

Criminal Procedure Outline

Professor: Brooks Holland

I. BACKGROUND

A. Criminal Process: Failures, Choices, and Legitimacy

1. Investigation Failures - Brown v Mississippi
2. Trial Failures - Powell v Alabama / Stories of Scottsboro
3. Norms of Criminal Process: accuracy, fairness, limited government, efficiency
4. Policy Themes: security, federalism, racism

B. Incorporation of Due Process

1. The Due Process Clause of the 14th Amendment incorporates rights from the 4th, 5th, and 6th Amendment, except grand jury indictment and civil jury trials. - Duncan v. Louisiana

C. 4th Amendment

D. 5th Amendment

1. Bail Provision
2. Double Jeopardy
3. Privilege Against Self Incrimination
4. Due Process
5. Takings Clause

E. 6th Amendment

1. Jury Trial
2. Public Trial
3. Speedy Trial
4. (Effective) Assistance of Counsel
 - a) Line Ups / Pre-Trial right to counsel
 - b) Distinguish Miranda Right to Counsel
 - c) Critical stages after formal accusation
5. Confrontation

II. THE PEOPLE

A. Application limited to

1. The people
2. Persons, Houses, Papers, and Effects
3. Unreasonable
4. Searches and Seizures

B. Right of the people (aggrieved): to have 4th Amendment protection as the people,

you must be part of the national community (U.S. citizen) or be sufficiently connected with this country to be considered part of that community. (*Verdugo*, Mexican homesearch)

1. Protected
 - a) US Citizen
 - (1) Home
 - (2) Abroad (unresolved, but yes according to 9th Circ. in *Barona*)
 - b) Non-Citizen
 - (1) Permanent lawful resident aliens (like work visa)
 2. Not Protected
 - a) Lawfully but involuntarily present foreign citizens are not protected (*Verdugo*)
 - b) Unlawfully present: mixed lower court decisions
- C. Searcher/Seizer: private parties are not restricted by the 4th Amendment from making unreasonable searches and seizures. But it would be trespass.
- D. Remedies for Violations
1. Tort for Trespass (Old): if law enforcement violates the 4th then the victim/Δ may sue the enforcement officer
 2. Exclusionary Rule (New): any evidence obtained in violation of the 4th Amendment by Federal or State agents, is excluded from a criminal trial.

III. SEARCHES & SEIZURES

A. Searches

1. 4th Amendment grants
 - a) the right to be secure in persons, houses, papers and effects
 - b) against unreasonable searches and seizures
2. Old Rule: Traditional trespass and violation of a persons body are protected under tort law, property theory. (Pre-Katz)
3. New Rule: The 4th Amendment protects a reasonable expectation of privacy from government intrusion. The 4th amendment protects a personal interest, not a place. (*Katz*, wiretap phonebooth)
 - a) Harlan concurrence 2 Part Test:
 - (1) Subjective Element: Did the Δ subjectively expect privacy?
 - (2) Objective Element: Would society recognize the Δ's expectation of privacy as reasonable?
4. Trespass: a trespass on a person's effects is a search. (*Jones*)
5. Third Party Doctrine: if you choose, voluntarily, to surrender information to a third party then you lose your reasonable expectation of privacy over that communication and it is thus not a search or seizure. (*White*, "frenemy" case) (*Smith*, pen register)

- a) Examples: bank records, phone numbers dialed, wire/bug on friend.
 - b) Garbage: when a trash is put out, it is voluntarily exposed to third party access and so an expectation of privacy in the garbage is not reasonable. (*Greenwood*)
6. Wiretapping: congressional statute raised requirement from probable cause to necessity.
7. Open Fields: police trespass of private property is not a search if it occurs in an open field (*Oliver*, ignored no trespassing, saw marijuana)
- a) Curtilage: whether the area in question is so intimately tied to the home itself that it should be placed under the home's 'umbrella' of the 4th Amendment. (*Dunn*) Factors:
 - (1) Proximity of the area claimed to be curtilage to the home
 - (2) Whether the area is included within an enclosure surrounding the home
 - (3) Nature of the uses to which the area is put
 - (4) Steps taken by the resident to protect the area from observation by people passing by.
8. Aerial Surveillance: if a curtilage is maintained in any way that a third party could observe the curtilage, then there is no reasonable expectation of privacy and police observation is not a search (*Dow*, industrial nightvision; *Ciraolo*, airplane 10' fence backyard; *Riley*, helicopter 500')
- a) Exceptions (*Riley*, dicta)
 - (1) The police must only use devices that improve natural human perception (*Ciraolo*)
 - (2) Police may not create undue noise, wind, dust or threat of injury
 - (3) The aircraft must remain in legally navigable airspace
 - (4) Must not observe "intimate details connected with the use of the home"
9. Narcotics Canine: there is no reasonable expectation in privacy of contraband, so if the canine only detects contraband and not other contents of a bag, trunk, etc., then it is not a search. (*Place*, *Caballes*)
- a) Property law makes use of aggressive canine on front porch, a trespass & search (importance of property rights - *Jardines*)
 - b) Canine sniffing in common space of apartment is not a search (*Nguyen*)
10. Sense-Enhancing Technology: information regarding the interior of the home (sacrosanct) that could not otherwise have been obtained without physical intrusion is a search when technology not in general public use is

used. (*Kyllo*)

11. Mosaic Theory: police activity that, in isolation, would not violate a reasonable expectation of privacy may constitute a search when aggregated because so much information reveals personal information. (*Jones*, concurrence)

a) NSA Surveillance: mosaic theory is influential in recent NSA cases.

B. What is a Seizure?

1. Definition: A seizure of property occurs when “there is some meaningful interference with an individual’s possessory interests in that property.”

a) Law enforcement officers may seize what they have probable cause to believe is criminal evidence. (*Karo*, beeper in drug container)

(1) Four categories of seizable items

(a) Contraband

(b) Fruits of a crime

(c) Instrumentalities used in the commission of an offense

(d) Mere evidence - evidence that will aid in a particular apprehension or conviction. (e.g., blood stained shirt)

(2) Seizure of a person

(a) Arrest

(b) When the officer, by means of physical force or show of authority has in some way restrained the liberty of a citizen (*Hodari*)

(c) A passenger in a car was “seized” when the car was stopped by the police to verify its temporary operating permit. (*Brendlin*)

IV. REASONABLENESS

A. Warrants

1. “No warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, or the persons or things to be seized” - 4th Amendment Warrant clause

2. Separation of Powers: the use of a judge to pre-review the actions of an executive for reasonableness.

3. Probable Cause
 - a) Reasonableness Test: if the facts and circumstances within the officer's knowledge which they have reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed. (*Brinegar*)
 - b) Before the search (ante) OR after the search (post): judges tend to be more favorable to the government when a warrant is requested before the search
4. Informants
 - a) State Courts (*Spinelli, Aguilar*)
 - (1) Veracity: the trustworthiness/reliability of information (why should we rely on you?)
 - (a) Police Officer: presumptively reliable informant
 - (b) Identified Citizen Informant: presumptively reliable
 - (i) Example: social worker
 - (c) Confidential Informants: presumptively unreliable
 - (i) Requires corroboration
 - (a) Independent investigation that suggests to a degree of probability that the information is reliable OR
 - (b) Track record of informant's reliability
 - (ii) The fourth amendment does not provide a right to confrontation and so the informant may remain confidential (*McCray*)
 - (iii) Franks Hearing
 - (a) Challenge the affiant-police officer who is relying on the informer.
 - (b) Substantially likely that the officer lied or recklessly disregarded the truth in the search warrant application
 - (c) Lies are excised and remaining evidence may still satisfy probable cause
 - (2) Basis of Knowledge: does the informant have personal knowledge of the information on which probable cause is relied (how do you know?)
 - (a) Hearsay: must trace the source of information to

determine whether the informant had sufficient personal knowledge of the crime

- b) Federal Courts (*Gates*)
 - (1) Totality of Circumstances: in order to determine whether there is probable cause for determining the reasonableness of the search or seizure, the judge must examine the totality of the circumstances.
 - (2) Factors:
 - (a) Veracity
 - (b) Basis of Knowledge
 - (c) Common Sense
 - (d) Other Relevant Information
 - (3) DO NOT add information learned after the fact for determining probable cause.
 - (4) Probability: there is no defined numerical probability which must be reached in order to have probable cause. (*Pringle*)
- 5. Individualized: each person being searched requires a proving of probable cause in order for the search to be reasonable. (*Ybarra*)
 - a) High Crime Neighborhood: it is an objective consideration but there are social justice concerns. There must be real evidence that the neighborhood is a high crime.
 - b) Create a reasonable inference of criminality through objective observations and circumstances
- 6. Anticipatory Warrants: contingent and anticipatory circumstances may create probable cause as long as it is both
 - a) Probable that contraband or evidence of a crime will be found in a particular place AND
 - b) That there is probable cause to believe the triggering condition WILL occur
- 7. Staleness: when information is so old that it may not create a reasonable inference of probable cause any longer
- 8. Deadly Force: probable cause is satisfied for a deadly force seizure if the suspect posed an imminent danger of death or serious bodily injury to the police or a third party.
- 9. Probable Cause Cliches
 - a) A qualitative, normative assessment of reasonableness
 - b) A fluid standard, highly fact-sensitive, and “not readily or even usefully, reduced to a neat set of legal rules.”
 - c) Probable cause is not about “hard certainties”
 - d) Must be an objective probability and may not be based on

generalized suspicion, rumor, speculation, conjecture, or mere conclusion.

- e) *Probable cause is less than a preponderance of the evidence*
- f) Probable cause must be judged by practical, common-sense considerations, and not under “library analysis by scholars.”

10. Arrest Warrants

- a) Every arrest requires a proof of probable cause
- b) Public Arrest: 4th Amendment does not require a warrant if the arrest occurs in a public place and the crime is a felony. (*Watson*)
- c) The traditional rule was that the police could not arrest for a petty, or non-felony, offense without a warrant unless the police personally observed the conduct supplying PC to arrest.
- d) Gerstein Hearing: retaining an individual for more than 48(ish) hours after an arrest without a warrant requires a finding of probable cause by a judge. (*Gerstein*)
- e) Home Arrests: arrests within a person’s home are presumptively unreasonable and require arrest warrants. (*Payton*)
 - (1) Vicarious Claims: guests are considered in public and may be arrested without an arrest warrant. (*Steagald*)
- f) Exigent Circumstances: emergency that legally rebuts the presumption of unreasonableness for a warrantless search. (*Olson*)
 - (1) Fleeing felon
 - (2) Destruction of evidence
 - (3) Prevent suspects escape
 - (4) Danger to police or others
- g) An arrest warrant is not sufficient to search a third party’s house. A search warrant must be obtained by showing probable cause to believe the object of a search is located in a particular place. (*Steagald*)

11. Search Warrants

- a) Parts of a Warrant
 - (1) Affidavit: request of the warrant that shows probable cause under oath or affirmation
 - (2) Warrant: permission for the search that particularizes the place to be searched or person/things to be seized.
- b) Search Warrant Cliches
 - (1) Most warrant requirements are statutory (e.g. Fed. R. Crim. Pro. 41)
 - (2) Courts recognize a preference for warrants
 - (a) Warrant clause is operative and defines

reasonableness

(3) Vast majority of searches involve police action without a warrant

(a) Reflects emphasis on reasonableness as operative and warrant requirement as explanatory

(4) Courts consistently require warrant for search of homes

c) Elements of Search Warrant

(1) Probable cause to support the search or seizure it authorizes. Relates to issuance, not the execution. (*Gates*)

(2) Issuance by a “neutral and detached magistrate” (*Coolidge*; *Lo-Ji Sales*)

(a) Member of the executive may not issue warrant (*Coolidge*)

(b) Magistrate acting as though an executive branch enforcement official may not issue warrant (*Lo-Ji*)

(c) Judge Shopping: an application submitted to multiple judges may be seen as undermining the magistrate’s neutrality

(i) Disclosure to subsequent judges and additional facts supporting probable cause may rebut the appearance of judge shopping

(ii) Law of the Case Doctrine: prior decisions by a judge of equal level, although not technically binding, is upheld by subsequent judges in a case.

(3) A particularized description of the place to be searched and the person or things to be seized. Reasonable particularity. This element relates to warrant execution, so the warrant must contain or cross-reference this information. (*Groh*)

(a) General Warrant: the warrant which colonial America despised

(b) Language of warrant must be particular as read by a reasonable officer in the execution of the warrant

(c) A warrant that is particular on its face may be invalidated when new information is obtained in the execution. (*Garrison*)

(4) Reasonable Execution:

(a) May search anywhere that the object of the search reasonably could be found.

(b) Reasonable mistakes in good faith are excusable in

execution of the warrant (*Garrison*)

(c) Unspecified Persons: unless the police have probable cause to believe that a person not specified in the warrant is committing a crime then the police may not search the person. (*Ybarra*)

(i) Physical detention of unspecified people is allowed to reasonably control a search. (*Mena*)

(d) Knock-and-Announce (*Wilson; Richards; Banks*)

(i) Balancing Interests - Justifications

(a) Privacy Interests

(b) Preventing Destruction of Property

(c) Safety of Surprising Individuals

(ii) Reasonable Suspicion: if there is a reasonable suspicion that knock and announce will threaten the purposes of the search, then the police do not need to knock & announce.

(iii) Night Time Search: no federal constitutional requirement that a search must occur during the day.

(a) Federal: FRCP 41(e)(2)(A)(ii) disallows nighttime searches. If police do a night time entry, a motion to suppress evidence may be made.

(b) State: May or may not have no night time requirement

B. Exigent Circumstances

1. Old: warrant clause the operative rule and a warrant is presumptively necessary except under specific circumstances

2. New: the 4th Amendment requires reasonableness that, in some circumstances, requires a warrant

3. Exigencies: emergencies that justify a warrantless search

a) Hot Pursuit: when the police are following a person immediately after a crime, including hiding in a home. (*Hayden*)

b) Destruction of evidence

c) Prevent suspects escape

d) Danger to police or others

4. Searches During Exigency: during an exigent arrest, the scope of a search

is limited by the exigency, to

- a) Any area where the person reasonably could be found, OR
 - b) Areas where objects of the exigency, like weapons and evidence, that could be imminently destroyed (*Olson*)
5. After Exigencies: once the exigency is over, the continued search is unreasonable.
 6. Minor Offense: the 4th Amendment does not allow the warrantless entry of a house for an exigent circumstance when the offense is minor. (*Welsh*)
 7. Police Created Exigency: police may engage in conduct that creates exigent circumstances unless the conduct violates the 4th Amendment. (*King*)
 8. Community Caretaker: if the police are not investigating crime and have an objective that is outside of that purpose then the warrant clause does not apply. Instead of requiring probable cause the courts requires a reasonable basis for the police search. (*Brigham City*)
 9. Closing Door: simply closing a door is merely the exercise of a right that is inherently not suspicious. Exigent circumstances require additional information. (*Ramirez*)
- C. Search Incident to (Lawful) Arrest
1. General: warrantless searches are allowed during a lawful arrest. (*Chimel*)
 2. Searches may always (categorically) be made incident to arrest for the purposes of (*Robinson*)
 - a) Officer Safety: fear that when an arrest occurs the suspect will respond with violence.
 - b) Evidence: threat that a detained suspect will attempt to destroy, secret or eliminate contraband or evidence of the crime for which the arrest was made.
 3. Arrest Bad/Search Bad: If the sole theory of the warrantless search was that it was linked to an arrest that is later determined to be illegal, THEN the evidence seized during the search incident to arrest is excluded.
 4. Scope
 - a) Physical Limits: the search area is limited to the zone immediately accessible to the suspect. (*Chimel*)
 - b) Time: the police may search the arrest zone for only a reasonable time, must be contemporaneous to the arrest.
 - c) Closed Containers: as long as the container is within the immediately accessible zone of the suspect, then the police may search inside of closed containers.
 - d) Clean Sweep: police may “sweep” the path between the location of arrest and the exit, for potentially dangerous people. If there is

reason to believe dangerous cohorts of the suspect are present then the police may “sweep” the entire home.

D. Searches During Vehicle Arrests

1. (OLD) Belton Search: If a recent occupant of a vehicle is lawfully arrested then the police may search the entire passenger compartment of the vehicle and any containers within the vehicle (*Belton*)
 - a) Scope: trunks and discrete mechanical compartments are not open to search during a Belton Search. (*Belton*)
 - b) Not reviewed by judge for case specific information showing reasonableness. (*Belton*)
2. (NEW) *Belton-Gant* Search: If, when arresting a recent occupant of a vehicle, the police reasonably believe that evidence related to the crime of arrest is present, then they may search the vehicle. (*Gant*)
 - a) Once the person is removed from the searchable area, the search must stop. This includes placing a suspect into a locked officer vehicle. (*Gant*)
 - b) Scope
 - (1) Containers: scope is limited to places and containers which may contain relevant evidence.
 - (2) Trunk: the trunk may be searched as well if it is reasonable that the evidence of the crime may be found there.
 - c) Citations: a citation does not carry the same presumptive dangers and so citations do not categorically authorize searches of a car in the same way arrests do. (*Knowles*)
 - d) Arrest: even if the offense is not punishable by jail time, the police may conduct a search of the vehicle whenever police lawfully arrest a recent occupant. (*Atwater*)
 - e) Recent Occupant: the Belton-Gant rule applies to individuals in a vehicle and shortly after they leave a vehicle. (*Thornton*)
3. Automobile Exception: when police have probable cause for a vehicle search then they may search anywhere that the object of the search **could reasonably be found**.
 - a) Scope: police may search any container or area within the vehicle that could reasonably contain the object of the search, including closed and locked containers. (*Acevedo*)
 - b) Damage: police may not search an area of the car if it will damage or destroy the car unless the police have a warrant or an exigency.
 - c) Automobile: includes mobile home or any vehicle as long as wheels are attached.
4. Impounding

- a) Police may search a vehicle when impounded to:
 - (1) avoid danger to the police and public,
 - (2) avoid accusations of theft during impound, and
 - (3) protect the owner's property in car
- b) Police may lawfully impound vehicles for civil or criminal reasons.
- c) Police must have standards for searching and recording the inventory of the vehicle in impound. (*Wells*)

E. Pretext Stops - Not unconstitutional

- 1. General: police use of a minor violation to justify the search and seizure of a person where they do not already have probable cause.
- 2. Fabricated Stop: distinguishable from pretext stop because no law was violated and so the stop is unlawful.
- 3. Pretext arguments are not valid because 4th Amendment analysis is objective and the subjective analysis of a police officer's reasonable intentions creates an unclear standard. (*Whren*)
- 4. Racial Profiling: fear that the police are given considerable discretion which allows race to act as a proxy for suspicions of criminality.
 - a) Proper constitutional basis for challenging racial profiling is the equal protection clause and not the 4th Amendment. (*Whren*)
 - b) Equal Protection Analysis:
 - (1) Invidious Purpose: purposely selected that individual for different treatment because of race.
 - (2) Disparate Treatment: prove that similarly situated individuals of different races are treated differently.
 - c) Exclusionary Rule
 - (1) 6th Circuit: violation of the Equal Protection clause does not include an exclusionary rule remedy. (*Nichols*)
 - (2) Massachusetts: violation of the Equal Protection clause requires the suppression of evidence in a criminal trial. (*Lora*)

F. Plain View

- 1. General: if an officer is lawfully present then anything an officer can observe is open to search.
 - a) Rule = Plain Sensory Perception (Plain View, Smell, Touch, Hearing, Taste)
- 2. Inadvertence: police are not required to find items inadvertently when observing in plain view. (*Horton*)
- 3. If police exceed the scope of consent or move objects then the police have conducted a search and plain view does not apply. (*Hicks*, moved stereo)
- 4. Police may seize unlawful object detected solely through an officer's

sense of touch if he had a right to touch the object in question and its identity as unlawful object was immediately apparent.

G. Consent

1. General: Validly obtained consent justifies an officer in conducting a warrantless search, with or without probable cause.
 - a) Definition - Valid:
 - (1) Obtained from someone with real or apparent authority
 - (2) Scope of search doesn't exceed consent granted
2. Voluntariness: must be present and is determined by the totality of the circumstances through these factors (*Schneckloth*):
 - a) Coercion
 - b) Duress
 - c) Advice of right not to consent
 - d) Custody
 - e) Prior Refusal
 - f) Individual Intelligence, experience, and mental condition
 - g) Police Deception: not allowed if it inherently undermines free will by jeopardizing the person, their property or family.
 - h) Maybe
 - (1) Police Threats
 - (2) Claims of Warrant (*Bumper*)
3. Co-Occupant
 - a) Consent may be given by a fellow occupant who shares common authority over property. (*Rodriguez, Mattox*)
 - b) Only requires that police reasonably believe that the person granting consent shares common authority. (*Rodriguez*)
 - c) Although there is no duty to inquire regarding the authority of a person granting consent, the courts will not imply that every person has common authority.
 - d) If any person who is present and has common authority to grant consent denies the request to search then there is no consent to search. (*Randolph*)
 - e) If person denying consent is removed for an objectively reasonable reason then the police may return and search under the consent of another person sharing common authority. (*Fernandez*)

H. Special Needs → see below

V. WASHINGTON LAWS

- A. Generally: State constitutions may provide greater protections than those afforded by the federal constitution.
- B. "No person shall be disturbed in his private affairs, or his home invaded, without

authority of law.” Art I, Sect. 7 Washington Constitution

C. State Constitutional protections that are higher than the federal protections:

1. Gunwall - Pen Register requires warrant
2. Hinton - Cell Phone requires warrant
3. Jordan - Motel Registry requires warrant
4. Ladson - Pretext not allowed
5. Boland - Garbage requires warrant

D. Federal courts in Washington are only limited by the federal constitution

VI. SEIZURES

A. General: a person is seized when his freedom of movement is restrained by means of physical force or a show of authority. (*Mendenhall*)

1. A seizure occurs when the suspect
 - a) Submits to police authority OR
 - b) Physical force is used to restrain the suspect

B. OLD RULE: The police must have an arrest warrant based upon probable cause or one of the warrant exceptions.

C. NEW RULE: Stop & Frisk may be reasonable without probable cause where the search & seizure is limited (*Terry*)

1. Separate Analysis: authority for a stop does not automatically grant authority for frisk. I.e. you have to look at the stop (seizure) and then look at the frisk (search).
2. Statistical Efficiency: the courts do not examine the “hit rate” of officers or precincts but look at each case for objective indicia of reasonableness on a case by case basis.
3. Stop: a limited seizure of a person is reasonable if the officer has a reasonable suspicion of a crime.
 - a) Limited Seizure: a limited seizure occurs when a reasonable innocent person would no longer feel free to leave the police encounter.
 - (1) Lower than an arrest
 - (2) Higher than a consensual encounter
4. Frisk: a limited search of the person for weapons
 - a) Limited Search: nonconsensual exploratory physical contact that remains outside of clothing
5. Scope: the length of time and physical intrusion of a limited seizure must be a brief investigation to confirm or dispel the reasonable suspicion of criminality (*Sharp*)

D. Reasonable Suspicion: totality of the circumstances test where the conclusion of criminality is objectively supported

1. Anonymous Tip: an anonymous tip that a man with a gun is located at an

intersection does not alone create a reasonable suspicion. (*Florida v J.L.*)

- a) Traffic Violation: uncorroborated anonymous tips may be sufficient to establish reasonable suspicion in traffic violations. (*Navarette*, anonymous tip of drunk driver)
2. Fleeing Suspect: flight in response to police officer presence in a high crime neighborhood creates a reasonable suspicion. (*Wardlow*)
- E. Non-Seizure: if a reasonable innocent person would feel free to terminate the encounter, then he or she has not been seized. (*Bostick*)
 1. Investigation: not every police-citizen encounter is a seizure and a mere police investigative presence does not create a seizure. (*Mendenhall*)
 2. Busses: closed space of a bus does not create the show of force necessary to create a seizure. (*Drayton*)
 3. Private Space: moving a person from a public space into a private space and taking the suspect's possessions would rise to an arrest. (*Royer*)
 4. Race: courts do not take into account racial or social factors when determining objective reasonableness.
 5. Age: courts may consider age as a relevant factor for determining reasonableness.
 6. Prior Encounters: a suspect's prior police encounters are not objective factors for determining a reasonable belief.
- F. Special Needs: Exceptions to probable cause/reasonableness
 1. General: no individualized suspicion is required for searches and seizures that fit within the scope of programmatic needs.
 2. Programmatic Reasonableness Test
 - a) Did the search or seizure fall within an acceptable program?
 - b) Is the program reasonable?
 3. Administrative Searches: state is not searching for criminal activity but for regulatory violations. (e.g. Health Department, Fire Department)
 - a) Administrative Warrant: judicial warrant that authorizes a non-arbitrary regulatory search
 - b) Administrative Searches without a warrant requires: (*Burger*)
 - (1) Commercial Premises
 - (2) Closely Government Regulated Industry
 - (a) A permit requirement is not sufficient
 - (b) E.g. Junk Yard (*Burger*)
 - c) Person performing the search is irrelevant. (police officers ok - *Burger*)
 - d) Evidence of criminal activity discovered during administrative searches is admissible.
 4. School Searches: students may be searched as long as there is reasonable

suspicion and the scope is not excessively intrusive. (*T.L.O*)

- a) Reasonable Suspicion: same as that required for Terry stops
 - b) Excessively Intrusive: reasonable in light of the age/maturity of the student.
 - (1) Strip Search: the danger of the object of the search must provide a threatening exigency. (*Redding*)
 - (a) Age
 - (b) Nature of Search
 - (c) Nature of Exigency
 - c) Minors retain a reasonable expectation of privacy against governmental intrusion of their person or bags.
5. Drug Testing: court considers the nature and immediacy of the government's concern
- a) Railway personnel involved in train accidents, Airline, and Law Enforcement Personnel can be tested randomly without suspicion.
 - (1) Law enforcement officers must submit to random, suspicionless drug testing if they encounter drugs or confidential documents.
 - b) Random urine testing for students involved in athletics or other extracurricular activities.
 - c) Politicians off limits (*Miller*)
 - d) Mother's Giving Birth: hospitals not required to give the results to officers. (*Ferguson*)
6. Border Enforcement
- a) At Border: no reasonable suspicion is required for a search at the border as long as the manner of the search is not carried out in an offensive manner. (*Ramsey*)
 - (1) Reasonable because of sovereign's plenary power in preventing dangerous items and unauthorized persons.
 - (2) Removing the gas tank of a car is not an offensively carried out search. (*Flores-Montano*)
 - b) NEAR Border: roving patrols near the border require a reasonable suspicion of criminal activity to detain the car occupants briefly. (*Brignoni-Ponce*)
 - (1) Foreign ethnicity alone does not give patrol reasonable suspicion
 - (2) Fixed Immigration checkpoints near the border that are not determined by the officers are reasonable (*Martinez-Fuerte*)
 - (a) Reasoning:

- (i) Lower fear and surprise in fixed checkpoints
 - (ii) Less enforcement discretion in fixed checkpoints
 - (b) Any further detention beyond brief questioning regarding citizenship must be based on consent or probable cause.
 - c) Laptop: border patrol may search a personal laptop except when using forensic examination (a.k.a. decrypting everything on your computer) (*Arnold*) (*Cotterman*)
- 7. Airports and Public Buildings salt
 - a) Searches and seizures at airports and public buildings do not need individualized suspicion (*U.S. v. Aukai* (9th Cir. 2007)).
 - b) Searches are appropriate if no more extensive than necessary
- 8. Vehicle Checkpoints
 - a) Program Requirements (*Brown*):
 - (1) Traffic related enforcement purpose only
 - (a) License and Registration Checks (*Sitz*)
 - (b) Drunk Driving (*Sitz*)(not in WA)
 - (c) NOT Narcotics Interdiction (*Edmond*)
 - (2) Effectiveness of the checkpoint
 - (3) Level of intrusion on an individual's privacy
 - (a) Must limit the discretion of enforcement
 - b) Primary Programmatic Purpose: as long as the search or seizure has a special need as the primary programmatic purpose, then the officers may add other stop purposes. (*Edmond*)
 - c) Suspicionless checkpoint stops may not be done for standard criminal investigations (*Edmond*)
 - (1) Checkpoints may seize in a criminal investigation where the persons seized are not being investigated (*Lidster*)
- 9. Criminal Justice System
 - a) Inmates may be strip searched when being admitted to jails (*Florence*)
 - b) Serious Offense arrestees may be required to give a DNA sample when taken into custody (*King*)

VII. STANDING

- A. General: a Δ may only use 4th Amendment violations to exclude evidence if the search or seizure was in violation of a right owned by the Δ claiming the exclusionary rule.
- B. OLD RULE (*Jones*): a Δ has 4th Amendment standing if:
 - 1. The Δ was lawfully present in the place that is searched AND

2. The Δ was a target of the investigation
- C. NEW RULE: a Δ has 4th Amendment standing if the Δ shows a legitimate expectation of privacy. (*Rakas*)
- D. Establishing A Legitimate Expectation of Privacy
 1. The Δ must plead standing in the initial motion to suppress
 2. The ownership of the object of the search/seizure does not establish standing
 - a) Did the person have the power to include or exclude others from that space?
 - b) Does the person control access to the space?
 3. Did the owner grant control over the space or just authorize use of the space?
- E. Factual representations made by the Δ in the standing affidavit or testimony may NOT be used in the prosecutor's case-in-chief. (*Simmons*)
 1. BUT they may be used to impeach the Δ if the Δ testifies
 2. OR in order to rebut a contrary factual claim that the Δ is making
- F. Guest in a Home
 1. General: One who is ***merely present*** in a residence, without further indicia of a reasonable expectation of privacy, may not claim the protections of the 4th amendment.
 2. Exceptions (further indicia)
 - a) Overnight Guests: have standing because society recognizes the extension of privacy rights to overnight guests. (*Olson*)
 - b) Social Guest: has an expectation of privacy in the areas which they are invited. (*Carter*)
 - c) Commercial Activity: a person present for commercial activity does not have an expectation of privacy. (*Carter*)

VIII. EXCLUSIONARY RULE

- A. Progression of Exclusionary Rule
 1. Judicially created remedy, not a right of Δ
 2. Silver Platter: federal agents use non-federal agents to obtain evidence in violation of the 4th. (*Byars, Gambino*)
 3. Evidence acquired by the federal government in violation of the 4th amendment is excluded from trial. (*Weeks*, transporting lottery tickets)
 4. States must follow the 4th Amendment because it falls within the liberties protected by the 14th Amendment but exclusionary rule not applicable to states. (*Wolf*, states' to create own remedies)
 5. States must also apply the exclusionary rule to evidence obtained in violation of the 4th Amendment. (*Mapp*, phony warrant, lewd stuff)
- B. Fruit of the Poisonous Tree: all evidence obtained as a result of a search or seizure

in violation of the 4th Amendment may be excluded. (*Wong Sun*)

1. Independent Source: if evidence obtained from an unlawful search or seizure was also obtained through other means then the evidence is admissible
 2. Attenuation: if the connection between obtaining the evidence and the 4th Amendment violation is too attenuated, then the courts will admit the evidence. (*Wong Sun*) Factors for attenuation:
 - a) Length of Time Elapsed
 - b) Flagrancy of initial misconduct
 - c) Intervening Causes
 - d) Act of free will
 3. Inevitable Discovery: if officers would have lawfully found evidence that was otherwise obtained unlawfully, then the evidence is admissible.
- C. Recharacterization: the exclusionary remedy is a remedy of last resort (*Hudson*)
- D. Good Faith: the exclusionary rule does not apply when the police exercise an invalid warrant in good faith BECAUSE no deterrence of police misconduct is accomplished by punishing good faith reliance on a judicially approved warrant. (*Leon*)
1. Objective Belief: the police must objectively/reasonably believe that the warrant has probable cause.
 2. Police Error: unless the police error involves culpable action (intentional, reckless, gross systematic negligence) then no deterrence is achieved through exclusion and so the evidence is admitted. (*Herring*)
 3. Constitutional Law Change: as long as the case remains on direct appeal then the most recent interpretation of rights under the constitution is holding but excluding evidence is a remedy and not a right. (*Davis*)

IX. TORTURE & CONFESSIONS

A. Voluntariness - Due Process

1. General: if the interrogation was coercive then the confession was involuntary.
 - a) Contexts:
 - (1) Pre-Arrest
 - (a) Due Process, right to counsel, NOT Miranda
 - (2) Post-Arrest
 - (a) Due Process, Miranda, NOT right to counsel
 - (3) Post Charge
 - (a) All three apply
 - (4) Questioning by undercover officer or unknown agent
 - (5) Questioning by identified law enforcement
 - b) Justifications

- (1) A concern for Δ 's free will, autonomy, or dignity?
 - (2) A desire to prohibit police abuse and misconduct?
 - (3) A concern for unreliable confessions?
 - (4) An effort to level the playing field during interrogation?
2. State Coercion:
- a) Physical
 - (1) Torture may not violate a suspect's due process rights by using torture to obtain a confession. (*Brown*)
 - (2) Tyrannical and oppressive means invalidate a confession because they obviously cross the line (threats of death & physical harm). (*Lisbena*)
 - b) Psychological: non-physical intimidation invalidates a confession. (*Spano*)
 - c) Legal
 - (1) Threat that unless you cooperate the evidence exposes you to the death penalty.
 - (2) Threats or promises about the legal consequences of the case or other things outside the officer's authority.
3. Private party intimidation does not invalidate a confession under Due Process (*Connelly*)
- a) State Use: if the state uses private party threats to coerce the confession then it is not admissible. (*Fulminante*)
 - b) Alternative means of invalidating confession induced by private parties:
 - (1) State Rules of Evidence: may be used to invalidate a confession.
 - (2) Jury: the Δ may always litigate the reliability of a confession to a jury.
4. Factors: totality of circumstances analysis of voluntariness
- a) Threats or promises to Δ or family
 - b) Δ 's intoxication, age, mental illness, or intelligence
 - c) Location of interrogation
 - d) Withholding food, drink, restroom, sleep, or nicotine
 - e) Length of Interrogation
 - f) Deception - if the deception presents a choice then the confession is voluntary but if there is only a false choice then there is no voluntariness. (*Thomas*)
 - (1) I.e., using a fake lie detector machine is ok, lying about the quality of the evidence is ok.
 - (2) Too Far

- (a) Threat that unless you cooperate the evidence exposes you to the death penalty.
 - (b) Threats or promises about the legal consequences of the case or other things outside the officer's authority.
 - (c) Using deception that threatens life or death as a choice is too far.
- (3) Prosecutors: are restricted about representations of legal issues/consequences
- (a) Lying is constitutional
 - (b) RPC 4.1, 4.3, & 8.4 ethical violations would be violated by deceptive interrogations
 - (c) Using evidence obtained by deception is allowed as long as the prosecutor was not
 - (i) Inducing officers to deceive
 - (ii) Being personally involved in the deception
 - (iii) Having officers deceive under their control
- B. Privilege Against Self Incrimination - 5th Amendment (*Miranda*)
1. General: the privilege against self incrimination is violated only when testimony is presented at a criminal trial. (*Chavez*)
 - a) Physical Evidence: blood, hair or voice samples are not protected because they are not testimonial or communicative evidence.
 2. Privilege: individuals may assert the evidentiary privilege at non-criminal proceedings. (*Hitchcock*, grand jury; *Murphy*, testimonial hearing)
 - a) Judge may not use compulsory methods (contempt) to force a privileged testimony
 3. Custodial Interrogation: interrogations that occur in a custodial interrogation in a police precinct categorically present a risk of coercion. (*Miranda*)
 4. Miranda Requirement: incriminating statements obtained during custodial interrogations are not admissible unless procedural safeguards are observed
 - a) Quasi-Constitutional: Miranda is a Constitutional requirement, however, a violation of it is not a violation of a constitutional right because it is merely a prophylactic rule that goes beyond the Constitution. (*Dickerson*)
 - b) Irrebuttable presumption of coercion when the Miranda warnings have not been given by the officers.
 - c) Analysis
 - (1) Custody: the degree of restraint on a person to trigger the

Miranda rule is the restraint traditionally consistent with an arrest. (*Mathiason*)

- (a) Objective: whether a reasonable person (of the same age) would believe that the police placed the suspect under arrest. (*J.D.B.*)
 - (b) Age: is relevant to the objective question during informal custody situations. (*J.D.B.*)
 - (c) Limited Seizures: police need not give Miranda warnings for every 4th Amendment seizure because not every seizure is equivalent to an arrest. (*Berkemer*, Traffic Stops; Terry Stops)
 - (d) Duration: suspects remain in custody for a 14 day cleansing period after being taken into custody. (*Shatzer*)
- (2) Interrogation: express questioning about the crime being investigated.
- (a) Functional Interrogation: a practice that the police know or should know that is reasonably likely to elicit an incriminating response. (*Innis*)
 - (i) Simple conversation in the presence of a suspect is not interrogation. (*Innis*, sawed off shotgun by disabled school)
 - (a) Guilt Trip
 - (b) Spontaneous Response
 - (b) Undercover Officer/Informant: questioning by undercover officers does not require Miranda warnings because the coercive presence of officers is absent. (*Perkins*, undercover officer in jail)
 - (c) Booking: Responses to routine booking questions are administrative in nature and not testimonial responses. (*Muniz*)
- (3) Warnings: “Right to remain silent. Anything you say can and will be used against you in the court of law. You have the right to an attorney for the interrogation. If you cannot afford an attorney for the interrogation then one will be provided for you.”
- (a) The warnings will be sufficient even if off the script of the Miranda as long as the rights are reasonably communicated to the suspect. (*Duckworth*)
 - (b) Reasonable sum and substance is sufficient for the

warning. (*Powell*)

(4) Waiver: (*Burbine*)

(a) Elements:

- (i) Voluntary
- (ii) Knowing
- (iii) Intelligent

(b) Implicit/Implied Waiver: must look to totality of the circumstances (*Butler*).

- (i) Proof of (1) an understanding of Miranda rights and (2) voluntary confession establishes an implied waiver. (*Thompkins*)

(5) Invocation: express assertion of a right requires officers to scrupulously honor the right.

(a) Right to Remain Silent: invoked when the suspect affirmatively and unambiguously asserts right

- (i) If Invoked: officers must scrupulously honor the right to remain silent means that all questioning must cease. (*Mosley*)

(a) Exception: after right to remain silent is invoked, suspect may be questioned about a different crime:

- (i) Noncoercive
- (ii) Did not capitalize on previous interrogation (same cop is a problem)
- (iii) New Miranda rights given

(b) Right to Counsel: invoked when suspect makes an unambiguous request for counsel. (*Davis*)

- (i) If Invoked: officers must absolutely stop interrogation, (*Edwards*) unless

(a) Spontaneous Statement: suspect initiates speech

(b) 14 Days pass after suspect is released

(6) Admissibility

(a) Derivative “fruit”: if officers violate Miranda, the primary confession is inadmissible, but fruit of the confession is admissible. (*Elsad*) (*Patane*)

- (i) Later Confession: if a confession is obtained in violation of Miranda and then a second confession complies with Miranda then the

later confession is admissible. (*Elstad*)

(a) Bad Faith Exception: If the police intentionally and strategically violate Miranda, then the second confession is not admissible. (*Seibert*)

(ii) Physical Evidence: discovered through a confession in violation of Miranda is admissible. (*Patane*)

(b) Permissible Use: confessions obtained in violation of Miranda may be used to impeach the Δ. (*Harris*)

(c) Public Safety: evidence obtained in violation of Miranda is not excluded if officers obtained the evidence when gathering information about a public safety emergency. (*Quarles*)

C. Right to Counsel - 6th Amendment

1. General: accused criminals have the right to have counsel as a medium between him or her and the State. (*Maine v Moulten*)

2. Attachment: the right to counsel attaches when **adversarial proceedings** have begun through

a) Filing charges with the court OR

b) Holding someone before a judge even without any filings. (*Rothgery*, no prosecutor & no defense attorney at initial proceeding)

3. Custody: irrelevant to 6th Amendment right to counsel because it attaches regardless coercion by officers.

4. Critical Stage: the right to counsel is more than a trial right but also at any point after the right attaches that is **critical to the fairness of the trial**. (*Brewer*) Critical stages include:

a) Line up

b) Interrogation

c) Plea Bargain

d) Pre-Trial Motions

5. Indigent vs Affluent: the court may not interfere with an affluent person's right to counsel of choice and so every stage is a critical stage. (*Gonzalez*)

6. OLD LAW Invocation: no invocation of the right to counsel is necessary. After attachment every Δ is treated as though they invoked the right to counsel. Importing Edwards. (*Jackson*)

7. NEW RULE Waiver: the 6th Amendment may be waived by the Δ through standard Miranda waivers. (*Montejo*, overruled Jackson)

a) The waiver may be revoked by invocation

8. Deliberate Elicitation: the police may not deliberately elicit information protected by the attorney-client relationship. (*Brewer*, car ride burial speech)
 9. Undercover Officers: the known identity of the eliciter is irrelevant. (*Massiah*, recording device hidden in car)
 - a) If the person eliciting information is acting as an agent of the state then the Δ 's right to counsel is violated. (*Henry*)
 - b) The police are not required to protect the Δ s right by shutting him up or closing their ears. (*Kuhlmann*)
 - (1) Burden: on the state to show that they did not deliberately elicit the response.
 10. Offense Specific: the 6th Amendment right to counsel only attaches to the charges which the Δ is charged. Police may interrogate about any other crime, no matter how factually interdependent the crimes. (*McNeil*; *Cobb*, burglar questioned about murder)
 - a) Other charges may be precluded if the uncharged crime would subject the Δ to double jeopardy
- D. Eyewitness Identification
1. Right to Counsel: if a line-up occurs post attachment the line-up is a critical stage and the Δ has a right to counsel. (*Wade*)
 - a) Counsel's Role at Line-Up: to be a witness to validate what the police are doing.
 2. Due Process: if the pretrial identification procedure is unnecessary, and unduly suggestive. (*Stovall*; *Manson*)
 - a) Types of Identification
 - (1) Line-Ups
 - (2) Show-Ups: live one on one presentation of suspect.
Inherently Suggestive
 - (3) Photo ID Lineup: computerized set of random photos.
 - (4) Single Photo ID: Present image of a single suspect to witness. Presumptively Suggestive and rebutted by existence of a prior relationship.
 3. Suppression: exclusionary rule would apply to any testimony about the out of court line-up and may also suppress in court identification of the Δ .
 - a) Independant Source Hearing: a hearing to determine if the witness could identify the Δ independant of the taint of the line-up.

Fourth Amendment Flow Chart.

1. The People

2. Search and Seizure
3. Reasonableness
 - a. Warrant requirement-historically
 - b. Warrant exception cases
 - i. Have grown and grown over time
 - c. True reasonableness cases
 - i. Special needs cases
 1. Border, airport, road stops, administrative, etc
 2. Terry cases
4. Exclusionary rule
 - a. Standing –does the Δ have standing to evoke the exclusionary rule
 - b. Limits- Leon, civil proceedings, immigration, police rely in good faith on a judicially invalid warrant,
 - i. Hudson, harring, davis
 1. Officer culpability, not just deterrence, as a justification for what the court calls the high costs of the exclusionary rule.
 2. It's the best last resort for police misconduct.

4TH AMENDMENT

SEARCH

The issue is whether the _____ violated the 4th Amendment and whether the evidence may be excluded _____'s trial. The 4th Amendment protects “the people” from unreasonable searches and seizures of their persons, houses, papers, and effects. 4th Amendment protections bar actions from both federal and state governments. (*Duncan*) To be within the people protected by the 4th Amendment an individual must be part of the national community (U.S. citizen) or be sufficiently connected with the US to be considered part of that community. (*Verdugo*). The 4th Amendment protects a person's reasonable expectation of privacy from government intrusion. (*Katz*). There is a subjective and objective element to determine whether the Δ had a reasonable expectation of privacy. (*Katz, Harlan concurring*).

SEARCH - Third Party

The issue is whether the _____ violated the 4th Amendment and whether the evidence may be excluded _____'s trial. The 4th Amendment protects “the people” from unreasonable searches and seizures of their persons, houses, papers, and effects. 4th Amendment protections bar actions from both federal and state governments. (*Duncan*) To be within the people protected by the 4th Amendment an individual must be part of the national community (U.S. citizen) or be sufficiently connected with the US to be considered part of that community. (*Verdugo*). A search under the 4th Amendment is government intrusion of a person's reasonable expectation of privacy. (*Katz*). There is a subjective and an objective element to determine whether the Δ had a

reasonable expectation of privacy. (*Katz, Harlan concurring*). If the Δ chose, voluntarily, to surrender information to a third party then the Δ lost the reasonable expectation of privacy over that communication and it is thus not a search or seizure. (*White*) (*Smith*)

SEARCH - Open Fields/Curtilage

The issue is whether the _____ violated the 4th Amendment and whether the evidence may be excluded _____'s trial. The 4th Amendment protects "the people" from unreasonable searches and seizures of their persons, houses, papers, and effects. 4th Amendment protections bar actions from both federal and state governments. (*Duncan*) To be within the people protected by the 4th Amendment an individual must be part of the national community (U.S. citizen) or be sufficiently connected with the US to be considered part of that community. (*Verdugo*). A search under the 4th Amendment is a government intrusion of a person's reasonable expectation of privacy. (*Katz*). There is a subjective and an objective element to determine whether the Δ had a reasonable expectation of privacy. (*Katz, Harlan concurring*). An officer trespass of private property is not a search if it occurs in an open field but is a search if it occurs in the curtilage of a home. (*Oliver*). The curtilage is the area so intimately tied to the home itself that it should be placed under the home's 'umbrella' of the 4th Amendment. (*Dunn*). Factors for determining if the area is part of the curtilage are (1) Proximity of the area claimed to be curtilage to the home; (2) Whether the area is included within an enclosure surrounding the home; (3) Nature of the uses to which the area is put; (4) Steps taken by the resident to protect the area from observation by people passing by. (*Dunn*)

SEARCH - Aerial Surveillance/Curtilage

The issue is whether the _____ violated the 4th Amendment and whether the evidence may be excluded _____'s trial. The 4th Amendment protects "the people" from unreasonable searches and seizures of their persons, houses, papers, and effects. 4th Amendment protections bar actions from both federal and state governments. (*Duncan*) To be within the people protected by the 4th Amendment an individual must be part of the national community (U.S. citizen) or be sufficiently connected with the US to be considered part of that community. (*Verdugo*). The 4th Amendment protects a person's reasonable expectation of privacy from government intrusion. (*Katz*). There is a subjective and objective element to determine whether the Δ had a reasonable expectation of privacy. (*Katz, Harlan concurring*). An officer trespass of private property is not a search if it occurs in an open field but is a search if it occurs in the curtilage of a home. (*Oliver*). The curtilage is the area so intimately tied to the home itself that it should be placed under the home's 'umbrella' of the 4th Amendment. (*Dunn*). However, if a curtilage is maintained in any way that a third party could observe the curtilage, even if by aerial surveillance, then there is no reasonable expectation of privacy and police observation is not a search. (*Dow*) (*Ciraolo*).

SEARCH - Narcotics Canine

The issue is whether the _____ violated the 4th Amendment and whether the evidence may be excluded _____'s trial. The 4th Amendment protects "the people" from unreasonable

searches and seizures of their persons, houses, papers, and effects. 4th Amendment protections bar actions from both federal and state governments. (*Duncan*) To be within the people protected by the 4th Amendment an individual must be part of the national community (U.S. citizen) or be sufficiently connected with the US to be considered part of that community. (*Verdugo*). The 4th Amendment protects a person's reasonable expectation of privacy from government intrusion. (*Katz*). There is a subjective and objective element to determine whether the Δ had a reasonable expectation of privacy. (*Katz, Harlan concurring*). However, there is no reasonable expectation in privacy of contraband, so, if a canine only detects contraband and not other contents, then it's detection of narcotics is not a search. (*Place, Caballes*).

SEARCH - Sense Enhancing Technology

The issue is whether the _____ violated the 4th Amendment and whether the evidence may be excluded _____'s trial. The 4th Amendment protects "the people" from unreasonable searches and seizures of their persons, houses, papers, and effects. 4th Amendment protections bar actions from both federal and state governments. (*Duncan*) To be within the people protected by the 4th Amendment an individual must be part of the national community (U.S. citizen) or be sufficiently connected with the US to be considered part of that community. (*Verdugo*). The 4th Amendment protects a person's reasonable expectation of privacy from government intrusion. (*Katz*). There is a subjective and objective element to determine whether the Δ had a reasonable expectation of privacy. (*Katz, Harlan concurring*). Collection of information regarding the interior of a home that could not otherwise have been obtained without physical intrusion is a search when officers use technology not in general public. (*Kyllo*)

SEIZURE - Property

The issue is whether the _____ violated the 4th Amendment and whether the evidence may be excluded _____'s trial. The 4th Amendment protects "the people" from unreasonable searches and seizures of their persons, houses, papers, and effects. 4th Amendment protections bar actions from both federal and state governments. (*Duncan*) To be within the people protected by the 4th Amendment an individual must be part of the national community (U.S. citizen) or be sufficiently connected with the US to be considered part of that community. (*Verdugo*). A seizure of property occurs when "there is some meaningful interference with an individual's possessory interests in that property." Law enforcement officers may seize what they have probable cause to believe is criminal evidence. (*Karo*)

SEIZURE - Person

The issue is whether the _____ violated the 4th Amendment and whether the evidence may be excluded _____'s trial. The 4th Amendment protects "the people" from unreasonable searches and seizures of their persons, houses, papers, and effects. 4th Amendment protections bar actions from both federal and state governments. (*Duncan*) To be within the people protected by the 4th Amendment an individual must be part of the national community (U.S. citizen) or be sufficiently connected with the US to be considered part of that community. (*Verdugo*). When

the officer, by means of physical force or show of authority has in some way restrained the liberty of a citizen. (*Hodari*).

REASONABLENESS - Search Warrant/Probable Cause

If the government engaged in a 4th Amendment search then the search must have been reasonable or it was unconstitutional. A search under the authority of a valid search warrant is presumptively reasonable if the warrant (1) is supported by an affidavit showing probable cause (*Gates*), (2) was issued by a neutral and detached magistrate (*Coolidge; Lo-Ji Sales*), (3) contains a particularized description of the place to be searched and the person or things to be seized (*Groh*), and (4) was reasonably executed. Probable cause is when the facts within the officer's knowledge, based on reasonably trustworthy information, are sufficient for a reasonable person to believe that an offense has been committed. (*Brinegar*). In order to determine whether there is probable cause for determining the reasonableness of the search, the judge must examine the totality of the circumstances factoring in an veracity, basis of knowledge, common sense, and other relevant Information. (*Gates*).

REASONABLENESS - Arrest Warrant/Probable Cause

If the government engaged in a 4th Amendment seizure then the seizure must have been reasonable or it was unconstitutional. A seizure under the authority of a valid arrest warrant is presumptively reasonable. Every arrest warrant requires proof of probable cause. Probable cause is when the facts within the officer's knowledge, based on reasonably trustworthy information, are sufficient for a reasonable person to believe that an offense has been committed. (*Brinegar*). There is no defined numerical probability which must be reached in order to have probable cause. (*Pringle*).

REASONABLENESS - Arrest Warrant/Probable Cause/Informants

If the government engaged in a 4th Amendment seizure then the seizure must have been reasonable or it was unconstitutional. A seizure under the authority of a valid arrest warrant is presumptively reasonable. Every arrest warrant requires proof of probable cause. Probable cause is when the facts within the officer's knowledge, based on reasonably trustworthy information, are sufficient for a reasonable person to believe that an offense has been committed. (*Brinegar*). In order to determine whether there is probable cause for determining the reasonableness of the seizure, the judge must examine the totality of the circumstances factoring in an veracity, basis of knowledge, common sense, and other relevant Information. (*Gates*).

REASONABLENESS - Warrantless Search/Exigent Circumstances

If the government engaged in a 4th Amendment search then the search must have been reasonable or it was unconstitutional. A search is presumptively reasonable if a search warrant is obtained, if a warrant exception applies, or as part of a special needs program. Exigent circumstances are warrant exceptions where emergency situations justify warrantless searches. (*Olson*). Such exigencies include hot pursuit of a fleeing felon, destruction of evidence, prevent

suspects escape, danger to police or others. (*Hayden*)(*Olson*).

CONFESSIONS

DUE PROCESS - Voluntariness

If the government coercively interrogates the defendant then the involuntary confession deprives the defendant of liberty through tyrannical means in violation of the Due Process clause of the 5th and 14th Amendments. (*Lisbena*). Coercion by the government may be by physical, psychological, or legal means. (*Brown*) (*Spano*). Whether the confession was involuntary is determined through a totality of the circumstances analysis factoring in threats or promises to Δ or family; Δ 's intoxication, age, mental illness, or intelligence; location of interrogation; withholding food, drink, restroom, sleep, or nicotine; length of interrogation; and deception. (*Thomas*).

MIRANDA - Privilege Against Self Incrimination

The privilege against self incrimination is violated when testimony obtained in violation of the 5th Amendment is presented at a criminal trial. (*Chavez*). Custodial interrogations by the police categorically present a risk of coercion and so incriminating statements obtained during custodial interrogations are not admissible unless procedural safeguards are observed. (*Miranda*).

RIGHT TO COUNSEL - 6th Amendment

The 6th Amendment provides accused criminals the right to have counsel as a medium between him or her and the State. (*Maine*). The right to counsel attaches to the defendant when adversarial proceedings have begun. (*Rothgery*). The right to counsel is more than a trial right but also at any point after the right attaches that is critical to the fairness of the trial. (*Brewer*). Such critical stages include line ups, interrogations, plea bargains, and pre-trial motions.