

I. Fourth Amendment

A. Preliminary Concerns

1. Only applies to Government Action:

- a) Government officials
 - (1) Federal (4th Amendment)
 - (2) State (*Mapp v. Ohio*)
 - (3) Implicated by government asking permission of others to take/get things such as landlords or PC techs finding child porn (*Burdeau v. McDowell*)
- b) Exceptions: doesn't apply to nonresidents w/ property in another country (*US v. Verdugo-Urquidez* → "4th refers to a class of persons forming the Nat'l community or have *sufficient* connection to US)

B. Analytical Schools of Thought

1. Normative: that there are principles inherent in our Constitution and the 4th that guides our understanding of what constitutes intrusive government action, privacy, etc. (ex: gov ought not be able to track individuals wantonly)
2. Empirical: objective, statistical measures of privacy, intrusions, and what does or doesn't constitute a violation of the 4th (ex: it is statistically unlikely that someone would be affected by this police behavior)

C. "Search"

1. Physical Trespass (property) - still constitutes a 'search' if it is a physical trespass on persons, homes, papers, and effects (although make sure other exception doesn't apply)
 - a) *Kyllo*: (thermal imaging): (1) gov uses device **not generally used by public** to (2) explore details of home previously unknowable w/o physical trespass = search and presumptively unreasonable
 - b) But see *Knotts*: GPS 'beeper' placed into barrel of chloroform then given to D. and driven around and left outside house = no 4th violation (public roads & no invasion of privacy of home)
 - c) And see *Karo*: GPS 'beeper' placed w/ permission of informant into ether can and sold to D. who takes it home and then drives w/ it into other peoples homes → 4th 'search' b/c of in-home monitoring (not open to visual surveillance)
 - d) *US v. Jones*: (GPS on wife's car) → 1) vehicle is an 'effect' and 2) gov placement of GPS device on the vehicle constitutes 'search' (so need warrant)
 - e) *Also under Dog Sniffs*: *Florida v. Jardines*: dog sniffing in curtilage of home & home = search w/in 4th b/c of sacred property area despite limited capacity
2. Reasonable Expectation of Privacy (REP) - *Katz v. United States* (NOTE: If there is REP = "search" but question still remains if it is 'reasonable')
 - a) Two Prong Test
 - (1) Subjective: actual demonstrated intent of privacy
 - (a) "Knowingly" not "purposefully" → lower threshold for State b/c only requires knowledge not intent
 - (i) This is a critique and there should be a critique involving knowing v. purpose on exam

- (2) Objective: society will recognize that expectation of privacy as reasonable
 - (a) Normative & Empirical reasoning (use both on exam)
- b) Doctrinal ('Exceptions') to REP:
 - (1) **"False Friends": NO REP** in things said/given to friends/any other person - *US v. White* 'criminals assume risk of association w/ other crim'
 - (a) *Lewis*: undercover agents not subject to 4th
 - (b) *Lopez*: recording by same undercover agent not 4th violation
 - (c) *Hoffa*: ppl entrusted w/ info they later reveal = no 4th violation
 - (d) *On Lee*: man overheard trusted convo = not subject to 4th
 - (2) **"Third Party Doctrine": *Smith v. Maryland*** (pen registers): things disclosed to a third party are not subject to 4th violation (No REP)
 - (a) *Miller*: bank records not subject to 4th protection
 - (b) But See → *Carpenter v. US*: (CSLI Cell Phone GPS data) 1)
 - contravenes public expectation of privacy (cell phone is so personal) & third-party doctrine not mechanical (no 'meaningful way volunteer this info')
 - (3) **"Dog Sniffs": *US v. Place***: canines only reveal absence or presence of contraband = contraband illegitimate = no REP
 - (a) BUT SEE → *Florida v. Jardines* (Dog Sniffing Home Case) =
 - using dogs to sniff w/in home & curtilage = search
 - (4) **"Open Field": No REP** in 'open field' - *Hester v. US & Oliver* = "open field" = undeveloped/unoccupied area of/and outside curtilage of a home
 - (5) **"Curtilage": *US v. Dunn***: 4 Factors for Defining Curtilage:
 - (a) Proximity of area claimed to be curtilage (of a home)
 - (b) Is area included in an enclosure?
 - (c) Nature of uses the area is put to?
 - (d) Steps taken by resident to protect from observation by people passing by
 - (6) **"Aerial Surveillance"**
 - (a) *California v. Curtado*: police could use private airplane to fly over yard and observe marijuana plants → no REP in police engaging in same behavior as civilians (ppl fly over homes)
 - (b) *Florida v. Riley*: Police can use helicopter too!
 - (7) **Garbage: *California v. Greenwood***: no REP in garbage left outside curtilage of home for trash removal (discarded items = no REP)
- c) Factors in REP Analysis
 - (1) Nature of place Observed (public v. private)
 - (2) Steps taken to enhance privacy (closing booth, cupping hands)
 - (3) Nature of object/activity (binary techniques, readily available equipment)
 - (4) Physical Nature of Intrusion (location of Observer)
- D. Seizure: *US v. Karo* → occurs when "there is some meaningful interference w/ an individual's possessory interests in that property" (quoting *US v. Jacobsen*)

- E. Probable Cause: General Rule: warrant based on PC is necessary when police action = search (several exceptions discussed later); also generally used when arresting someone
1. PC exists where facts and circumstances w/in affiant's knowledge and of which they have reasonably trustworthy info are sufficient to warrant a man of reasonable caution to believe that:
 - a) An offense has been committed by the person to be arrested; or
 - b) Evidence subject to search and seizure will be found in the place to be searched
 2. Augilar-Spinelli Test: Two Pronged (OVERTURNED)
 - a) "Basis of Knowledge" = establishing means by which affiant/informant came by info
 - b) "Veracity" or "Reliability": establishes that source of info is honest, trustworthy, credible
 3. TOTALITY OF CIRCUMSTANCES = ANALYSIS FOR PC (i.e. still knowledge and reliability but now it's a continuum, the more you have of one the less you need of the other)
 - a) *Illinois v. Gates* → FL Drug-Cation → removed formal 2 prong test and made TOC (above) b/c 80% of details from anonymous source proved to be true so police had PC
 4. PC DOES NOT MEAN PROBABLY & POLICE CAN BE MISTAKEN W/O CONSEQUENCE
 5. *Franks v. Delaware*: steps to challenge truthfulness of statements in affidavit
 - a) D. *must* make "substantial prelim showing" that false statement was made "knowingly & intentionally" or w/ "reckless disregard"
 - b) If shown, 4th requires hearing
 - c) If perjury is established by preponderance of the evidence, affidavits remaining contents must be examined for PC
 - d) If no PC established, warrant invalid and "fruits of tainted tree" suppressed.
 - e) ONLY APPLIES TO POLICE OR DA UNDER OATH NOT INFORMANTS TO POLICE
 6. NO SLIDING SCALE → either objectively exists or it does not
 7. Subjective intent & motivations of officer seeking warrant or making arrest is IRRELEVANT
- F. Arrests & Arrest Warrants
1. Arrest = taken into custody by lawful authorities for purposes of being charged w/ crime ("custodial arrest")
 - a) All arrests = seizure; all seizures not arrest (traffic stop)
 - b) *Atwater v. Lago Vista*: (2001) 9-0 decision that police can arrest you for anything they can also enforce the law for (this only looked at traffic stop)
 2. Basic Constitutional Rules for Arrests:
 - a) Arrests must have PC
 - b) May arrest person in public w/o warrant (*US v. Watson*)
 - (1) Must be accompanied by *Gerstein* hearing to determine PC of arrest
 - c) Person in home = must have warrant (*Payton v. New York*) UNLESS exigent circumstances
 - (1) Exigent Circumstances:

- (a) Hot Pursuit: begin in public → into private place
- (b) Reasonable cause to believe if no immediate entry:
 - (i) Evidence will be destroyed;
 - (ii) Suspect will escape; or
 - (iii) Harm will result to police or others in/out building
- (c) NOTE: Gravity of Harm AND Likelihood suspect is armed MUST be considered
- d) Person in another person's home = need at least a search warrant for 3rd party home (and if only purpose is to arrest that person then you need an arrest warrant) unless exigent circumstances (see above)
 - (1) *Steagald Principle*: arrest warrant protects D. but not the 3rd person whose home is about to be entered and searched
- 3. NOTE: warrantless arrest DOES NOT void Conviction or release suspect → only SUPPRESSES EVIDENCE
- 4. Excessive Force & No Knock Warrants: *Graham v. Connor* = objective reasonableness test → taken at the time that the police used force (that exact moment)

G. Qualified Immunity

- 1. Was there a violation of a statutory or constitutional right; and
- 2. Was that right CLEARLY ESTABLISHED @ time of alleged misconduct
 - a) I.e. was there a previous case that established that right
 - (1) Naturally, no new law will be created then

H. Search Warrants

- 1. Elements (same for arrest warrant)
 - a) PC
 - b) Oath/Affirmation
 - c) Particularly describing the place to be searched & persons or things to be seized
 - (1) *Lo-Ji Sales*: left warrant blank to be filled out later
 - (2) Read in fair context - i.e. if it lists 7 things for a robbery then it's ok to seize other non-specific things related to a robbery (*Anderson v. Maryland*)
 - (3) Incorporation of other documents if: 1) warrant uses appropriate incorp language and 2) supporting doc accompanies the warrant
 - d) Reviewed and approved by neutral and detached magistrate
 - (1) *Lo-Ji Sales* → magistrate took part in the investigation = not neutral and detached
- 2. Execution
 - a) Knock & Announce rule = norm
 - (1) *Wilson v. Arkansas* → Implicit from CL
 - (2) *Richards v. Wisconsin* → no per se exemption from knock-and-announce rule
 - (a) Only need REASONABLE SUSPICION (specific and particularized facts) for exigencies
 - (i) Dangerous to officers

- (ii) Futile (fugitive)
 - (iii) Destruction of evidence
- (b) No remedy in criminal court for violating - we learn this b/c it's still tested and provides for civil remedies
- (3) 15-20 seconds = enough time to wait after K&A to enter (*US v. Banks*)
- b) After Entry:
 - (1) May search containers that *could* contain searched item (i.e. ring can fit anywhere v. piano)
 - (2) May seize object not w/in warrant w/ PC it contains contraband
 - (3) Officers may need to adjust their search given new info discovered immediately before or during search
 - (a) *Maryland v. Garrison* → cops able to use evidence obtained prior to realizing search was in wrong house
 - (4) *Ybarra v. Illinois* → police may not search anyone in premises not listed in warrant w/o **independent PC to search that person**
 - (a) *Michigan v. Summers* → implicit authority to detain occupants of a home that is being searched pursuant to valid search warrant so long as search is conducted
 - (b) *Bailey* → automatic, implicit right to detain and doesn't require anything besides valid search warrant and a search
- c) EXCEPTIONS:
 - (1) Exigent Circumstances
 - (a) Circumstances/Factors:
 - (i) Hot Pursuit
 - (a) *Stanton v. Sims* can warrantlessly enter home even for minor offense
 - (ii) Evidence will be destroyed (MOST COMMON)
 - (a) *Schmerber* : car accident + trip to hospital = no warrant for BAC
 - (b) *Missouri v. McNeely*: no categorical allowance of blood draw
 - (c) BUT *Mitchell*: unconscious driver = no chance for breath test = blood draw is chill
 - (iii) Suspect will escape
 - (iv) Harm will result to police/others
 - (a) Gravity of Harm & Likelihood suspect is armed
 - (b) *Warden v. Hayden*: armed robbery + fled into home (and didn't matter if they searched for more weapons anywhere in home)
 - (c) "Community Caretaking" *Brigham City Utah v. Stuart* : police may enter home to respond to emergency and not crim. investigation

- (b) NOTE: does not apply if police create the exigency BUT it's ok if they don't violate the 4th amendment/threaten to engage in conduct that violates (*Kentucky v. King*)
- (2) Search Incident to Lawful Arrest (SILA)
 - (a) *Chimel v. California* → can search w/ a lawful arrest the (1) person for weapons or evidence and (2) area under D. immediate control (w/in 12 feet?)
 - (b) *US v. Robinson* → automatic justification to SILA & doesn't matter what the thing is
 - (c) *Riley v. California* → EXCEPTION = CELL PHONES (need search warrant) absent exigency
 - (d) *Maryland v. Buie* → may also search closets/places immediately adjacent to the arrested D. to search for other people that would hurt police (NOTE scope is limited to looking for people and officer safety - not containers)
 - (e) *NY v. Belton* → SILA in car = police may search entire passenger compartment to the car (and all containers inside)
 - (f) *Thornton* → extends *Belton* to recent occupants of vehicles
 - (g) ***Arizona v. Gant*** → BELTON IS LIMITED → only search vehicle when D. is unsecured and w/in reaching distance at time of search AND added "reasonable belief" that more evidence will be found in car
 - (h) *Whren* → subjective motivations for pretextual traffic stops doesn't matter
 - (i) *Ladson* → same
- (3) Automobile Exception
 - (a) *Carroll* → PC only needed (mobility rationale) to search car
 - (b) *Chambers* → added reduced privacy concern
 - (c) *Coolidge* → car in driveway and searched a year after = court said 4th violation b/c cars doesn't mean abuse whatever
 - (d) *Carney* → mobile homes count as cars, don't need warrant
- (4) Inventories
 - (a) Basically, 4th applies to criminal investigations → towing a car and performing an inventory = A-OK

- (b) Ditto for people
- (c) AS LONG AS it follows a procedure → inventory cannot be used to circumvent the 4th
- (5) Containers (in cars)
 - (a) Definition: any object capable of holding another object
 - (i) Only thing where there is no privacy is something like a plastic bag
 - (ii) All other containers treated exactly alike (brown paper bag → locked trunk)
 - (b) *California v. Acevedo*: err on the side that police can search a container in a car w/o warrant if their search is supported by PC
 - (i) Two Circumstances:
 - (a) As part of valid auto exception search police come across container = may search as long as large enough to hold evidence
 - (b) Police may have PC that container has evidence; may search car for container and open it

I. Plain View

- (a) Definition: object of incriminating nature may be seized w/o warrant if it is in “plain view” of a police officer lawfully present at the scene (**not an exception b/c it isn't a “search”**)
- (b) General Rule:
 - (i) Officer observes from lawful vantage point;
 - (a) Executing valid search warrant
 - (b) Executing valid arrest warrant
 - (c) Executing valid warrantless search/arrest pursuant to an exception
 - (d) Viewing evidence from a lawful public place (sidewalk, etc.)
 - (ii) Has a right of physical access to it; and
 - (a) Observes weed via window but cannot enter house without a warrant = no right of access
 - (iii) It is immediately apparent to her that it is contraband or a fruit, instrumentality, or evidence of a crime
 - (a) *Arizona v. Hicks*: must know, w/o further movement/investigation, that item is evidence (PC required)
 - (iv) *Horton v. California* → doesn't have to be inadvertent
 - (v) *Minnesota v. Dickerson* → PLAIN TOUCH → officer lawfully pats down suspect and feels object that is contraband (same rationale as plain view)

J. Consent

1. Generally, if someone consents then there is no need for warrant or PC b/c there is no intrusion by the Gov.
2. CONSENT MUST BE VOLUNTARY (not coerced)

3. Scope/Boundaries:

- a) Matlock: co-occupant possesses equal rights to property to consent to search
→ reminder that this only goes as far as their authority to consent (shared space, their room)
- b) GA v. Randolph: co-occupant consent does not allow police to search IF the non-consenting party is actually PRESENT → VERY LIMITED HOLDING
- c) Fernandez v. CA: guy that was arrested and taken away after denying police consent to a search was considered not able to continue to object once taken away. (Matlock not Randolph applied)
- d) Illinois v. Rodriguez → Officer does not need to be correct in determining that a person is a co-occupant → only needs 'reasonable belief' → where in this case the gal mentioned her clothing and 'some furniture' was at the apartment after showing signs of abuse
- e) Florida v. Jimeno: Consent search is invalid IF the officer exceeds scope of consent → here, however, an envelope of cocaine in the car was 'objectively reasonable' to be considered in the scope

K. Terry Stops

- 1. Whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger → as determined by the specific reasonable inferences which he is entitled to draw from the facts in light of his experience → reasonable suspicion
 - a) Terry Stop specifics
 - (1) Brief investigative stop and frisk is only for weapons
 - (2) Must be related to criminal activity
 - (3) SPECIFIC and ARTICULABLE facts → w/ all rational inferences
 - (4) No PC b/c it's R.S.
 - b) Scope:
 - (1) **Alabama v. White** → analogue to the anon tip case for PC → anon tips that predict facts, particularly behavior, are going to be considered reliable (also, less than PC***) where the lady was seen leaving an apartment. She consented to search but enough for stop
 - (2) **Florida v. JL** → anon caller gives description of guy at bus stop → not enough for RS → no predictive info and this info was available to anyone publicly

- (3) Adams v. Williams → officer gets tip from guy not always reliable but walks up to guy and rips gun out of waistband = ok b/c the ID of informant was known and so he could be arrested if wrong
- (4) **Navarette v. CA** → anon. Caller says guy “ran her off the road” in Ford pickup w/ license plate #. Police follow for 5 min and observe nothing reckless → deemed ok by Thomas b/c anon 911 calls can be traced and implies 911 calls are presumptively reliable (despite no evidence of criminal activity, no predictive behavior, etc.)
- (5) Heien v. NC → officer was mistaken about the law = ok
- (6) US v. Johnson → “parking while black” → SWAT team attacked 3 guys in a car to check if it was parked illegally = ok
- (7) **Illinois v. Wardlow** ****→ unprovoked flight = factor in R.S. as well as being in “high crime area”
- (8) **US v. Sokolow**: “Drug Courier Profile”
 - (a) Arrive early or late; first, last or middle; used one-way ticket or round-trip ticket; traveled alone or w/ companion; acted too nervous/calm

2. 2 Prong Test:

- a) R.S. to “stop” based on specific, articulable facts
- b) R.S. to “frisk” for weapons (only) w/ specific articulable facts
 - (1) Must be preceded by justifiable stop
 - (a) 4th = armed = presently dangerous

3. Scope:

- a) *Camara* → reasonableness determined by balancing need for search/seizure w/ invasion of privacy interests
- b) US v. Henley → works for past crimes (completed felony) → misdemeanors are left open to interp. By SCOTUS

4. Terry Stop v. Seizure

- a) Limits on Terry Stops?
 - (1) Dunaway → don’t need formal arrest for seizure if it functions as one
 - (a) Relevant factors:
 - (i) Not questioned where found
 - (ii) Never told “free to go” (agents kept the ID + ticket)
 - (iii) Miranda Warning
 - (2) Royer → going from the airport (public) to an interrogation room (private) = not allowed (here, evidence was suppressed b/c the consent only happened after the unlawful seizure i.e. he was in the room)

(3) Sharpe → Time limit is not set but is a TOC

(a) Factors

- (i) Brevity
- (ii) Law enforcement purposes served
- (iii) Time reasonably needed for those purposes
- (iv) Officer acting diligently
- (v) Actions of suspect in prolonging the stop

b) Consent v. Terry Stop/Seizure

(1) **Mendenhall** → a person is seized only when by means of physical force or show of authority their freedom of movement is restrained

- (a) Objective reasonable person who, in view of TOC, would believe that they were not free to leave
- (b) Show of authority OR physical force OR both

(2) Basic analysis steps:

- (a) Consent or seizure?
- (b) If seizure, RS or PC needed (Terry stop v. arrest)

(3) **California v. Hodari** → NO SEIZURE WHEN SHOW OF AUTHORITY IF IT IS IGNORED → where an officer chased a kid and that kid threw a crack rock and court found no seizure until kid was tackled BC he was ignoring the show of authority

(4) **Torres v. Madrid** → split circuits on whether or not an incomplete show of force follows same rule as above

L. Standing

1. General Requirements

- a) Injury in Fact
- b) Causation
- c) Redressability

2. No vicarious application

- a) **Alderman** → must be the victim of 4th not just a victim
- b) **Anderson** → man could not sue on behalf of wife for the things done to her in violation of 4th

(1) Focus on police conduct to a victim and not on whether someone has also been wronged tangentially

3. REP

a) **Rakas** → *Katz* for standing → i.e. is there a REP in the place searched?

- (1) Here, b/c the bullets, rifle, and car were not owned these men had no REP and there was no violation = no standing
- (2) Car was relevant

b) **Minnesota v. Olson** → standing for an overnight guest staying at a home

c) **Minnesota v. Carter** → people “merely legitimately on property” = no REP;

- (1) Factors for majority:
 - (a) Purely commercial nature of activity

- (b) Short period of time for event/on property
- (c) No long relation between the people
- d) Rawlings v. Kentucky → emphatic rejection of property based Standing = just a factor in REP analysis → no case since revival of property in REP for Katz

M. Exclusionary Rule

1. Analysis Steps

- a) What is the “Tree” (violation)
- b) What is the “Fruit” (evidence)
- c) Does the Fruit come from the Tree?
 - (1) Independent Source
 - (2) Inevitable Discovery
- d) Is it still connected enough to justify exclusion?
 - (1) Dissipation of Taint

2. Exceptions:

- a) Independent Source: evidence was found independent of the violation
 - (1) Murray: Police have PC that there are drugs in warehouse BUT also break in and check to see. Warrant didn't include the break-in and so there was PC independent of that violation = valid
- b) Inevitable Discovery: the police would have found the ‘fruit’ anyway
 - (1) Nix v. Williams: search for little girl body was well underway and they were already in the area where the body was located → just a matter of time → christian burial speech not a violation
- c) Dissipation of the Taint: has there been enough separation between violation and evidence to warrant keeping it?
 - (1) Factors:
 - (a) Length of time between the two
 - (b) Flagrancy of initial conduct
 - (c) Intervening Causes
 - (d) Act of Free Will
 - (2) Utah v. Strieff: suspicionless stop leads to finding out guy has a warrant for arrest → it's gucci
 - (a) Length of time: nothing really
 - (b) Flagrancy: D. wasn't acting out of order
 - (c) Intervening Cause: Warrant = BIG intervention
 - (d) Free Will irrelevant
 - (3) Wong Sun → shitshow but there was exclusion and admission based entirely on how bad police treated the suspects AND how far removed from the initial BS tip the info was and consent was
- d) Good Faith: Officer's conduct not the problem = ok
 - (1) US v. Leon: warrant was later found to be invalid/insufficient PC = still ok b/c officer didn't deviate and performed search based on previously valid PC and under good faith
 - (a) Reasonably relied on the validity of a facially valid warrant issued by neutral and detached magistrate

(b) Objective determination → still can suppress if warrant has misleading info (Franks) or magistrate wholly abandons judicial role (Lo-Ji Sales) or situations where no indicia of PC (BE CAREFUL FOR THIS)

- (2) MA v. Sheppard: Judge gave officer an order to his warrant was valid despite not being particular enough = officer relied on judge = no suppression
- (3) Hudson v. Michigan → Knock and Announce violations = no exclusionary rule
- (4) Herring v. United States: inaccurate recordkeeping + good faith = no exclusion → where sheriff arrested guy based on bad OFA when he came to get his car from impound lot
- (5) Davis v. United States → GF of officers acting in accordance w/ GF precedent = no suppression if SCOTUS changes or overturns.

II. 5th Amendment

A. Confessions

1. Voluntariness

- a) Hector (A Slave) v. State → determination of whether confession is made freely and voluntarily = matter for judge not jury
- b) Due Process Aspect
- c) Chavez v. Martinez → the 'process that is due' for a terrorist about to kill millions may be different than regular criminal
- d) Colorado v. Connelly → crazy guy believes he either confesses to murder or will have to commit suicide per God. Col. Sup. Court = it was coercive to take confession ; SCOTUS = NOPE, this is chill (GOOD)
- e) Spano v. NY: Spano is 'derivative citizen', 25 years old, and was subjected to extremely long interrogations where he was denied access to his attorney, not given food or drink, and psychologically subjected to best friend (cop)
interrogation → NOT DP; TOC. Relevant factors
 - (1) Foreign born
 - (2) No history of criminal behavior
 - (3) Little education and emotional instability
 - (4) Subjected to CX by prosecutor w/o his attorney (refused permission to see him)
 - (5) Wee hours of night
 - (6) Non stop
 - (7) Psychological warfare

- f) Arizona v. Fulminante → Confession of child murderer/rapist was coerced b/c of physical threat of violence that remaining in prison posed. Man would do anything to save his own life
 - g) SCoPe:
 - (1) 5th is broader than DP → protects against more scenarios
 - (2) When violation occurs → right not to be coerced = infringed at moment coercion happens; 5th = slipperier b/c
 - (a) Kastigar v. United States: use and derivative use-immunity → implicit violation only occurs if compelled testimony is used
 - (b) Chavez v. Martinez → compelled testimony = no violation bc martinez not forced to testify
 - h) Involuntariness Factors:
 - (1) Ppl like Spano (no crim history, no education, surrendered, immigrant)
 - (2) Youth
 - (3) Mental incapacity
 - (4) Police methods
- B. Miranda v. AZ: specific requirements set out for establishing knowledge of 5th rights:
1. Warning Itself:
 - a) Must be warned you have right to remain silent
 - b) Anything said can + will be used against you;
 - c) And warned you have right to attorney (even appointed)
 - d) ADDITIONAL:
 - (1) Must be given opportunity to express those rights
 - (2) May exercise those rights at any time during interrogation
 - (3) May waive those rights but nothing can be used against you w/o voluntary waiver
 2. Pushback:
 - a) Harris v. NY: uncounseled statements can be used for impeachment purposes
 - b) Michigan v. Tucker: warning itself doesn't mean constitutional right (just a factor in analysis)
 - c) NJ v. Portash: Coerced statements, as opposed to Miranda, **ALWAYS** 5th violation
 3. Narrowing Miranda:
 - a) NY v. Quarles: officer is given description of armed suspect. Upon Terry stop and frisk finds empty holster and asks where gun is. Gets it and then reads Miranda and arrests the man → no Miranda violation b/c of a PUBLIC SAFETY EXCEPTION → gun loose is dangerous in grocery store so needed to find it before Miranda
 - b) Oregon v. Elstad → Guy admits in his living room he did something and then police arrest, take to station and read miranda and go over details → no 'fruit of

- poisonous tree issue here b/c Miranda is not a constitutional violation = not a poisonous tree. Pre Miranda statements suppressed but post = gucci
- c) Dickerson v. United States → Congress cannot overrule Miranda → Miranda is a 'constitutional rule' and therefore w/o change to constitution there is no congressional regulation
 - d) Missouri v. Seibert (NOT IN POWERPOINT) → Basically, plurality reasoned that TOC warranted no statement (check notes)
 - e) TRAFFIC STOP = NOT CUSTODY/INTERROGATION: Berkemer v. McCarty → when the guy made statements during traffic stop = not an arrest, this would be ridiculous. Statements made at station house = not warned = not allowed
 - f) INTERROGATION = any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the subject = here that wasn't found even though it was a convo between officers re: handicapped girls + shotgun used in robbery
4. Waiver
- a) No express waiver needed
 - (1) NC v. Butler: where Butler was provided w/ a written waiver form after Miranda warning and he refused. Then proceeded to give inculpatory statements → nothin said express waiver is necessary = chill af
 - b) Waiver Implied From:
 - (1) Silence
 - (2) Understanding of rights
 - (3) Course of conduct indicating waiver (TOC)
5. Invocation of Rights → Under 5th
- a) Edwards: waiver of right to counsel, once invoked, is not done by showing D. continued answering questions BC INTERROGATION MUST CEASE WHEN EXPRESS REQUEST FOR ATTORNEY IS MADE UNLESS SUSPECT "INITIATES" CONVO
 - (1) Oregon v. Bradshaw = initiation occurs *only* when an inquiry from a suspect can be fairly said to represent a desire on the part of the accused to open up a more generalized discussion relating directly or indirectly to the investigation
 - b) Davis → MUST BE EXPRESS → must say "I want a lawyer" not "Maybe I should have lawyer"
 - c) Berghuis → right to silence and counsel = same invocation = express
 - d) Minnick v. Mississippi: guy requests counsel and then after weekend officers resume interrogation = violation

- e) MD v. Shatzer → 2.5 years elapsed between invocation and second waiver/request/incriminating statement = unanimous court says 2 weeks = coverage

III. 6th Amendment - Right to Counsel

A. Difference btwn 5th and 6th

1. 5th = must expressly waive right to counsel
2. 6th = right to counsel need not be invoked & EVERY REASONABLE PRESUMPTION AGAINST WAIVER

B. Scope:

1. Illinois v. Patterson: did post-indictment questioning w/o attorney violate 6th? NO b/c D. was sufficiently aware of his right to counsel (warned twice w/ Miranda) and chose to continue anyways → waiver was found to be voluntary
2. Massiah: applies to indirect and surreptitious interrogations used as work-a-rounds to 6th Amend → guy was released on bail and gave incriminating statements to informant cohort. (could not be used against *him*)
3. Brewer v. Williams: Burial speech case w/ terrible facts → this man did not waive counsel b/c he clearly wanted counsel (went to great lengths) and this burial speech was used as a way around that.

Analytical Attack Sheet:

1. Is this the action of a government actor? (or where Gov. is prompting the action?) No = no 4th
2. Is this an action against someone "in the Nat'l community of the United States"? No = no 4th
3. Is there a physical trespass? No = possibly no 4th, see #4
4. Is there a REP? (Subjective+Objective Ex. of Privacy) No = no 4th
 - a. Exceptions to REP: false friends, third party, dog sniffs, aerial surveillance, thermal imaging
 - b. Factors to consider: Place intruded, lawful vantage point, method/mode of intrusion
5. If REP, was search "reasonable"? Yes = no 4th
6. Arrest = was there a warrant?
 - a. No = was there PC? No = invalid/ 4th violation
7. Search = was there warrant?
 - a. No = Was there PC?
 - i. No = was there exception? (Exigent, SILA, Automobile, Container, Plain View, Inventories)
 1. No = 4th violation