendant’s fourth amendment rights by looking at his open field. Open fields are often viewed by the public anyways even when no trespassing signs are posted. Also, police can view the fields from the air so it doesn’t make sense that they can’t walk up to it or view it from a far. The defendant did not have a reasonable expectation of privacy in the field-it is not close enough to the home and is not what the framers had in mind for protection
          1. Says that *Katz* did not overrule an earlier case stating that police entry and examination of a field is free of any Fourth Amendment restraints – not a *search* for purposes of 4A
          2. Special protection given to people in their persons, houses, papers, and effects, is not extended to open fields
          3. No reasonable expectation of privacy in a field because they are easily accessible, can be surveyed from air, etc.
          4. Common Law said that curtilage (land immediately surrounding home) got more protection than open fields
          5. Rejects a case by case approach looking to actual expectation of privacy – instead makes it a bright line rule
    4. Florida v. Riley, p. 427
       1. **Facts**: Helicopter fly over, saw marijuana w/ naked eye thru hole in roof of greenhouse, used this to get a warrant, searched house & found marijuana, arrested him
       2. **Issue**: whether surveillance of interior of partially covered greenhouse in residential backyard from vantage point of helicopter located 400’ above greenhouse is a “search” which requires a warrant under 4th amendment?
          1. Claims he has a right to privacy in the greenhouse (not just in the back yard) – if you had been driving by or walking by you wouldn’t have seen these, had to get up in the air to see them
       3. Ct discusses plain view exception 🡪 police and any member of public had a right to be 400’ above property and anything they saw in plain view from there would be valid
       4. **Rule**: police can search and seize anything they find in plain view as long as they are where they have a lawful right to be (plain view exception) – actually have to SEE it!
          1. i.e. officer walking by and looks up into the window and see the plants, can go in and search and arrest without a warrant, “open fields”
          2. here ct says in age where private and commercial flights in public airways is routine, unreasonable for Riley to expect he was protected from his plants being seen at 400’ w/ naked eye
       5. **Holding**: police are not req’d to get a warrant for what they can w/ the naked eye while traveling thru public airways at 400’ – ct notes holding would be different if flying or altitude had been contrary to law or regulation
          1. Dissent: Not just walking by, majority of people may not be able to do this, police have access to this expensive machinery common people don’t have (dissent argument), police went and got the helicopter, went up in the helicopter with the express purpose of flying over the greenhouse – police went to extra effort to put themselves in a position to see “plain view” of greenhouse
          2. ability to see over the fence was thru use of expensive, sophisticated machinery that avg citizen wouldn’t have, not abt whether police violated regulation in operation helicopter but if Riely’s expectations of privacy were reasonable!
       6. NOTE: What technology will permit u to do from a scientific standpoint is NOT the same as what you are permitted to do from a constitutional standpoint (see Kyllo)
    5. Bond v. United States, p. 434
       1. **FACTS**: ∆ put bags in overhead compartment of bus. Police got on bus and felt around the soft luggage from exterior (plain feel) in compartment. Police did not have PC or R/A suspicion. gov’t argues no REP. ∆ claims physical manipulation was too much.
       2. **ISSUE**: Whether police’s physical manipulation of a bus passenger’s carry-on luggage violate the 4th Amd.
       3. **Court**: Police action violated 4th Amd. There is a REP and feeling such bag was a search w/o PC.
       4. This **WAS** a search. Katz 🡪He had a subjective expectation as he wrapped it well and put item inside suitcase that was *opaque.* He puts bag RIGHT above him, so he can keep an eye on it. Objective expectation- you expect people to slightly move bag, or casual contact, but not extensive prodding.
    6. **Technologically enhanced** searches of the home are searches in violation of the 4th amendment. Search occurs: when a govt uses a device not in general public use to explore details of the home that would have been previously unknowable w/o the device or physical intrusions.
    7. Kyllo v. U.S., p. 438
       1. **Rule:** Use of thermal imager is a search. The general public isn’t using this technology, one has reasonable expectation of privacy in the heat signature emitting from their home.
       2. Govt suspects he’s growing MJ which requires use of these heat lamps. PO’s take the thermal imager, scan outside of home, and scan what parts of the home are unusually hot.
       3. C.I. is the one who tipped them off in the first place. The utility bill indicates he’s keeping a very warm house. They use this combination to get a warrant. D’s argument  He’s trying to say that the “scan” was an illegal search, no warrant, no probable cause.
       4. **Overview**: held that the use of a thermal imaging device from a public vantage point to monitor the radiation of heat from a person's home was a "search" within the meaning of the Fourth Amendment, and thus required a warrant. Because the police in this case did not have a warrant, the Court reversed Kyllo's conviction for growing marijuana.
       5. **Analysis**: They are using this device from a car on a public street. There’s no entrance on curtilage. It only shows hot spots, seems like the odor in place and not a search. BUT the court says this is a search because this is FROM INSIDE THE HOUSE, and using a device that the public wouldn’t have.
          1. The home is at the very core of the 4th am. Privacy expectation in the house is okay. They say it could show very intimate details. They also express concern w/more and more sophisticated technology. They’re arguing that there were more intimate details. The heat could come from someone having a shower, or a sauna. You can tell by heating, where people are in the house etc.
       6. Reasoning:
          1. The Supreme Court ruled 5-4 that the thermal imaging of Kyllo's home constituted a search. Since the police did not have a warrant when they used the device, which was not commonly available to the public, the search was presumptively unreasonable and therefore unconstitutional. The majority opinion argued that a person has an expected privacy in his or her home and therefore, the government cannot conduct unreasonable searches, even with technology that does not enter the home. Justice Scalia also discussed how future technology can invade on one's right of privacy and therefore authored the opinion so that it protected against more sophisticated surveillance equipment. As a result, Justice Scalia asserted that the difference between “off the wall” surveillance and “through the wall” surveillance was non-existent because both methods physically intruded upon the privacy of the home. Scalia created a “firm but also bright” line drawn by the Fourth Amendment at the “‘entrance to the house’”. This line is meant to protect the home from all types of warrantless surveillance and is an interpretation of what he called “the long view” of the Fourth Amendment. The dissent thought this line was “unnecessary, unwise, and inconsistent with the Fourth Amendment” because according to Scalia’s previous logic, this firm but bright line would be defunct as soon as the surveillance technology used went into general public use, which was still undefined.
       7. Dissent:
          1. This is capturing escaped heat and how is heat intimate?
          2. Justice John Paul Stevens argued that the use of thermal imaging does not constitute a search, which requires a warrant, because any person could detect the heat emissions. He argued that this could be done by simply feeling that some areas in or around the house are warmer than others or observing that snow was melting more quickly on certain sections of the house. Since the public could gather this information, Stevens argued, there is no need for a warrant and the use of this technique is not unconstitutional. Moreover, Stevens asserted that the use of the thermal imaging device was merely "off the wall" surveillance because it did not detect any "intimate" details of Kyllo's home. Finally, Stevens commented on the absurdity of Kyllo's trying to incorporate something as intangible, fluid and public as heat into the private sphere. He explained, "Heat waves, like aromas that are generated in a kitchen, or in a laboratory or opium den, enter the public domain if and when they leave a building."
          3. The decision did not break along the traditional "conservative" and "liberal" wings of the court: the majority opinion was written by Scalia, joined by Souter, Thomas, Ginsburg and Breyer, while Rehnquist, O'Connor, Kennedy and Stevens dissented.

1. Consent
   1. If there is valid consent, you can do a search w/o a warrant, w/o PC and w/o RS. Consent must be ACTUAL and VALID.
   2. Who can consent?
      1. Actual Authority—owner
      2. Common Authority—people with ability to grant access (Matlock)
         1. Unless the other person refuses (GA v. Randolph)
         2. D assumed the risk
         3. BUT SCOPE—Jimeno
      3. Apparent Authority—Rodriguez
   3. ***General Rule***: Refusal to consent cannot be held against the D, and cannot provide RS. Instead there must be actual and valid consent.
      1. **Actual**- This means the suspect voluntarily gives consent.
      2. **Validity**- This validity of the consent is determined by the totality of the circumstances and the question is whether the consent was the product of duress or coercion, either express or implied. It is analyzed from a common sense perspective.
         1. voluntariness of D’s custodial status
         2. presence of coercive police procedures
            1. physical force
            2. threats
         3. extent and level of D’s cooperation w/police
            1. Was suspect in custody? If so, more likely to be coerced
            2. Were they in a public place? If so, less likely to be coerced
         4. D’s awareness of his right to refuse consent
         5. D’s education and intelligence
         6. D’s belief that no evidence will be found
      3. Scneckloth v. Bustamonte, p. 449
         1. **Rule:** Consent for a consent search must be voluntary, as determined by the totality of the circumstances. State doesn’t have to show that the person knew they could refuse consent. Consent is not a waiver of the 4th amendment, because the search still has to be reasonable
         2. **Facts**: PO stopped car at 2:40 am w/a headlight burned out. 6 men were in the car and driver had no license, only one passenger produced his license, and he explained that car was his brothers. Eventually PO asked if he could search the car, and he said, “sure go ahead.” The search produced 3 stolen checks. He was never told he could refuse consent.
         3. **Conclusion**: There was no duress or coercion, express or implied.
            1. Knowledge of right to say no is one factor to be considered in totality of the circumstances, but isn’t necessary
            2. Use old voluntariness test from coerced confession cases
            3. Stewart, for majority, points out that Consent is a valuable weapon for the police
            4. May be the only means to search in the absence of PC
         4. Would be impracticable to inform the suspect of the right to refuse consent
            1. Don’t need a Johnson v. Zerbst type knowing and intelligent waiver – that only applies to trial rights
            2. 4A rights don’t promote the fair ascertainment of truth at trial
         5. Holding limited to non-custodial searches
         6. **Dissent**- Can’t be voluntary if they don’t even know they have the right.
            1. Marshall’s Dissent – when the majority talks about “practicality” they are really talking about the ability of the police to capitalize on the ignorance of citizens to accomplish what they could not achieve by relying only on the knowing relinquishment of a right
      4. **Illinois v. Rodriguez**, p. 459 - **(Apparent, but not Actual authority) -** 1990 Scalia; a third party can consent to search if it reasonably seems to police that the party has common authority over the property
         1. then it’s reasonable to recognize any co-inhabitant has the right to permit inspection and the others have assumed the risk that one of them could let their common areas be searched. The state has the burden to prove common authority, didn’t carry it here. she moved out a month ago, her clothes were gone, some furniture was there but she never went over there w/o him, she had taken a key (prelim hearing said she had been given key); The reasonableness of requirement of the 4 A is not that they must be correct but they must be reasonable; if it’s reasonable to think she could consent that’s okay
         2. **Facts:** R’s woman friend who unknown to PO’s had moved out a month before and kept a key without permission. When speaking to the officers, she referred to apt as “our apt.”
         3. **Conclusion:** She didn’t have actual authority to consent as no joint access or control of the premises after moving out, but the officer’s REASONABLE BELIEF that friend had authority to consent validates the entry.
         4. Marshall/Brennan/Stevens: 3rd party consent searches not based on exigency and therefore no compelling social goal.
            1. Brinegar v. US—police just have to have probable cause, factual error doesn’t make it an invalid search
            2. Stoner v. Cali—not cool for search when hotel clerk consents, they called reliance on his ‘apparent authority’ ‘unrealistic.’
            3. In US v. Matlock—court held it’s okay for 3rd party consent where the 3rd party had ‘common authority’ over the premises—common authority: mutual use of the property by persons having joint access or control for most purposes…court confirmed unremarkable proposition police need only probable cause but the possibility of factual error is build into the probable cause standard and since that defines reasonableness in 4 A context…
2. Are We Moving Towards Open Season on Automobiles As We Enter A New Millennium?
   1. X
      1. Whren v. U.S., p. 467
         1. **you can’t have a pretext to search in the absence of probable cause, but when you have objectively justifiable behavior (probable cause to arrest) can have pretexts in traffic stops.**
      2. **decision to stop vehicle is reasonable where the police have probable cause to believe that a traffic violation has occurred** …**our cases show that the validity of a search *in the absence* of probable cause you can’t have a pretext,**
   2. For the run of the mill case, which this is, there is no realistic alternative to traditional common-law rule that probable cause justifies a search and seizure
      1. **NOTE: you could have pulled them over with REASONABLE SUSPICION. But then you can’t just search everything—you can only do it within the limits of terry.** 
         1. FN in Watson—the law of the state determines your 4 A protection—federalism.
            1. What’s wrong with the would-have standard?
            2. State court created exceptions to Whren—police stops someone for vaguely touching the middle line once…a *De minimus* exception—so small it’s bordering on ridiculous. (Rowe)
      2. **Cannot Have Pretexts Without Probable Cause**
         1. Florida v. Wells—inventory search must not be a ruse for rummaging in order to discover incriminating evidence
         2. Colorado v. Bertine—approved inventory search, significant that there was no showing the police (following standard procedures) acted in bad faith.
         3. New York v. Burger—upheld constitutionality of admin inspection and noted it wasn’t a pretext
      3. Do not care when the officer is doing something objectively reasonable (has probable cause)
         1. US v. Villamonte-Marquez—otherwise valid warrantless boarding of vessel by customs officials didn’t become invalid b/c they were accompanied by LA state police and following an informant’s tip; ulterior motive didn’t strip them of their authority to search
         2. US v. Robinson—traffic violation arrest wouldn’t be rendered invalid by the fact that it was a pretext for a drug search
            1. Scott v. US—rejected contention that wiretap evidence was subject to exclusion b/c agents conducting the tap had failed to comply with statutory requirement that unauthorized acquisitions be minimized
      4. Ohio v. Robinette, p. 472
         1. ***do not need to tell someone they are free to go b/f asking for a search***
         2. Court: you don’t need to warn someone or advise them they are free to go before asking for a search…there aren’t brightline rules in 4 A inquiries…
         3. Stevens dissent: a reasonable person wouldn’t know he was free to leave
      5. Maryland v. Wilson, p. 477
         1. **officer making a traffic stop may order passengers to get out of the car pending completion of the stop…there is not the same basis for making them get out of the car but that’s minimal and it’s justified by officer safety**
         2. HYPO: PO pull someone over, can arrest, them, don’t make a decision, search, find marijuana arrest for that
            1. Is it distinguishable from Knowles—evidence collection, or safety—they didn’t arrest him, no need for safety, definitely not evidence collection
            2. This is evidence collection—could that make it okay?
            3. You need to arrest before search for a search incident to arrest????

Sometimes they say doesn’t matter if the arrest and the search are close in time, then this exception applies.

This is a state jurisdiction split; open question under Fed Con.

In low visibility decision-making, most officers don’t follow this

* + 1. Knowles v. Iowa, p. 483
       1. **inventory search must be incident to a real arrest, not a citation issuance—no officer safety worry, or preservation of evidence where stop was for speeding**
    2. Atwater v. City of Lago Vista, p. 486
       1. ***fine to arrest for misdemeanor in presence of the officer***
    3. Arkansas v. Sullivan, p. 500
       1. ***the 4 A does limit to some extent the official discretion, you don’t get to follow a suspect, wait for him to speed and then arrest.***

Whren: you can stop with PC of traffic violation or with RAPS

RAPS: While you’re detained can ask about immigration status or drugs (Mena) or do a drug sniff (Caballes)

PC: If traffic violation is a misdemeanor and you saw it happen or felony and you didn’t you can arrest!

Find anything? ARREST

Take before neutral magistrate w/in 48 hours (Gerstein/Mclaughlin)

Take b/f neutral magistrate w/in 48 hours (Gerstein/<McLaughlin)

Lawful Arrests! Tasty fruits are in.

* + 1. Virginia v. Moore, p. 502

1. **Unusual Situations**
   1. Especially Intrusive Searches
      1. Winston v. Lee, p. 509
         1. **surgeries or intrusions underneath the skin must be done case-by-case, where it’s an invasive surgery it’s not reasonable absent a state compelling need**
         2. Surgery to get bullet to show that D was robber hit by victim’s gunfire; This operation requires gen anesthesia, will take awhile, could lead to injury of muscle and nerves…therefore it will intrude substantially on d’s protected interests, that’s not reasonable given the state’s failure to show a compelling need
         3. Applying Schmerber balancing test, Ct held that proposed court-ordered surgery on Δ (for purpose of removing bullet expected to prove that Δ was robber hit by victim’s gunfire) would constitute an unreasonable search. Reasonableness of surgical intrusions depends on case-by-case approach that balances individual’s privacy interests with society’s interests in conducting the procedure. Moral: blood-letting reasonable; surgery too intrusive.
   2. **Border Searches**
      1. U.S. v. Montoya De Hernandez, p. 515
         1. A case appealed from the Ninth Circuit to the Supreme Court of the United States regarding balloon swallowing.
         2. Procedural History: The Ninth Circuit had reversed a district court's conviction of Rosa Elvira Montoya de Hernandez, the defendant, for federal narcotics offenses, on the grounds that the district court incorrectly refused to suppress evidence used against the defendant. The prosecution appealed to the U.S. Supreme Court.
         3. Issue: Whether detention at the border on suspicion of concealing contraband violated 4th Amendment.
         4. Holding: The Supreme Court held that the detention of a traveler at the border, beyond the scope of a routine customs search and inspection, is justified at its inception if customs agents, considering all the facts surrounding the traveler and her trip, reasonably suspect that the traveler is smuggling contraband in her alimentary canal; here, the facts, and their rational inferences, known to the customs officials clearly supported a reasonable suspicion that respondent was an alimentary canal smuggler.
         5. Facts:
         6. Montoya de Hernandez entered the United States at Los Angeles International Airport from Bogotá, Colombia. Customs inspectors detained Montoya de Hernandez upon her arrival based upon a suspicion that she was smuggling drugs. After 16 hours and a rectal examination by a physician that produced a balloon containing a foreign substance, she passed balloons filled with cocaine from her alimentary canal. The defendant had claimed that she was pregnant, and she was given the opportunity to undergo an X-ray, but she refused after being informed that she would have to be handcuffed en route to the hospital. Over the next three days, the defendant passed 88 balloons filled with over one pound of cocaine.
         7. Montoya de Hernandez alleged that her Fourth Amendment rights were violated by an unreasonable detention. The government contended that the inspectors had reasonable suspicion that the defendant-respondent was a drug smuggler. She had a noticeable bulge in her abdomen when she was detained, and a female inspector searched her revealing that Montoya de Hernandez was wearing two sets of elastic underpants and had paper towels lining her crotch area (as balloon swallowing makes bowel movements hard to control).
         8. The Supreme Court, in an opinion written by William Rehnquist and joined by Warren Burger, Byron White, Harry Blackmun, Lewis Powell, and Sandra Day O'Connor, reversed the Ninth Circuit's holding that defendant was subject to unreasonable search and seizure and upheld the conviction entered for charges brought by the government because custom agents were subject to a reasonable suspicion standard under the Fourth Amendment for detaining suspects.
         9. John Paul Stevens filed a concurring opinion while William Brennan and Thurgood Marshall dissented, stating that the detention of Montoya de Hernandez was more akin to the behavior of a police state rather than that of a free society
      2. U.S. v. Flores-Montano, p. 527
         1. Facts:
         2. When Manuel Flores-Montano approached the U.S.-Mexico border, U.S. Customs inspectors noticed his hand shaking; an inspector tapped Flores-Montano's gas tank with a screwdriver and noticed that the tank sounded solid. After a mechanic began disassembling the car's fuel tank, inspectors found 37 kilograms of marijuana bricks in the tank.
         3. Flores-Montano was charged in federal district court in California for importing and possessing marijuana with intent to distribute. Flores-Montano moved to suppress the marijuana finding on Fourth Amendment grounds. He argued that the search that yielded the marijuana finding was intrusive and non-routine and therefore required reasonable suspicion (which, he argued, was not present in his case).
         4. Relying on U.S. v. Molina-Tarazon, a case decided by the U.S. Ninth Circuit Court of Appeals in 2002 (with similar circumstances), the district court agreed that the search was non-routine and thus required reasonable suspicion. The government, the court held, failed to prove that reasonable suspicion prompted its search. The Ninth Circuit Court of Appeals affirmed.
         5. Issue: Does the Fourth Amendment require customs officers at the international border to have reasonable suspicion in order to remove, disassemble, and search a vehicle's gas tank for illegal material?
         6. **Holding**: No. In a unanimous opinion delivered by Chief Justice William Rehnquist, the Court held that the government had authority to inspect a vehicle's fuel tank at the border without suspicion. Though the Fourth Amendment "'protects property as well as privacy,'" interference with a vehicle owner's gas tank "is justified by the Government's paramount interest in protecting the border." The Court rejected the argument that the requirement of suspicion for highly intrusive searches of people be carried over to cars (especially at the border): "Complex balancing tests...have no place in border searches of vehicles."
   3. The Fourth Amendment Beyond our Borders
      1. United States v. Verdugo-urquidez, p. 530
         1. **Facts:** Rene Martin Verdugo-Urquidez was a citizen and resident of Mexico. In cooperation with the Drug Enforcement Agency (DEA), Mexican police officers apprehended and transported him to the U.S. border, where he was arrested for various narcotics-related offenses. Following his arrest, a DEA agent sought authorization to search Verdugo-Urquidez's residences for evidence. The Director General of the Mexican Federal Judicial Police authorized the searches, but no search warrant from a U.S. magistrate was ever received. At trial, the district court granted Verdugo-Urquidez's motion to suppress the evidence on the ground that the search violated the Fourth Amendment to the Federal Constitution.
         2. **Issue:** Does the Fourth Amendment apply to the search and seizure by United States agents of property that is owned by a nonresident alien and located in a foreign country?
         3. **Holding:** No. The text of the Fourth Amendment concerns "the people," suggesting a concern with persons who are part of the national community, as contrasted with aliens without any substantial connection to the U.S. Moreover, extraterritorial aliens are not even entitled to rights under the Fifth Amendment, which speaks in the relatively more universal term of "person." And non-"fundamental" rights are not even guaranteed to inhabitants of unincorporated territories under U.S sovereign control, much less aliens. Therefore, any restrictions on searches and seizures of nonresident aliens and their foreign property must be imposed by the political branches through diplomatic understanding, treaty or legislation
   4. **Administrative And Other Non-Criminal Searches**
2. **The Exclusionary Rule**
   1. **The Rationale for the Exclusionary Rule**
   2. **Overview**- This is the primary remedy for 4th amendment violations, but can also be a remedy for some 5th and 6th am violations.
      1. Rationales:
         1. The rational for this right is that it is the only way to protect 4th am rights
         2. AND it protect judicial integrity by not allowing the courts to sanction illegal searches by allowing their fruits of illegality into evidence.
         3. AND prevents govt from profiting from its own wrong AND
         4. Rule is not costly, because it only excludes what should never have been obtained in the first place AND
         5. Rule necessary to deter police conduct
      2. **Other remedies**- Other remedies pose all sorts of problems (e.g. who wants to fine the cops? They are supposed to be helping us. Prosecutors use lots of cops in their investigations, so they won’t want to prosecute etc.) **COSTS 🡪 you punish cops and let criminals go free!!!! AND doesn’t really deter police.**
      3. Old Rules:
         1. **WOLF**- States are not required to apply Exclusionary rule and can develop own remedies for 4th am violations.
         2. **WEEKS**- exclusionary rule only applies to federal courts.
      4. **Mapp v. Ohio**, p. 543
         1. **Facts**: 4th am violation
         2. **Conclusion:** Remedy of exclusionary rule applies to the states and federal courts to protect 4th am and protect judicial integrity.
         3. ***Dissent-*** They don’t want to take power away from states and want to continue to defer to them.
      5. United States v. Calandra, p. 548
         1. ***we do not apply exclusionary rule to GJ proceedings***
      6. Hudson v. Michigan, p. 555
         1. Supreme Court opinion
         2. Majority
         3. Justice Antonin Scalia, writing for the majority (5–4) with respect to Parts I, II and III of his opinion, held that evidence seized in violation of the knock-and-announce rule could be used against a defendant in a later criminal trial in comport with the Fourth Amendment and that judges cannot suppress such evidence for a knock and announce violation alone. Justice Scalia was joined by Chief Justice John Roberts, Justice Samuel Alito, Justice Clarence Thomas, and Justice Kennedy, who concurred in part and with the judgment.
         4. Unlike previous cases addressing the knock-and-announce requirement, the Court did not need to address the question of whether the knock-and-announce rule was violated, as the State of Michigan conceded the violation at trial. The question before the Court was regarding the remedy that should be afforded Hudson for the violation.
         5. The majority notes that the Court first adopted an exclusionary rule for evidence seized without a warrant in Weeks v. United States, which was applied to the states in Mapp v. Ohio, but points out that the exclusionary rule was limited by later decisions. After discussing these decisions, Scalia writes:
         6. [E]xclusion may not be premised on the mere fact that a constitutional violation was a 'but-for' cause of obtaining evidence. Our cases show that but-for causality is only a necessary, not a sufficient, condition for suppression. In this case, of course, the constitutional violation of an illegal manner of entry was not a but-for cause of obtaining the evidence.
         7. Scalia distinguishes evidence seized in warrantless searches from evidence seized in searches that violated the knock-and-announce rule, noting that:
         8. [ex]clusion of the evidence obtained by a warrantless search vindicates [the] entitlement [of citizens to shield their persons, houses, papers, and effects, from the government’s scrutiny]. The interests protected by the knock-and-announce requirement are quite different—and do not include the shielding of potential evidence from the government’s eyes.
         9. The interests protected by the knock-and-announce rule, according to Scalia, are to protect police officers from surprised residents retaliating in presumed self-defense, to protect private property from damage, and to protect the "privacy and dignity" of residents. Scalia says that the knock-and-announce rule "has never protected . . . one’s interest in preventing the government from seeing or taking evidence described in a warrant."
         10. The majority opinion goes on to note that the costs of exclusion for knock and announce violations outweigh the benefits of admitting the evidence. Scalia states that the costs are small, but that "suppression of all evidence[] amount[s] in many cases is a get-out-of-jail-free card." The Court states that exclusion of evidence has little or no deterrence effect, especially considering that deterrents (a civil action against the police department and internal discipline for officers) already exist. Scalia ends the portion of his opinion which constitutes the majority opinion with praise for the "increasing professionalism" of the police force over the last half-century, which he says makes some concerns expressed in past cases by the Court obsolete.
         11. Kennedy's concurrence
         12. Justice Kennedy concurred in part with Scalia's opinion and concurred in the judgment that a violation of the knock-and-announce rule does not require a court to exclude seized evidence. Kennedy's concurrence emphasizes that the Court has not disregarded the knock-and-announce rule through its decision and that the exclusionary rule continues to operate in other areas of criminal law per the Court's precedent. Kennedy agrees with the majority that civil remedies and internal police discipline are adequate deterrents for knock-and-announce violations, but goes on to note that if a pattern of police behavior emerges that demonstrates disregard for the knock-and-announce rule, he would reevaluate his position.
         13. Dissent
         14. Justice Breyer, joined by Justice Ginsburg, Justice Stevens, and Justice Souter, dissented. Breyer begins his dissent with a rebuke of the majority opinion,
         15. In Wilson v. Arkansas, a unanimous Court held that the Fourth Amendment normally requires law enforcement officers to knock and announce their presence before entering a dwelling. Today’s opinion holds that evidence seized from a home following a violation of this requirement need not be suppressed. As a result, the Court destroys the strongest legal incentive to comply with the Constitution’s knock-and-announce requirement. And the Court does so without significant support in precedent. At least I can find no such support in the many Fourth Amendment cases the Court has decided in the near century since it first set forth the exclusionary principle in Weeks v. United States.
         16. Breyer goes on to examine the underlying case law, tracing the knock-and-announce rule to the thirteenth century, the writing of the Fourth Amendment, and the establishment of the exclusionary rule.
         17. Breyer says that the strongest argument for application of the exclusionary rule to knock-and-announce violations is that it serves as a strong deterrent to unlawful government behavior. At the very least, according to Breyer, eliminating the exclusionary rule from consideration for knock-and-announce violations will cause some government agents to find it less risky to violate the rule. Pointing out that civil remedies are not an adequate deterrent, Breyer says,
         18. [t]he cases reporting knock-and-announce violations are legion . . . [y]et the majority . . . has failed to cite a single reported case in which a plaintiff has collected more than nominal damages solely as a result of a knock-and-announce violation . . . . [C]ivil immunities prevent tort law from being an effective substitute for the exclusionary rule at this time.
         19. Breyer notes that, in precedent, the Court has declined to apply the exclusionary rule only: "(1)where there is a specific reason to believe that application of the rule would 'not result in appreciable deterrence,' or (2)where admissibility in proceedings other than criminal trials was at issue" (citations omitted). The dissent states that neither of these exclusions apply to knock-and-announce violations.
         20. Breyer wraps up his dissent with a summary of his disagreement with the majority:
         21. There may be instances in the law where text or history or tradition leaves room for a judicial decision that rests upon little more than an unvarnished judicial instinct. But this is not one of them. Rather, our Fourth Amendment traditions place high value upon protecting privacy in the home. They emphasize the need to assure that its constitutional protections are effective, lest the Amendment "sound the word of promise to the ear but break it to the hope."
         22. [T]he Court should assure itself that any departure from that principle is firmly grounded in logic, in history, in precedent, and in empirical fact. It has not done so.
   3. **The Good Faith Exception to the Exclusionary Rule**
      1. United States v. Leon, p. 567
         1. Q: Should the ER apply to evidence obtained under a search warrant obtained by officers acting in reasonable reliance on a search warrant issued by a detached and neutral magistrate but ultimately found to be unsupportable by probable cause? In other words, ***should there be a good faith exception to the ER***
         2. **Reasoning**
         3. ER designed to safeguard 4th Am through its deterrent effect, rather than a personal constitutional right of the aggrieved.
         4. Cost-benefit analysis: ER has substantial social costs—ER has to pay its way. “Particularly when law enforcement officers have acted in objective good faith or their transgressions have been minor, the magnitude of the benefit conferred on such guilty s offends basic concepts of the criminal justice system.” May generate disrespect for the law. Cardozo’s famous quote: “The criminal is to go free because the constable has blundered.”
      2. Commonwealth v. Edmunds, p. 583
         1. **(use these factors along with Arkansas v. Sullivan)**
         2. Facts: Guy gets his house searched in PA pursuant to a search warrant. They find marijuana and introduce it as evidence. The Trial court found that the search warrant was not sufficient-not based on probable cause but that the good faith exception from Leon allowed for the evidence to be introduced. Pa crim Pro Rules said that oral testimony cannot be used to outside the four corners of the written affidavit to supplement finding of probable cause. The problem with the warrant was that it did not specify the date when the informants used saw marijuana in the guys house.
         3. Issue: Does the PA const have a good faith exception rule that permits introduction of evidence seized where probable cause is lacking on the face of a warrant? [Whether Pennsylvania should adopt the "good faith" exception to the exclusionary rule as articulated by Supreme Court in Leon?]
         4. Holding: No.
         5. ANALYSIS OF PA CONST: SC has held that state courts are allowed to analyze their own constitutions. Analyze four factors: 1. Text of pa cont provisions, 2. History of provision, 3. Related case law from other states, 4. Policy considerations.
         6. TEXT-does not give them any clues
         7. HISTORY-the purpose of the exclusionary rule in pa is different then the feds say it is in Leon-not for police deterrent. PA says it is for privacy.
         8. RELATED CASE LAW-States like PA, following the same logic have rejected the good faith exception.
         9. POLICY CONSIDERATIONS-adopting good faith rule would go against PA cases. They also thought that underlying principle of Leon was still unclear.
         10. CONCLUSION-Good faith exception is not going to be adopted for PA
      3. Arizona v. Evans, p. 593
         1. **where bench warrant’s existence was clerical error, and police arrested, searched incident, found drugs, the Leon exception applies to the officers b/c it was a clerk of the court who had made the error**
         2. Some gov’t searches covered by 4th Am are nonetheless inappropriate occasions for use of ER in light of kind of gov’t official who was at fault.
         3. **Facts**: Court clerk’s failure to void a warrant for traffic violations resulted in erroneous arrest. Subsequent to that arrest, marijuana was found.
         4. Ct: No deterrent effect for clerical errors. Ct employees have no stake in outcome of particular criminal prosecutions. Evidence is admissible.
         5. Dissent: Court personnel and police officers are not neatly compartmentalized actors.
      4. Herring v. U.S., p. 602
         1. **Facts**-guy goes to another county to get something out of his impounded truck with sheriff's there.  So officer asks someone to run a check for warrants on the guy.  There is an outstanding warrant for arrest.  Fifteen minutes later the clerk calls back and tells them that the warrant was recalled.  But it was too late.  Herring already arrested and his car was already searched.  The police found firearms and methamphetamine.  So he is charged.
         2. **Issue**-can evidence obtained on a faulty warrant be allowed into evidence?
         3. **Holding**-yes.  This negligence was not done purposefully or maliciously.  It will not deter police conduct to not allow the evidence.  Also, the negligence was attenuated from the search and was not a conscious disregard of constitutional requirements
   4. Standing
      1. Rakas v. Illinois, p. 611
         1. ***standing based*** ***on whether the challenged search or seizure violated the rights of the D who seeks to exclude the evidence***
         2. Better analysis forthrightly focuses on the extent of a particular D’s rights under the 4 A, rather than any theoretically separate concept of standing. Question is whether the challenged search or seizure violated the 4 A rights of a criminal D who seeks to exclude the evidence obtained during it. Requires a determination of whether the disputed search and seizure has infringed an interest of the D that the 4 A was designed to protect. Under no illustion that by dispensing with rubric of standing, court rendered the determination simpler
         3. SEARCHSZR: important to keep in mind that the question traditionally labeled as standing is not example to the question of whether 4 A has occurred.
         4. Brennan think it’s an uncon condition for you to have to testify you own the car where the drugs were, and then you can be impeached with that at trial
      2. United States v. Salvucci, p. 625
         1. ***based on simmons, court abolished Jones rule they can’t use the testimony!***
         2. The dilemma identified in *Jones* was eliminated by *Simmons* which not only extends protection against the risk of self-incrimination in all of the cases covered *Jones* but also grants a form of ‘use’ immunity to those ds charged with non-possessory crimes
         3. Today: you can be charged with a possession crime and still not have standing to object to the manner in which the gov’t got it.
         4. **Now we are left with reasonable expectations of privacy as the only real definition that gives rise to standing**
      3. Rawlings v. Kentucky, p. 629
         1. ***where you place objects you own in another’s possession then you have no legitimate expectation of privacy in your stuff in their possession unless you know them, can exclude others from purse, etc. b/c no legit expectation of privacy, no standing***
         2. **D had no standing b/c he failed to make a sufficient showing that his legitimate or reasonable expectation of privacy was violated by search of the purse**. He dumped drugs in her purse after only knowing her for a few days, had never sought or received access to her purse before, no right to exclude others to the purse, the precipitous nature of the bailment hardly means he took normal precautions to maintain his privacy
         3. Blackmun concur: agrees that determining 1) whether D has a legit expectation of privacy and 2) whether applicable cause and warrant reqs have been properly observed merge into once in the sense they are both addressed under 4 A principles; Factors:
            1. Only known a few days
            2. Never used the purse
            3. didn’t take steps to keep it private
            4. others access it
            5. admitted no exp of privacy
            6. can exclude people
      4. Minnesota v. Carter, p. 635
         1. ***where Ds were doing business (or filling bags with crack) in someone else’s home, the unreasonable search of that home via going up to the window wasn’t something they could challenge***
         2. Respondents here were not overnight guests but were essentially present for a business transaction and were only there for a matter of hours.
         3. Worker can claim 4 A protection over his own workplace: O’Connor v. Ortega 1987
         4. Scalia/Thomas concur: the case law gives short shrift to the text of 4 A and to the well and long understood meaning. Katz society prepared to recognize reasonability is uncannily like what members of the court think
         5. Kennedy concur: social guests have a legit expectation of privacy in a home, but these people had no meaningful connection to the owners’ home or expectation of privacy
         6. Ginsburg/Stevens/Souter dissent: this decision undermines the security of short-term guests and the security of the home resident herself. doesn’t agree that we have a greater expectation of privacy when we place a call from public phone to person’s home than when we enter persons home
         7. Breyer concur: didn’t think the observation (made from public area outside the cartilage) was an unreasonable search and agreed with Ginsburg that they had standing to claim 4 A protection
         8. **Difference b/t Minnesota v. Carter AND Minnesota v. Olson**
            1. Legitimate purpose to be there v. illegitimate purpose to be there.
            2. Ownee present v. not
            3. Office v. not really an office
            4. Longer amounts of time in the house
            5. Well, if you’re the only person there you can exclude or invite…whereas in an overnight guest situation you aren’t
      5. STANDING all together
         1. Only reasonable expectation of privacy standing.
         2. No derivative
         3. No target
         4. No automatic
         5. BUT overnight guests have reasonable expectations of privacy
3. **Confessions, Voluntariness**
   1. voluntary confessions grounded in what?
      1. Could ground in DP
      2. 5 A self-incrimination
      3. Right to counsel in the 6 A
   2. What is voluntariness?
   3. Standard.
   4. TOC test. But what’s the inquiry? Undue coercion. (sounds like police practice) or if the suspects will was overborne (that’s more untrustworthiness)
   5. Factors
      1. Physical beating
      2. Threats to beat them (lynumn—taking kids away)
      3. Threats to friends
      4. Tracey Maclin’s ideas—the racial balance b/t the police
      5. Deception—tell you they will trump op charges
         1. Leyra—the state psychiatrist pretended to be normal Doc, hypnotisted him
      6. Drugging—Townsend
      7. Length of Interrogation
         1. 36 Hours Ashcroft
      8. If they move you away from family
      9. Characteristics of a suspect—age but then it’s not police conduct
   6. Cases
      1. **Brown v. Mississippi**, p. 647
         1. 1936; **you can’t beat someone up for a confession—against DP**
         2. First 14 A due process confession case (beating the Ds, but no so much for a black person);
         3. this was about the untrustworthiness rationale
      2. Watts v. Indiana, p. 650
         1. **free standing DP mean exclude them even though confessions reliable**
         2. court reversed 3 convictions resting on coerced confessions w/o disputing the accuracy that they were inherently believable when checked by the outside evidence
         3. Frankfurter—in holding the DP clause bars police procedure which violates the basic notions of our accusatorial mode of prosecuting crime and vitiates a conviction based on the fruits of such procedure, we apply DP clause to its historic function of assuring appropriate procedure before liberty is curtailed
      3. Crooker v. California, p. 655
         1. **okay to deny counsel during interrogation where D had had law school training and knew of right to remain silent**
         2. Petitioner attended 1 year of law school, indicated to police he was aware of right to remain silent. He was convicted of murder of his paramour and sentenced to death; **He had asked for a lawyer and the police had continued to interrogate him**
         3. **to disallow this would have a devastating effect on the enforcement of crim law, for it would preclude police questioning far as well as unfair until the accused was afforded opportunity to call his attorney;** due process is less rigid and more fluid than the specific rights envisaged in the Bill of Rights Betts v. Brady demands no such rule
         4. Douglas/Warren/Black/Brennan dissent: right to have counsel at the pretrial stage is often necessary to give meaning and protection to the right to be heard at the trial itself…may also be a restraint and coercive power of the police
      4. Spano v. New York, p. 659
         1. **at least for retained counsel, right to counsel attaches at indictment**
         2. Appeared the court considered that once a person was formally charged by indictment or information his constitutional right to counsel had ‘begun’ (at least for retained counsel)
         3. Spano was already indicted for murder; usually what follows indictment for murder was arraignment and trial, but here D got an all-night inquisition in a prosecutor’s office, a police station, and a car. con guarantees assistance of counsel to a man on trial for his life in an orderly courtroom, presided over by a judge, open to the public and protected by all the procedural safeguards of the law
4. **Right to Counsel**
   1. X
      1. Massiah v. United States, p. 665
         1. **after indictment and lawyer retained, police can’t question you extrajudicially and use those statements against you at trial**
         2. D indicted on fed drug charges, retained a lawyer, pled not guilty was on bail. Codefendent invited D to discuss the case in his car. co-d was using a radio-transmitter
         3. **It was decisive this happened after indictment, therefore at a time when D clearly entitled to his lawyer’s help;** D was subjected too completely extrajudicial police-orchestrated proceeding. It was entirely proper to continue the investigation into ds criminal activities, but his own incriminating statements, obtained by fed agents couldn’t be used by prosecution against him at his trial
         4. White/Clark/Harlan dissent: there was no substitution of brutality for brains, or danger of police coercion…doesn’t see how this interferes with Ds right to counsel, no meetings with counsel were spied on, preparation for trial not obstructed
      2. Escobedo v. State of Illinois, p. 670
         1. Goldberg; **6 A (later read to mean 5 A) means you can’t prevent a D who requests his lawyer and his lawyer is THERE trying to see him from speaking to his lawyer when the D is a particular suspect.**
         2. Interrogation here was conducted before D indicted but that fact shouldn’t make a difference, **when D requested and was denied the opportunity to consult lawyer, the investigation had ceased to be a general unsolved crime and D was the accused**
         3. It’s argued this is going to cut down on the number of confessions—this cuts both ways; **No system worth preserving should fear that if an accused is allowed to consult with his lawyer he or she may then become aware of and exercise his or her constitutional rights.** **Therefore where the investigation is no longer a general inquiry into an unsolved crime but has begun to focus on a particular suspect, and that suspect is in police custody, then if he asks for and is refused counsel and doesn’t know about his right to remain silent, he’s no longer got his right to counsel**
         4. Stewart dissent: the judicial proceedings had not started!!
         5. White/Clark/Stewart dissent: we’re assuming the court has held that once the accused becomes a suspect any admission is inadmissible unless he waives his right to counsel
5. **Miranda**
   1. **Miranda v. Arizona**, p. 681 - the prosecutions may not use statements, exculpatory or inculpatory, stemming from custodial interrogation of the D unless it demonstrates the use of procedural safeguards effective to secure the privileges against self-incrimination.
      1. the prosecutions may not use statements, exculpatory or inculpatory, stemming from custodial interrogation of the D unless it demonstrates the use of procedural safeguards effective to secure the privileges against self-incrimination. D may waive effectuation of these rights if the waiver is voluntary, knowingly, and intelligently—burden on state; but if he says he wants a lawyer questioning must cease. Bram v. US and McNabb and Mallory—using supervisory power to make sure any fed D is brought b/f a commissioner and all evidence obtained b/f that excluded. This does not create a con straightjacket which will handicap sound efforts at reform; but if we’re not shown other procedures which are at least as effective, these safeguards must be observed.
      2. **Miranda**: police arrested D, took him to special interrogation room got a confession; after confession, he signed statement saying he knew legal rights; never asked for a lawyer; but from the testimony of the officers and admission of responded clear Miranda did not know he could have an atty nor did he know of his rights not to incriminate himself; signing statement w/typed clause at time isn’t an knowing and intell waiver
      3. **Vignera**: D made oral admissions to the police after interrogation in aft then signed inculp statement after dist atty questioning that evening; no warnings at the time of atty questioning; nor was there any evidence police told him of his rights
      4. **Westover**: D handed over to FBI after they detained and interrogated him for lengthy period that night and following morning; after 2 hours of questioning, FBI got a statement; FBI did tell him of his rights; but they reverse anyway—no showing of an articulated waiver of westover’s rights and we won’t assume such a waiver. and further the FBI started questioning after a full 14 hours of being in custody and he had been interrogated already and the police hadn’t warned him.
      5. **Stewart**: local police went to D’s house, consent search, found drugs, arrested him. held D 5 days in police station and interrogated him on 9 occasions b/f they got an inculpatory statement; nothing shows whether or not stewart was advised of his rights, no police officer remembers doing so; conviction reversed will not assume when presented with silent record that d was told of his rights. Nor can a waiver of those rights be presumed
      6. Harlan/Stewart/White dissent: the aim of the court today is toward ‘voluntariness’ in a utopian sense; DP better to deal with this and the precedents under 5 A do not sustain these rules….no states have been doing this on their own, no one has started this we’re just making it up…the states were trying to reform the crim just system, this is going to stymie that
      7. White/Harlan/Stewart dissent: there’s no support for this in history or language of the 5 A; somehow interrogation is coercive but the spontaneous product of arrest and detention is voluntary; if this is about worrying that some confessions are coerced we could have observers, time limits, etc. this was about the court not liking confessions. But we see nothing wrong with the police getting evidence from the suspects.
      8. What did Miranda do to Escobedo?
         1. Escobedo—narrow holding, you get a right to an atty the minute you ask for one
         2. Focus of investigation for Miranda: if you are taken into custody OR if you are under the control of the police; this sort of morphs into Escobedo
         3. What does the court say about the 6 A in Miranda:
            1. FN 35: preventing the atty from discussing with the client in the stationhouse—NY state case.
         4. What about a traffic stop: do you have freedom of action that is curtailed? Well, then
         5. It’s not only that you are in custody when you have an inherently compelling environment, but the police officer has to interrogate you. Custody + interrogation.
         6. The rules
            1. So now the 5 A isn’t just trial!!! It **applies pretrial** to the stationhouse.
            2. It applies outside of trial, when you are in custody and being interrogated it’s inherently compelling
            3. It’s a presumption, rebuttable by the state doing **something to dispel the coercion**—read her her rights! Mirandize her.
            4. What they do to dispel the compulsion may be up for grabs…
         7. Prophylactic—broader than the right itself
            1. The right not to be compelled to be a witness against itself
            2. The warnings themselves are prophylactic…
      9. Key Points from this case:
         1. The privilege against self-incrimination applies only to interrogation initiated by the police
         2. Waiver of the privilege may not be presumed from silence after a defendant has been warned of his rights
         3. The defendant must expressly articulate a waiver
         4. Police may not trick the defendant into a waiver
         5. The defendant can withdraw a waiver once given
         6. The defendant’s privilege is a continuous one; once it has been relinquished it can be reasserted at any time
         7. At any point that a defendant asks for counsel, the questioning must stop until a defendant’s lawyer arrives
         8. It is unconstitutional to persuade a defendant not to withdraw his waiver
         9. If the interrogation continues without the presence of counsel, a heavy burden rests on the state to show that the defendant knowingly and intelligently waived his right to counsel and to remain silent
         10. There can be no admissions by silence when the defendant is in custody
   2. Comment’s on *Miranda*
      1. Miranda doesn’t displace the voluntariness test, it only adds an additional test
         1. So can still satisfy *Miranda*, but have a confession be involuntary under Miranda and vice versa
         2. Miranda only covers the typical defendant, not the atypical (e.g., mentally retarded)
         3. Miranda (5A) did not build on Escobedo (6A) – went in a different direction but still sought to defend the embattled *Escobedo*
         4. NOTE – fn 37 says that prosecution cannot use Δ’s silence after being warned as evidence of guilt at trial
         5. The Court talks about the importance of having counsel present during interrogation, But YK points out that this is totally unrealistic – if lawyer shows up there won’t be any interrogation at all
         6. Suspect has the right to cut off questioning, but he doesn’t get informed of this right
         7. Court comes close to requiring a recording, but instead says that state has heavy burden to show waiver
         8. Court hasn’t been clear on what the cops are permitted to do if the guy does agree to be questioned
         9. Opinion in *Miranda* avoids using the word “arrest” because it is a complicated term – instead refers to “in custody”
            1. Court is avoiding the stop and frisk issue at this point
            2. QUESTION – WAS TERRY AFTER MIRANDA?
         10. NOTE – *Miranda*  was held to apply to those cases in which *the trial* began after the date of the decision (maybe should have only applied to police interrogations conducted after the date in questions)
      2. **HYPO**: A arrested by PO’s, in custody, not given MIRANDA, then questioned/interrogated, confession; she immediately confesses. Can the confession be suppressed?
         1. YES! No Miranda was given so wouldn’t come in UNLESS she voluntarily waived it, but there’s no evidence of that. It doesn’t matter if she knew her rights, she was NOT given them here. It’s a blanket rule. So suspects must be given the rights not matter what.
         2. Dissent: We won’t get many confessions, this is a barrier to finding truth since may have committed crime, and no DP violation. Wanted a return to the voluntary DP analysis
   3. The Nature of the Warnings
      1. **Duckworth v. Eagan**, **Adequacy Warning -** p. 710, 1989 p. 602 Miranda warnings do not need to be the ones we all know and love—just need to touch all the bases of Miranda and reasonably convey the rights
         1. Police do not have to get the exact words of Miranda correct as long as the purpose of Miranda is met. Substantial compliance is good enough.
            1. The purpose is to protect against subtle violations of the defendants right to be free from incriminating himself, to keep police from doing the psychological intimidations.
            2. Here, they gave def the Miranda warnings but also, at the same time, told him that they couldn’t get him an attorney until Monday (implying that he’ll have to be in custody until then). Court says this is OK
            3. Dissent: says if he’s told he’s not going to get a lawyer this negates the point of Miranda in telling them that they have a right to talk to a lawyer. Feel that this is coercive because it’s telling the def that he’ll be in custody until he gets a lawyer in a few lawyers
         2. Court upheld use of a warning that advised that “we have no way of giving you a lawyer, but one will be appointed for you, if you wish, if and when you go to court”
         3. Rhenquist says that these warnings “touched all the bases” required by *Miranda*
         4. Again focused on Miranda being prophylactic, not constitutional
         5. Can’t expect all officers in the field to have access to a printed Miranda card
         6. Says this is just anticipating the question if Δ does ask for a lawyer
         7. this touches on all the bases of Miranda and reasonably convey the rights required by Miranda; California v. Prysock 1981—don’t need a precise formulation of Miranda warnings
         8. Marshall/Brennan/Blackmun/Stevens dissent: Under Miranda, a police warning must ‘clearly inform’ a suspect taken into custody if he can’t afford an atty one will appointed before questioning.
      2. Colorado v. Spring, p. 717
         1. An example of the fact that the court puts more and more of a burden on the def to execute whatever 5th rights they possess. Def can at any time say he wants to talk to a lawyer and the questions have to stop. So if they start asking questions about something else after giving a general Miranda, then its he def’s burden to exercise his rights
         2. If police give a general Miranda warning, they can ask the def about anything. Def doesn’t need to understand every possible consequence of the waiver, once they waive it they accept the consequences
         3. S was arrested when trying to sell firearms to an undercover agent. S was given warnings and signed a waiver form. He was asked about firearms, then asked if he shot someone. He said yes he had once, then eventually confessed to whole murder. S argued that he hadn’t knowingly and intelligently waived because he thought they would only ask about firearms and not murder
         4. **Conclusion:** No! S understood the right to remain silent. M doesn’t require that a suspect understand EVERY possible consequence of a waiver; not knowing subjects of interrogation is not encompassed w/in the right; but instead not talking to law enforcement, only talking w/atty present, and discontinuing talking are the rights a D should be aware of.
         5. If police specifically say “We’re going to talk to you about a robbery two nights ago”, then start asking about something else- may be an issue here, we’re not really sure
         6. Suspects awareness of all the possible subjects of questioning in advance of interrogation is not relevant to determining whether there was a valid waiver of 5A privilege
         7. Failure to inform a suspect of the potential suspects of interrogation does not constitute the police trickery and deception condemned in *Miranda*
      3. **Custody vs. Focus**
         1. In *Miranda*, Court dropped a footnote that may have implied that custody and focus were alternative grounds for requiring the warnings, but probably the reason for fn 4 was Court’s attempt to retain some continuity with precedent
            1. Despite that footnote, *Miranda* marked a fresh start in describing the circumstances under which constitutional protections first come into play
         2. Focus test was expressly rejected in *Beckwith v. United States* (1976)
         3. In addition, the Court in *Stansbury v. CA* (1977 per curiam) Court stated that an officers unarticulated suspicions do not affect the objective circumstances of an interrogation or an interview – so they cannot affect the *Miranda* custody inquiry
      4. **Hypo:** A is given M warnings and he agrees to talk about robbery but not murder. PO’s question about both crimes and she confesses to both. Is this a valid waiver for the robbery? The murder?
         1. Yes. However, if A was under the impression that an oral statement couldn’t be used against him at trial, then they would be excluded, because he doesn’t understand the nature of the right he would be giving up, making it an invalid waiver
      5. A is given M warnings and he agrees to talk about robbery but not murder. PO’s question about both crimes and she confesses to both. Is this a valid waiver for the robbery? The murder?
         1. For the robbery yes, but not for the murder. She put a condition on the waiver, so everything about murder stays out.
   4. Invoking Miranda – Silence
      1. **Michigan v. Mosley** p. 725 - okay to ask again (and about other crimes) after right to silence has been invoked as long as first invocation was scrupulously honored
         1. Exercising of Miranda rights to remain silent is case specific. If you exercise right about a burglary, police can initiate contact to speak with you about a different burglary or a murder, even if you’re still in custody for the original crime.
         2. If you waive your rights, you waive them for all purposes/potential crimes- seen in previous case
         3. The admissibility of statements obtained after the person has decided to remain silent depends on whether his right to cut off questioning was scrupulously honored. This time, they immediately ceased the interrogation, resumed questioning only after the passage of time, and the provided a fresh set of Miranda warnings, and restricted the 2nd interrogation to a different crime
         4. At the very least, police must promptly stop, resume only after significant period, and give the suspect a fresh set of warnings. Whether *Mosley* requires more is in dispute
   5. **Invoking Miranda – Counsel**
      1. Edwards v. Arizona p. 733
         1. E charged w/robber, burglary and murder. E was arrested at home, given M and after asking for a “deal” said he wanted an atty before making one. Questioning ceased and he was taken to jail. In the morning, 2 detectives came to see E and he said he didn’t want to talk to anyone. He was told he “had to talk” w/detectives and again given M, listened to tape of co-con who implicated him, then said he would make an oral statement.
         2. **Conclusion:** INVALID WAIVER! He invoked, and then was corralled into being interrogated more by being told he had to speak to them.
         3. What if atty leaves after the atty has met w/client? What if person waives now? Does fact that they’ve met w/atty get around Edwards?
            1. NO! Once atty leaves, we’re back at Edwards again, she MUST initiate or ATTY must be present.
         4. When you invoke your right to counsel, it lasts until counsel is present. *Edwards*
            1. If you say you want counsel, cops can’t talk to you about any crimes for any length of time until you get counsel. Unless and until you waive counsel (initiation).
         5. An accused who expresses his desire to deal with the police only through counsel cannot be subject to further interrogation by the authorities until counsel has been made available to him, unless the accused *initiates* further communication, exchanges, or conversations with the police
         6. The 5th right is the right to have counsel present at any custodial interrogation
      2. Oregon v. Bradshaw p. 737 - What Constitutes Initiating Further Communication with the Police?
         1. When you ask for lawyer, they must cease questioning and can’t resume said questioning (unless the suspect initiated) until the lawyer was present
         2. After expressing desire to talk to a lawyer, police terminated the conversation, but suspect then asked “what is going to happen to me now>”
         3. Court finds no violation of the Edwards rule when police then suggested that the suspect take a lie detector test – suspect had reinitated a conversation after first requesting counsel
            1. Respondent’s question about what was going to happen evinced a willingness and a desire for a generalized discussion about the investigation
         4. Accepts lower courts finding of valid waiver of rights
         5. But – conversation about the incidents of a custodial relationship would not be reinitation – such as request to use the telephone or for a drink
      3. **Arizona v. Roberson** p. 744 – Cannot ask about OTHER crimes after 5th Amendment counsel invocation
         1. After invoking right to counsel the police can’t even initiate interrogation about *other* crimes. Presumption raised by request for counsel does not dispel b/c police have approached the suspect still in custody and still without counsel about a separate investigation
         2. Once a suspect effectively asserts his *Miranda-Edwards* right to counsel, the police cannot even initiate interrogation about crimes other than the one for which the suspect has invoked his right to counsel
         3. **Note:** Edwards-Roberson-Minnick rules are very strong, but Bradshaw and Davis have created significant weaknesses
      4. Minnick v. Mississippi p. 749
         1. Holds that *Edwards* protection does not cease once the suspect has consulted with an attorney
            1. Means that police cannot reinitiate interrogation without counsel present, whether or not the accused has consulted with his attorney
         2. This is further than Warren would have gone and indeed does go too far – once suspect has seen his rights honored, inherent coercion is eliminated
         3. Where def requests to speak with counsel, leaves and speaks with counsel, then police contact him again after he’s spoken with counsel, this violates *Edwards*.
            1. The right to counsel is actually a right to the presence of counsel.
         4. Police were saying that once we’ve complied by letting you talk to a lawyer, Edwards shouldn’t apply here because he talked to a lawyer.
            1. Crt rejects this argument and says that you have a right to the presence of counsel. Say that the rule in Edwards is a bright line test: the police can’t contact you or try to talk to you after def has initiated his rights
      5. Maryland v. Shatzer (supp.)
         1. The Court held that a fourteen-day break in custodial interrogation ends the *Edwards* presumption that a *Miranda* waiver at a subsequent interrogation is the result of coercion. In reversing the decision of the Maryland Court of Appeals, the Court concluded that Shatzer’s return to his normal pre-interrogation life in the general prison population for a period of two-and-one-half years before re-interrogation constituted a sufficient break in custody to end the *Edwards* presumption and enable him to voluntarily waive his *Miranda* rights. Therefore, *Edwards* did not require that Shatzer’s re-interrogation statements be suppressed, and the Court remanded the case for further proceedings.
         2. The Court reasoned that a suspect who has been released for at least two weeks following the custodial interrogation in which he initially asserted a right to counsel will have had sufficient time to re-acclimate to his normal life, consult with counsel, family, and/or friends, and rebound from any lingering coercive effects of the prior custody. In adopting a bright-line fourteen-day rule, the Court noted the need for a clear and certain rule for law enforcement officers. In his concurring opinion, Justice Thomas disagreed with the Court’s creation of a fourteen-day rule, which he characterizes as arbitrary.
         3. The Court reasoned that the release of a suspect who has been previously incarcerated back into the general prison population is a release to the suspect’s “accustomed surroundings and daily routine,” in which the suspect regains the same control over his life as he possessed prior to the interrogation
      6. Davis v. United States p. 758 - How Direct, Assertive, and Unambiguous Must a Suspect Be in Order to Invoke the Right to Counsel?
         1. the suspect must ambiguously request counsel to invoke Edwards (please note: if the suspect had not yet waived and he used ambiguously statements THEN the state has the burden to establish waiver)
         2. **To invoke Edwards rule the suspect must unambiguously request counsel.** When a D makes an ambiguous or equivocal reference to an atty, the officers do not know whether the suspect wants a lawyer, a rule requiring immediate cessation of questioning would transform the safeguards of Miranda into wholly irrational obstacles
            1. BUT had someone not WAIVED YET and then they say something equivocal, the STATE still has the burden to establish a waiver
         3. Court rejects the view that courts should not place a premium on suspects making direct, assertive, unqualified invocations of the right to counsel and also rejects that all arguable references to counsel should be treated as valid invocations of the right
         4. Holds that after a knowing and voluntary waiver of Miranda rights, police may continue questioning until and unless the suspect requests an attorney
         5. O’Connor says she is unwilling to create a third layer of prophylaxis (on top of Miranda and Edwards) to prevent questioning when a suspect *might* want a lawyer
   6. **Waiver of Miranda**
      1. ***General Rule-*** The right to counsel and silence can be waived, but only if under all the circumstances, the rights are waived, “voluntarily, knowingly, and intelligently.” Examining the totality of the circumstances, there must be sufficient evidence to show that the suspect understood his rights and voluntarily waived them. **Burden is on gov’t to prove waiver by preponderance.**
      2. Waiver will not be presumed from silence, BUT can show waiver from words or actions of the suspect; as it need not be in writing or express
      3. North Carolina v. Butler p. 766 - Implied Waiver
         1. Recognizes that Miranda says that mere silence after being given warnings is not enough to indicate a waiver
         2. But that doesn’t mean that the Δ’s silence coupled with an understanding of his rights and a course of conduct indicating waiver may never support a conclusion that a Δ has waived his rights
         3. “the prosecution’s burden is great, but at least in some cases, waiver can be clearly inferred from the actions and words of the person interrogated”
         4. In this case, Court found waiver based on fact that guy said he understood his rights, but refused to sign waiver at bottom of form – he then said he would talk to them but not sign any form
         5. Under *Miranda*, mere silence is not enough to find waiver. However, coupled with an understanding of his rights and a course of conduct indicating waiver, may support a conclusion that a D has waived his rights
         6. No explicit statement of waiver of Miranda rights is necessary
            1. If it appears from the totality of the circumstances hat the defendant is willing to talk to the police, the ambiguity can easily be resolved in favor of the gov’t
         7. To *exercise* Miranda rights, suspect must be very clear (don’t look at totality of circumstances)
         8. To w*aive* Miranda rights, such a clear statement is not needed
            1. here def says that he will talk but not sign anything (not clear whether he understands his rights- may think that an oral confession won’t be held against him)
      4. Tague v. Louisiana p. 769
         1. Waiver was not proven when a PO said that he had read the suspect his rights from a card. PO couldn’t remember rights, whether he asked suspect if he understood these, or if he made any effort to see if suspect understood his rights
            1. **KNOWING/ INTELLIGENTLY- –** This means it was made w/full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it

Suspect must understand the language AND

Have mental capacity- though the standard is not hard to meet

* + - * 1. **VOLUNTARY-** it must have been the product of a free and deliberate choice rather than intimidation, coercion or deception. THUS to show waiver was NOT voluntary, must show police coercion. (e.g. threatening not to let kids go home; Defendant in a lot of pain in hospital).
    1. Connecticut v. Barrett p. 770
       1. D given rights three times and signed acknowledgement - each time refused to sign written statement of confession without lawyer present but agreed to talk orally
       2. intentions were clear and were followed - just b/c illogical doesn't mean waiver wasn't valid - D's full knowledge of consequences not required
       3. Ct has read the waiver req’t rather loosely. It doesn’t have to be in writing
       4. D’s are given a choice to speak or be silent. If a D opts to speak, even though specifically refusing to write, he has chosen to speak, and those things said can be used against the D
    2. Berghuis v. Thompkins (supp).
       1. A Michigan state court convicted Van Chester Thompkins of first-degree murder, assault with intent to commit murder, and several firearms related charges. After exhausting his remedies in Michigan state court, Thompkins petitioned for habeas corpus relief in a Michigan federal district court. The district court denied the petition
       2. Thompkins argued that his confession was obtained in violation of the Fifth Amendment and that he was denied effective counsel at trial. The Sixth Circuit held that the Michigan Supreme Court's finding that Thompkins waived his Fifth Amendment right was unreasonable because Thompkins refused to sign an acknowledgement that he had been informed of his *Miranda* rights and rarely made eye contact with the officer throughout the three hour interview. The Sixth Circuit also held that the Michigan Supreme Court improperly determined that Thompkins was not prejudiced by his counsel's failure to request a limiting instruction related to his separately tried co-defendant's testimony.
       3. Did the Sixth Circuit improperly expand the *Miranda* rule when it held that defendant's Fifth Amendment rights were violated?
       4. Did the Sixth Circuit fail to give the state court deference when it granted habeas corpus relief with respect to defendant's ineffective counsel argument when there was substantial evidence of the defendant's guilt?
          1. Yes. Court reasoned that Mr. Thompkins failed to invoke his *Miranda* rights to remain silent and to counsel because he failed to do so "unambiguously." Moreover, the Court reasoned that Mr. Thompkins waived his *Miranda* right to remain silent when he "knowingly and voluntarily" made a statement to the police. The Court further held that, even if Mr. Thompkins' counsel was ineffective, he cannot show he was prejudiced by counsel's deficient performance – a prerequisite to establishing that his Sixth Amendment right was violated
          2. Dissented. She reprimanded the majority for retreating from the broad protections afforded by *Miranda*, stating that now a criminal suspect waives his rights simply by uttering a "few one-word responses."

|  |  |  |
| --- | --- | --- |
| **Custody** | **Interrogation** | **Exceptions** |
| * Location/relocation * How came to be questioned * # of officers/handcuffs (circumstances) * What police tell D about his status * How long interrogation lasts * Time of day/night * Whether you can leave * Age & other characteristics of D? | * Express Questioning * Functional Equivalent * What did police know about the suspect? * Reasonably likely to elicit incriminating response   + If the police know D has vulnerability and exploits that to get an incriminating response, that’s interrogation. | * Undercover Agent in Prison Cell (IL v. Perkins) * Public Safety (NY v. Quarles)   + Rescue Doctrine * Demeanor—non-testimonial |

* 1. **Custody and Miranda**
     1. **General Rule for Custody and Miranda**
        1. Once there is:
           1. Custody
           2. Interrogation
        2. Must give Δ warning
           1. Right to remain silent,

Anything said can and will be used against him

* + - * 1. Right to counsel
        2. Counsel will be appointed if can’t afford
      1. Can only use confession if there has been a voluntary, intelligent, and knowing waiver (VIK)
    1. **ONLY APPLIES DURING CUSTODIAL INTERROGATION-** You have the right to remain silent….(PO has to respect) anything can be used against you (telling you the consequences)you have the right to the presence of an atty (during interrogation later)if you can’t afford one, one will be provided for you 🡪 they’re telling of your right and anything can be used against you. If the warnings aren’t given, you can’t use any self-incriminating statements in response (**including inculpatory and exculpatory as well**) introduced by the prosecutor 🡪 why does it cover both? Someone else can read it a different way, and prosecutor is trying to prove guilt, no it may appear exculpatory, and pros is introducing, so they’re probably using it in an inculpatory fashion.
       1. **Arrested/Or functional equivalent-** is in custody- a functional equivalent would be a similar restraint on freedom of movement
          1. S Custody need NOT be for the crime being interrogated about (e.g. in custody for murder, still in custody for interrogation about a burglary)
    2. **6 Factors for possible custody**:
       1. Whether suspect was informed at time of questioning that questioning was voluntary and that suspect was not considered under arrest
       2. Whether suspect possessed unrestrained freedom to leave
       3. whether the suspect initiated contact w/authorities or voluntarily acquiesced to official request to respond to questions
       4. whether strong arm tactics or deceptive stratagems were employed during questioning
       5. whether atmosphere was PO dominated
       6. whether suspect was placed under arrest at termination of the questioning
    3. **Oregon v. Mathiason** p. 775 - ***Custody means that Δ is not free to leave***
       1. An individual questioned at a PO station is not per se in custody. M was to be questioned; they asked him if he’d rather go to station or somewhere else. He voluntarily went to the station and was told he wasn’t under arrest. Was told that his fingerprints were at the scene, and was then allowed to leave.
          1. **Conclusion**: Not in custody.
       2. Δ agreed to meet with police on own accord, voluntarily went to stationhouse. Office told him he wasn’t under arrest, and he confessed a few moments later. Ct held that he was not subject to “custodial interrogation.” This case is also noted because the interrogator falsely stated to Δ thatΔ’s fingerprints were at the scene. This is, said the Court, had nothing to do with the “custody” question
       3. **What is INTERROGATION**
          1. ***Definition-*** Interrogation is either express questioning OR words or actions that PO’s should know are reasonably likely to elicit an incriminating response from the suspect. The focus is on the perceptions of suspect NOT intent of the police.
    4. ***Miranda applies to all crimes – There is no Misdemeanor exception***
    5. **Berkemer v. Mccarty** p. 779 - **Traffic stop is not custodial, since person stopped will be able to leave soon and w/in public view**
       1. Police saw Δ weaving and stopped him. Δ got out and was shaky and therefore decided to arrest him. Questions him w/o Miranda and Δ admitted to using drugs
       2. Miranda applies to all crimes, b/c don’t know whether the person is going to be charged w/ misdemeanor or felony until later. As for whether the statement was admissible, in this case it is admissible, b/c there is no custodial interrogation. Though there is interrogation, b/c (1) people that are stopped think that they will be allowed to go soon and (2) it is w/in the public view, it is not custodial
       3. roadside questioning of a motorist detained pursuant to a routine traffic stop does not amount to custodial interrogation
       4. Detention of a motorist is usually temporary and brief
       5. Circumstances associated with typical traffic stop are not such that the motorist feels completely at the mercy of the police
       6. Typical traffic stop is public to some degree
       7. Typical traffic stop is more like a *Terry* stop than an arrest
    6. **Illinois v. Perkins** p. 788
       1. **Miranda warnings not required when suspect unaware he is speaking to law enforcement officer and gives voluntary statement. the essential ingredients of a police-dominated atmosphere and compulsion are not present here when an incarcerated person speaks freely to someone that he believes is a fellow inmate;** when the suspect has no reason to think the listeners have official power over him, it should not be assumed that his words are motivated by the reaction he expects from his listeners
       2. Facts: Δ was suspected of murder but jailed on other charges. Cops put two agents—a former cellmate and an undercover officer—in his cellblock in order to engage Δ in casual conversation and report any incriminating statements
       3. **Q**: **Does “custodial interrogation” occur when a secret gov’t agent, posing as a fellow prisoner,** is placed in the same cell or cellblock with an incarcerated suspect and induces him to discuss the crime? Ct: **No**.
       4. Ct (Kennedy): Miranda warnings aren’t required when suspect is unaware that he is speaking to a law enforcement officer and gives a voluntary statement. Coercion is determined from the perspective of the suspect. No coercive atmosphere
       5. Marshall, dissenting: Miranda was concerned not only with police coercion, but also with any police tactics that may operate to compel a suspect in custody to make incriminating statements w/o full awareness of constitutional rights
    7. Maryland v. Shatzer (supp.)
  1. **Miranda & Interrogation**
     1. ***Any words/actions by police that they know, or should know, is likely to elicit an incriminating response***
        1. Latter portion focuses primarily on POV of suspect Instead of intent of the police
        2. **Rhode Island v. Innis** p. 795
           1. A cab driver told police that he had been robbed. When the police obtained the suspect, read him his rights and he asked for counsel. On the way to being transported to the station, the officers engaged in a conversation b/t themselves and said that they hoped that a handicapped kid would not pick up the gun and kill themselves. Δ, listening, felt guilty and said that he would show them where the gun was. There is no question that Δ was in custody and invoked his right to counsel

There was no interrogation b/c the police were not directing their comments to the suspect. They were talking to each other. Also, the cops didn’t necessarily know whether Δ would respond to their statemens (unlike *Brewer v. Williams*)

Majority – refused to adopt “Question mark rule.” Police’s conversation about retarded children was functional equivalent to interrogation

Court was concerned about the possibility that police would try to devise methods of indirect interrogation

Miranda also applies when you get functional equivalent interrogation: words or actions by the police, that they know are likely to elicit incriminating statements from suspects

Functional equivalent to interrogation: “any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect.”

Police’s knowledge about the defendant or special susceptibility of the defendant counts

Holding: “‘[I]nterrogation’ under Miranda refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect.” Focuses on perceptions of suspect, not intent of police. “A practice that the police should know is reasonably likely to evoke an incriminating response from a suspect thus amounts to interrogation.”

* 1. **Miranda & The Public Safety Exception** - **can ask questions outside of Miranda for public safety (where is the gun)**
     1. **New York v. Quarles** p. 804
        1. Officers spot Quarles, who matches description of rapist. He runs, the police stop him, handcuff him, the situation is under control, there are 4 officers standing around him. Ask him where the gun is, he tells them, they get the loaded gun and then arrest and Mirandize him. **This is okay b/c there are overriding considerations of public safety that justify the officer’s failure to provide Miranda warnings before he asked the question.** No claim that his statements were actually compelled by police conduct which overcame his will to resist (involuntary)
        2. O’Connor would have suppressed “the gun is over there”: but not the gun itself b/c it was nontestimonial evidence derived from informal custodial interrogation.
        3. *Public safety exception*: “We conclude that under the circumstances involved in this case, overriding considerations of public safety justify the officer’s failure to provide Miranda warnings before he asked questions devoted to locating the abandoned weapon.”
           1. Exception doesn’t depend on officers’ motivations. “Kaleidoscopic situation” where “spontaneity” controls.
           2. Here, the gun might have been grabbed and used by an accomplice or found by customer.
           3. Exception circumscribed by exigency that justifies it; police can “instinctively” distinguish between interrogation and questions necessary for public safety.
        4. K: There was no public safety threat here. Dissent: If there’s really a threat, then just do what you need to do. Evidence may be excluded and you may lose conviction, but at least you’ll abate the threat.
        5. O’Connor’s concurrence/dissent is more important, because it’s about fruit. She would have excluded the statement about the gun but not the gun itself, because “nothing in Miranda or the privilege itself requires exclusion of nontestimonial evidence derived from informal custodial interrogation.”
           1. Quarles hasn’t opened the door to other large exceptions as widely as some initially feared. He notes that since Quarles, SC has not approved any other instances of custodial interrogations in which warnings need not be given

1. **The Right to Counsel & Confessions**
   1. Massiah Revisited p. 817
      1. Brewer v. Williams p. 817
         1. **police cannot deliberately elicit information after the 6 A right to counsel is attached (DIFFERENT FROM INTERROGATION UNDER 5 A); deliberate elicitation—reasonably have known it’s likely to produce an incriminating response**
         2. Williams kills girl and disposes of body. Police agree with his lawyer not to question him. Then police give him a ‘christian burial speech’ on the way from Davenport to Des Moines. He directed them to the body, trial court found he had waived his rights. You have the right to the help of a lawyer at and after the time proceedings have been initiated, the proceedings here were iniatied, it’s obvious the police speech was designed to get information out of Williams. **The police cannot deliberately elicit the information 6 A**
         3. Different from interrogation under 5 A
            1. **Deliberate elicitation—yes when you are in jail with an informant and they have CONVERSATIONS not if they sit there passively**

Reasonably have known it’s likely to produce an incriminating response

* + - 1. Burger dissent: what are we doing? This guy is guilty! HUGE COSTS TO SOCIETY!
      2. White/Blackmun/Rehnquist dissent: he knew he wasn’t supposed to talk, so the question is whether he relinquished his rights intentionally. He did!
      3. Blackmun/White/Rehnquist: the police didn’t deliberately seek to isolate him for his lawyers so as to deprive him of assistance of counsel (but the Davenport lawyer ASKED to come on the ride!!!!)
    1. Maine v. Multon p. 828
       1. ***Massiah violation statements are excluded—but only for trials on pending charges: incriminating statements pertaining to pending charges are inadmissible at trial of those charges***
       2. **To allow evidence admitted that is obtained from the accused in violation of 6 A rights wherever the police assert an alternative, legitimate reason for their surveillance (witness intimidation) invites abuse by law enforcement personnel in the form of fabricated investigations and risks the evisceration of 6 A rights reorganized under Massiah…**But to exclude statements pertaining to charges that had not been filed, so the 6 A hadn’t attached would unnecessarily frustrate the public interest in the investigation of crimes; **so incriminating statements pertaining to pending charges are inadmissible at the trial of those charges**
       3. Burger/White/Rehnquist/O’Connor dissent: the deterrent purpose of the exclusionary rule assumes the police have engaged in willful or negligent conduct to deprive D of some right. This wasn’t happening here
          1. Same offense can’t use it. If she was charged with kidnapping, and questioned under Murder 1, to get the kid, you can’t use it under Maine v. Moulton BUT CAN USE IT under Texas v. Cobb
          2. Supreme court doesn’t SAY that specifically
    2. Kuhlmann v. Wilson p. 836
       1. ***where the informant is passive listener, and the statement only happens after the d’s brother visits and D is upset, then it’s by luck or happenstance that the govt is obtaining the incriminating statement. (only one comment by informant is not deliberate elicitation)***
       2. In jail for killing dispatcher, waiting trial. There’s an informant in there with him, told not to ask questions, but to keep ears open. D tells him story fo the crime, informant says, doesn’t look to good for him. Several days go by. After D’s brother visits, d tells him real story of he crime. Statements in. **The 6 A isn’t violated whenever by luck or happenstance the govt obtains incriminating statements from the accused after 6 A has attached.** **only one comment and that’s not ‘deliberately eliciting’ the respondent’s statements**
       3. Brennan/Marshall dissent: state trial court simply found that he didn’t ask respondent any direct questions. But he stimulated conversations with D!!
  1. **Contrasting Massiah and Miranda** **(4/12)**
     1. Michigan v. Jackson p. 841
        1. Stevens: Edwards applies by analogy. The reasons for prohibiting the interrogation for an uncounseled prisoner who has asked for help of lawyer even stronger after formally charged. b/c police initiated questioning, the waivers were invalid.
        2. Rehnquist/Powell/O’Connor dissent: the prophylactic rule makes no sense at all except when linked to 5 A’s prohibition on compelled self-incrim
        3. ***in 6 A context: Edwards applies by analogy (but note below, 6 A is offense specific)***
     2. Mcneil v. Wisconsin p. 846
        1. ***6 A is offense specific, after invoking right to counsel under 6 A, they can come back and talk to you about other crimes (offense=blockburger)***
        2. 6 A right to counsel provides less protection than Miranda-Edwards-Roberson rule. The 6 A is ‘offense specific’ thus even a D invokes his right, the police can initiate questioning about OTHER crimes. To invoke the 6 A interest, it’s a matter of fact…one might be willing to speak without counsel present concerning certain matters but not matters that are under prosecution.
        3. Stevens/Marshall/Blackmun dissent: this means important of right to counsel. But if petitioner in this case had made a statement indicating he wanted 5 A right to counsel as well as 6 A right to counsel then this house of cards would fal down
        4. Scalia replies—we’ve never held that a person can invoke Miranda anticipatorily; if Miranda right to counsel can be invoked at a prelim hearing why couldn’t it not be invoked by a letter prior to arrest? No most rights must be asserted when the govt tries to countervail them.
     3. Texas v. Cobb p. 853
        1. **offense’** **for** **purposes of 6 A right to counsel is the same interpretation of the word in Blockburger**
        2. Burglar/murder. Charged with burglary, they ask questions about the murder, he waives Miranda and tells them all. This is fine! There’s no exception for crimes that are ‘factually related’ to a charged offense; hold that there is no con difference b/t offense charged and offense for the purposes of double jeopardy. **When the 6 A right to counsel, it does encompass offense that, even if not formally charged, would be considered same offense under Blockburger**
        3. Kennedy/Scalia/Thomas concur: it’s difficult to understand the utility of a 6 A rule that operates to invalidate a confession given by free choice of suspects who have received their Miranda rights but waived them.
        4. Breyer/Stevens/Souter/Ginsburg dissent: the definition of ‘in all criminal prosecutions’ I not self-evident. For 6 A purposes why do we need to use the same idea as for double jeopardy? It undermines the 6 A definitions to have such a technical definition
     4. Patterson v. Illinois p. 863
        1. ***Miranda waivers effective for 6 A right to counsel (though Moran v. Burbine wouldn’t be cool under 6 A so if lawyer is trying to get to an indicted D, then we have to let the lawyer get to him)***
        2. The 6 A right to counsel isn’t a greater right—if he has been given the Miranda warnings, he knows of the nature of his 6 A rights. His waiver will be considered knowing and intelligent of 6 A as well as 5 A if he talks. **Key inquiry must be if the accused knew he could have counsel present.** There will be cases that would be a valid Miranda waiver but not valid 6 A waiver (i.e. Moran v. Burbine—counsel trying to reach him at station and he’s not told). There’s a difference b/t 5 A and 6 A right to counsel, but no right is ‘superior’ to the other. **Miranda is an effective waiver for 6 A as well as 5 A**
        3. Stevens/Brennan/Marshall: thinks the r/thip b/t the state and accused shifts after indictment, therefore it’s insufficient for a Miranda waiver to waive 6 A rights too
  2. Difference b/t 6 A and 5 A Right to Counsel: post indictment, can they keep the lawyer out of the interrogation room?
     1. FN: Moran isn’t cool in the 6 A context.
     2. FN in Miranda: Moran wouldn’t have been cool.
     3. Does this comport with the theory of the 6 A:
        1. Why don’t we have to advise him of more than Miranda—6 A rights should require more
        2. Is it a more important right? Are they the same?
           1. But no 6 A rights when no jail
           2. STILL have 5 A right
        3. The machinery of the state has started against him
  3. T**he Sixth Amendment and the Roberts Court: The Times they are a Changing** **(4/13)**
     1. **Moran v. Burbine** (1986, O’Connor) – sister hires lawyer on behalf of brother. At attorney’s request, police agree not to questions until the morning, but they lie and continue to question him.
        1. There was no Massiah violation, b/c proceedings had not started and therefore may question w/o presence of attorney and there was no duty on the part of the police to tell Δ that his lawyer was outside.
     2. Fellers v. United States p. 827
        1. Fellers v. US 2004; *Massiah can be implicated if suspect is already indicted and is speaking freely with someone who he believes to be an inmate—deliberate elicitation can happen without being aware of it*
           1. **A person cannot be ‘interrogated’ within the meaning of Miranda unless he is aware of it, but he can be subject to police efforts to deliberately elicit statements from him w/o being aware of it**
     3. Kansas v. Ventris p. 873
        1. Donnie Ventris and his girlfriend entered the apartment of Ernest Hicks who was subsequently robbed and killed. Mr. Ventris was convicted of aggravated robbery and aggravated battery by the District Court of Montgomery County in Kansas. To rebut the testimony of Mr. Ventris at trial, the State relied on the testimony of his former cell mate, Johnnie Doser.
        2. Are statements obtained in the absence of a knowing and voluntary waiver of the Sixth Amendment right to counsel admissible for the purposes of impeaching a defendant's testimony?
           1. Yes. Mr. Ventris' statements, elicited in violation of the Sixth Amendment, were admissible to impeach his inconsistent testimony at trial. With Justice Antonin G. Scalia writing for the majority and joined by Chief Justice John G. Roberts, and Justices Anthony M. Kennedy, David H. Souter, Clarence Thomas, Stephen G. Breyer, and Samuel A. Alito, the Court reasoned that the interests protected by excluding "tainted evidence" are outweighed by the need to assure "integrity of the trial process."
        3. A statement deliberately elicited from a represented defendant without a waiver in violation of the Sixth Amendment right to counsel established in Massiah v. United States is admissible as impeachment evidence if the defendant testifies at trial
        4. Whether a confession that was not admissible in the prosecution’s case in chief nonetheless can be admitted for impeachment purposes depends on the nature of the constitutional guarantee violated
        5. The core of the Sixth Amendment right to counsel is a trial right, but the right covers pretrial interrogations to ensure that police manipulation does not deprive the defendant of “ ‘effective representation by counsel at the only stage when legal aid and advice would help him.’ ” *Massiah* v. *United States*, 377 U. S. 201, 204.
           1. This right to be free of uncounseled interrogation is infringed at the time of the interrogation, not when it is admitted into evidence. It is that deprivation that demands the remedy of exclusion from the prosecution’s case in chief.
     4. Montejo v. Louisiana p. 877
        1. *Michigan* v. *Jackson* should be and now is overruled
           1. A defendant may waive his right to counsel for police interrogation, even if police initiate the interrogation after the defendant's assertion of his right to counsel at an arraignment or similar proceeding. This decision overruled Michigan v. Jackson
        2. The State Supreme Court’s interpretation of *Jackson* would lead to practical problems. Requiring an initial “invocation” of the right to counsel in order to trigger the *Jackson* presumption, as the court below did, might work in States that require an indigent defendant formally to request counsel before an appointment is made, but not in more than half the States, which appoint counsel without request from the defendant.
        3. On the other hand, Montejo’s solution is untenable as a theoretical and doctrinal matter. Eliminating the invocation requirement entirely would depart fundamentally from the rationale of *Jackson,* whose presumption was created by analogy to a similar prophylactic rule established in *Edwards* v. *Arizona*, 451 U. S. 477, to protect the Fifth Amendment-based *Miranda* right. Both *Edwards* and *Jackson* are meant to prevent police from badgering defendants into changing their minds about the right to counsel once they have invoked it, but a defendant who never asked for counsel has not yet made up his mind in the first instance
        4. If, under Montejo, officers can, consonant with the Sixth Amendment, obtain statements from a represented defendant, provided they have given the Miranda warnings and procure a waiver of the right to counsel, why can’t they do so vis-a-vis a defendant in custody who has invoked the right to counsel following the Miranda warnings and before the right to counsel has attached (i.e., before initial appearance and filing of charges)?
           1. In other words, does the rule in Edwards have continued vitality and viability B does the following remain a correct summary of current law
           2. After Montejo, the Sixth Amendment does not bar police initiated interrogation of an accused who has previously asserted his right to counsel. On the other hand, the Fifth Amendment [via Edwards] does bar police initiated interrogation of an accused who, in the context of custodial interrogation, has previously asserted his right to counsel during such interrogation, unless the accused's counsel is actually present [or the accused initiates further contact, communication or conversation]
           3. [W]e think that Montejo should be given an opportunity to contend that his letter of apology should still have been suppressed under the rule of Edwards. If Montejo made a clear assertion of the right to counsel when the officers approached him about accompanying them on the excursion for the murder weapon, then no interrogation should have taken place unless Montejo initiated it
           4. That statement seems to signal a willingness on his part to distinguish between post-invocation police contact with a confined defendant, currently controlled by Edwards, and contact at any time with defendants who are entitled to or have counsel (i.e., following the filing of charges and an initial appearance, etc.)
           5. The gist, however, of Montejo is that officers can approach a defendant who has, or has the right to counsel under the Sixth Amendment, give the Miranda warnings and, if the defendant waives the presence of counsel, interrogate him.
           6. Why would not the same be so where a defendant in custody has invoked the right to counsel and thereafter officers return, give him renewed warnings and ask if he wants to waive his rights (having done nothing else coercive vis-a-vis the defendant B though he has remained in custody)? In other words, is there a logical underpinning post-Montejo to Edwards. If not, is Edwards likely to suffer the same fate as Jackson?

1. Voluntariness Revisited p. 893 **(4/15)**
   1. Mincey v. Arizona p. 893
      1. in hospital, D keeps asking not to be interrogated and saying he didn’t want to answer—his will was overborne
      2. There is a problem of coercion and therefore this was a violation of DPC. Therefore not admissible at trial
      3. Dissent (Rehnquist) – b/c the government did not create the coercive environment, there is no DPC violation
      4. Note: No exigent circumstances here, no hot pursuirt, search incident to arrest, sweep search
      5. Mincey had been seriously wounded in drug raid, was in hospital, couldn’t speak and wrote on paper, asked not to be interrogated several times, said this is all I’m saying without a lawyer. **undisputed evidence makes it clear d didn’t want to answer, but weakened by pain and shock and isolated from family and friends and legal counsel, and barely conscious, his will was simply overborne**
      6. Rehnquist dissent: mincey’s statements were nit involuntary and the state supreme court cast no doubt on the testimony of Dective hust thereore court is coming up with its own conclusions on the reliability of witnesses on this appeal
   2. **Colorado v. Connelly** p. 898
      1. Δ comes up to officer and confesses to murder. He’s crazy and wants to suppress confession. Court rules that there was no coercion by police or state actor, so it was voluntary under the T/C. Wouldn’t deter misconduct to exclude the confession here.
      2. Court holds that coercive police conduct is a necessary predicate to finding that a confession is not voluntary within meaning if DP clause
      3. Court cannot suppress a confession on the grounds that the accused felt “compelled” to make the confession due to a mental disorder
      4. This case may be an indication that Court is focusing on police overreaching rather than voluntariness
         1. BUT – Rhenquist declines to expressly get rid of voluntariness as the standard
         2. Kamisar says all along they should have been focusing on police overreaching
      5. D, mentally ill, flew to Denver from boston, approached a uniformed policeman on the street and said he’d killed someone and wanted to talk about it. He was crazy, and was being commanded to confess. **The confession cases have always focused on police overreach—if this guy had no free will b/c of a mental illness and the police did nothing, not going to suppress the statement.** In Blackburn, police exploited the mental problem, same with Townsend. That didn’t happen here. **This is for state laws about evidence;** even the most outrageous behavior by a private party doesn’t make the resulting confession in admissible
      6. Brennan/Marshall Dissent: the use of a mentally ill persons’ involuntary confession is against our fundamental fairness
      7. Facts: Δ flew from Boston to Denver, approached a uniformed police officer, and, w/o any prompting, said he’d killed someone and wanted to talk about it. He was repeatedly Mirandized and fully confessed to murdering a young girl in Denver 9 months earlier. Δ was found competent only after 6 months of drug and psychiatric therapy. Psychiatrist testified that his statements were the result of a mental disorder; the “voice of God” told him to confess. Psych. believed Δ was unable to make a free and intelligent waiver of his rights. Trial court suppressed; US SC rev’d.
      8. Reasoning (Rehnquist):
         1. Coercive police activity is a necessary predicate to finding that a confession isn’t voluntary under DPC. Absent police conduct causally related to the confession, there is no basis for concluding that any state actor deprived Δ of due process.
         2. Prior cases all involved police overreaching. See, e.g., Townsend v. Sain (suppressing confession of Δ who, because he was suffering from severe heroin withdrawal symptoms, was injected by a police doctor with a drug that had the properties of a “truth serum”; doctor and police interrogators didn’t know about these properties, but Rehnquist nonetheless characterizes it as a case of “police wrongdoing.”)
         3. Purpose of suppression is deterrence, which wouldn’t be served here.
      9. Dissent: “Surely in the present stage of our civilization a most basic sense of justice is affronted by the spectacle of incarcerating a human being upon the basis of a statement he made while insane.” Focus on reliability. No corroboration.
      10. *White* (618) says that Connelly can be read narrowly: police exerted no pressure and had no reason to believe Δ was suffering from mental disability. So police conduct wasn’t not implicated, and they did not exploit a known weakness.
   3. **Arizona v. Fulminante** p. 904 – **Offering to Help Protect a Prisoner from Physical Harm at the Hands of Other Inmates**
      1. F was suspected of murder and had not been arrested or charged before he was incarcerated on an unrelated crime. He became friends w/another inmate who was a paid informant for the FBI. FBI man said he would protect F in exchange for F confessing as to what he did
      2. **Conclusion:** Though there was no actual violence, the PO statements were a threat of physical violence and confession was to be made to avoid that violence.
      3. **Facts**: After Δ’s stepdaughter was murdered, he was convicted of an unrelated federal offense and incarcerated. A paid FBI informant befriended him and eventually elicited a confession after he said that he would protect Δ from his fellow inmates if Δ told him about murder. AZ SC threw it out. US SC aff’d
      4. **Reasoning** (White): Totality of the circumstances test. AZ SC found a “credible threat of violence” resulting in “extreme coercion.” “[A] finding of coercion need not depend on actual violence by a gov’t agent; a credible threat is sufficient.”
   4. Miller v. Fenton p.
2. Miranda Revisited **(4/18)**
   1. **Dickerson v. United States** p. 937
      1. 18 US.C. § 3501 was passed when the case was on appeal
      2. Circuit Court said that 3501 is a federal statute; Dickerson’s statements were voluntary (even though obtained with Miranda violation), so the government wins
      3. Supreme Court: 3501 is nullity  it is not for the Congress to say what 5th Amendment protection is (judicial supremacy issue)
         1. What’s the problem with the majority opinion in Dickerson? We are used to Miranda; we are a Miranda nation now
         2. Scalia dissenting opinion – majority position has no principle stand point. Majority cannot point out anywhere in Constitution that says Miranda warning is required (textualism)
      4. Facts:  arrested for bank robbery. Trial court suppressed statement on grounds that he had not received Miranda warnings before interrogation. 4th Cir. rev’d, holding that Miranda is not a constitutional decision and, therefore, § 3501’s voluntariness test controls. SC rev’d.
      5. Holding: Miranda is a constitutional decision; therefore, that decision and its progeny, not § 3501, govern the admissibility of statements made during custodial interrogation in both state and federal court.
      6. Reasoning (Rehnquist)
         1. Miranda concluded that the coercion inherent in custodial interrogation blurs the line between voluntary and involuntary statements, and thus heightens the risk to the 5th Am privilege against self-incrimination. Miranda accordingly laid down “concrete constitutional guidelines.”
         2. Congress intended, in passing § 3501, to overturn Miranda. It can’t do that. See Boerne.
         3. There is language in some of our opinions that suggests, as the 4th Cir. concluded, that Miranda isn’t a constitutional decision. But that’s wrong
         4. Miranda *is* a constitutional decision
            1. It applied to proceedings in state courts, and since our supervisory powers don’t reach the States, it could only reach them if constitutional. Echoes Douglas’s dissent in Tucker and Stevens in Elstad
            2. Language of Miranda itself indicates that majority thought it was announcing a const’l rule
            3. Exceptions from Miranda (e.g., Quarles, Roberson) simply illustrate the principle “that no constitutional rule is immutable. No court laying down a general rule can possibly foresee the various circumstances in which counsel will seek to apply it, and the sort of modifications represented by these cases are as much a normal part of constitutional law as the original decision.”
            4. We indicated in Miranda that legislatures could try other solutions, but § 3501’s protections don’t meet the constitutional minimum.
            5. Stare decisis. “Miranda has become embedded in routine police practice to the point where the warnings have become part of our national culture” Sometimes we overrule precedent “when subsequent cases have undermined their doctrinal underpinnings, [but] we do not believe that this has happened to the Miranda decision. If anything, our subsequent cases have reduced the impact of the Miranda rule on legitimate law enforcement while reaffirming the decision’s core ruling that unwarned statements may not be used as evidence in the prosecution’s case in chief.
      7. all the cases that cut down Miranda are still good. Rehnquist wrote the decision in order to contain the damage that Stevens might have done. So the Court simply reaffirms Miranda compete with all of its limitations
      8. **Miranda is a constitutionally based rule (not a profilactic procedural rule) that congress cannot overturn by statute**
      9. Before Miranda we used voluntariness—both under 14 A and that also morphed into 5 A too. But then we had Miranda, it was constitutional decision. 3501 has a TOC test that doesn’t have an exclusive warning requirement so yes, they tried to overrule Miranda. **But they don’t get to overrule us in con holdings, only in supervisory power holdings. Miranda says it does this to give concrete con guidelines for law enforcement agencies to follow.**  The whole opinion talks about how it is a con rule. We have created exceptions to Miranda but also we have broadened it and this shows that no con right is immutable. **Our refusal to apply fruits doctrine to Miranda doesn’t mean it’s not a con holding, but the rights under 4 A are different from 5 A. Miranda requires procedures that will warn a suspect in custody of his right to remain silent which will assure the suspect that he exercise of that right will be honored**
      10. Scalia/Thomas dissent: section 3501 does not violate the constitution, we cannot strike it down. And Miranda isn’t a con decision, but now it is, this is a fundamental shift in doctrine.
          1. Why don’t the states want 3501?
             1. Paul Cassell: He thinks the rules for Miranda aren’t constitutional, so he starts filing amicus briefs all over the place, finally gets CA4 to bite in Dickerson.
          2. Why can section 3501 beat Miranda:
             1. Quarrels said we can create exceptions (it’s prophylactic), Miranda said it could be replaced;
          3. Why can it not beat Miranda?
             1. Applies to the states, it’s a floor, it’s part of a habeas claim
      11. **A Word on Prophylactic Rules**
          1. A prophylactic rule is a rule designed to make a constitutional provision meaningful and more practical; it provides “breathing space.”
          2. The new LaFave treatise defines a prophylactic rule as a preventive measure designed to prevent a constitutional violation rather than to identify what constitutes a violation. A per se rule, by contrast, identifies what constitutes a constitutional violation. K thinks this distinction breaks down. See, e.g. McNabb-Mallory.
          3. Strauss calls prophylactic rules “a central and necessary feature of constitutional law.”
          4. A lot of rules, such as Ashcraft, have been termed prophylactic in retrospect. But the Court has been sloppy in its use of the term. For example, White’s majority opinion in Edwards called its rule at various times prophylactic and per se.
          5. Dickerson seems to be calling Miranda a per se rule that identifies a violation. But it’s not clear.
   2. **Chavez v. Martinez** p. 951
      1. Miranda violations happen when the statement is introduced at trial, you can’t bring a 1983 claim against unwarned statements
      2. **Facts** Martinez brought a federal civil rights action after Chavez; a PO questioned M in hospital after he had been shot. M received no M warnings and made some incriminating admissions. No charges were ever brought, and never admitted against him. M argued that the 5th am was violated by the questioning itself
      3. **Conclusion:** M is a trial right, and not implicated until govt. offers Martinez -defective statements against the D at trial. Ct also held 5th am provided no protection because statements were never admitted in a crim case
         1. **Statement and impeachment-** they can’t use statement against you to impeach your testimony at trial, you don’t have to testify. If you don’t testify can’t use your statement but if you testify and say something in violation than what you confessed to, they can use your statement for impeachment purposes. BUT you can’t use one that was obtained in violation of DP. If involuntary, then out completely
         2. **DP-** This is the biggest limit on MIRANDA, because if something violates DP, it would go out no matter what
         3. **Fruits of Miranda Violation-** An illegal confession could lead to witnesses, a 2nd confession, or physical evidence. The exclusion of the fruit of a poisonous tree is only justified if the poison itself is a constitutional violation
            1. ***Rationale-*** Cost benefit analysis; even if M is a C rule, costs of compliance by excluding fruits (the loss of reliable evidence) outweigh benefits of deterrence (deterring future M violations)
      4. Suspect shot, in hospital, officer keeps questioning him while he’s being treated, expresses he believes he’s going to die, etc. brings 1983 action; 1983 qualified immunity: 1) did the officer violate a con right? (DP and 5 A); 2) if yes, was that a clearly established con right? **5 A says witness against yourself, these statements never in court, can’t violate 5 A;** this allows witnesses to insist on immunity agreements before testimony, it allows them to not give statements even in noncrim cases. the rules designed to safeguard a con right, however, do not extend the scope of the con right itself; we’ve established the Miranda exclusionary rule as a prophylactic measure to prevent violations of 5 A
      5. Remember: **if someone is given Miranda rights and they waive them, this does not automatically waive issues of coercion**. It can still be a coercively obtained confession. Miranda is really just an element of whether or not it was coercion.
      6. So if theres a gun to his head, its still coercive
      7. Also if there’s no Miranda, **this doesn’t necessarily mean its coerced. Ex: Harris- confessions given without Miranda can still be used for impeachmen**t…Then Kordash tells us that if the confession was coerced, it could not be used for anything.
      8. As far as the court is concerned, Miranda is just part of the analysis- failure to give them makes it more likely that it was coerced, but it’s not in and of itself making it coercive
      9. Souter concur: there’s a degree of discretionary judgment here that’s greater than Thomas acknowledges; the issue is civil liability and that the D can’t make a powerful showing of his rights being taken from him
         1. this part judgment of the court): whether he can pursue a claim in liability for substantive due process can’t be addressed by the court
      10. Scalia concur in part in judgment: agrees with rejection of 5 A claims; this isn’t a violation of the text of the Self-Incrimination clause.
      11. Stevens concur: as a matter of fact, this was an attempt to obtain an involuntary confession, matter of law, this is brutal and is an immediate deprivation of liberty
      12. Kennedy concur with stevens/ginsburg: kennedy by himself thinks no Miranda warning doesn’t by itself establish a violation, but he thinks the self-incrimination clause arises before it’s introduced at trial; with stevens and ginsburg now: the conclusion that self-incrimination clause isn’t violated until govt seeks to use a statement in a crim proceeding strips the clause of an essential part of its force and meaning; had the officer inflicted the injuries for the purposes of extracting a statement, clear and immediate violation of con; rather here the initial injuries not inflicted to aid interrogation. There are actions police can’t take if the prohibition against coercion is to be respected; i.e. prolong or increase suspect’s suffering against suspect’s will. That’s rendering the police accountable for the increased pain.
      13. Ginsburg concur: whether they made him believe he wouldn’t be treated or not, this is still clear instance of compulsion, remediable by 1983

|  |  |
| --- | --- |
| * + - 1. Due Process | * + - 1. 5 A |
| * Thomas, Rehnquist, Scalia—doesn’t shock their conscious * Souter, Breyer, Ginsburg, Stevens, + Kennedy: REMAND: * Kennedy, Stevens, Ginsburg: police can’t prolong or increase the suspect’s suffering against the suspect’s will—this is DP violation. * O’Connor—nothing. | * Thomas, Rehnquist, O’Connor, Scalia: trial right only, the 5 A is violated at trial; no one can succeed on 1983 violation if they aren’t prosecuted * Souter + Breyer: no 5 A challenge, b/c it goes too far…it’s discretionary …therefore trial right but b/c it’s unworkable. * Scalia: Miranda is not constitutional rule * Kennedy+Stevens: well, simple Miranda violation that’s before trail that’s one thing, but if you TORTURE someone, that’s something, then you can bring that claim. |
| * + What’s now governing voluntariness determinations? Police conduct? | * 5 A rights not violated before trial!!! |

1. Due Process Outside of the Confession Context **(4/19)**
   1. Due Process and the 4th or 5th Amendment
      1. Rochin v. California p. 967
         1. Local cops forced way into room,  swallowed capsules; dr. pumped his stomach.
         2. Court (per Frankfurter): Police conduct violated the 14th Amendment DPC. “This is conduct that shocks the conscience… They are methods too close to the rack and the screw…” Applies a “shocks the conscience” test.
            1. Just as coerced confessions “offend the community’s sense of fair play and decency,” to admit this evidence “would be to afford brutality the cloak of law.”
            2. “It would be a stultification of the responsibility which the course of constitutional history has cast upon this Court to hold that in order to convict a man the police cannot extract by force what is in his mind but can extract what is in his stomach.”
         3. When evidence is taken in violation of 14th amendment due process/fundamental fairness, it shall be excluded.
            1. **Case sets a standard for due process exclusion- famous phrase “did the behavior of the police shock the conscience of the court”**
      2. Irvine v. California p. 970
         1. ***illegal wiretapping without a warrant pretty bad, but under 4 A so no exclusion***
         2. Jackson said few police measures have come to our attention that more flagrantly violated the fundamental 4 A principle, but they adhered to Wolf v. Colorado that the exclusionary rule wasn’t binding against the states
         3. Limited Rochin to situations involving *coercion, violence or brutality to the person.*  Facts: Cops miked guy’s home for over a month. Ct recognized deliberate violation of 4th Am, but still adhered to Wolf
      3. Schmerber v. California p. 974
         1. **Court does not decide this based on 14th amendment due process- having blood drawn hygienically by a nurse to test for alcohol does not shock the conscious of the court- not significant enough pain or intrusion here. Need to be some kind of physical or emotional pain, humiliation danger like in Rochin stomach pump**
         2. **No 4th amendment violation: the extraction of the blood is a search- they had PC here. The testing of the blood is a search but if police are just looking for contraband, its not a search**
         3. FACTS: ∆ arrested for drunk driving. Police want to give suspect a blood test. They do so, analyze it, want to introduce results at trial.
         4. b. ∆ ARGUES: bodily intrusion, using Rochin (due process)
         5. c. COURT: NO 14th Amd. violation – doesn’t shock the conscience b/c taking blood at the hospital is not that intrusive (minor intrusion). No 4th Amd issue either b/c of exigency of situation (he will sober up)
         6. d. DISSENT: Taking blood = testimony
   2. Due Process and Identification
      1. Manson v. Brathwaite p. 980
         1. **after we ask if there’s a substantial likelihood of misidentification, it is still coming in if it’s reliable anyway**
         2. black undercover officer buys drugs from black man. Describes him. Later, is shown single photo and he IDs. CA2 thinks this is unnecessarily suggestive, should have been an array or a line-up and excludes the ID; **is it conducive to a substantial likelihood misidentification? (this is the threshold) THEN is it reliable anyway will be the second question…** i.e. opportunity of witness to view the criminal at the crime, the witness’s degree of attention, accuracy of his prior description of the criminal, the level of certainty demonstrated at the confrontation and the time b/t crime and confrontation
         3. Marshall/Brennan dissent: the per se rule isn’t so inflexible, it’s like suppressing the fruit of an unlawful search; the exclusion of suggestively obtained eyewitness testimony because it is unreliable. Therefore this would HELP the administration of justice; thinks the cop couldn’t have seen him so clearly, needed to make the ID, unreliable. Thinks the in court IDs should be based on simmons v. US whereas other should be baed on Biggers
         4. Reliability is the linch-pin. Factors include opportunity of the witness to view criminal at time of crime, witness’ degree of attention, the accuracy of his prior description of the criminal, the level of certainty demonstrated at the confrontation and the time btwn crime and confrontation
2. **Attenuation** – **(4/20)**
   1. 4th Amendment
      1. **Wong Sun v. United States** p. 995
         1. ***Illegal arrest of T 🡪 T’s statement 🡪 Y’s heroin 🡪 T’s statement***🡪 ***W’s arrest 🡪 W’s statement***
         2. PO’s elicited an oral statement from Toy, after forcing entry into his laundry. The agents followed him down the hall to his bedroom, where they placed him under arrest. The Ct concluded no PC for arrest. Toy’s statement led them to Johnny Yee who possessed narcotics. Yee said heroin was brought to him by Toy and Wong Sun. Then Toy led them to WS’s house, and they arrested WS. They ROR’d him, and several days later he returned voluntarily to give an unsigned confession
         3. **Conclusion**: T’s statements that consequently led to Y’s heroin should all be excluded since an T’s statements didn’t result from an independent act of free will and not sufficiently an act of free will to purge the primary taint of the unlawful invasion.
         4. W’s statements  in light of lawful arraignment, ROR and then returning voluntarily days later, connection btwn unlawful arrest and statement had become so attenuated as to purge the taint.
         5. both his declaration on the illegal break-in and the narcotics taken from Yee (who he declared to have drugs) had to be excluded as fruits of unlawful entry into bedroom; the question is whether granting the establishment of the primary illegality, the evidence has been come at by the exploitation of that illegality or if it was gotten by means sufficiently distinguishable to be purged of the primary taint?
         6. Home Way 🡪 Blackie Toy (no illegality so far)
         7. James Toy 🡪 Break down the door, found nothing, but arrested James Toy nonetheless (illegal search and arrest: fruit – statement “Johnny” & address)
         8. Entry to Johnny Yee’s house (produce statement & drugs) 🡪 “Sea Dog”
         9. Arrest Wong Sun (Sea Dog), but found no drug
         10. 🡺Toy, Yee, and Wong Sun were arrested. Judge released them on recognizance
         11. Fruit 1: Toy’s statement in bedroom (implicating Johnny Yee); and heroin 🡪 comes from illegal arrest, so fruit is still on the tree (same event, no time lapse – no attenuation)
         12. Fruit 2: Yee’s statement (fruit of illegal arrest)
         13. Fruit 3: Toy’s latter statement and Wong Sun’s later statement after being released
         14. Fruit 4: Wong Sun’s latter statement after being released
         15. 🡺fruit 3 and 4 are attenuated, because of the time lapse, and the defendants voluntarily came back to make the statement (intervening act of free will & voluntariness)
         16. **Act must be purged of the taint of unlawful invasion**
         17. **Δ’s statements must be act of free will to purge primary taint of unlawful invasion.**
         18. Need admission + evidence to corroborate not just admission
             1. Criminal confessions and admissions of guilt require extrinsic corroboration
         19. Out of court declarations made after arrest may not be used at trial against of the declarant’s partners in crime
         20. No reference to Toy in Wong Sun’s statement constitutes admissible evidence corroborating any admission by Toy.
         21. **Make sure to use ‘proximate cause’**
      2. **Taylor v. Alabama** p. 999
         1. Held that Δ’s confession was the impermissible fruit of his illegal arrest even though six hours elapsed between arrest and confession, Δ was Mirandized three times, and he was allowed to visit briefly w/ girlfriend and neighbor before confession
         2. Several factors to determine
         3. On a basis of a tip not sufficient to provide Probable Cause, PO’s arrested T w/o warrant for a grocery store, robbery searched him and took him to station for questioning and gave MIRANDA warnings. He was fingerprinted, re-advised of his rights, questioned, and placed in a line-up. Was told fingerprints matched, then visited w/girlfriend and other friend, signed a confession and MIRANDA waiver. Arrest and confession = 6 hours here
         4. **:** Ct said that despite 3 M warning, the lack of counsel, fingerprinting, line-up etc. Insufficient to break the connection w/the illegal arrest and detention
         5. **Defendant still in custody from illegal arrest cannot exercise free will in confessing**.
         6. - def is under unconstitutional arrest, mirandized several times, talks to friends, 6 hours go by- crt says this is not enough to create free will, he was still being unconstitutionally detained. Confession inadmissible as fruit of the poisonous trees
         7. Here, there was no meaningful intervening event. The illegality of the initial arrest was not cured by the facts that six hours elapsed between the arrest and confession; that the confession may have been "voluntary" for Fifth Amendment purposes because *Miranda* warnings were given; that petitioner was permitted a short visit with his girlfriend; or that the police did not physically abuse petitioner. Nor was the fact that an arrest warrant, based on a comparison of fingerprints, was filed after petitioner had been arrested and while he was being interrogated a significant intervening event, such warrant being irrelevant to whether the confession was the fruit of an illegal arrest. The initial fingerprints, which were themselves the fruit of the illegal arrest and were used to extract the confession, cannot be deemed sufficient "attenuation" to break the connection between the illegal arrest and the confession merely because they formed the basis for the arrest warrant.
         8. A confession obtained through custodial interrogation after an illegal arrest should be excluded unless intervening events break the causal connection between the arrest and the confession so that the confession is sufficiently an act of free will to purge the primary taint.
      3. **New York v. Harris** p. 1004
         1. D confessed at the station after PO’s made a warrantless in home arrest. He was at station an hour after illegal arrest, he received MIRANDA and waived rights
         2. Not tainted because D was not unlawfully in custody at time of confession. Though illegal search of home, it was a valid arrest since they had a warrant. There’s no auto connection btwn warrantless search of home and subsequent confession outside home. He leaves home, and then they could have arrested him in public, so not the fruit of illegal arrest or a search. bEcause they had PC to arrest outside, so now keeping you at station is not the product of warrantless earlier in-home arrest
            1. PAYTON 🡪 is not further protection past home; they just can’t search you in the home
         3. Applying the rule of *Brown v. Illinois,* [422 U. S. 590](http://supreme.justia.com/us/422/590/case.html), and its progeny that the indirect fruits of an illegal search or arrest should be suppressed when they bear a sufficiently close relationship to the underlying illegality, the court deemed the second statement inadmissible because its connection with the arrest was not sufficiently attenuated
         4. ***Held****:* Where the police have probable cause to arrest a suspect, the exclusionary rule does not bar the State's use of a statement made by the defendant outside of his home, even though the statement is taken after an arrest made in the home in violation of *Payton.* The penalties imposed on the Government where its officers have violated the law must bear some relation to the purposes which the law serves
      4. **United States v. Ceccolini** p. 1010
         1. PO stopped to talk w/a friend who was in C’s flower shop. The officer picked up an envelope, found money and gambling slips, and learned from friend that envelope belonged to C. Officer relayed info who relayed to FBI, the FBI questioned pO’s friend who told about the slip, and that friend testified against C
         2. The exclusionary rule should be invoked w/much greater reluctance where the claim is based on a causal relationship btwn a C violation and the discovery of a live witness than when a similar claim is advanced to support suppression of an inanimate object. The willingness of a witness to testify is very likely to break the chain of causation set up in WS. (4 months passed in this case)
   2. Miranda – **(4/26)**
      1. New York v. Quarles p. 1017
         1. Officers spot Quarles, who matches description of rapist. He runs, the police stop him, handcuff him, the situation is under control, there are 4 officers standing around him. Ask him where the gun is, he tells them, they get the loaded gun and then arrest and Mirandize him. **This is okay b/c there are overriding considerations of public safety that justify the officer’s failure to provide Miranda warnings before he asked the question.** No claim that his statements were actually compelled by police conduct which overcame his will to resist (involuntary)
         2. O’Connor would have suppressed “the gun is over there”: but not the gun itself b/c it was nontestimonial evidence derived from informal custodial interrogation.
         3. *Public safety exception*: “We conclude that under the circumstances involved in this case, overriding considerations of public safety justify the officer’s failure to provide Miranda warnings before he asked questions devoted to locating the abandoned weapon.”
         4. Exception doesn’t depend on officers’ motivations. “Kaleidoscopic situation” where “spontaneity” controls.
         5. Here, the gun might have been grabbed and used by an accomplice or found by customer.
         6. Exception circumscribed by exigency that justifies it; police can “instinctively” distinguish between interrogation and questions necessary for public safety.
         7. K: There was no public safety threat here. Dissent: If there’s really a threat, then just do what you need to do. Evidence may be excluded and you may lose conviction, but at least you’ll abate the threat.
         8. O’Connor’s concurrence/dissent is more important, because it’s about fruit. She would have excluded the statement about the gun but not the gun itself, because “nothing in Miranda or the privilege itself requires exclusion of nontestimonial evidence derived from informal custodial interrogation.”
         9. Quarles hasn’t opened the door to other large exceptions as widely as some initially feared. He notes that since Quarles, SC has not approved any other instances of custodial interrogations in which warnings need not be given
      2. **Oregon v. Elstad** p. 1020
         1. Ruled that the fact that police had earlier obtained a statement from Δ in violation of his *Miranda* rights did not bar the admission of a subsequent confession at the station house when, this time, the police complied with *Miranda*
         2. **Earlier statement in violation of Miranda didn’t bar admission of later statement post-Mirandizing him**
         3. Fact that the police had earlier obtained statement from D in violation of Miranda didn’t bar admission of later statement after they had Mirandized him.
         4. If errors are made by law enforcement officers in administering prophylactic Miranda procedures, should not breed same irremediable consequences…this was a “guilty secret” given in response to an unwarned but noncoercive question
         5. Stevens dissent: court’s attempt to fashion distinction b/t actual coercion and an irrebuttably presumed coercion is only legitimate if it is assumed there is always a coercive aspect to custodial interrogation that is not preceded by adequate advice of the con right to remain silent
         6. Arrest guy in his home, question him there no Miranda, he says he was there, then they bring him into the station, Mirandize, requisition, he makes a statement. Court Did not apply the poisoned fruit doctrine to a second confession after the first one had been obtained w/o Miranda; **there’s a vast difference b/t direct consequences of coercion of confession by physical violence and the uncertain consequences of disclosure of a guilty secret, freely given in response to an unwarned by non-coercive question as in this case**…someone who was given no Miranda warnings and said something had suffered no identifiable constitutional harm
      3. **Missouri v. Seibert** 1035
         1. Souter: double confessions, only 2nd one mirandized is not acceptable—the warnings aren’t as effective after the cat is out of the bag and maybe even more coercive…Elstad was about totally different circumstances, here it was the same person doing the same thing twice; Kennedy: bad faith is all I care about. Who is controlling? We don’t know!
         2. Question D sans warnings. Then they give D 20 min. break, requisition her with warnings, and confront her with her previous statement. Not cool. **Threshold question is whether this is as effective as giving the warnings at the outset, think the police are doing this for a reason, obvious it’s not as effective**. Second is why shouldn’t this confession be allowed—the sensible underlying assumption is that one confession in hand before the warnings, the interrogator can just get another easily, the D won’t genuinely think he has the right to remain silent. What is worse, telling a D ‘anything you say can be used against you’ without saying, except what you just said, makes the D think they have already said it all.
         3. **This is a systematic station house interrogation practice**. Elstad can be read as a good-faith Miranda mistake. In elstad, it wasn’t unreasonable to see the stationhouse v. the home as markedly different places and questioning experiences, not so here. they didn’t tell her that her earlier statement couldn’t be used (FN 6—that alone doesn’t make it okay!) these circumstances must be seen as challenging the comprehensibility and efficacy of the warnings so that they wouldn’t convey the message she had the choice
         4. Breyer concur: wants to use the fruits approach, and this is a good example. Also agrees with Kennedy’s good faith exception
         5. Kennedy concur: agrees with much of plurality but opinion differs in some respects—Thinks the plurality’s test cuts too broadly-objective inquiry from the perspective of the suspect; wants a test when these interrogations are used in a calculated way to undermine Miranda.
         6. O’Connor/Rehnquist/Scalia/Thomas dissent: the plurality is right to look at objective factors not the intent of the officer and not to exclude this based on fruits doctrine. Otherwise they are bad. in Elstad we rejected this. We refused to recognize the psychological impact of the suspect’s idea that he’s let the cat out of the bag b/c we thought those psychological effects shouldn’t have constitutional implications.
            1. Holding: Kennedy!!! BAD FAITH. OR PLURALITY?
            2. NO REAL HOLDING
            3. WHAT ARE THE FACTORS: time, setting, police officer, telling the D that the previous statements can’t be used against him?,
            4. Difference b/t this and Elstad:

Time and setting: Elstad was at home, was quick question not extensive

Extensive nature of questions: whole interrogation, and confronted him with his non-Mirandized questioned

* + 1. **United States v. Patane** p. 1045 - **core Miranda protection is compelling D to testify against himself at trial, allowing nontestimonial evidence doesn’t violate the Self-I clause**
       1. D arrested outside home and handcuffed, police didn’t finish mirandizing him, violation, but D told them where the pistol was. Miranda is a prophylactic to protect violates of self-incrimination clause; **but that’s not implicating the admission into evidence of the physical fruit of a voluntary statement; therefore no need to extend Miranda in this context…core protection is compelling a criminal D to testify against himself at trial, the clause can’t be violated by the introduction of non-testimonial evidence obtained as a result of voluntary statements**. The violation only occurs when they introduce the evidence at trial, therefore there’s nothing to deter here, and there’s no reason to apply the fruit of the poisonous tree doctrine. Introduction of non-testimonial physical evidence does not implicate the self-incrimination clause.
       2. Kennedy/O’Connor concur: it’s unnecessary to decide whether his failure to give the full warnings is a violation or whether there’s anything to deter so long as the unwarned statements aren’t introduced at trial—he said he knew his rights… it’s reliable evidence.
       3. Souter/Stevens/Ginsburg dissent: in closing our eyes to the consequences of giving an evidentiary advantage to police who ignore Miranda, we are inducing interrogators to ignore the warnings. There’s a price for excluding this evidence but the 5 A is worth the price.
       4. Breyer dissent: I liked my concurring opinion in Seibert, and Souter’s dissent today…courts should exclude evidence from unwarned questioning unless the failure to provide the warnings was in good faith.
       5. **GUN NOT TESTIMONIAL—NOT PROTECTED BY MIRANDA. Physical fruits are admissible**.
          1. But if it’s physical compulsion—still a 5 A claim—physical fruits are inadmissible.
          2. Does Miranda have life? And if so when and should it?
  1. **The Implications of the *Tucker-Quarles-Elstad* Way of Thinking About Miranda**
     1. Michigan v. Tucker (1974) –
        1. **Held** – witness discovered through confession obtained in violation of *Miranda* may testify
        2. Rhenquist calls the Miranda warnings not actual Constitutional rights – just prophylactic standards designed to safeguard or to provide practical reinforcement for the privilege against self-incrimination
        3. Demonstrates that courts generally hold that fruits of *Miranda* violations are admissible
     2. **New York v. Quarles** (1984)
        1. Recognizes a public safety exception to Miranda and thus holds both the suspect’s statement and the gun admissible
        2. Describes Miranda as a prophylactic rule – failure to give Miranda warnings is not in itself a violation of 5A
     3. **Oregon v. Elstad** (1985)
        1. Ruled that the fact that police had earlier obtained a statement from Δ in violation of his *Miranda* rights did not bar the admission of a subsequent confession at the station house when, this time, the police complied with *Miranda*
     4. **Comments**
        1. All three cases contain language disparaging Miranda – this is Rhenquist setting himself up to say that Miranda is not constitutional
        2. *Grano* – Miranda is an illegitimate rule
        3. *Schulholfer and Strauss* – Court has power to establish prophylactic rules and doing so is in herent in the art of judging
           1. Example is presumption of vindictiveness when a judge imposes a more severe sentence on a Δ after a new trial
  2. **What is a Prophylactic Rule?**
     1. Something that gives breathing space to a Constitutional rule
     2. Doesn’t identify a constitutional violation, just safeguards against such violations

1. Inevitable Discovery p. 1051 – **(4/27)**
   1. **Inevitable discovery v. Independent source**
      1. Need to be fairly close under inevitable discovery for the discovery to be inevitable…
      2. Already in progress
   2. **Nix v. Williams** p. 1051
      1. Child disappeared and Δ was arrested. While Δ was being transported, the police said that they wanted “Christian burial” and the Δ led the police to the location of hte body. Statements were excluded from the 1st trial. At 2nd trial, attempted to admit evidence recovered from location of the dead body linking Δ to the crime.
      2. ***the question is whether police would have inevitably or eventually or probably discovered lawfully***
      3. Adoption of the inevitable discovery doctrine, where if the prosecution can satisfy by a preponderance of the evidence that the evidence would have been discovered, then it is admissible. In this case, use of the grid system to conduct the search and therefore there would have been inevitable discovery
      4. Ct (Burger): Same justification as independent source doctrine—deterrence. The burden of proof is on the prosecution by a *preponderance of the evidence*. No good faith req’t. This would inevitably have been discovered
      5. Held: Inevitable discovery exception to the exclusionary rule is recognized. No showing of good faith required
         1. Don’t need good faith requirement – the social costs of excluding evidence far outweigh any possible deterrent benefits that a good faith requirement might bring
      6. Note: Whether search was ongoing should have nothing to do with admissibility. How does one define an ongoing investigation? – this is the issue of active pursuit that Brennan and Stevens try to urge
      7. Police subjected Defendant to “Christian Burial Speech” in violation of 4th Amendment, and Defendant made incriminatory statement and also led police to find victim’s body. Defendant sought to exclude the statement & the body as evidence in trial.
      8. Court: statement should be excluded as fruit of poisonous tree, but body should not be excluded even though it was also the fruit of poisonous tree, because the body would have been found anyways
      9. Inevitable Discovery Doctrine
      10. Is the discovery of the body in large area of corn field really inevitable or just imaginary result?
   3. **Murray v. United States** p. 1059
      1. ***evidence police observed illegally is okay to come in if the police then get a warrant for it with totally unconnected evidence.***
      2. Evidence observed by police during illegal entry of premises need not be excluded if it’s discovered later during the execution of an otherwise valid search warrant sought and issued on the basis of evidence wholly unconnected to prior entry
      3. Held that evidence observed by police during an illegal entry need not be excluded if such evidence is subsequently discovered during the execution of an otherwise valid search warrant sought and issued on the basis of information wholly unconnected to the prior entry. Ct emphasized that second entry was independent of the first; if warrant had issued on basis of what agents had seen during illegal entry, evidence would be excluded. But, How do you know whether it was prompted by what the police saw?
      4. Court declined to require exclusion of evidence that was seized during a valid entry (with a warrant), even though the evidence had been observed during an earlier illegal entry
         1. Based on independent source doctrine – remanded to determine if agents would have sought a warrant anyway if they hadn’t first entered the warehouse illegally
      5. There goes the warrant requirement from the Fourth Amendment. Post-Murray, if you’re a cop, why bother with hassle of getting a warrant ahead of time
      6. Independent Source Doctrine
         1. Police got probable cause, then illegally entered and searched warehouse, later went get warrant and came back to seize evidence
         2. Difference between first source (probable cause) and second source (illegal search) of evidence
         3. Scalia Majority: nothing is going to be deterred if police already had other source to get to the evidence