

Criminal Procedure Outline

- I. Introduction to Criminal Procedure
 - a. Investigation and prosecution of criminal cases
 - b. Source of Law = US Constitution
 - c. Supreme Court turned Procedure into Federal Law
 - i. Process was not protecting citizens in some states
 - d. 4th, 5th, and 6th Amendments
 - e. State / US Constitution governs criminal procedure
 - f. Appeals
 - i. Direct appeal is the appeal by right
 - ii. Then get appeal on habeas → collateral attack on conviction because of constitutional violation during trial
 - iii. Federal Habeas – warden gets sued in habeas
 - g. Powell v. Alabama
 - i. Black man accused of rape
 - ii. Court assigned entire bar as counsel and he was convicted after 1 day of trial
 - iii. Argued denial of counsel
 - iv. Had no right of counsel during procedural / discovery stage
 - h. Bill of Rights
 - i. First 10 amendments
 - ii. Class about 4th, 5th, and 6th
 - iii. Incorporate = applying to State's under the 14th Amendment
 - 1. Applies certain parts of Bill of Rights to States
 - iv. Federalism – State's should have own powers and Federal government can't force the State's to do certain things.
 - 1. Judiciary vs. legislature making the decision whether the Bill of Rights applies
 - v. Supreme Court did not believe State legislature would treat people fairly so it got involved in Criminal Procedure
 - i. Duncan v. Louisiana
 - i. Wanted trial by jury but State refused
 - ii. Doesn't have common law but he has civil law instead
 - iii. Supreme Court says right to trial by jury is fundamental
 - 1. Whether right is fundamental to the American Scheme of justice
 - 2. 6th Amendment
 - iv. Justice Black – all Bill of Rights are incorporated
 - v. Certain rights have not been incorporated yet
 - vi. Good practice to make argument under state constitution because it generally provides greater protection than federal constitution.
 - j. Retroactivity
 - i. Supreme Court decisions apply now and going forward
 - 1. Exceptions
 - a. 1) placing a matter beyond the reach of criminal law
 - i. No longer a crime
 - b. 2) Watershed Decision

- i. changes the way we think about application of the law (highly unlikely)
- k. Right to Counsel
 - i. All stages of criminal defense
 - ii. Becomes even more important before trial
 - iii. No right to Counsel at habeas hearing
 - iv. Gideon v. Wainwright
 - 1. Right to counsel applied to States
 - 2. Denied counsel by florida
 - 3. Right by appointment of counsel at all stages of trial
 - 4. 14th Amendment – States can't deny federal rights
 - 5. Cannot be assured of a fair trial w/o an attorney
 - 6. A good lawyer makes a difference
- l. 4th Amendment
 - i. Right of people to be secure against unreasonable searches and seizures
 - ii. Issues – is warrant required? Or is it a reasonableness argument?
 - iii. “Shall not be violated” – reasonableness clause
 - 1. Dominant argument is requirement of a warrant
 - 2. Road block = reasonableness idea
 - iv. Reasonableness clause v. warrants clause
 - 1. Issues
 - a. What is reasonable?
 - b. What is probable cause?
 - c. What is protected? (papers, effet, etc) tangible evidence?
 - d. What is home?
 - e. What is a search?
 - f. When is something seized?
 - g. Particularity?
 - h. Who are the people?
 - i. From whom / by whom?
 - j. Where is protected?
 - k. How secure? What is a search?
 - l. Is a warrant always required?
 - m. What is the remedy for violation?
- m. Constitution of Michigan
 - i. Additional sentence but is invalid as in conflict with the US Constitution
- n. Who are the People?
 - i. Don't know if applies to US citizens outside of the country
 - ii. Probably doesn't apply to non-citizens in foreign countries
 - iii. Applies to non-citizens living in US
 - 1. Regardless of immigration paper statute
 - 2. Protects a person who is hear voluntarily
 - iv. Drug lord arrested in Mexico – 4th amendment does not apply because he never chose to be among the people – non-citizen not in US

- v. To be “of the people” must have developed sufficient connection with the country to be part of the country
- o. 4th Amendment Hypo
 - i. Only applies to government officials
 - ii. Actions of landlord are not covered
 - iii. Doesn’t apply to stuff stolen from your apartment that ends up w/ the police
 - iv. Landlord directed by police is a state actor
 - v. Protects against state actions which could include private citizens acting on the part of the state

II. Defining a “Search”

a. Katz v. United States

- i. Electronic surveillance device placed on outside of phone booth to listen to petitioner’s conversation
- ii. Could only hear petitioner’s part of conversation
- iii. Device was limited in scope & duration
- iv. Whether listening to the conversations constituted a search under the 4th Amendment?
- v. United States argued eavesdropping is not covered because it is not tangible evidence
 - 1. Olmstead – no physical penetration
 - 2. Cannot seize intangible items
- vi. Expectation of privacy in the phone booth
- vii. Yes, it was a search
- viii. People could see him but he was not ready for public listening
- ix. No warrant
- x. Protects people and not places
- xi. Underpinnings of Olmstead have been so eroded by subsequent decisions that it should be overruled.
- xii. Court says it is a search
 - 1. Protects people and not places
 - 2. Phone booth has “reasonable expectation of privacy” so search w/o warrant is unreasonable.
- xiii. Harlan concurring – 1) an actual expectation of privacy, and 2) an expectation that society recognizes as reasonable
 - 1. Factors around treatment of phone booths are relevant
- xiv. Harlan’s Test for Identifying a Search
 - 1. An actual expectation of privacy
 - 2. An expectation that society is prepared to recognize as reasonable

b. Nash Case

- i. Not a search because no expectation of privacy in that box

c. Oliver v. United States (Open Fields Doctrine)

- i. Marijuana was being grown on Oliver’s property
- ii. Officers went behind a gate w/ a no trespassing sign
- iii. Is it a search to go onto property to search “open fields”?
- iv. “effects” is less inclusive than property
- v. Field is not intimate to the home

- vi. Dissent – one property right is exclusion and officers violated law by trespassing. State is intruding on private property
- vii. Rule – no reasonable expectation of privacy in an “open field”
 - 1. Katz does not apply to open fields.
- d. Generally Speaking
 - i. Federal actor in federal court – Oliver applies
 - ii. State actor in state court – state protection applies
 - iii. Federal actor in state court
 - 1. Usually still Oliver
 - 2. Michigan accepts Oliver case
- e. United States v. Dunn (curtilage test)
 - i. Concluded the barn lay outside the curtilage so it was not a search
 - ii. Not in the open field – always within curtilage
 - 1. If within curtilage then it is arguable 4th Amendment applies
 - iii. Dissent – Barn is within curtilage; within intimate activities of the house
 - iv. Pg 43 – 44 = the 4 curtilage factors
- f. Dunn hypothetical (People v. Hudson)
 - i. Dunn factors show the patio is in curtilage
 - ii. Harbors intimate activities of the house
- g. California v. Ciraolo (1,000 ft fly over by plane)
 - i. Area search by 1,000 ft flyover is within curtilage and court determined it did not violate the 4th Amendment
 - ii. Harlan Test
 - 1. Actual expectation of privacy because of the fence
 - 2. Not an expectation that society provides as reasonable
 - a. Was showing off roof to anybody flying over
 - iii. Issue – whether naked-eye observation of the curtilage by police from an aircraft lawfully operating at an altitude of 1,000 ft violates an expectation of privacy that is reasonable
 - 1. Any member of public could fly in plane and see the yard
- h. Dow Chemical Hypo
 - i. EPA got airplane and flew over property
 - 1. Standard precision air mapping camera
 - 2. Technology generally available to the public so not a violation
 - a. Not a violation to merely enhance vision
- i. Florida v. Riley (green house within curtilage and helicopter fly-over)
 - i. Greenhouse was part of same enclosed area and part of the curtilage
 - ii. Helicopter flew over at 400 ft and saw through 2 panels in the roof to marijuana growing incised
 - iii. Greenhouse is covered and sides of house were obscured
 - iv. Not a matter of FAA regulation
 - v. Helicopter is not as frequently occurring and not as readily available to members of the public
 - vi. Court finds it was not a search but no majority opinion
 - vii. Dissent – prosecution should have to show that helicopters regularly flying over at altitudes of 400 ft – is expectation of privacy reasonable?

- j. Backyard Hypo
 - i. Hasn't put lid on yard
 - ii. No reasonable expectation of privacy
 - iii. Enhancing human characteristics is not a problem
- k. *Kyllo v. United States* (thermal scanner case)
 - i. Scanned home w/ thermal image from the street
 - ii. Used utility bills
 - iii. Court says it is a search
 - iv. Homes are different
 - 1. Thermal image used to look into someone's home
 - v. If knowingly exposed to public then no 4th Amendment protection
 - vi. Thermal images are not publicly available
 - vii. By obtaining through sense enhancing technology details about interior of a home that could not be obtained w/o the device is a search
 - viii. Dissent – distinction based on facts, information is about outside of the home and not about interior.
 - 1. In criminal procedure facts are the law
 - 2. Use of technology should not be limited to the home
 - a. Too broad or too narrow?
 - b. Category of technology
 - c. Worried about future problems
- l. *United States v. Jones*
 - i. GPS on car and tracked car for 28 days.
 - ii. Warrant was for DC and 10 days but it was installed on 11th day in Maryland.
 - iii. Whether the GPS device on the vehicle and monitoring the device are search within the 4th amendment?
- m. *California v. Greenwood* (Searched trash for evidence)
 - i. Police searched trash for evidence of narcotics use
 - ii. Found evidence and entered home finding drugs
 - iii. Searched trash again
 - iv. Is it a search?
 - 1. No actual expectation of privacy because exposing to public
 - 2. Not an expectation society recognizes as reasonable
 - v. No expectation of privacy in something you are giving away
 - vi. Rule – no actual expectation and no reasonable expectation of privacy
 - vii. Dissent
 - 1. Could not have searched bag if carried so why should they be able to search then at the curb
 - 2. Decision to discard does not get rid of expectation of privacy
- n. *Greenwood Hypo*
 - i. Valet garbage service where trash was within the curtilage and police entered property to take trash
 - ii. Court said it was a search
- o. *United States v. Knotts* (beeper used to track outside the home)
 - i. Beeper attached to chloroform prior to purchase by defendant

- ii. Beeper was used to follow drum to defendant's cabin
- iii. Whether or not using the beeper constitutes a search?
- iv. Could not have done what they did w/o the beeper—enhances police ability
- v. Defense argues there should be expectation of privacy beyond that what can be watched
- vi. Court says it is not a search
 - 1. 24 hr surveillance is fine and a beeper is the same
 - 2. Beeper got to outside of his cabin
- p. United States v. Karo (beeper used to track inside the home)
 - i. (read whole opinion in karo)
 - ii. Beeper used to track ether inside the house
 - iii. Court says it was a search
 - iv. Knotts could all be watched visually and was only on public roadways
- q. United States v. White
 - i. Used radio transmitter on an agent
 - ii. If actions do not invade then simultaneous recording does not invade
 - 1. Knowingly exposed information to his companion
- r. Smith v. Maryland
 - i. Whether use of pen register is a search?
 - 1. Court says it was not a search because #'s dialed are voluntarily conveyed to a 3rd party, the telephone company
 - 2. Installed a pen register and police obtained a warrant to search the home as a result
 - ii. No search according to the court
 - 1. Conveyed #'s to a 3rd party
 - 2. Only limited information obtained by the 3rd party
 - 3. Possible argument – messages over phone are transferred to company just like #'s are
- s. Other
 - i. Need to understand what the fight is in Jones
 - ii. Scalia – doesn't matter what Katz says because there is a trespass of a kind that counts
 - 1. Trespass & attempt to find information
 - iii. Hard case because Knotts & Karo
 - iv. Knotts would be relevant if it was only public information
 - v. Beeper was in possession of 3rd party first
 - vi. Scalia
 - 1. This car was not an open field
 - 2. GPS attached to private car and tracked it for two weeks
 - 3. Katz test cannot support a search in this instance
 - 4. Does not deviate that mere visual observation is a search
 - vii. There is no precedent for the proposition that whether a search has occurred depends on nature of crime committed
 - viii. The attachment is not the violation in this case
 - ix. Technical trespass followed by gathering of evidence is a search
 - 1. Trespass based rule was criticized
- t. Illinois v. Cabelles

- i. Use of dog is not a search generally
 - 1. May use dog w/o any suspicion
 - 2. Dog may give rise to suspicion

III. Probable Cause

- a. Amount of evidence police must have before taking certain actions
- b. Works to get warrant & excuse a warrant
 - i. Question of probabilities
 - ii. Less than 50%
 - 1. What is it?
 - 2. How do we evaluate it?
- c. Probable cause can't work w/o a reason
 - i. To arrest? To search? To get a warrant?
 - 1. Probable cause to do what?
- d. How many facts add up to probable cause?
- e. Draper v. United states
 - i. Narcotics agent got information from informant
 - ii. Man would get off plane w/ tan bag, raincoat, slacks, and walk really fact
 - iii. Officer stopped and arrested the man meeting the description
 - 1. Was there probable cause?
 - 2. Arrest and search were lawful by the court
 - iv. Probable cause by the informant because of level of detail and reliability of the informant
- f. Illinois v. Gates
 - i. Anonymous letter describing drug activity where husband flies to Florida and drives back to Illinois
 - ii. Searched car and home and found drugs and guns
 - iii. Gates won in Illinois—search unlawful—affirmed the lower courts
 - iv. Supreme Court reversed saying there was probable cause
 - 1. Facts add up to probable cause
 - 2. Informant had facts right except that woman and man drove back together
 - v. Aguilar & Spinelli
 - 1. Made it difficult to use anonymous informants
 - a. Veracity of informant
 - b. Reliability
 - i. Background and where information came from; nature of information
 - vi. Totality of circumstances (look at everything)
 - vii. Substantial basis
 - viii. Fair probability
 - 1. Practical common-sense decision
 - a. Use cases to prove it up
 - ix. Magistrate issued warrant
 - 1. Had substantial basis and fair probability
 - 2. Including whether evidence of wrongdoing should be uncovered
 - 3. Substantial deference should be given to trial court but review is technically de-novo

- x. Gates if very permissive
- g. Probable Cause Hypo
 - i. Anonymous, where Draper was a well-known informant
 - ii. Not as much corroboration as Draper
 - iii. Court found no probable cause
- h. Maryland v. Pringle
 - i. All 3 men in car were arrested
 - ii. Court says there was probable cause to arrest all of them
- i. Devenpeck v Hilford
 - i. Don't have to tell defendant what the crime is—no need to identify crime
- j. Basics of Probable Cause
 - i. Fair probability / substantial basis – Gates Case
 - ii. Cannot be a hunch
 - iii. Less than 50%
 - iv. Based on totality of circumstances
 - 1. Reliability and truthfulness and basis of knowledge
- k. Probable Cause Hypo #2
 - i. No description of defendant; know nothing about the informant
 - ii. Prior experience w/ the individuals; car registered to someone who lived at residence
 - iii. Under totality of circumstances the informant was sufficiently corroborated for probable cause to exist
- l. Canine Cases
 - i. Florida v. Harris (yes dog sniff can give probable cause to search)
 - 1. Can a dog sniff give probable cause to search vehicles?
 - a. Old rule – dog sniff signal is probable cause to search
 - 2. Argued dog was picking up false positive so there was not giving probable cause because of lack of reliability
 - 3. Court says don't need dog to be that accurate
 - a. Probable cause is less than certainty
 - 4. Enough for fair probability that a reasonable person would believe there was criminal activity afoot
 - 5. Be cautious when considering the reliability testing of the dog
 - ii. Florida v. Jardines
 - 1. Majority uses Jones
 - a. Trespass w/ intent to gather information is an unlawful search
 - 2. Concurring – Katz privacy issues apply
 - 3. Jones – trespass on the vehicle
 - a. May go up to the front door but could not go up and down front of house
 - 4. Officer walked up to front door based on implicit license
 - a. But exceeded license by deploying dog along front of house w/ the 6 ft leash
 - 5. Concurring → using enhanced technology to invade the reasonable expectation of privacy
 - a. Actual expectation
 - b. Reasonable expectation

6. Dissent → dog could be there and the dog smelled so no violation
7. Old law is use of dog is not a search
 - a. Can use based on reasonable suspicion or no suspicion

IV. The Warrant Requirement

- a. Memorize elements of a warrant
- b. Know the warrants clause
- c. Some justices don't believe in the warrant requirement
- d. Davidson Warrant – search home
 - i. Need probable cause to believe there is evidence of the crime in the home
 - ii. o/s warrants and found dead body so left and got search warrant
- e. Boyd Case – search body
 - i. 2 witnesses suggest Boyd was involved
 - ii. Probable cause to search Boyd who is an inmate
- f. Probable cause to do something
 - i. Probable cause to believe evidence is located in the place to be searched
- g. Magistrate must be neutral and detached
 - i. Cannot also be a police officer because officer is not neutral
 - ii. Bias must be extra-judicial
 - iii. Under normal circumstances we will assume the judge is neutral
 - iv. Test is not actual bias but appearance of bias and evidence of bias is so substantial
 1. Too much prejudice
 - v. Magistrate – evaluate evidence in as neutral a position as possible to determine if probable cause exists
 - vi. Scope of search is limited by particular
 1. If warrant for house then cannot look in barn
 2. Limits actions of officers
- h. Andersen v. Maryland
 - i. Fraudulent real estate transaction
 - ii. Defendant said terms in warrant were too broad because of permission for “other crimes”
 1. Court says crime is the one of false pretense in certain case and limited searched showed the “other crimes” term was not overly broad
 - iii. The particular requirements are sufficient because of the nature of the crime
 - iv. Nothing should be left to the discretion of the officer executing the warrant.
 - v. Courts are tolerant of generality if objects to be seized cannot be as specifically described.
- i. Groh Case
 - i. Civil rights case
 - ii. Should have incorporated affidavit in warrant
- j. Hypo
 - i. Okay because judge signed affidavit as well as warrant
 1. Always get the judge to sign both
- k. United States v. Grubs
 - i. Excepting delivery of contraband so got “anticipatory warrant” that was valid after material was delivered
 - ii. Conditions must be met for the probable cause to exist

- iii. 4th amendment does not require probable cause to be stated in the warrant
- iv. Magistrate knows extent of authority but home owner does not
 - 1. No duty to provide home owner w/ the warrant but it is better to inform them
- v. Search warrants have to be executed within a time period but arrest warrants do not need to be
- l. Treatment of Other People
 - i. Moehler v. Mena (Others may be detained during warrant)
 - 1. Civil law suit by Mena for civil rights violation
 - 2. Mena is at house where police had warrant & SWAT team entered
 - 3. Mena was detained and handcuffed during search
 - 4. Duty to bystanders during warrant
 - a. Police have to be reasonable
 - b. Reasonable force / detention; asking questions is not additional procedure
 - m. Wilson v. Arkansas (Knock and Announce)
 - i. Had warrant and entered w/o knocking and announcing
 - ii. Was search reasonable if they did not knock and announce
 - iii. 4th Amendment says “reasonable” so looks to Common Law to get meaning of “reasonable”
 - iv. Does reasonableness require a knock and announce?
 - 1. Yes, it does
 - v. Different because there was a warrant so what does 4th Amendment require when a warrant is present?
 - vi. No exceptions to knock-and-announce rule will apply
 - vii. If reason to believe that evidence would likely be destroyed if advance notice were given
 - n. Richards v. Wisconsin (no blanket knock and announce rule)
 - i. Is blanket no-knock rule for felony drug cases constitutional? –No
 - ii. Officers did not knock and announce
 - iii. Exception to knock and announce
 - 1. Reasonable suspicion that knocking and announcing would be dangerous, futile, or evidence would be destroyed.
 - o. United States v. Banks
 - i. Was 15-20 second wait long enough before forcible entry?
 - ii. Wait was long enough to believe that any further wait would have resulted in contraband being destroyed
 - p. Hudson v Michigan
 - i. Not going to exclude evidence if knock & announce is violated
 - q. Maryland v. Garrison
 - i. Mistakes in warrant
 - ii. Got warrant for entire floor but there were two apartment on the floor
 - iii. Found drugs in apartment that belonged to someone other than for which the warrant was valid
 - iv. The validity of the search depends on whether the officers’ failure to realize the overbreadth of the warrant was objectively understandable & reasonable.
 - r. L.A. County v. Rettele
 - i. Entered home and discovered two people who were not same race as respondents

- ii. Entered wrong house with warrant but court said no violation
- s. Muehler v. Mena and LACounty v. Rettele are civil rights claims so they weaken the court's protections.

V. Warrant Exceptions

a. Search Incident to Arrest

i. Chimel v. California

1. Search incident to arrest
2. Had arrest warrant and arrested Chimel and then searched the entire house
3. Whether warrantless search of entire house can be justified as incident to arrest
4. "theory is house was in his control"
5. Arresting officer can search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction
 - a. And the area into which an arrestee might reach in order to grab a weapon or evidentiary items must be governed by a like rule
6. Dissent – could have gotten a warrant but why go through the formality when there is probable cause
 - a. When independent probable cause then should be able to search w/o a warrant

ii. United States v. Robinson

1. Crime was not violent
2. No immediate danger from suspended license
3. Court concluded a search incident to arrest is permissible even if there is no reason to believe that the individual has weapons

iii. Knowles v. Iowa

1. Citation and no arrest
2. No arrest so there can be no search incident to arrest

iv. Hypo

1. Court says plenty of arrest power
2. In custody so have right to search
 - a. "Close enough" to being arrested

b. Hot Pursuit

i. Warden v. Hayden

1. Robbed diamond cab company and cabs informed police via radio
2. Police search house that robber ran into and find Hayden asleep
3. Found clothes, ammo, and guns
4. Search did not violate 4th amendment because speed was essential; delay of investigation would gravely endanger the lives of others
5. Requirements
 - a. Immediately contemporaneous
 - b. Violent crimes / danger for Hot Pursuit
 - i. How fast it is and what crime was committed?

ii. Payton v. Hayden

1. Pursued fleeing felon – two days later
2. Statute allows a felony arrest w/o warrant in a private residence
3. To make arrest of individual in a house you need a warrant in most circumstances

c. Plain View

i. Coolidge v. New Hampshire.

1. Arrested Coolidge in his house and seized automobiles at his house because they needed it in this case
 - a. Did not know that the car was evidence
2. Criminal nature of crime must be immediately apparent for Plain View to apply.
3. Requirements
 - a. Must be lawfully present where they are
 - b. Seizable nature must be immediately apparent
 - i. Inadvertent
 1. Wanted police to get warrant when they should
4. Seizable nature is the probable cause

ii. Horton v. California (does plain view have to be inadvertent?)

1. Guns and clothes were not in warrant and only proceeds were in warrant
2. During search found guns and clothes and officer says he was looking for items other than proceeds
3. He was “properly present”
 - a. Warrant to search for proceeds
 - i. Not limited because a ring can be anywhere
 - ii. Scope of search is controlled by language of search warrant
 - b. Immediately apparent – guns
 - c. Not inadvertent but search was not expanded at all so inadvertence is not required

iii. Arizona v. Hicks

1. Saw stereo equipment and moved to obtain serial #'s and found out it was stolen
2. Seizable nature was not immediately apparent
3. Police did not have right to go there because police moved stereo equipment
4. Not plain view if additional investigation is needed
5. Must have probable cause to invoke plain view and cannot do more to get there

iv. Minnesota v. Dickerson (Plain Feel)

1. Pat down led to plain feel of drugs in coat
2. Plain feel can also be plain view
3. Claims he knew it was drugs

d. Automobiles

i. Carroll v. United States

1. Pulled petitioner over and cut open seats and found alcohol
2. This was a search—was it okay w/o a warrant?
3. Had probable cause to search the whole car
4. Reasonable search of car because there was probable cause

ii. California v. Carney (vehicle exception applies to mobile homes)

1. Mobile home in public area and had tip that he was giving marijuana for sex (established probable cause)
2. Conducted search w/o a warrant and found drugs
3. Vehicle exception-mobile home
 - a. Readily mobile

- b. Heavily regulated & plain view so reduced expectation of privacy
- iii. Vehicle Exception Rationale (less expectation of privacy)
 - 1. Mobility
 - 2. Heavily regulated
 - 3. Cars have windows (plain view)
 - 4. This vehicle is road-ready
 - a. Objectively looks like its not used as a home
- iv. Chambers v. Maroney
 - 1. Automobile had been taken to a police station
 - 2. Doesn't meet mobility because impounded
 - a. Ig could do it before then can search it after
 - 3. Probable cause to search the car because the car is at the same level (could have searched under inventory)
- v. Searching Cars Hypo #1
 - 1. Constitutional
 - 2. Defendant argued vehicle was immobile
 - 3. Court says vehicle was capable of mobility—tow truck, etc.
- vi. Exception extends to any and all integral parts of the automobile including the glove compartment and trunk.
- vii. California v. Acevedo (only probable cause to search the bag in the car)
 - 1. Acevedo walked to a car and placed a bag in the trunk
 - 2. Officers stopped him, opened the trunk, and found marijuana
 - 3. Was search of bag within the car valid?
 - a. Did they need a warrant?
 - 4. Probable cause to search the bag in the trunk
 - 5. Didn't have probable cause to search the whole car
 - 6. Not allowed to search whole car when only probable cause for one little bag
 - 7. Probable cause determined by the officers
 - 8. Dissent – no probable cause to search the car; no special exigency; could have seized the bag
 - 9. Use reasonableness arguments
- viii. Wyoming Case
 - 1. Can search the passengers belongings when in a car
- ix. New York v. Belton (Know the facts of this case)
 - 1. One police car and 4 men in another car
 - 2. Put men on side of road in line while officer searched the car
 - 3. Was search of the car proper?
 - 4. No probable cause to search car but there is search incident to arrest under Chime
 - a. What exactly is the area in immediate control?
 - b. Can search passenger compartment and containers within but not the trunk
- x. Thorton v. United States
 - 1. Thorton exited car and then police arrested him
 - 2. Consented to pat down and they found drugs
 - 3. Searched car and found a gun
 - 4. Defense—car not within reach and not in car so Belton does not apply

5. Valid search because Belton applies even when defendant has left the vehicle
6. Scalia – reasonable to conclude the car might contain evidence of the crime
 - a. Bright-line rule is not needed when person has been arrested.
- xi. Arizona v. Gant (can only search car incident to arrest under certain circumstances)
 1. Information Gant was driving w/ a suspended license
 2. Arrested outside of car and they search car and found a gun
 3. Court said the search was not valid
 4. Police officers knew he was driving w/o a license but search car for evidence of other crimes
 5. Scalia – is it reasonable to believe there is evidence of the crime committed in the car?
 6. Driving w/o a license requires no other evidence that could be found in the car
 7. Search Incident to Arrest
 - a. Leave suspect out – okay to search for safety
 - b. Reasonably believe evidence of crime in car
 - i. What is reasonable?
 1. Not Probable Cause or Reasonable Suspicion
 8. Chimel = Search for Safety
 9. Belton – does not authorize car search incident to arrest after the arrestee has been secured
- xii. Searching Cars Hypo #2
 1. Belton does apply even though the passenger was the one arrested
 2. Can search car incident to arrest
 3. Gant – search was unreasonable
 - a. No safety search because arrestee was in back of car and additional unit showed up
 - b. No reason to believe evidence of driving crimes in the car
- xiii. Search incident in car does not require probable cause because then they would have a right to search anyways
- e. Inventory Searches
 - i. South Dakota Case
 1. Car impounded and searched car
 2. No probable cause
 3. Inventory to protect property, protect against false claims, and protect against potential danger
 4. “Standard procedure” – operating on basis of standard operating procedure and they follow it.
 5. Dissent – no safety issue; police are not liable for stolen property; authorized search on no basis at all.
 - ii. Illinois v. Lafayette
 1. Searched bag in police station before looking
 2. It is entirely proper for police to remove and list inventory property
 3. Need standard procedure – administrative procedures
 4. Concurring in judgment – if fact of arrest is sole reason then it would not be valid – only valid because they were about to hold a person.

- iii. Another Search Hypo
 - 1. Whether there was standard procedure followed?
 - a. No policy or procedure was followed so it did violate the 4th amendment
 - 2.
- f. Borders & Checkpoints
 - i. Different standards and powers for borders
 - ii. United States v. Flores-Montano (gas tank at border case)
 - 1. Drove in car from Mexico and inspector though the tank sounded solid
 - 2. Whether it was a search to take apart the tank
 - 3. Don't need suspicion for search at border
 - a. High government interest in protecting border.
 - b. Privacy interests are less
 - c. Paramount interest in protecting border
 - 4. Okay to have a fixed check point near the border that is part of border patrol
 - a. Not a 4th amendment issue
 - iii. United States v. Ramsey (search of international mail is same as search at border)
 - 1. Searched international mail and found heroine
 - 2. Did not have probable cause
 - 3. Court says it is form of a border search
 - iv. United States v. Montoya v. Hernandez (balloon smuggler)
 - 1. Individual flying in from Columbia
 - 2. Suspected of being a balloon swallower so she is held
 - 3. Got an order from federal magistrate from probable cause
 - 4. Border – no suspicion → warrant – probable cause
 - 5. Court says it was okay based on level of suspicion – only works at the border
 - v. United States v. Matinez-Fuerte
 - 1. Court approved suspicion-less stopping of vehicles at a permanent checkpoint on a highway leading away from the Mexican border
- g. Other Checkpoints
 - i. Delaware v. Prouse
 - 1. Rejecting random suspicion-less stops of cars rejecting random suspicion-less stops of cars to check for driver's license and registration
 - a. random check might be okay if less intrusion and no unconstrained discretion
 - b. every other car eliminates discretion
 - ii. Michigan State Police v. Sitz (DUI checkpoint is allowed)
 - 1. Sobriety checkpoint—temporary—75 minutes
 - 2. Temporary
 - 3. Stop every car (no suspicion)
 - a. Possible sobriety tests
 - 4. 25 second delay
 - 5. Safety—stop drunk driving
 - 6. Court says checkpoint is okay
 - 7. Balancing tests of State's interest compared to rights of individuals
 - 8. Court says effectiveness is not relevant and police department has discretion

9. Drunk driving is a significant problem and intrusion is minimal
 10. Dissent – the effectiveness is not enough to justify the intrusion
- iii. City of Indianapolis v. Edmond (checkpoint for drugs not allowed)
1. Temporary
 2. Stop set number of cars
 3. 2-3 minutes
 4. Check for drugs (war on drugs)
 5. Drug dog gets probable cause for search if it gives the signal
 6. Officers could search w/ consent or particularized suspicion
 7. Issue is whether this search and seizure was reasonable
 8. Purpose was different than Sitz case
 - a. War on drugs is a safety issue
 - i. Maybe hot pursuit or terrorist attack would make the checkpoint okay
 9. Dissent – specific purpose of roadblock is irrelevant. Valid reasons are found so that makes it reasonable
- iv. Safety check point is okay but not for general purposes
- v. Illinois v. Lidster – checkpoint to seek information about hit-and-run because not looking for criminals of any kind.
- h. Consent
- i. Schneckloth v. Bustamonte (consent must be voluntary)
 1. Traffic stop and removed occupants from vehicle and asked for consent to search
 2. Brother gave consent and helped with the search
 3. Whether the consent was free and voluntary
 4. Whether knowledge of ability to refuse is required
 5. Can consent be free and voluntary if they do not have knowledge of ability to refuse
 6. Court says consent is evaluated on the totality of the circumstances
 - a. No knowledge of ability to refuse is required
 - b. Consent must in fact be voluntary and no express or implied coercion
 - c. Question of fact
 - d. Not necessary to warn like Miranda because suspect is not in custody so no coercion
 - e. No presumption of coercion so no warning is needed
 - ii. United States v. Drayton (not seized if on bus and questioned)
 1. Defendants on a bus and bus stopped midway on a trip and 3 police officers got on the bus
 2. Asked to search luggage and found nothing and then asked to search the person and consent was given
 3. Consent was voluntary under totality of the circumstances
 4. Dissent – says suspects were seized so had to prove consent was voluntary
 - a. Consent may be impossible if person was seized
 5. Consent must be voluntary; need not be going; burden of proof on government
 - iii. United States v. Matlock (common-authority can give consent over absent party)
 1. Was wife's consent valid?

2. Common-authority consent is valid against absent person
3. Common authority assumes risk that one in their number may permit a search
- iv. Illinois v. Rodriguez (consent from person w/o authority is okay)
 1. Visitor let police into the apartment
 2. Police were mistaken but if reasonable believe the person had authority then no problem)
- v. Georgia v. Randolph (consent is only good against absent-cotenants)
 1. Wife consents but husband says no to the search of the house
 2. Court says when non-consenting co-occupant is present then search is invalid against non-consenting person
 3. No independent right to consent
 4. Consent—only good against absent co-tenants)
- vi. Consent Hypo
 1. Whether parents can give consent over the area
 2. Is it a common area?
 3. Mom's consent was valid
 - a. Reasonable believe the party had common authority over the area
- vii. Safford School District v. Redding
 1. Search of middle school girl for prescription drugs
 2. Never found drugs in back pack, outer-clothing, or underwear
 3. TLO—search will be permissible if within its scope given circumstances and must be justified in the first place.
 4. Content of suspicion failed to support the degree of the search in this case
 - a. Backpack and outer clothes okay but not underwear
- viii. Drug Testing
 1. Suspicion less drug testing is often constitutional but not always
 2. Employment v. schools v. hospitals
- ix. Consent Hypo #2
 1. Wanted to suppress the shoes
 2. Present co-occupant that declines to give consent makes a search invalid
 3. Have to infer from silence w/refused to consent
 4. Behavior suggests he did not consent
 5. Search was valid because no express refusal → only implied
- i. Special Needs
 - i. Special needs analysis
 1. Nature and immediacy of government interests
 2. Privacy interest of the subject
 - ii. Welsh v. Wisconsin (dui arrest not exigent circumstances)
 1. Entered defendant's house to arrest him for drunk driving w/o warrant
 2. Not right kind of emergency to enter house w/o a warrant
 3. Not exigent circumstances or hot pursuit
 - iii. Brigham City, Utah v. Stuart (fight and injury made for exigent circumstances)
 1. Police entered house upon seeing a fight and injury
 2. Did officers behave in a reasonable manner in response to the emergency
 - iv. Mincy v. Arizona – no blanket exception for emergency for murder scenes

- v. Michigan v. Fisher
 1. Cops responded to disturbance inside a house
 2. Found car w/ blood and man inside home yelling and throwing stuff
 3. Officer's entered because it was an emergency and the man pulled a gun on them.
 4. Court says entry is just fine because of the emergency from the injury
 5. Dissent – trial court decided no emergency so should rely on the trial court
- vi. Kentucky v. Kimy (no police created exigency)
 1. Police created exigency by knocking on the door
 2. Court said it was okay to knock on the door
 3. Police are allowed to knock on door so court said they did not create the exigency.

VI. Seizures and Arrests

- a. Seizure – consent
 - i. Stop (Terry) – reasonable suspicion
 - ii. Arrest – probable cause
 - iii. United States v. Watson
 1. Informant told postal inspector of man w/ stolen credit card and they set up another meeting to get more
 2. Arrested man but no card on him and he gave consent to search his car and they found the cards
 3. Okay to make arrest because there is probable cause
 4. Public arrest w/o warrant is valid
 - iv. Arrest Hypo
 1. No probable cause?
 2. Hotel room is home so need warrant to arrest
 - v. United States v. Mendenhall (when a person is seized)
 1. Trying to undo the consent
 2. A person is seized if under the circumstances they would not feel free to leave
 3. Court says she was not seized and there was not enough to be a seizure
 - vi. When does an encounter become a seizure?
 1. If not a seizure then 4th Amendment does not apply
 2. Is it a search? Katz / Jones
 3. Is it a seizure? Mendenhall
 - a. If no then no 4th Amendment protection.
 - vii. Mendenhall – no seizure; voluntary consent
 1. She was free to disregard requests to go to the office at the airport
 - viii. Bostick – no per se rule for police boarding a bus
 1. Would person feel as if they could decline the search?
 - ix. United States v. Drayton – if reasonable person would feel free to terminate the encounter?
 - x. Brendlin v. CA – passengers are seized when they are riding in a car and stopped by police officers
 1. Seized based on level of suspicion
 - xi. California v. Hodari D. (when is a person seized)
 1. Unmarked car and Hodari ran and while fleeing threw away drugs
 2. When was he seized?

- a. Not when officer asserted authority; but when suspect submitted to it
- xii. Atwater – just need probable cause to make arrest
 - 1. Does not matter what the crime is
 - 2. “Stop” – did police have enough suspicion to do what they did
- b. Terry v. Ohio – Stop and Frisk
 - i. Did not have probable cause but did have enough for reasonable suspicion
 - ii. Defendant argued it was search and seizure
 - iii. State says it was neither search nor seizure
 - iv. Court says it was a search and seizure but must balance intrusion with government interests
 - 1. Allow limited search for weapons by conducting search of outer clothing upon reasonable suspicion
 - 2. Can conduct limited search of outer clothing “stop and frisk” upon “reasonable suspicion”
 - v. Level of knowledge matters
 - 1. Hunch = consent
 - 2. Reasonable suspicion = stop and frisk
 - 3. Probable cause = arrest or search
 - vi. Dunaway v. N.Y.
 - 1. Picked up defendant based upon reasonable suspicion – court says it was an arrest and seizure was improper
 - vii. Florida v. Roger – stopped defendant; took his ticket and ID and took him to a small room
 - 1. Reasonable suspicion but court found detention exceed what was allowed under reasonable suspicion
 - viii. United States v. Place (pg 256) – 90 minute delay before search exceeded what was allowed
 - ix. United States v. Sharp – 30-40 minute delay did not exceed what was allowed because respondent made it difficult
 - 1. Police must diligently pursue means of investigation
 - x. What police may do?
 - 1. Plain feel
 - 2. Search from an area that a weapon could be obtained
 - 3. Cursory of places where a person may be found
- c. Reasonable Suspicion
 - i. Hiibel v. 6th Judicial District of Nevada
 - 1. Anonymous tipster and man does not give his name and he was arrested
 - 2. Can arrest suspect stopped on reasonable suspicion if he refuses to identify himself
 - 3. Dissent – this is an arrest based on reasonable suspicion
 - ii. Terry v. Ohio
 - 1. Balance intrusion by level of suspicion
 - 2. Reasonable prudent man under circumstances would believe he may be in danger
 - 3. Probable cause is something less than 50%
 - 4. Reasonable suspicion is less than probable cause

5. Behavior that leads to level of suspicion
- iii. United States v. Aruizo
 1. Was there reasonable suspicion?
 2. Sensor was set off by minivan and it slowed from 55 mph to 30mph
 3. Court unanimously agreed it was reasonable suspicion.
 4. Need not rule out the possibility of innocent conduct
- iv. Alabama v. White
 1. Anonymous tip – consider totality of the circumstances
 2. Provides name address, time leavings, what she is carrying
 3. Court says there is quantity and quality of information
- v. Florida v. J.L.
 1. Anonymous tip that man had a gun
 2. Indicia of reliability?
 3. No identification
 4. Has not identified what the person will do
- vi. Illinois v. Wardlow (is flight sufficient for reasonable suspicion?)
 1. Man saw police and then ran away
 2. Police had reasonable suspicion to stop based on suspect's flight
 3. High crime area and ran away from officers
 4. Not a bright line rule but works in this case
 5. Nervous evasive behavior is a pertinent factor
 6. Need to use common sense judgments and inferences.
- vii. United States v. Sokolow
 1. Paid \$2,100 for two tickets and flew from Miami to Honolulu
 2. Only stayed in Miami 48 hours
 3. Stopped on side walk and took to office for search
 4. He fit profile of drug courier
 5. Court says there is reasonable suspicion
- viii. Constitutional Stop Hypo
 1. He was still on corner
 2. 1:00 am time
 3. He ducked out of sight
 4. Gunshots in the area
 5. Illinois v. Wardlow – flight in high crime area
 6. Arvizo – cumulative factors for suspicion

VII. Exclusionary Rule & Standing

- a. Applies to all constitutional violations and not just to 4th amendment
- b. Excludes the evidence
- c. It will deter police from misbehavior.
- d. Weeks v. United States
 - i. Federal case against Weeks
 - ii. Only applies to federal agents and not to States
- e. Mapp v. Ohio (exclusionary rule applies to state and federal actors)
 - i. Police went to appellants home to investigate
 - ii. Found illicit materials in the home

- iii. Conducted through search of the house
 - 1. Exceeded bounds of probable cause
 - iv. Does exclusionary rule apply to state action?
 - 1. Exclusionary rule applies to everyone.
 - f. Rakas v. Illinois (must have standing to use exclusionary rule)
 - i. No probable cause to search vehicle
 - ii. Did passengers have standing to challenge the illegal search of the car?
 - iii. Passengers didn't own shells, rifle, or car so they didn't have standing because their 4th Amendment rights were not violated
 - 1. Did person have reasonable expectation of privacy?
 - g. Minnesota v. Carter (no standing in another's residence if there temporarily)
 - i. Carter and Johns were bagging cocaine at Thompsons house
 - ii. Is window a search?
 - iii. Reasonable expectation of privacy?
 - iv. Plain view?
 - 1. Right to be there? Open fields?
 - 2. Immediately apparent?
 - v. Did Carter and Johns have standing?
 - 1. Just a quick business trip
 - 2. Not real guests
 - 3. No standing
 - vi. Olson Case – overnight guest has standing
 - vii. Commercial nature and short time period so no expectation of privacy
 - viii. Kennedy – almost all social guests have expectation of privacy
 - ix. Ginsburg – short-term guests should have expectation of privacy
 - h. MN v. Carter Hypos
 - i. No permission of owner so no standing
 - i. Brendlin v. California (passenger of car is seized and has standing because unlawful stop violated 4th amendment rights)
 - i. Stop was unconstitutional so he was seized
 - ii. Rakas – search of car was illegal
 - iii. Current case – stop of car was illegal
 - iv. If person was seized then has standing to challenge the stop
 - j. People v. Gadomski Hypo
 - i. No standing and no expectation of privacy because exposed to 3rd party
 - k. Power of the exclusionary rule
 - i. Cannot violate 4th amendment and use the fruits of such unlawful conduct to secure a conviction
 - ii. Fruit of poisonous tree
 - 1. Make sure to figure out where the evidence is poisoned
 - 2. Analyze from the start
 - iii.

VIII. Exceptions to the Exclusionary Rule

- a. Independent Source
 - i. Murray v. United States

1. Arrested two individuals and police entered warehouse but then left until a warrant was obtained. Information from warehouse was not used in obtaining the warrant
 2. Warrant came from independent source so not excluded
 3. Requirements
 - a. Warrant
 - b. No bad/tainted facts in warrant application
 - c. Still have probable cause
 4. Dissent – risks are that cops will check evidence before getting a warrant
 - a. Risks of “confirmatory searches” and then restatement of facts to get warrant.
 - b. Evidence will be tainted
- b. Inevitable Discovery
- i. Nix v. Williams (inevitably would have found the body)
 1. Defendant was arrested in connection w/ missing girl
 2. Defendant questioned illegally and body was found
 3. Trying to get evidence in of the girl’s body
 4. Inevitable Discovery Requirements
 - a. Constitutional violation (bad confession) → taint
 - b. Second investigation that is not tainted
 - i. Don’t find it but they would have
 - c. How confident?
 5. Search team would have found the body anyways
 - ii. Exceptions to Exclusion Hypo
 1. Independent Source Doctrine
 2. Would have affidavit for warrant been approved w/o the information in the house?
 3. If warrant then think “independent source doctrine”
- c. Fruit of the Poisonous Tree
- i. Wong Sun
 1. Hom Way was arrested and he gave information about Blackie Toy
 2. Police went to Toy’s house and unlawfully entered and arrested. He gave information about Yee
 3. Yee was arrested w/ heroin and gave information about Wong sun
 4. Wong Sun was arrested and interrogated
 - a. Crime is possession of heroin
 5. Toy’s Case
 - a. Illegal arrest so bedroom confession is suppressed and Yee’s heroin is suppressed
 - b. These items are fluid and not attenuated from the illegal arrest
 6. Wong Sun’s Case
 - a. Illegal arrest and search so the initial confession was suppressed
 - b. Returned a second time and this second confession was attenuated from the illegal arrest so as to make it admissible.
 - i. Too attenuated → time passed

- ii. This evidence is not poison because it is too attenuated
 - c. No privacy or possessory interest in the heroin and none of his rights were violated in obtaining the heroin from Yee.
 - i. No standing to challenge
 - ii. Brown v. Illinois (Miranda does not attenuate the taint)
 - 1. Illegal arrest and search and then placed him in interrogation. He was then read his Miranda rights
 - 2. Government argues Miranda warnings attenuated the taint
 - 3. Miranda warnings are not a fresh start
 - 4. Miranda is a 5th Amendment concern
 - 5. Wong sun → applies and we look for attenuation
 - 6. Warnings in this case do not dissipate the taint
 - 7. Powell concurring – no per se rule → thinks probable cause will be found on remand
 - iii. United States v. Cealini (fruit of poisonous tree may not apply to live witnesses)
 - 1. Found evidence of gambling but put evidence back and informed supervisors
 - a. Was decision to talk to former employee the fruit of the poisonous tree?
 - b. Court says it is reluctant to invoke the rule against a live witness
 - i. Exclusion would silence the witness
- d. Good Faith
 - i. Davis v. United States
 - 1. Good faith exception
 - 2. Reliance on binding appellate law
 - ii. United States v. Leon
 - 1. Got warrant and made arrest but the warrant was later found to be invalid
 - 2. Court says exclusionary rule isn't deterring them
 - 3. Don't need warrant for good faith as long as you are relying on case law; statute (exception)
 - 4. Brennan Dissent – should have analyzed based on the system and not the individual officer
 - iii. Good faith does not apply if
 - 1. Knowing falsity
 - 2. Not a neutral magistrate
 - 3. Clear lack of probable cause
 - 4. Facially invalid
 - iv. Herring v. United States
 - 1. Computer terminal wrongfully informed officer that driver had an o/s warrant
 - 2. Good faith reliance on computer and no deterrence will occur so the exclusionary rule does not apply.
 - v. Davis v. United States
 - 1. See Groh v. Ramirez
 - 2. Warrant is facially invalid
 - vi. Hudson v. Michigan
 - 1. Exclusionary rule does not apply to knock and announce violations.

IX. Police Interrogation

- a. Voluntariness
 - i. Hopt v. Utah
 - 1. Confession must be voluntary
 - 2. Coercion makes a confession invalid
 - ii. Brown v. United States
 - 1. Whether asking questions after having removed their clothing was coercion
 - a. “too coercive”
 - 2. Confession must be voluntary; no threats express or implied; no improprieties
 - iii. Brown v. Mississippi
 - 1. Brown confessed to murder after being hung from tree and then being whipped
 - 2. Others were beaten w a buckle until confessing
 - 3. State argues Due Process did not apply and can choose its own policy
 - a. 5th amendment not incorporated
 - 4. Supreme Court – offends some principle of justice so rooted in the traditions
 - a. “fundamental principles of liberty and justice”
 - iv. Voluntariness requirement still persists after Miranda
 - v. Miranda is a minimum conduct but voluntariness is still a requirement
 - vi. Length of interrogation and whether defendant was deprived of basic bodily function
 - 1. Ashcroft v. Tennessee – interrogated for 36 hours, confined in small room.
 - 2. Payne v. Arkansas – no food for 24 hours and confession was involuntary
 - vii. The use of force and threats of force
 - viii. Voluntariness is not a question of fact for jury. It is a question of law to be decided by the court.
 - ix. Arizona v. Fulimante
 - 1. Daughter was murdered
 - 2. Confessed to FBI informant while in prison
 - 3. Agent said he would give protecting him if he confessed
 - 4. Was confession voluntary?
 - 5. Whether suggestion of physical violence made the confession involuntary?
 - 6. Coercion can be mental or physical
 - 7. Court found a credible threat of violence
 - 8. “free will was overcome by the coercion”
 - 9. Dissent – informants are okay and Fulimante confessed to informant on his own free will
 - x. Psychological Pressure Tactics
 - 1. Spano was robbed and beat up by a boxer
 - 2. Spano shot him twice
 - 3. Calls friend Bruno and says he will surrender
 - 4. Brings counsel w/ him to station
 - 5. Refuses to answer questions and officers tell Bruno to play on Spano’s sympathies
 - a. Brown would get fired if Spano did not confess
 - 6. Jury was allowed to rely on it if they thought it was voluntary
 - a. Is confession voluntary?
 - b. Not proper to submit to jury

7. Not voluntary – questioned incessantly; only a junior high education’ used friend Bruno to guilt Spano into confessing
8. Factors → language; high school drop out; never been interrogated before; age; level of education; and mental condition of a suspect → all matter
 - a. Deception?
- xi. Crocker v. CA → law student confession was voluntary
- xii. Colorado v. Connelly
 1. Connelly confessed to officer on street about a murder
 2. “voices in head” told him to confess
 3. Mental illness interfered w/ his free will
 - a. Confession was not voluntary
 4. Does matter that there was no state action
 - a. No coercive police activity and this is necessary to find a confession is not voluntary
- xiii. Hypo
 1. Continues solitary confinement would likely make confession involuntary
 2. Sleep deprivation – not admissible
 3. Forced nudity – not admissible
 4. No solid food – likely not admissible
 5. “mental freedom is main concern”
- b. Miranda
 - i. Miranda v. Arizona
 1. Miranda was brought in and questioned for 2 hours and he confessed
 2. Was not warned and had no counsel
 - a. May have found statement to be involuntary
 3. put into unfamiliar environment and then interrogated
 4. old rule → must be free and voluntary under totality of circumstances
 5. what do police have to prove in order to show the confession was voluntary?
 6. 5th Amendment – no person should be compelled to be a witness against himself
 7. State argued there is no criminal case → just a questioning
 8. 5th amendment – “in a criminal case”
 9. 6th Amend – “in all criminal prosecutions”
 10. Due Process – “ shall not deprive a person of life, liberty or property, without due process of law
 11. Free and voluntary
 12. Not coerced – court says it is hard to prove up because interrogation is done in private
 13. Miranda is a 5th amendment case
 - a. When there is custodial interrogation the 5th Amendment applies
 14. Miranda rests on 5th Amendment right
 - a. In custody
 - b. Being interrogated
 15. Warnings
 - a. Right to be silent
 - b. Right to have an attorney

- c. Right that if no attorney then court will provide one
 - 16. Nobody knows what happens in the interrogation rooms so it is better to be safe and prevent coercion from happening
 - a. Set up Miranda so we don't have to argue what happened
 - 17. "taken into custody and otherwise deprived of freedom of action in any particular way"
 - 18. Questions and tactics
 - 19. Statements made w/o warnings are excluded regardless of being voluntary or not
 - 20. Suspect cannot waive rights if not informed
 - ii. Orozco v. Texas – person questioned in his room. Court said he was in custody so Miranda warnings were required
 - iii. Miranda also applies to psychiatric evals
- c. Custody and Interrogation
 - i. Oregon v. Mathiason
 - 1. Whether he was in custody?
 - 2. Suspect called officer and met officer at the police station
 - a. Went into office to talk
 - 3. Told him he was not under arrest
 - 4. Officer lied about finding fingerprints and defendant confessed
 - 5. Argued he was in custody but did not get warnings
 - a. Alone, in interrogation room, door closed, did not feel like he could leave
 - b. Not free to leave
 - i. Is suspect in custody?
 - 6. Came voluntarily, brief, told not under arrest, no evidence of restriction on movement
 - 7. In custody or otherwise deprived of freedom of action in any significant way
 - a. Whether a reasonable person would feel free to leave under the circumstances
 - 8. Suspect came to station on his own free will
 - 9. Usually a probation officer questioning is not custody
 - 10. IRS agent questioning is not custody
 - a. Fact intensive inquiry
 - ii. Yarborough v. Alvarado
 - 1. Alvarado was present during a carjacking and murder
 - 2. Parents drove him to the station and he was questioned for 2 hours before confessing
 - 3. He was given opportunity for a break twice but his parents were not allowed to go into the room w/ him
 - a. Long interrogation
 - b. More thorough questioning
 - c. No access to parents
 - 4. Factor is that he is young
 - 5. Whether or not age of suspect should be part of the objective analysis?
 - a. Concurring – age doesn't apply here because close to 18 but it may apply as part of the objective test

iii. JDB v. North Carolina

1. Taken to office at school but uniformed officers and was interrogated by officers and principal
2. Grandmother was legal guardian and was not contacted
3. Age is allowed because it was objectively apparent to a reasonable officer at the time of questioning
4. What would a reasonable person of same age do in that situation?
5. No reason for courts to blind themselves to the common sense reality that children feel like they must submit
6. So long as age is known or estimated it may be considered

iv. Beckemer v. McCarthy

1. Car was swerving and officer pulled him over
2. Failed sobriety tests
3. Suspect admits to use of alcohol and marijuana
4. Passed breath test but then questioned at station and then answered on form that there was no PCP or angel dust in the pot
5. He was not read his rights at any time
 - a. In public; no physical intimidation
6. Government wants
 - a. No traffic stops are custody
 - b. Questioning on misdemeanor does not implicate Miranda
7. Miranda is required for questioning on misdemeanors
 - a. Required regardless of nature of the offense
8. It is possible that a traffic stop could not be custody
 - a. As long as does not exceed the bounds of Terry stop then person is not in custody
9. Traffic stop can become custody
 - a. Length of time?
 - b. # of officers?
 - c. Extensive questioning?
 - d. Inability to leave?
10. Compare facts of Miranda and interrogation room to the traffic stop
11. Was not in custody during traffic stop in this case

v. Custody Hypothetical

1. Part 1 – refusal to let him leave does not turn Terry stop into “custody”
 - a. Reasonable person would not have believed he was under arrest
2. Part 2 – court found that they were in custody but once found the knife, a reasonable person would not feel free to walk away
 - a. Issue of knife changes the situation
3. Part 3 – in his home so presumption against custody; no custody under circumstances
4. Part 4 – in bedroom, 3am, grandmother allowed entry
 - a. Court says he is in custody
 - b. Like Orozco case
 - c. Didn't say they wouldn't arrest

- vi. Rhode Island v. Innis (not an interrogation)
 - 1. Suspect must be in custody and subject to interrogation → Miranda rights
 - 2. Custody – freedom of action is curtailed in any significant way
 - 3. Suspect was arrested and said he did not want to talk after receiving his Miranda Rights
 - 4. Questioning must stop because he stated he did not wish to talk
 - a. Interrogation after the rights have been told and suspect resists
 - 5. Officers talking to each other about how they wished they could find the gun
 - 6. Not actually equivalent of questioning
 - 7. Direct questions or functional equivalent
 - a. Designed to elicit a response from defendant
 - b. Objectively designed to elicit an incriminating response from defendant
 - 8. Any words or actions by the police that the police should know are reasonably likely to elicit an incriminating response (from THIS suspect)
 - a. Includes facts and circumstances of this suspect
 - b. Not THIS police officer but a reasonable officer should know
 - 9. No evidence officers knew or should have known of defendant's soft-heartedness towards kids
 - a. Not disoriented or upset
 - 10. Are police aware of any reasonable susceptibility of the defendant?
- vii. Illinois v. Perkins
 - 1. Undercover police agent was placed in hail
 - 2. Planned to break out
 - 3. Are the Miranda warnings required?
 - a. In custody → in prison
 - b. In interrogation → direct question
 - 4. Subject was not aware he was speaking to law enforcement so no coercion or intimidation
 - a. Not the interrogation room
 - 5. Lacks atmosphere of domination
- viii. What is required of Police?
 - 1. California v. Prysock
 - a. Did not specify if attorney would be provided at trial or questioning
 - b. Must only consider whether the warnings were effective
 - i. Do not have to recite word-for-word
 - 2. Duckworth v. Eagan
 - a. Reported he saw a deal women on the beach
 - i. Told police they were attacked
 - b. Miranda warnings
 - i. "if and when you go to court" an attorney will be provided
 - c. Argues he did not know he could have an attorney immediately
 - d. Court says the warnings given were sufficient
 - e. Witness must have understood and warnings must be given
- ix. Oregon v. Elstad
 - 1. Robbery of neighbor's house

2. Officers came to house and questioned boy in his bed room
 3. He confesses to being at the house
 4. Then he received his warnings at the station and he confessed
 5. Argues that first unwarned admission “let cat out of the bag”
 - a. Tainted the later legal confession
 6. Court says the confession in home was a violation of Miranda
 7. Can subsequent confession be admitted?
 - a. Yes the subsequent confession can be admitted
 8. Fruit of poisonous tree applies sometimes to 5th amendment violations
 9. Court says the first questioning violated Miranda but did not violate the 5th amendment because no coercion
 10. No protection of 4th amendment
 11. Miranda is protection for 5th amendment so exclusionary rule does not need to be triggered if no 5th amendment violation
 12. If first encounter were not so un-coercive then 5th amendment violation and appropriate to look at downstream effects (fruit of poisonous tree doctrine)
 13. Waiver at station was valid because it was “knowing and valid”
- x. *Dickerson v. United States*
1. Congress passed statute which laid down admissibility of such statements should turn only on whether they were voluntarily made
 2. Interrogated at FBI before being read Miranda warnings
 - a. Argued §3501 was satisfied so confession should be admitted
 3. Court says Miranda applies and statute does not
 4. § 3501 cannot replace Miranda
- xi. Interrogation Hypo
1. “from the suspect’s perspective”
 2. What police officer should know and not what he actually knows
 3. Not questioning under *Inis*
 4. Any words or actions police should know are reasonably likely to elicit a response
 - a. Reasonable officer would believe that his action would elicit a response from the defendant
 5. Sought counsel and evidence was planted placed in front of him
- xii. Interrogation Hypo Part II
1. Just trying to confront the suspect
 2. Original statement was consolation and defendant not interrogated
 3. Use *Inis* case by analogy to argue interrogation cases
- xiii. *Missouri v. Seibert*
1. Defendant’s son had cerebral palsy and died in his sleep and mother planned to burn the trailer
 2. Officers interrogated and got her to confess. Then they read her Miranda warnings and questioned again and she then confessed again
 - a. “now remind us what you told us before”
 3. Used *Elstad* case
 4. First interrogation was pretty rough and was at station
 - a. *Elstad* was at house and no rough questions

5. Was taught this interrogation method at police academy
 - a. Relied on Elstad where violation of Miranda can be cured by subsequent warnings
6. The interrogation here was basically continuous
 - a. This case is not like Elstad
7. Kennedy Concurring – evidence of intentionally circumventing Miranda → goal is to avoid Miranda
 - a. When a deliberate two-step interrogation is used there must be curative measures taken
 - i. Narrow and more specific test
8. Elstad will not govern → whether it would be reasonable to find that under the circumstances the Miranda warnings could be ineffective
9. Continuity of interrogation → same interrogation
 - a. Using statements from full and complete confession to cross examine
10. O'Connor Dissent – test should be voluntariness
 - a. Does initial interrogation pass voluntariness?
11. Seibert v. Elstad analysis
 - a. Is it fruits of the poisonous tree?

d. Miranda Exceptions

i. Impeachment

1. Harris v. New York (statements obtained in violation of Miranda can be used for impeachment)
 - a. Available for impeachment purposes
 - i. Statements obtained in violation of Miranda
 - b. When violation is outside 5th amendment but was voluntary it can be used to impeach a suspect even if it violated Miranda
 - i. Only if free and voluntary
 - c. Miranda statements can be used in impeachment

ii. Emergencies

1. New York v. Quarles (statements can be used if in emergency)
 - a. Public safety exception
 - b. Defendant was found in grocery store and police found him in store w/ empty holster
 - c. Officer asks him where the gun is and defendant says gun is in a crate
 - d. In custody & subject to interrogation
 - e. Public safety concerns override Miranda warnings
 - f. Didn't know where the gun was and could have been used in that narrow place in public
 - i. Looking for a gun
 - g. Trying to get control of the situation
 - h. Dissent – police could have used normal methods; could have asked question but not used response as evidence

iii. Booking

1. General questions during booking are allowed without warnings

- a. DUI case – relied on physical observations and not substance of answers.
The question about what day he turned 6 years old was not allowed.
- e. Miranda Waivers
 - i. Cannot be waiver w/o warnings first
 - ii. Requirements
 - 1. Right to remain silent
 - 2. Right to attorney and appointed if cannot afford one
 - a. Must reasonably convey the party's rights
 - iii. North Carolina v. Butler
 - 1. Gave him form to waive rights and he did not want to sign the form
 - 2. Says he would talk but would not sign form; then he made incriminating statements
 - 3. Whether answering the questions waived his rights?
 - a. Is enough to establish waiver
 - 4. Waiver can be inferred from actions
 - a. Saying he would not sign the form is not enough → don't need express waiver
 - 5. Dissent – there was no affirmative waiver
 - iv. Michigan v. Mosley
 - 1. Robbery Interrogation
 - a. Miranda Warnings
 - b. I don't want to talk → right to silence
 - c. Stop interrogation
 - 2. Homicide interrogation (new detective)
 - a. New warnings
 - i. Right to silence does not block the second interrogation
 - ii. Confession
 - b. Issue is evidence of confession during the second interrogation
 - 3. Considerations
 - a. Amount of time (not continuous)
 - b. Different crime
 - c. New warnings
 - 4. Was right to remain silent scrupulously honored?
 - 5. Police gave full warnings at each state
 - a. Amount of time that passed was several hours
 - v. Edwards v. Arizona
 - 1. Investigation begins
 - a. Warnings
 - b. Right to counsel
 - 2. Next morning – new detectives
 - a. Guard says “must talk”
 - b. Warnings issues
 - c. Confession
 - 3. Wants to exclude the confession
 - 4. Whether questions after right to counsel were a violation?

5. Does it scrupulously honor the rights he invoked?
 6. Confession violated rights because he explicitly requested his right to counsel during questioning
 - a. In order to waive defendant would have to initiate questions himself
 - b. Different w/ Mosley is right to silence v. right to counsel
 7. No solution to right to silence w/ the state but right to counsel is easily fixed
 8. No re-approaching when right to counsel is invoked
- vi. Maryland v. Shatzer
1. Shatzer was already in prison on an abuse charge
 2. Allegations of child abuse
 - a. Interviewed
 - b. Warned
 - c. Invoked right to counsel
 - d. Stop
 3. Goes to prison on a different crime
 4. New evidence
 - a. New questioning in prison
 - b. New warnings/waiver
 - c. Confession
 5. Suspect in general population is not in custody
 6. Argues he invoked his right to counsel and should not have been re-approached for questioning
 7. Court says there had been an adequate break in custody / time → so no coercion
 8. No reason to believe the waiver was coerced
 9. Compare to factors in Edwards
- vii. Minnick v. Mississippi
1. Petitioner escaped from prison
 2. Arrested and received warnings
 3. Said he would not answer many questions
 - a. Told them to come back when he had a lawyer
 4. He spoke w/ counsel and then was interrogated again and confessed
 5. Right to counsel does not cease after suspect has consulted w/ counsel
 6. Right to counsel persists
 7. Shatzer is not controlled by Minnick
 - a. No break in custody in Minnick
- viii. Davis v. United States
1. Suspect must unambiguously request counsel
 2. If ambiguous or un-colloquial then do not need to stop the questioning
 3. Concurrence – if ambiguous then stop and ask what the suspect meant
- ix. Berghuis v. Thompkins
1. Suspect shot someone and as arrested a year later
 2. He was read his warnings and he was mainly silent for the interrogation
 - a. Court says this is not enough to invoke right to silence
 - b. Must unambiguously invoke right to silence
 3. Did he waive it?

- a. Waived his right by making a statement
 - 4. Dissent – he did not waive his rights
 - a. His silence should not be enough and statements should not be enough for waiver
 - x. Waiver v. Assertion?
 - 1. Waiver must be voluntary and knowing and burden will always be on state
- X. 6th Amendment Right to Counsel
 - a. Right to counsel defined
 - i. Right to counsel applies after adversarial proceeding have begun
 - 1. Formal charge? Prelim hearing? Indictment? Arraignment?
 - ii. Suspect may have 5th amendment but not 6th amendment or vice versa
 - iii. If custodial interrogation then Miranda applies. 6th Amendment right is present once it is invoked. 6th Amendment right attaches once indictment
 - iv. Massiah v. United States
 - 1. Cocaine found on boat and petitioner was arrested, indicted, and released
 - 2. Another suspect offered to have radio transmitter in his car and got defendant to make incriminating statements
 - 3. Deliberately elicited statement from him in absence of counsel
 - a. Violated 6th amendment because counsel was not present and 6th amendment continues after it attaches
 - b. Deliberately elicited
 - c. Subjective instead of objective
 - i. Were they actually trying to get certain answers from defendant?
 - d. Did they do it on purpose?
 - 4. Dissent – he was not denied assistance to counsel → there is not custody, coercion, or interrogation
 - 5. Police may not deliberately elicit information after 6th amendment right attaches
 - v. Brewer v. Williams
 - 1. Arrested for murder of 10 year old girl
 - 2. Called lawyer in Des Moines and tells Davenport lawyer to make sure defendant does not say anything
 - 3. Knew he needed a lawyer
 - a. Makes arrangements to have him transported back to Des Moines
 - 4. 6th Amendment right attached at arraignment
 - a. Officer gave “Christian burial speech “ on the trip
 - 5. 3 hour trip
 - 6. Not allowed to ask questions
 - 7. No questions but Williams asks them to stop to locate clothes, then blanket, then body
 - 8. District court found for defendant on grounds of
 - a. Due process
 - b. Miranda
 - i. In custody and interrogation (always ask for Miranda)
 - 1. Questioning or functional equivalent
 - c. 6th amendment right to counsel

- a. Can request counsel once in custody
 - 3. No interrogation in this case so Miranda does not apply
 - 4. Michigan rule is different because right to counsel attaches for all identifications to indictment
- iv. Hypo #2
 - 1. Has the right attached? – murder proceeding but dismissed
 - 2. Did state deliberately elicit?
 - 3. Did defendant waive 6th amendment right?
 - a. This is narcotics case not murder – offense specific
 - 4. Not in custody so no 5th amendment
 - a. In custody?
 - b. Interrogated?
 - c. Asserted? / waived?
 - 5. Whether 6th amendment right still attaches after charges are dismissed?
 - a. Court said it should be suppressed
 - 6. Defense Oriented arguments
 - a. The right attaches and once attached waiver during interrogation during the charged case is ineffective
 - b. Cannot use undercover informant
 - c. Separate investigation and no intent from the separate investigating party
 - 7. When does it attach?
 - 8. Does not depend on custody
 - 9. Does not matter if already consulted w/ counsel
- v. United States v. Henry
 - 1. Defendant in hail and put informant in cell and told not to elicit statements from defendant
 - 2. Defendant confessed to robbery
 - 3. 5th amendment → not in custody so no coercion
 - 4. 6th amendment → indicted for robbery so attached → right to counsel so state cannot deliberately elicit statements from him in absence of counsel
 - 5. Contingent fee basis so deliberately elicited information → violated 6th amendment
 - 6. Government may not deliberately elicit information when 6th amendment attaches
- vi. Kuhlman v. Wilson
 - 1. Informant was to keep ears open for names of cohorts
 - 2. Informant does not believe him
 - 3. Confessed to informant
 - 4. Was not told to elicit
 - 5. No elicitation so admission is allowed
 - 6. Qnot paid on contingent fee so no incentive to elicit
- vii. Kansas v. Ventris
 - 1. 6th amendment violation evidence can be used to impeach the witness
 - a. Can only be used for credibility
- viii. Hypo #3
 - 1. Not a state actor? – he was a state actor because of uniform

2. Did he waive?
3. Right attached
4. Court says deliberate elicitation

XI. Review

- a. What is a search?
 - i. Distinguish among cases that determine what a search is
 - ii. Knotts and Karo – beeper cases
 - iii. Don't ignore analysis of is it a search
- b. Probable Cause
 - i. Gates – how to establish P.C.
 1. Facts and knowledge plus reasonably reliable information
 2. Totality of the circumstances
 - a. How and where to look
 3. Need conclusion on whether or not there is enough
 - ii. Distinguish reasonable suspicion from probable cause
 1. Have to do it by analogy of the cases
 - iii. Probable cause → objective standard
- c. Warrants
 - i. Make sure to look at warrants and do analysis
 - ii. Must be issued on probable cause
 - iii. Detached and neutral magistrate
 - iv. Where and what to search w/ sufficient particularity
 - v. Special requirements? → no knock?
 - vi. Others present may be detained for safety
 1. Ybarra case – search of woman at a bar
- d. Exceptions to warrant requirement
 - i. Think of hypo that pushes the limit of each doctrine
 - ii. Police officer may search vehicle w/ probable cause
 1. Scope of search is limited to the scope of probable cause
 - iii. Probable cause of arrest may lead to search incident to arrest of car.
 1. Limited by Gant case
 - iv. Checkpoints → no suspicion required
- e. Arrest vs. Stop
 - i. Seizure?
 - ii. May violate even if it doesn't lead to an arrest
 - iii. Reasonable suspicion?
 1. Know the facts in Terry
- f. Exclusionary Rule
 - i. Will it deter unconstitutional behavior by police?
 - ii. Fruit of poisonous tree → recognize the parties and the flow of the violation
 - iii. Standing → can only claim violation of one's own individual rights
 - iv. Independent Source
 - v. Inevitable Discovery – 2 ways to find evidence and one of them is constitutional