U. S. Department of Homeland Security
Federal Law Enforcement Training Center
Legal Division

LEGAL ISSUES SOURCE BOOK

Homeland Security

6th Edition

July 2004

Foreword to the Sixth Edition

Updated: September 1, 2004

The Legal Issues Source Book is the culmination of more than twenty-five years of dedicated efforts of many members of the Legal Division at the Federal Law Enforcement Training Center. What originally began as a book containing case briefs of Fourth Amendment issues has evolved into this comprehensive resource. Contained herein are brief descriptions of the facts, issues and holdings of every important Supreme Court case decided concerning Fourth, Fifth and Sixth Amendment issues taught by the Legal Division. I hope you find it a useful tool in preparing for the legal courses here at the FLETC and for serving your agency in the years to come.

I would like to express my appreciation for those that worked most diligently in creating this instrument. Many members of the Legal Division, past and present, created these briefs. The Legal Division could not have constructed the book itself without the outstanding efforts of the Legal Division interns that have served over the years.

Susan Thornton and Lisa Triola deserve a special thank you. In Ms. Triola's first venture with this book, her impact upon it has been immeasurable. Ms. Thornton's editorial review substantially improved the quality of the work found herein. Other editors deserving of our appreciation include Bryan Lemons, Trisha Besselman, Robert Cauthen and Keith Hodges. Without the efforts of these people, there would be no Legal Issues Source Book.

John Besselman
Editor and Branch Chief
Legal Division

How to Use this Book

This book serves a different purpose than the Legal Division Student Text. That resource explains essentially how Supreme Court cases have developed Fourth, Fifth and Sixth Amendment law. While the crucial principles of the law are embedded in the student text, this resource allows the students an opportunity to refine their understanding of these areas of law.

Some students have found this resource helpful in preparing for legal examinations. The facts of each case mimic multiple choice test questions. The issue in each case brief can serve as a test question. Students may attempt to answer the question posed in the issue before reading the Supreme Court's answer and rationale as a means of testing their knowledge gained from course work and the text.

For updates, visit the FLETC Legal Division at –

http://www.fletc.gov/legal

This book may be downloaded there. Also available at the web site is the *Quarterly Review*, an update of important legal cases the Legal Division issues four times a year.

For advanced updates the legal division presents the Continuing Legal Education Training Program (CLETP). The CLETP is offered at Glynco, Georgia as well as various sites in the field. Please refer to our CLETP web page at the above address for locations and dates.

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FOURTH AMENDMENT

I. EXCLUSIONARY RULE

A. ORIGINS

Weeks v. United States
232 U.S. 383, 34 S. Ct. 341 (1914)

FACTS: Police officers arrested the defendant without a warrant at his place of employment. Other officers went to his home. A neighbor told the officers where the defendant kept a key, and they entered the house. The officers found evidence of gambling paraphernalia that they turned over to the U.S. Marshal. Later that day, the Marshal, hoping to find additional evidence, returned to the house. He searched and found additional evidence. Neither the Marshal nor the police obtained a search warrant. The government used this evidence to convict the defendant of using the mails to transport gambling paraphernalia.

ISSUE: Whether the evidence seized by the U.S. Marshal was admissible?

HELD: No. As the evidence was obtained through unconstitutional means, it was not admissible.

DISCUSSION: An official of the United States seized the evidence acting under the color of his office in direct violation of the constitutional rights of the defendant. The defendant applied for the return of his property before the trial. The Supreme Court held that the federal government could not use unreasonably obtained evidence in a federal courtroom. However, the fruit of the first search conducted by the state officers was admissible. "As the Fourth Amendment is not directed to the individual misconduct of such officials," the fruits of the state search were admissible in a federal trial.

NOTE: The Fourth Amendment would not be completely applicable to state actions until the Mapp v. Ohio decision in 1961.

Elkins v. United States
364 U.S. 206, 80 S. Ct. 1437 (1960)

FACTS: State officers, having received information that the defendants had in their possession obscene motion pictures, obtained a search warrant for the

defendant's house. The officers did not find any obscene pictures but they found various paraphernalia they believed the defendant had used to make illegal wiretaps. A state court held that the search was illegal under state law. During these state proceedings, federal officers, acting under a federal search warrant, obtained the items in state custody. Shortly after that, state officials abandoned their case and federal agents obtained a federal indictment.

ISSUE: Whether evidence obtained through an unreasonable search and seizure by state officers, without involvement of federal officers, is admissible in a federal criminal trial?

HELD: No. Evidence unreasonably obtained is inadmissible in a federal criminal trial.

DISCUSSION: The Supreme Court calculated the exclusionary rule to prevent, not repair. Its purpose is to deter - to compel respect for the constitutional guaranty to be free from unreasonable searches - by removing the incentive to disregard it. Evidence obtained by state officers during a search that, if conducted by federal officers, would have violated the Fourth Amendment, is inadmissible in a federal criminal trial.

Mapp v. Ohio
367 U.S. 643, 81 S.Ct 1684 (1961)

FACTS: Three police officers arrived at the defendant's home pursuant to information that "a person [was] hiding out in the home, which was wanted for questioning in connection with a recent bombing and that there was a large amount of policy paraphernalia being hidden in the home." The officers knocked on the door and demanded entry. The defendant, after telephoning her attorney, refused to admit them without a search warrant.

Three hours later, the officers (now with four additional officers) again sought entry. When the defendant did not immediately come to the door, the officers forcibly opened at least one door to the house. It appeared that the defendant was halfway down the stairs from the upper floor when the officers broke into the house. She demanded to see the search warrant. One officer held up a piece of paper claimed to be a warrant. The defendant grabbed the "warrant" and placed it under her clothing. A struggle followed in which the officers recovered the piece of paper. They handcuffed the defendant because she had been "belligerent" in resisting their official rescue of the "warrant" from her person. Running roughshod over the defendant, a police officer "grabbed" her, "twisted" [her] hand, and she "yelled [and] pleaded with him" because "it was hurting."

During this encounter, the defendant's lawyer arrived at the home. The officers neither permitted him to see his client, nor allowed him to enter the house. They discovered the obscene materials for which she was ultimately convicted of possessing in the course of a widespread search.

ISSUE: Whether the exclusionary rule applies to state actions?

HELD: Yes. The Supreme Court made the Fourth Amendment and the exclusionary rule applicable to the states.

DISCUSSION: The exclusionary rule is of constitutional dimensions. All evidence obtained by searches and seizures in violation of the Constitution is inadmissible in a state court. The Fourth Amendment right of privacy is enforceable against the states through the due process clause of the Fourteenth Amendment.

B. FRUIT OF THE POISONOUS TREE

Silverthorne Lumber Co. v. United States
251 U.S. 385, 40 S. Ct. 182 (1920)

FACTS: Silverthorne was indicted and arrested. While he was being detained, DOJ representatives and the U. S. Marshal went to his corporate office. Without authority, they confiscated and copied his records. The federal trial court held that the officers unconstitutionally obtained the records and ordered their return. Based on the copies, the government obtained a new indictment, and served the defendant a subpoena for the original records.

ISSUES:

1. Whether the government can use information obtained from an illegal search and seizure to secure other evidence?

2. Whether the Fourth Amendment protects corporations against unlawful searches and seizures?

HELD:

1. No. The government may not use illegally obtained evidence to gain other evidence.

2. Yes. Corporations enjoy Fourth Amendment protections.

DISCUSSION: Information gained by the government's unlawful search and seizure may not be used as a basis to subpoena that information. The

essence of a rule prohibiting the acquisition of evidence in an illegal way is that it cannot be used at all. This is the "Fruit of the Poisonous Tree" doctrine. This doctrine prohibits law enforcement officers from doing indirectly what they are prohibited from doing directly. Also, the Court held that corporations are protected against unlawful searches and seizures.

Nardone v. United States
308 U.S. 338, 60 S. Ct. 266 (1939)

FACTS: The government convicted the defendant of fraud based on evidence secured through a wiretap. On appeal, the conviction was reversed because the wiretap violated federal law. At the second trial, the government did not introduce the evidence from the wiretap. However, the government again convicted the defendant. On appeal, he argued that the trial court should have suppressed much of the evidence against him, because the government would not have learned about it but for the fact that they had performed an illegal wiretap.

ISSUE: Whether courts must exclude all evidence that the government gained directly and indirectly from an illegal search?

HELD: No. If the government performs an illegal search, and the information learned eventually led it to other evidence, that evidence may still be introduced, if the connection between that evidence and the illegal search is distant and tenuous.

DISCUSSION: This limitation on the exclusionary rule may apply when the government wants to introduce evidence for which it has no untainted, independent source. If the only reason that the government has a particular piece of evidence is that it performed an illegal search, then the evidence should be excluded. However, if the trial judge determines that the connection to the illegal search is remote, the evidence may be admissible.

United States v. Ceccolini
435 U.S. 268, 98 S. Ct. 1054 (1978)

FACTS: The FBI investigated gambling in the defendant's place of business. A full year after the FBI ended the surveillance, a police officer, while taking a break in defendant's flower shop, "tarried" behind the customer counter and conversed with an employee of the shop. During this illegal search, he noticed an envelope with money protruding on the cash register. Upon examination, he found it contained money and policy (gambling) slips. The officer then placed

the envelope back on the register and, without telling the employee what he had found, asked her to whom the envelope belonged. She said it belonged to the defendant and that she had instructions to give it to someone. The officer's finding was reported to local detectives and to the FBI. Four months later, officers interviewed the employee. Six months after that the defendant testified before the grand jury that he had never taken wagers at his shop. The employee testified to the contrary, and the government indicted the defendant for perjury.

ISSUE: Whether the employee's testimony was inadmissible as "fruit of the poisonous tree?"

HELD: No. The employee's testimony was admissible as the illegal search was distant and attenuated as to the employee's statements.

DISCUSSION: The time lapse between the police officer's illegal search and the store clerk's testimony as to the defendant's activities was significant. This attenuation was sufficient to evaporate the connection between the illegality and the testimony so as to render the testimony admissible. A substantial period of time elapsed between the illegal search and initial contact with the store clerk who was present at the time of the search. The clerk's testimony was an act of her own free will and was not coerced or induced by official authority because of the illegal search.

United States v. Crews
445 U.S. 463, 100 S. Ct. 1244 (1980)

FACTS: Officers observed the defendant in the general area of some recent crimes. The defendant resembled the police "lookout" that described the perpetrator. The officers approached the defendant, who told them his name and said that he was sixteen years old. When asked why he was not in school, the defendant replied that he just walked away from school. The officers allowed the defendant to leave, and he entered the nearby restrooms.

While the defendant was still inside, the officer spoke to an eyewitness to one of the crimes. The witness tentatively identified the defendant as he left the restroom as the possible perpetrator.

Based on this additional information, the officers detained the defendant and summoned the detective assigned to the investigation. Upon his arrival ten to fifteen minutes later, his attempt to take a photograph of the defendant was thwarted by the inclement weather. The officers then illegally took the

defendant into custody, ostensibly because he was a suspected truant. The officers took a photograph of the defendant at the station.

The following day, the police showed the first victim a photo display including a photo of the defendant. She immediately selected the defendant as her assailant. Later, another victim made a similar identification. The officers arrested the defendant. At a court-ordered lineup, the two witnesses who had previously made the photographic identifications positively identified the defendant as the assailant. The defendant was later identified in court by the two witnesses.

ISSUE: Whether the in-court identification was tainted by the identifications made through the illegal seizure?

HELD: No. In-court identification can be tainted by identifications made through the illegal seizure. But in this instance, the eyewitness' identification was not the result of the illegal seizure.

DISCUSSION: The victim's presence in the courtroom is not traceable to any police misconduct that violated the Fourth Amendment. The police knew the victim's identity before the arrest and was not discovered because of the unlawful arrest. Also, the unlawful police conduct did not bias the victim's capacity to identify the perpetrator of the crime.

"The exclusionary rule enjoins the Government from benefiting from evidence it has unlawfully obtained; it does not reach backward to taint information that was in official hands prior to any illegality. . . . The pretrial identification obtained through use of the photograph taken during defendant's illegal detention cannot be introduced; but the in-court identification is admissible . . . because the police's knowledge of defendant's identity and the victim's independent recollections of him both antedated the unlawful arrest and were thus untainted by the constitutional violation."

Taylor v. Alabama
457 U.S. 687, 102 S. Ct. 2664 (1982)

FACTS: After a robbery, an incarcerated individual told police that he had heard that the defendant was involved. Based on this information, two officers arrested petitioner without a warrant, searched him, fingerprinted him, questioned him, and placed him in a lineup. Subsequently, the police matched the defendant's fingerprints with fingerprints found on items that had been handled by one of the robbers. Once told of this, the defendant signed a waiver-of-rights and made a confession. A court found that the tip from the incarcerated

individual was insufficient to give police probable cause to obtain a warrant or to arrest petitioner.

ISSUE: Whether the confession obtained from the defendant was the fruit of an illegal seizure?

HELD: Yes. The initial fingerprints, which were themselves the fruit of an illegal arrest, and which were used to extract a confession from petitioner, could not be deemed sufficiently attenuated to break the connection between the illegal arrest and the confession.

DISCUSSION: The Court held that a confession obtained through custodial interrogation after an illegal arrest should be excluded unless intervening events break the causal connection between the illegal arrest and the confession. The Court identified several factors that should be considered in determining whether a confession has been purged of the taint of the illegal arrest: time between the arrest and the confession, the presence of intervening circumstances, and, particularly, the purpose and flagrancy of the official misconduct. The government bears the burden of proving that a confession is admissible.

Here, there was no meaningful intervening event. The initial illegal arrest tainted the statements despite the facts that six hours elapsed between the arrest and confession, that the confession may have been "voluntary" for Fifth Amendment purposes because Miranda warnings were given; that the defendant was permitted a short visit with his girlfriend; or that the police did not physically abuse petitioner. Nor was the fact that an arrest warrant, based on a comparison of fingerprints, was filed after the defendant had been arrested.

Trupiano v. United States
334 U.S. 699, 68 S. Ct. 1229 (1948)

FACTS: A Federal agent illegally seized evidence of a prohibited alcohol still. The Supreme Court held that the officer had ample time to secure a search warrant and failed to do so.

ISSUE: Whether the defendant is entitled to the return of his contraband property?

HELD: No. The exclusionary rule prohibits the government from using illegally obtained evidence in its case-in-chief against the defendant. It does not compel the government to return contraband to the defendant.

DISCUSSION: Where officers illegally seize property in violation of the Fourth Amendment that is contraband, the owner is not entitled to its return. The exclusionary rule only entitles the defendant to have the unlawfully seized property suppressed as evidence.

C. EXCEPTIONS

1. No Standing to Object

Wong Sun v. United States
371 U.S. 471, 83 S. Ct. 407 (1963)

FACTS: Federal narcotics agents arrested Hom Way and found heroin in his possession. Hom Way, who had never been an informant before, stated that he had bought heroin the night before from "Blackie Toy."

This information led to the illegal seizure of James Wah "Blackie" Toy. During this illegal seizure Toy said, "No, I haven't been selling narcotics at all. However I do know somebody who has." He provided information that led to the illegal search and seizure of Johnny Yee's premises, where the officers discovered heroin. Yee stated that "Blackie" Toy and the defendant, Wong Sun, had brought the heroin to him four days earlier.

Some agents took Toy to the defendant's neighborhood where he pointed out where the defendant lived. An agent rang a doorbell, identified himself as a narcotics agent to the woman on the landing, and asked for "Mr. Wong." She said that he was "in the back room sleeping." The agent and six other officers entered the apartment. One of the officers went into the back room and brought the defendant from the bedroom in handcuffs. A thorough search of the apartment followed, but the officers did not discover any narcotics. However, the defendant made incriminating statements.

The government tried the defendant for distribution of narcotics. The trial court admitted the government's evidence over the objections by the defense that the following items were fruits of unlawful arrests and searches: (1) the statements made orally by Toy at the time of his arrest; (2) the heroin surrendered by Johnny Yee; (3) Toy's pretrial unsigned statement; and (4) the defendant's statements.

ISSUE: Whether the four items of evidence are admissible against the defendant Wong Sun?

HELD: Yes. The defendant did not have standing to object to the introduction of the first three pieces of evidence and his statements were admissable.

DISCUSSION: A search that is unlawful at its inception is not validated by what officers discover in that search. However, even though contraband seized by officers is inadmissible against one defendant, it is admissible against another who has not suffered an invasion of his privacy. Defendants must have standing to object.

As for the defendant's statements, "The exclusionary rule has no application because the Government learned of the evidence from an independent source. . . . We need not hold that all evidence is the fruit of the poisonous tree simply because it would not have come to light but for the illegal actions of the police. Rather, the more apt question in such a case is whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint." The Court held that the illegality that led to the defendant's statements had become attenuated.

Rawlings v. Kentucky
448 U.S. 98, 100 S. Ct. 2556 (1980)

FACTS: Police officers, armed with an arrest warrant for Marquess, lawfully entered his house. Another resident of the house and four visitors (including the defendant) were present. While searching the house unsuccessfully for Marquess, several officers smelled marihuana smoke and saw marihuana seeds. Two officers left to obtain a warrant to search the house, and the other officers detained the occupants, allowing them to leave only if they consented to a search of their person. About forty-five minutes later, the officers returned with the search warrant for the premises. Cox, a visitor, was ordered to empty her purse, which contained controlled substances. Cox told the defendant, who was standing nearby, "to take what was his." The defendant immediately claimed ownership of the drugs.

ISSUE: Whether the defendant had a reasonable expectation of privacy in Cox's purse?

HELD: No. The defendant did not have a reasonable expectation of privacy in Cox's purse, and therefore had no standing to challenge the illegal search of it.

DISCUSSION: The defendant failed to sustain his burden of proving that he had a reasonable expectation of privacy in Cox's purse. Therefore, he had no standing to object to the search of the purse. The fact that the defendant claimed ownership of the drugs in the purse did not entitle him to challenge the legality of a search of the purse itself. Even assuming that police violated the Fourth and Fourteenth Amendment rights of the defendant and Cox by detaining them while other officers obtained a search warrant, exclusion of the defendant's admissions would not be necessary unless his statements were the direct result of his illegal detention.

Rakas v. Illinois
439 U.S. 128, 99 S. Ct. 421 (1978)

FACTS: After receiving a robbery report, police stopped the suspected getaway car driven by the owner and in which the defendants were passengers. After the occupants were ordered out of the car, two officers searched the interior of the vehicle. They discovered a box of rifle shells in the locked glove compartment and a sawed-off rifle under the front passenger seat. The officers then arrested the defendants, who conceded that they did not own the automobile and were simply passengers. The defendants did not assert ownership of the rifle or the shells seized.

ISSUE: Whether the defendants had standing to object to the search of the vehicle?

HELD: No. The defendants had no property or privacy interest in the interior of the vehicle.

DISCUSSION: The defendants admitted they had neither a property nor a possessory interest in the automobile. They had no interest in the property seized, and they failed to show any reasonable expectation of privacy in the glove compartment or under the seat of the vehicle in which they were passengers. Therefore, the defendants lacked standing to challenge the search of those areas.

United States v. Salvucci, Jr
448 U.S. 83, 100 S. Ct. 2547 (1980)

FACTS: The defendant and Zackular were charged with unlawful possession of stolen mail. The police used a search warrant to search an apartment rented by Zackular's mother to seize the twelve checks that formed the basis of the indictment. The defendant moved to suppress the checks on the ground that the affidavit supporting the application for the search warrant was inadequate to show probable cause.

ISSUE: Whether the defendants have standing to object to the search of the apartment?

HELD: No. Defendants may claim the benefits of the exclusionary rule only if the government has violated their Fourth Amendment rights.

DISCUSSION: Legal possession of a seized good is not a proxy for determining whether the owner had a Fourth Amendment interest. Property ownership is only one factor to be considered in determining whether an individual has a Fourth Amendment right. Possession of a good may not be used as a substitute for a factual finding that the owner had a legitimate expectation of privacy in the area searched.

United States v. Payner
447 U.S. 727, 100 S. Ct. 2439 (1980)

FACTS: The Internal Revenue Service launched an investigation into the financial activities of United States citizens in the Bahamas. Agents focused their suspicion on the Castle Bank. An IRS agent asked Casper, an occasional informant, to learn what he could about the Castle Bank. Casper cultivated a friendship with a Castle Bank Vice President. Casper introduced the Vice President to Ms. Kennedy. When Casper learned that the Vice President intended to spend a few days in Miami, he devised a scheme to gain access to bank records the Vice President might be carrying in his briefcase. The IRS agent approved the basic outline of the plan.

The Vice President arrived in Miami and went directly to Ms. Kennedy's apartment. Shortly after the two left for dinner, Casper entered the apartment using a key supplied by Kennedy. He removed the briefcase and delivered it to the agent. The agent supervised the photocopying of approximately 400 documents taken from the briefcase. The records were returned without the Vice President's knowledge of their removal. The photocopied documents led to the indictment of one of the bank's clients for falsifying his income tax return.

ISSUES: 1. Whether the defendant has standing to object to the illegal search and seizure of the Vice President's briefcase?

2. Whether the defendant's right to due process had been violated by the gross illegality of the government?

HELD: 1. No. The defendant does not have standing to block the admission of evidence derived through violations of the constitutional rights of others.

2. No. The defendant's right to due process was not violated by the government's actions.

DISCUSSION: The defendant had no reasonable expectation of privacy in the Castle Bank documents taken from the Vice President. He neither owned nor had control over the briefcase. Therefore, he has no standing to object to the illegal search and seizure of the briefcase.

Although courts should not condone unconstitutional and possible criminal behavior by government agents, such behavior does not demand the exclusion of evidence in every case of illegality. Rather, courts must weigh the applicable principles against the considerable harm that would flow from indiscriminate application of the exclusionary rule.

United States v. Padilla
508 U.S. 77, 113 S. Ct. 1936 (1993)

FACTS: The police unreasonably found Arciniega in possession of a controlled substance. They subsequently arrested several others connected to the crime, including the defendant. The government charged them with conspiracy to distribute a controlled substance. The defendant moved to suppress the evidence discovered during the investigation, claiming that it was the fruit of an unlawful investigatory stop of the car.

ISSUE: Whether the defendant has standing to object to illegal search of a co-conspirator's reasonable expectation of privacy?

HELD: No. Expectations of privacy and property interests govern the analysis of Fourth Amendment search and seizure claims. Participants in a criminal conspiracy may have had such expectations or interests, but the conspiracy itself neither added to nor detracted from them.

DISCUSSION: A defendant can urge the suppression of evidence obtained in violation of the Fourth Amendment only if that defendant demonstrates that his Fourth Amendment rights were violated by the challenged search or seizure. The established principle is that suppression of the product of a Fourth Amendment violation can be successfully urged only by those whose rights were violated by the search itself. Co-conspirators and codefendants are not accorded any special standing in establishing a reasonable expectation in each other's privacy.

2. Good Faith Exception

United States v. Leon
468 U.S. 897, 104 S. Ct. 3405 (1984)

FACTS: Based on an affidavit summarizing an investigation, an officer prepared an application for a warrant to search three homes and the defendant's automobiles. The application was reviewed by several Deputy District Attorneys, and approved by a state court judge. The resulting searches produced large quantities of evidence. The government indicted the defendants, who filed motions to suppress the evidence seized. An appellate court granted the motions in part, concluding that the search warrant affidavit was insufficient to establish probable cause. The court recognized that the searching officer acted in good faith, but refused to recognize a good-faith exception to the exclusionary rule.

ISSUE: Whether a good faith exception to the exclusionary rule exists?

HELD: Yes. A good faith exception to the exclusionary rule exists.

DISCUSSION: The Fourth Amendment's exclusionary rule should not apply to evidence obtained by officers acting in reasonable reliance on a search warrant issued by a detached and neutral magistrate. Reasonable minds frequently differ on whether a particular search warrant affidavit established probable cause. Officers are entitled to rely on the judgment of the issuing magistrate.

However, deference to a magistrate in search warrant matters is not unrestricted. A reviewing court's deference to a finding of probable cause does not preclude its inquiry into whether the officers included knowing or reckless false information. A magistrate must perform a neutral and detached function and not serve merely as a rubber stamp for the government. Suppression is an appropriate remedy if information in an affidavit misled the issuing magistrate

that the affiant knew was false or should have known was false (reckless disregard for the truth).

Massachusetts v. Sheppard
468 U.S. 981, 104 S. Ct. 3424 (1984)

FACTS: The defendant was a suspect in a murder case. A police officer drafted an affidavit for a search warrant for the defendant's house. Because it was a Sunday, the local court was closed, and the police had a difficult time finding a warrant application form. One officer found a warrant form for a controlled substance violation. He proceeded to make changes in the form to adapt it to his search but he failed to delete the reference to "controlled substance."

The officer took the affidavit form to the home of a judge. He told the judge that the form as presented dealt with controlled substances and showed the judge where he had crossed out subtitles. After unsuccessfully searching for a more suitable form, the judge said he would make the necessary changes. The judge then took the form, made some changes to it, and signed it. However, he did not change the section that authorized a search for "controlled substances." The police searched the defendant's house and found several items of evidence.

ISSUES:

1. Whether the officers reasonably believed that the search they conducted was authorized by a valid warrant?

2. Whether Federal law requires the exclusion of evidence seized under a defective warrant issued by an appropriate judicial officer?

HELD:

1. Yes. The officers reasonably believed that the search they conducted was authorized by a valid warrant.

2. No. Federal law does not require the exclusion of evidence seized under a defective warrant issued by an appropriate judicial officer.

DISCUSSION: Citing United States v. Leon, the Supreme Court held that the exclusionary rule should not be applied when the officer conducting the search acted in reasonable reliance on a warrant issued by a neutral and detached magistrate. The officers took every necessary step that the Court could reasonably expect of them. Officers are entitled to rely on warrants that they

reasonably believe are lawfully issued. The exclusionary rule is designed to deter unreasonable actions by law enforcement officers.

Arizona v. Evans
514 U.S. 1, 115 S. Ct. 1185 (1995)

FACTS: The defendant was stopped for a routine traffic violation. During this encounter, the officer learned of an outstanding warrant for his arrest. The officer arrested the defendant and conducted a search of the automobile incident to that arrest, where he found a bag of marijuana. He charged the defendant with possession of a controlled substance. Later, the government learned that a court clerk should have previously removed the arrest warrant from the computer database. The defendant moved to suppress the marijuana as the fruit of an unlawful arrest.

ISSUE: Whether the fruit of the poisonous tree doctrine is applicable when the officer acted in good faith reliance on a computer warrant database?

HELD: No. The fruit of the poisonous tree doctrine is designed to deter the unreasonable actions of police officers.

DISCUSSION: Under the framework of the good faith exception to the exclusionary rule established by United States v. Leon, the rule does not require the suppression of evidence seized because of clerical errors of court employees. Exclusion is appropriate only if such action serves the remedial objectives of the rule. The exclusionary rule is designed to deter police misconduct, not mistakes of court employees. In the case at hand, the Court noted that there was no unreasonable or illegal police activity that needed to be deterred.

Illinois v. Krull
480 U.S. 340, 107 S. Ct. 1160 (1987)

FACTS: A state statute required licensed motor vehicle and vehicular parts sellers to permit state officials to inspect certain records. Pursuant to the statute, a police officer entered the defendant's wrecking yard and asked to inspect records of vehicle purchases. The defendant stated that the records could not be found but gave the officer a list of approximately five purchases. The officer received permission from the defendant to look at the cars in the yard. He discovered that three were stolen and a fourth had its identification number removed. The officer seized the cars and arrested the defendant. An appellate

court subsequently held that the statute (not the search) was unconstitutional because it allowed too much discretion in the officers conducting the examinations.

ISSUE: Whether the exclusionary rule commands the suppression of the evidence?

HELD: No. The Fourth Amendment's exclusionary rule does not apply to evidence obtained by police who acted in objectively reasonable reliance upon a statute authorizing warrantless administrative searches, which is subsequently found to violate the Fourth Amendment.

DISCUSSION: The purpose of the exclusionary rule is to discourage officers from engaging in unreasonable searches and seizures. The application of the exclusionary rule in these circumstances would not affect future police misconduct. Officers conducting such searches are simply fulfilling their responsibility to enforce the statute as written. If a statute is not clearly unconstitutional, reviewing courts cannot expect officers to question the judgment of the legislature that passed the law.

3. Impeachment Purposes

Walder v. United States
347 U.S. 62, 74 S. Ct. 354 (1954)

FACTS: At his trial on the charge of sale of narcotics the defendant testified that he never sold or possessed narcotics. The government then sought to introduce evidence that it acknowledged had been unreasonably seized (a heroin capsule that had been found in his possession). The trial judge admitted this evidence over the defendant's objection.

ISSUE: Whether unconstitutionally seized evidence is admissible for impeachment purposes?

HELD: Yes.

DISCUSSION: The government cannot violate the Fourth Amendment and use the fruits of such unlawful conduct to secure a conviction. Nor can it use such evidence to support a conviction on evidence obtained through leads from the unlawfully obtained evidence.

However, the defendant cannot turn the existence of the exclusionary rule into a license to commit perjury on direct examination. The defendant's assertion on direct examination that he had never possessed narcotics opens the door, solely for the purpose of attacking his credibility. The illegally seized evidence can be used for impeachment purposes.

United States v. Havens
446 U.S. 620, 100 S. Ct. 1912 (1980)

FACTS: Law enforcement officers stopped a man named McLeroth and searched him, finding cocaine in makeshift pockets in his underclothes. McLeroth implicated the defendant, who was then illegally seized and searched. In the defendant's luggage, the officers found a tee shirt from which pieces had been cut. These missing pieces matched McLeroth's makeshift pockets.

The government tried the defendant for conspiracy to import cocaine. At trial, the court suppressed all evidence of the tee shirt as the fruit of an illegal search. The defendant testified in his own defense. During a proper cross-examination, the prosecutor asked the defendant if he had anything to do with sewing pockets into McLeroth's underclothes. The defendant answered "absolutely not."

The prosecutor offered to introduce evidence of the tee shirt for the limited purpose of impeaching the defendant's credibility. The shirt was admitted over defense objections, with an instruction from the judge to the jury that they could not consider the shirt as evidence of a crime, but that they could consider it in deciding whether the defendant had testified truthfully.

ISSUE: Whether evidence suppressed as the fruit of an unlawful search and seizure may nevertheless be used to impeach a defendant's perjury?

HELD: Yes. Suppressed evidence can be used to impeach a defendant who lies on either direct or cross-examination.

DISCUSSION: Defendants who lie on the witness stand do so at their peril. Our courts work best when witnesses tell the truth. Therefore, the courts have developed a strong public policy to ferret out perjury.

The exclusionary rule is not constitutionally mandated. Rather, it is a creation of case law, designed to discourage officers from violating the Constitution. As case law, the exclusionary rule is subject to judge-made exceptions based on public policy.

Here, the Supreme Court decided that the policy against perjury is sufficiently strong to limit the action of the exclusionary rule to direct evidence against a defendant. If a defendant chooses to take the stand and lie, evidence that would normally be inadmissible against him will now be admissible for the limited purpose of showing that the defendant is not truthful.

James v. Illinois
493 U.S. 307, 100 S. Ct. 648 (1990)

FACTS: The police violated the defendant's Miranda rights in obtaining a statement. The murder suspect stated that on the day of a murder his hair had been reddish-brown and slicked-back, and that the next day he had it dyed black and curled. The defendant did not testify at trial but called a family friend as a witness. The witness testified that the defendant's hair had been black on the day of the murder. Witnesses for the prosecution however, testified that the murderer had "reddish" slicked-back hair. The prosecution sought to introduce the defendant's illegally obtained statement to the police to impeach the credibility of the defense witness' testimony.

ISSUE: Whether illegally obtained evidence may be used to impeach a defense witness?

HELD: No. Evidence illegally obtained may not be used to impeach a defense witness other than the defendant.

DISCUSSION: The Court felt that expanding the impeachment exception to all defense witnesses would have a chilling effect on a defendant's ability to present his defense for three reasons. First, defense witnesses pose difficult challenges. Hostile witnesses called by the defense might willingly invite impeachment. Friendly defense witnesses might, through simple carelessness, subject themselves to impeachment. Also, expanding the impeachment exception to encompass the testimony of all defense witnesses would dissuade some defendants from calling witnesses who would otherwise offer probative evidence.

Second, the defendant rarely fears a perjury prosecution since the substantive charge is usually much more compelling. A witness other than the defendant

fears a prosecution for perjury. Therefore, the Court's need to deter perjured testimony from a defense witness is less than where the witness is the defendant.

Third, expansion of the exception would also significantly weaken the exclusionary rule's deterrent effect on police misconduct by opening the door inadvertently to the admission of any illegally obtained evidence. This expansion would enhance the expected value to the prosecution of illegally obtained evidence by increasing the number of occasions on which such evidence could be used.

4. Independent Source

Murray v. United States
487 U.S. 533, 108 S. Ct. 2529 (1988)

FACTS: Agents observed suspected narcotics traffickers drive vehicles into and out of a warehouse. Later, those vehicles were lawfully seized elsewhere and found to contain marijuana. The agents then entered the warehouse without a warrant, observed a number of burlap-wrapped bales that were later found to contain marijuana, and then left. They kept the premises under surveillance. The agents then applied for and obtained a warrant to search the warehouse. They did not mention their prior illegal entry or rely on any observations made while inside. With the warrant, the agents re-entered the warehouse and seized the bales along with some customer lists.

ISSUE: Whether the evidence was secured through an independent source?

HELD: Yes. The Fourth Amendment does not require the suppression of evidence initially discovered during an illegal entry if that evidence is also discovered during a later search pursuant to a valid warrant that is wholly independent of the illegal entry.

DISCUSSION: The exclusionary rule prohibits the introduction into evidence, in a criminal prosecution, of tangible materials seized during an unlawful search, and of testimony concerning knowledge acquired during an unlawful search. The exclusionary rule also prohibits the introduction of derivative evidence, both tangible and testimonial, that is the product of the unlawful search.

However, the connection between an unlawful search and superceding events can become so attenuated as to dissipate the taint. The "independent source" doctrine allows evidence secured in connection with a violation of the Fourth

Amendment to be admissible if that evidence has a source independent of the illegality.

The Court held this rule applies to evidence initially obtained during an independent lawful search as well as evidence that is discovered during an unlawful search but is later obtained independently through lawful activities. The evidence here would be admissible if the second search, conducted with a search warrant, was a genuinely independent source of that evidence. If the agents' decision to seek that warrant was prompted by what they saw during the illegal entry or if information obtained during that entry was presented to the reviewing magistrate, independence does not exist.

5. Inevitable Discovery

Nix v. Williams
467 U.S. 431, 104 S. Ct. 2501 (1984)

FACTS: During the holiday season, a young girl disappeared from a YMCA building in Des Moines, Iowa. Police arrested the defendant the next day 160 miles away.

After his initial appearance, the police informed the defendant's attorney that they would pick up the defendant and return him to the appropriate district without questioning him. During the return trip one of the officers initiated a conversation with the defendant, which resulted in the defendant stating where the victim's body was located. As they approached the location, the defendant, without any further conversation, agreed to direct the officers to the child's body.

At that time, one search team was only two and one-half miles from where the defendant soon guided the officers. The child's body was found next to a culvert in a ditch beside a gravel road within the search area.

ISSUE: Whether the evidence derived from the conversation was admissible?

HELD: Yes. The evidence derived from the conversation was admissible as it would have been inevitably discovered.

DISCUSSION: The Court held that when illegally seized evidence could have been obtained through an independent source and efforts are underway that would lead to that discovery, exclusion of such evidence is not justified. While the independent source exception may not justify the admission of evidence here (as the evidence here had been removed it could not be

independently discovered), its rationale is wholly consistent with and justifies the adoption of the inevitable discovery exception to the exclusionary rule. Unlawfully obtained evidence is admissible if ultimately or inevitably it would have been discovered by lawful means.

6. Grand Jury

United States v. Calandra
414 U.S. 338, 94 S. Ct. 613 (1974)

FACTS: Federal agents obtained a warrant to search the defendant's business premises for evidence of illegal gambling operations. The warrant specified the object of the search was bookmaking records and wagering paraphernalia. The search was fruitless. However, an agent discovered an index card suggesting that Dr. Walter Loveland had been making periodic payments to the defendant. The discovery of this evidence exceeded the scope of the search warrant. The agent stated that he was aware that the U.S. Attorney's Office was investigating possible violations of extortionate credit transactions, and that Dr. Loveland had been the victim of a "loansharking" enterprise then under investigation. The defendant was subpoenaed by a special Grand Jury convened to investigate the proliferation of "loansharking" activities. The defendant refused to respond because the information identifying him with these activities had been illegally obtained.

ISSUE: Whether grand jury witnesses can refuse to answer questions on the ground that the questions were developed through illegally seized evidence?

HELD: No. The grand jury may question the witness based on the illegally obtained material, and the witness may not refuse to answer on those grounds.

DISCUSSION: Grand jury questions, based on evidence obtained from an illegal search and seizure, do not themselves constitute violations of the witness' Fourth Amendment rights. These questions do not involve independent governmental invasion of one's privacy. The exclusionary rule does not extend to grand jury proceedings. The rationale for this rule is that allowing the grand jury witness to invoke the exclusionary rule would unduly interfere with the effective and expeditious discharge of the grand jury's duties, and would achieve only a speculative and minimal advance of the exclusionary rule's purpose of deterring police that disregard Fourth Amendment requirements.

II. WHAT IS A SEARCH?

A. APPLIES TO GOVERNMENT ACTIVITIES ONLY

New Jersey v. T.L.O.
469 U.S. 325, 105 S. Ct. 733 (1985)

FACTS: The defendant, a fourteen-year-old student, was found smoking cigarettes in a public high school bathroom. She was taken to the vice-principal's office, who demanded to see her purse. Opening the purse, he found a pack of cigarettes. As he reached into the purse for the cigarettes, the vice-principal also noticed a package of cigarette rolling papers. Suspecting that a closer examination of the purse might yield further evidence of drug use, the vice-principal thoroughly searched it. He found a small amount of marijuana, a pipe, several empty plastic bags, a substantial quantity of money in one-dollar bills, an index card that appeared to be a list of students who owed the defendant money, and two letters that implicated the defendant in marijuana dealing.

ISSUE: Whether the intrusion of the defendant's purse by a public high school administrator was a Fourth Amendment search?

HELD: Yes. The Fourth Amendment regulates all government intrusions into reasonable expectations of privacy.

DISCUSSION: The Constitution and its amendments act as a regulation of governmental actions. Every governmental intrusion into a person's reasonable expectation of privacy must meet Fourth Amendment's scrutiny. This is true whether the government is seeking evidence of a crime, inspecting a structure, or putting out a fire. The Court stated "Accordingly, we have held the Fourth Amendment applicable to the activities of civil as well as criminal authorities: building inspectors [cite omitted], Occupational Safety and Health Act inspectors [cite omitted], and even firemen entering privately owned premises to battle a fire [cite omitted], are all subject to the restraints imposed by the Fourth Amendment." The fundamental command of the Fourth Amendment is that searches and seizures be reasonable.

Under ordinary circumstances, a search of a student by a teacher or other public school official will be justified at its inception when reasonable grounds exist for suspecting evidence that the student has violated either the law or the rules of the school. Such a search will be permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction.

Coolidge v. New Hampshire
403 U.S. 443, 91 S. Ct. 2022 (1971)

FACTS: Police went to the defendant's house to question him about a murder. During their inquiry he showed them three guns and he agreed to take a lie-detector test a few days later. The test was inconclusive. However, the defendant did admit to a theft. Other police officers went to the defendant's house to corroborate his admission to the theft. The defendant was not home but his wife agreed to speak to the officers. Unaware of the earlier visit by the officers who had been shown the guns and knowing little about the murder weapon, the police asked about any guns that might be in the house. The defendant's wife showed them four weapons that she offered to let them take. The police took the weapons and several articles of clothing acquired in the same manner. One gun was later determined to be the murder weapon.

ISSUE: Whether the officers obtained the murder weapon and the clothing through an illegal search?

HELD: No. The officers obtained this evidence through private actions.

DISCUSSION: The Fourth Amendment controls governmental actions. The Fourth Amendment was not implicated when the police obtained the guns and clothing from the defendant's wife. The police exerted no effort to coerce or dominate her, and were not obligated to refuse her offer to take the guns. In making these and other items available to the police, she was not acting as an instrument or agent of the police. The items were secured through private actions.

Gouled v. United States
255 U.S. 298, 41 S. Ct. 261 (1921)

FACTS: Investigators believed military personnel and an attorney were involved in a conspiracy of using the mails to defraud the United States. One defendant agreed with police to go to a co-defendant's office and pretend to make a friendly visit. He had gained admission to the co-defendant's office, and, in the co-defendant's temporary absence, seized and carried away several documents.

ISSUE: Whether an agent of a government has to comply with the Fourth Amendment?

HELD: Yes. An agent of a government must comply with the Fourth Amendment just as any other member of the government would.

DISCUSSION: The secret taking, without force, from the premises of anyone by a representative of any branch of the Federal government is a search and seizure. It is immaterial that entrance to the premises was obtained by stealth or through social acquaintance, or in the guise of a business call.

B. REASONABLE EXPECTATION OF PRIVACY

Katz v. United States
389 U.S. 347, 88 S. Ct. 507 (1967)

FACTS: FBI agents overheard conversations of the defendant by attaching an electronic listening and recording device to the outside of a public telephone booth from which he had placed his calls. The defendant was convicted of transmitting wagering information out of state. At the trial, the court permitted the government to introduce evidence of the defendant's end of the telephone conversations.

ISSUE: Whether the agents' actions amounted to a Fourth Amendment search?

HELD: Yes. The agents intruded into a reasonable expectation of privacy.
DISCUSSION: The Court held that a "search" takes place whenever the government intrudes on a reasonable expectation of privacy. The Court concluded that the defendant's expectation of privacy was reasonable if: he had taken measures to secure his privacy and the defendant's expectation of privacy met community standards.

What a person seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected under the Fourth Amendment. A person in a telephone booth may rely upon the protection of the Fourth Amendment, and is entitled to assume that the words he utters into the mouthpiece will not be broadcast to the world.

Once the defendant established both prongs, any government intrusion into these areas must meet Fourth Amendment standards. The Fourth Amendment demands that all searches be reasonable. Searches conducted without a warrant are presumed to be unreasonable, except for some limited well-delineated exceptions. In this case, the agents did not have a warrant or valid exception.

California v. Ciraolo
476 U.S. 207, 106 S. Ct. 1809 (1986)

FACTS: Police received an anonymous telephone tip that the defendant was growing marijuana in his backyard. This area was enclosed by two fences, six and ten feet in height, and shielded from view at ground level. Officers trained in marijuana identification secured a private airplane, flew over the defendant's home at an altitude of 1,000 feet, and readily identified marijuana plants growing in his yard. A search warrant was issued based on this information.

ISSUE: Whether the naked-eye aerial observation of the defendant's backyard constituted a search?

HELD: No. Areas within the curtilage may be observed from public areas.

DISCUSSION: The Fourth Amendment's protection of the home and curtilage does not require law enforcement officers to shield their eyes when passing by a home on a public thoroughfare. Airways constitute a public thoroughfare. The government may use the public airways just as members of the public. While the fences were designed to conceal the plants at normal street level, they will not shield the plants from the elevated eyes of a citizen or a police officer.

Dow Chemical Co. v. United States
476 U.S. 227, 106 S. Ct. 1819 (1986)

FACTS: The defendant operated a 2,000-acre chemical plant. The plant consisted of numerous covered buildings, with outdoor manufacturing equipment and piping conduits located between the buildings that were exposed to visual observation from the air. The defendant maintained an elaborate security system around the perimeter of the complex, barring ground-level public views of the area. When the defendant denied a request by the EPA for an on-site inspection of the plant, the EPA employed a commercial aerial photographer, using a standard precision aerial mapping camera, to take photographs of the facility from various altitudes, all of which were within lawful navigable airspace.

ISSUE: Whether this conduct was a Fourth Amendment search?

HELD: No. The government can use the air space just as other members of the public.

DISCUSSION: The EPA's aerial photograph of the defendant's plant complex from aircraft that was lawfully in public navigable airspace was not a search. The open areas of an industrial plant complex are not analogous to the "curtilage" of a dwelling. The intimate activity associated with family privacy, the home and its curtilage do not include the outdoor areas between structures and buildings of a manufacturing plant. The open areas of an industrial complex are more comparable to an "open field" in which an individual may not legitimately demand privacy. Oliver v. United States, (1984).

Florida v. Riley
488 U.S. 445, 109 S. Ct. 693 (1989)

FACTS: A Sheriff's Office received an anonymous tip that the defendant was growing marijuana on his property. He lived in a mobile home on five acres of rural property. A deputy saw a greenhouse behind the mobile home, but could not view inside. Walls, trees and the mobile home blocked his view. He observed that part of the greenhouse roof was missing. The officer flew over the curtilage at 400 feet in a helicopter, and with his naked eye, saw marijuana inside the greenhouse. A search warrant was obtained and executed, resulting in the discovery of marijuana.

ISSUE: Whether naked eye observations on a curtilage from 400 feet in a helicopter constitute a search?

HELD: No. The government may use air space consistent with public use.

DISCUSSION: The Supreme Court had previously approved flying a fixed wing aircraft at 1,000 feet over curtilage. The aircraft was in public airspace and complied with FAA regulations. Therefore, no reasonable expectation of privacy existed. The Court also approved flying over an industrial complex and taking photographs. Dow Chemical Co. v. United States.

In this case, the defendant had no reasonable expectation of privacy from the helicopter overflight. FAA regulations allow any helicopter to fly lower than fixed wing aircraft if its operation is conducted without hazard to persons or property on the ground.

United States v. Chadwick
433 U.S. 1, 97 S. Ct. 2476 (1977)

FACTS: Railroad officials in San Diego observed Machado and Leary load a brown footlocker onto a train bound for Boston. Their suspicions were aroused when they noticed that the trunk was unusually heavy for its size, and that it was leaking talcum powder, a substance often used to mask the odor of marijuana or hashish. Machado fit a drug-courier profile. The railroad officials notified DEA in San Diego who in turn notified DEA in Boston.

The Boston DEA agents did not have a search or arrest warrant, but they did have a trained drug dog. The agents observed Machado and Leary as they claimed their baggage and the footlocker. They released the drug dog near the footlocker and he covertly alerted to the presence of a controlled substance. The defendant joined Machado and Leary and together they lifted the 200-pound footlocker into the trunk of a car. At that point, at approximately 9:00 p.m., while the trunk of the car was open and before the car engine had been started, the officers arrested all three. A search incident to the arrests produced the keys to the footlocker. All three were taken to the Federal Building in Boston. Agents followed with the defendant's car and the footlocker. At approximately 10:30 p.m., the agents opened the footlocker. It contained large amounts of marijuana. The agents did not have consent of the defendants to search, nor did they have a search warrant.

ISSUE: Whether the defendant can expect privacy in his trunk?

HELD: Yes. The defendant's actions indicated he wanted to preserve his privacy in the trunk.

DISCUSSION: By placing personal effects inside a double-locked footlocker, the defendants manifested an expectation of privacy in the footlocker. Since the defendants' principle privacy interest in the locked footlocker was not in the container itself, but in its contents, seizure of the locker did not diminish their legitimate expectation that its contents would remain private. A footlocker is not open to public view and not subject to regular inspection. By placing personal effects inside a double-locked footlocker, the defendant manifested an expectation that the contents would remain free from public examination.

NOTE: This case was decided before California v. Acevedo. Today, if the officers could establish probable cause that the locker contained contraband, they could have opened it pursuant to the mobile conveyance doctrine.

Illinois v. Andreas
463 U.S. 765, 103 S. Ct. 3319 (1983)

FACTS: A Customs inspector initiated a lawful border search and found marijuana concealed inside a table. The inspector informed the DEA of these facts and an agent went to the airport later that day. The next day, the agent put the table in a delivery van and drove it to the defendant's building. Posing as deliverymen, the agent and another officer entered the apartment building and announced they had a package for the defendant.

At the defendant's request, the officers left the container in the hallway outside the defendant's apartment. The agent stationed himself to keep the container in sight. He observed the defendant pull the container into the apartment. While the agent maintained surveillance, he saw the defendant leave his apartment, walk to the end of the corridor, look out the window, and then return to the apartment. The agent remained in the building but did not keep the apartment door under constant surveillance.

Between thirty and forty minutes after the delivery, the defendant reemerged from the apartment with the shipping container and was immediately arrested by the agent and taken to the police station. There, the officers reopened the container and seized the marijuana found inside the table.

ISSUE: Whether the Fourth Amendment requires a search warrant to reopen a container that had previously been lawfully opened?

HELD: No. A reopening of a sealed container in which contraband drugs had been discovered in an earlier lawful border search is not a "search" within the Fourth Amendment where the reopening is made after a controlled delivery.

DISCUSSION: When a common carrier or Customs officer discovers contraband in transit, the contraband could simply be destroyed. However, this would eliminate the possibility of prosecuting those responsible. Instead, the government may make a "controlled delivery" of the container to the person to whom it is addressed. As long as the initial discovery of the contraband is lawful, neither the shipper nor the addressee has any remaining expectation of privacy in the contents. Therefore, the government may, at the conclusion of the controlled delivery, seize the container and re-open it without procuring a warrant.

Normally, the police will not let the container stray from their observation between the time contraband is discovered and the time it is delivered to the addressee and then seized. However, even if there is a brief lapse in surveillance, a reasonable expectation of privacy will not be re-instituted. The relatively short break in surveillance made it substantially unlikely that the defendant had

removed the table or placed new items inside the container while he was in his apartment. Therefore, the seizure and re-opening of the container was not a Fourth Amendment search as it violated no reasonable expectation of privacy.

United States v. Karo
468 U.S. 705, 104 S. Ct. 3296 (1984)

FACTS: The DEA learned through an informant that the defendant had ordered fifty gallons of ether (commonly used to process cocaine. The government obtained a court order to install and monitor a beeper in one of the cans of ether. With the informant's consent, the DEA substituted their own can containing a beeper for one of the cans in the shipment.

The agents saw the defendant pick up the ether from the informant, followed him to his home, and determined by using the beeper that the ether was inside the residence. The ether was moved several other times. Finally, the ether was transported to a house rented by Horton, Harley and Steele. Using the beeper, agents determined that the can was inside the house, and obtained a search warrant for the house, based in part on information derived from the beeper. The search warrant was executed and cocaine was seized.

ISSUES: 1. Whether the installation of the beeper was a search?

2. Whether the monitoring of the beeper inside the residences was a search?

HELD: 1. No. The defendant did not have a reasonable expectation of privacy in the container when the beeper was installed.

2. Yes. The defendant had a reasonable expectation of privacy inside the residence.

DISCUSSION: No Fourth Amendment right was infringed by the installation of the beeper. The consent of the informant to install the beeper was sufficient. The transfer of the beeper-laden can to the defendant was neither a search nor a seizure, since it conveyed no information that he wished to keep private, and did not interfere with anyone's possessory interest in a meaningful way.

The monitoring of the beeper in a private residence, an area of reasonable expectation of privacy, is a search. As this search was conducted without a warrant, it violated the Fourth Amendment. The government, by the

surreptitious use of a beeper, obtained information that it could not have obtained from outside the curtilage of the house.

United States v. Knotts
460 U.S. 276, 103 S. Ct. 1081 (1983)

FACTS: Armstrong was suspected of buying chemicals for the production of controlled substances. With the consent of the chemical company, police officers installed a beeper in a five-gallon can of chloroform, which is often used to manufacture drugs. The company agreed to use this can the next time Armstrong purchased chloroform. When Armstrong made his next purchase, the company sold him the beeper-laden can. The officers followed the beeper signal to its final destination, underneath the defendant's cabin. Relying on this information, the officers obtained a search warrant. They discovered the defendant's fully operational drug laboratory in the cabin.

ISSUE: Whether the monitoring of the beeper on public roadways or at its final destination amounted to a search?

HELD: No. A person's whereabouts on public roadways is not protected as a reasonable expectation of privacy.

DISCUSSION: The government's activity does not amount to a search unless it intrudes into a reasonable expectation of privacy. The Court held that a person traveling on a public roadway has no reasonable expectation that other members of the public or law enforcement officers will not observe their movements. As the officers could have used visual surveillance techniques to obtain the information provided by the beeper, they did not intrude on the defendant's reasonable expectation of privacy.

The monitoring of the beeper while on the defendant's property did not amount to an intrusion of the defendant's reasonable expectation of privacy. The Court reasoned that members of the public could have visually observed the can that contained the beeper in the transfer from the public domain to private property. However, if the beeper had been used to reveal information about the movement of the can while inside the cabin, which is not observable from a public place, this would have amounted to an intrusion into a reasonable expectation of privacy.

Cardwell v. Lewis
417 U.S. 583, 94 S. Ct. 2464 (1974)

FACTS: Police officers focused their murder investigation on the defendant. Officers went to the defendant's place of business to question him. While there, they observed the car that they suspected might have been used in the murder. Several months later, the defendant was questioned again. The officers obtained an arrest warrant. The defendant drove his car to the station for questioning and left his car in a commercial parking lot. The suspect was arrested and the car was towed to a police impound lot where a warrantless examination of its exterior was conducted the following day.

ISSUE: Whether the examination of an automobile's exterior was an intrusion on a reasonable expectation of privacy?

HELD: No. The examination of the exterior of the defendant's automobile invaded no right to privacy that the requirement of a search warrant is meant to protect.

DISCUSSION: Nothing from the interior of the car and no personal effects were searched or seized. The intrusion was limited to the exterior of the vehicle left in a public parking lot. No reasonable expectation of privacy is violated by the examination of a tire on an operative wheel or in the taking of exterior paint samples from a vehicle that had been parked in a public place. Further, the police had probable cause to search the car. Where probable cause exists, a warrantless search of an auto is reasonable under the Fourth Amendment. See Carroll v. United States.

United States v. Taborda
635 F.2d 131 (2nd Cir. 1980)

FACTS: DEA agents conducted surveillance of the defendant's apartment from an apartment directly across the street. They observed various drug paraphernalia. The surveillance was occasionally conducted with a high-powered telescope. A search warrant was issued based on all the observations. An officer testified that he made most of the observations without the aid of the telescope. However, the officer also testified that he used the telescope to help him count small dark objects from which white powder was being removed, as well as to allow him to read the legends on containers.

ISSUE: Whether the government surveillance of a home by means of a telescope is a search?

HELD: The answer depends on whether the observation violated a reasonable expectation of privacy. Unenhanced visual observations from the public street are not searches. To the extent that agents used a telescope to identify objects or activities that could not be identified with the naked eye from a public place, those observations were searches.

DISCUSSION: A person's home is a place where privacy is reasonably expected. The fact that a person is in their home raises a reasonable inference that he intends to have privacy. This inference may be rebutted by the person's actions. If he conducts activities or places objects in such a way that it comes within the unenhanced viewing of the public there is no legitimate expectation of privacy. However, any enhanced viewing of the interior of a home intrudes upon a legitimate expectation of privacy.

In this case, if the distance between the two apartments permitted unenhanced visual observations, such observations would not be searches within the meaning of the Fourth Amendment. However, the agents' use of a telescope to identify objects or activities that could not be identified without the instrument, conducted a search and they could not use that information to form the basis of a warrant application.

Kyllo v. United States
533 U.S. 27, 121 S. Ct. 2038 (2001)

FACTS: Agents suspected the defendant of growing marijuana in his home. They used a thermal-imaging device to determine if the amount of heat emanating from his home was consistent with the high-intensity lamps typically used for indoor marijuana growth. The scan of the defendant's home took a few minutes and was performed from the passenger seat of an agent's vehicle. The scan showed that the house was warmer than neighboring homes. The agents obtained a search warrant, in part based on this information. Their search revealed more than 100 marijuana plants.

ISSUE: Whether the use of a thermal-imaging device to detect levels of heat is a search under the Fourth Amendment?

HELD: Yes. Using technology that is not used by the general public to obtain information about a home's interior that could not have been obtained without physical entry constitutes a search.

DISCUSSION: The government argued that the scan only detected heat radiating from the home and that it did not detect "intimate details." The government also argued that the defendant had not shown an expectation of privacy because he made no attempts to conceal the heat escaping from his home. The Court held that any information of a home that cannot be obtained except through either physical entry or sophisticated technology not readily available to the public is considered "intimate details" of that home. The defendant did not have to show an expectation of privacy since this activity occurred in his own home behind closed doors. In this case, the surveillance was a search and a warrant was needed to engage in the scan.

Hoffa v. United States
385 U.S. 293, 87 S. Ct. 408 (1966)

FACTS: The defendant, the President of Teamsters Union, was on trial in Federal Court. During the trial, he occupied a three-room suite in a hotel. Several friends and fellow teamster officials were his constant companions during the trial. One companion was a teamster official and an FBI informer.

During the trial, the defendant told this companion that he was attempting to bribe jurors to insure a hung jury and made other incriminating statements. The companion reported these statements to the FBI. As the defendant predicted, the jury failed to reach a verdict in the case and a mistrial was declared. He was later tried for obstruction of justice.

ISSUE: Whether the presence of a government informant in the defendant's hotel room was a search?

HELD: No. The presence of a government informant, at the invitation of the defendant, in the defendant's hotel room was not a search.

DISCUSSION: The defendant has no reasonable expectation that his conversation will not be reported to a government agent. Where the informer was in the suite by invitation, and every conversation that he heard was either directed to him or knowingly carried on in his presence, the defendant assumes the risk that the person will maintain confidentiality. The Fourth Amendment does not protect a wrongdoer's misplaced belief that a person to whom he voluntarily confides his wrongdoing will not reveal it.

Minnesota v. Olson
495 U.S. 91, 110 S. Ct. 1684 (1990)

FACTS: The defendant was suspected of driving a getaway car involved in a robbery and murder. Police officers learned that the defendant was staying in a home occupied by two women. One of the women notified the police that the defendant was in her home. After receiving this information, police officers surrounded the home and telephoned the women to tell them that the defendant should come out. During this conversation, a male voice was heard saying "tell them I left." One of the women relayed this message to the police. There were no indications that the women were in danger or being held against their will by the defendant. Nonetheless, without either the consent of the homeowners or a warrant, police officers entered the home to arrest the defendant. He was found hiding in a closet and arrested. Shortly thereafter, he made statements at police headquarters.

ISSUE: Whether the warrantless, non-consensual entry into the house where the defendant had been staying violated his Fourth Amendment rights?

HELD: Yes. As an "overnight guest," the defendant had a reasonable expectation of privacy in the house. The entry to arrest him, made without a warrant, consent, or exigent circumstances, was a violation of the Fourth Amendment.

DISCUSSION: The Fourth Amendment protects people, not places. While the defendant in this case was not the legal owner of the home, he was an "overnight guest" there. This fact allowed him to create a reasonable expectation of privacy in the home. An overnight guest "seeks shelter in another's home precisely because it provides him with privacy, a place where he and his possessions will not be disturbed by anyone but his host and those his host allows inside."

No exigent circumstances existed that would excuse the officers' warrantless entry into the home. While the crime was serious, the police had previously recovered the murder weapon and there was no evidence that the two women inside the residence were in danger. The police had the home surrounded. It was apparent that the defendant was not able to leave. If he had, he would have been arrested in a public place. For all of these reasons, exigent circumstances did not exist to enter the home and make the arrest without a warrant. The defendant's statement was suppressed as the fruit of his unlawful arrest.

Minnesota v. Carter

525 U.S. 83, 119 S. Ct. 469 (1998)

FACTS: The defendant and the lessee of an apartment packaged cocaine in the apartment. A law enforcement officer observed this activity by looking through a drawn window blind. The defendant did not live in the apartment, he had never visited that apartment before and his visit only lasted a matter of hours. His singular purpose in being there was to package cocaine. The defendant was arrested for conspiracy to commit a controlled substance crime. He complained that the information that led to his arrest was the product of an unreasonable search.

ISSUE: Whether a visitor enjoys a reasonable expectation of privacy in a premises visited for commercial reasons?

HELD: No. Commercial visitors do not enjoy a reasonable expectation of privacy in a premises visited for commercial reasons.

DISCUSSION: The Supreme Court distinguished the defendant's presence in this apartment from the social, overnight guest's presence in Minnesota v. Olson. In Olson, the Court held that a guest staying overnight in another's home had a reasonable expectation of privacy. The defendant here went to the apartment for a business transaction, where he was present for only a matter of hours. He did not have a previous relationship with the lessee of the apartment, nor did he have a connection to the apartment similar to that of an overnight guest. While the apartment was a dwelling for the lessee, the property was equivalent to a commercial site as to the defendant. Lacking a significant connection to the property, the defendant did not have standing to object to the search conducted on that premises.

O'Connor v. Ortega
480 U.S. 709, 107 S. Ct. 1492 (1987)

FACTS: The defendant, a physician, was an employee of a state hospital. Hospital officials became concerned about possible improprieties in his conduct. After placing the defendant on administrative leave, hospital officials entered his office to inventory and secure state property. They seized personal items from his desk and file cabinets. These items were later used in administrative proceedings resulting in his discharge. No formal inventory of the property in the office was ever made, and all the other papers in the office were merely placed in boxes for storage.

ISSUES: 1. Whether the defendant, a public employee, had a reasonable expectation of privacy in his office, desk, and file cabinet at his place of work?

2. Whether a public employer must establish probable cause before searching an employee's reasonable expectation of privacy?

HELD: 1. Yes. It is possible for an employee to establish a reasonable expectation of privacy in a work place environment. The defendant had been the sole occupant of the office for 17 years, kept personal items in his desk and cabinets, and was not in violation of policy in doing so.

2. It depends. When the employer's search is work-related, the search must be reasonable under the circumstances.

DISCUSSION: The Court recognized that employees may develop a reasonable expectation of privacy in government workplaces. Justice Scalia stated "[c]onstitutional protection against unreasonable searches by the government does not disappear merely because the government has the right to make reasonable intrusions in its capacity as employer." The operational realities of the workplace, however, may make some employees' expectations of privacy unreasonable when an intrusion is by a supervisor rather than a law enforcement officer.

The Court concluded that the defendant had a reasonable expectation of privacy in his office. Because the record did not reveal the extent to which hospital officials may have had work-related reasons to enter his office, the case was remanded for further determination. Regardless of any legitimate right of access the hospital staff may have had to the office, the defendant had a reasonable expectation of privacy in his desk and file cabinets. He did not share his desk or file cabinets with any other employees.

A determination of the standard of reasonableness applicable to a search requires "balancing the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion." In the case of searches conducted by a public employer, the court must balance the invasion of the employees' legitimate expectations of privacy against the government's need for supervision, control and the efficient operation of the workplace.

To ensure the efficient and proper operation of the agency, public employers must be given wide latitude to enter employee offices for work-related, non-investigatory reasons, as well as work-related employee misconduct. The Court held that public employer intrusions on the constitutionally protected privacy interests of government employees for non-investigatory, work-related purposes, as well as for investigations of work-related misconduct, should be judged by the standard of reasonableness under all the circumstances.

New York v. Class
475 U.S. 106, 106 S. Ct. 960 (1986)

FACTS: Two police officers observed the defendant driving above the speed limit in a car with a cracked windshield (both of which are traffic violations under New York law). They stopped the defendant, who emerged from his car and approached the officers. One officer went directly to the defendant's vehicle. The defendant provided the other officer with a registration certificate and proof of insurance, but stated that he did not have a driver's license.

The first officer opened the door of the vehicle to look for the VIN, which was located on the left doorjamb on vehicles manufactured before 1969. When he did not find the VIN there, he reached into the interior of the car to move some papers obscuring the area of the dashboard where the VIN is located in later model cars. In doing so, the officer saw the handle of a gun protruding from underneath the driver's seat. He seized the gun and arrested the defendant. The officers had no reason to suspect that the defendant's car was stolen, that it contained contraband, or that the defendant had committed an offense other than the traffic violations.

ISSUE: Whether the intrusion into the interior of the vehicle was lawful?

HELD: Yes. Because of the important role played by the VIN in the pervasive government regulation of the automobile and the efforts by the government to ensure that the VIN is placed in open or plain view, there is no reasonable expectation of privacy in the VIN.

DISCUSSION: An automobile's interior is subject to Fourth Amendment protection from unreasonable intrusion by the police. However, the officer's reaching into the vehicle to remove the papers was not an unreasonable search but was incidental to viewing something in which the defendant has no reasonable expectation of privacy. The fact that papers on the dashboard obscured the VIN from plain view did not create a reasonable expectation of privacy in the VIN.

Bond v. United States
529 U.S. 334, 120 S. Ct. 1462 (2000)

FACTS: A Border Patrol agent entered a bus to check the immigration status of the occupants. After satisfying himself that the passengers were lawfully in the United States, the agent walked toward the front of the bus, squeezing the soft luggage passengers had placed in the overhead storage bin. The agent felt a "brick-like" object in a green canvas bag. After verifying with the defendant that he owned the bag, the agent obtained consent to search its contents. He found a quantity of a controlled substance.

ISSUE: Whether the agent's squeezing of the passengers' containers was a "search" under the Fourth Amendment?

HELD: Yes. The defendant did not surrender his reasonable expectation of privacy in a container by placing it in an overhead bin accessible by the public.

DISCUSSION: A search is defined as a government intrusion into a reasonable expectation of privacy. The government argued that the defendant did not have a reasonable expectation of privacy because he exposed his container to the public. The defendant could not have prevented any other member of the public from handling the container. Therefore, he should not have the ability to complain when the government does. The Court acknowledged that persons do not maintain a reasonable expectation of privacy in things that can be viewed from public places. One cannot expect members of the public to ignore items making their way about public areas.

However, this does not mean that introducing items into the public allows others to manipulate the property. It is true that fellow passengers and bus employees may handle the containers found in the overhead bin. However, the defendant would not have expected anyone to "feel the bag in an exploratory manner." The Border Patrol agent exceeded the scope of what the public could have been expected to do (which went beyond merely viewing or engaging in incidental contact), thereby intruding on the defendant's reasonable expectation of privacy.

United States v. Place
462 U.S. 696, 103 S. Ct. 2637 (1983)

FACTS: The defendant's behavior aroused the suspicion of law enforcement officers as he waited in line at the Miami International Airport to purchase a ticket to New York's LaGuardia Airport. The officers approached the defendant and requested and received identification. There was a discrepancy in the name given by the defendant and the baggage tags. The defendant gave permission to the officers to open his luggage. As the defendant's flight was about to leave, the officers decided not to search his luggage and allowed the defendant to depart. They called DEA in New York and relayed their information. Upon the defendant's arrival in New York, two DEA agents approached him and said that they believed he might be carrying narcotics. When he refused to consent to a search of his luggage, one of the agents told him they were going to take the luggage to a federal judge to obtain a search warrant. The agents took the luggage to Kennedy Airport where it was subjected to a "sniff test" by a drug dog. The dog reacted positively to one of the suitcases. At this point, ninety minutes had elapsed since the seizure of the luggage. The agents obtained a search warrant and opened the luggage. They discovered cocaine inside.

ISSUE: Whether the "sniff test" was a search within the meaning of the Fourth Amendment?

HELD: No. The drug dog sniffs air surrounding the bag, an area in which the suspect has no reasonable expectation of privacy.

DISCUSSION: Subjecting luggage to a "sniff test" by a trained narcotics dog is not a search under Fourth Amendment. The dog is sniffing the air that surrounds the container and the defendant has no reasonable expectation of privacy in this air.

When officers reasonably suspect that a traveler is carrying luggage that contains contraband, the principles of Terry permit the officer to detain the luggage temporarily to investigate the circumstances that aroused the officer's suspicion, provided that the investigative stop is properly limited in scope. However, in this case, the extended duration of the detention of defendant's luggage was unreasonable as a Terry seizure. Therefore, the evidence was suppressed.

1. Open Fields

Hester v. United States
265 U.S. 57, 44 S. Ct. 445 (1924)

FACTS: Federal agents, hiding fifty to one hundred yards from defendant's house, saw a car drive on to the property. They observed the defendant sell moonshine to the driver.

ISSUE: Whether the Fourth Amendment protection of privacy in persons, houses, papers, and effects extends to "open fields?"

HELD: No. The Fourth Amendment protection of the house does not extend to "open fields."

DISCUSSION: The concept of "open fields" is very old. The special protection accorded by the Fourth Amendment to the people in their persons, houses, papers, and effects is not extended to the "open fields." There is no intrusion into reasonable expectation of privacy when government agents enter onto open fields. Therefore, there is no Fourth Amendment search. The Court said that, even if there had been a trespass, the observations were not obtained by an illegal search or seizure.

Oliver v. United States
466 U.S. 170, 104 S. Ct. 1735 (1984)

FACTS: Narcotic agents, acting on a report that marijuana was being grown on the defendant's farm, went to the farm to investigate. They drove past the defendant's house to a locked gate with a "no trespassing" sign, but with a footpath around the gate on one side. The agents walked around the gate and along the footpath and found a field of marijuana over a mile from the defendant's house.

ISSUE: Whether the officers' observations were made in the open fields?

HELD: Yes. The officers' observations were made in the open fields.

DISCUSSION: Steps taken to protect privacy, such as planting the marijuana on secluded land and erecting fences and "No Trespassing" signs around the property, do not necessarily establish an expectation of privacy in an open field. Open fields do not provide the setting for those intimate activities that the Fourth Amendment is intended to shelter from government intrusion or surveillance.

United States v. Dunn
480 U.S. 294, 107 S. Ct. 1134 (1987)

FACTS: DEA agents discovered that Carpender had bought large quantities of chemicals and equipment used to make controlled substances. The agents placed beepers in some of this equipment and followed it to the defendant's

ranch. The ranch was completely encircled by a perimeter fence, and contained several interior barbed wire fences, including one around the house approximately fifty yards from the barn, and a wooden, corral fence enclosing the front of the barn. The barn had an open overhang and locked, waist high gates. Agents, without a warrant, climbed over the perimeter fence, several of the barbed wire fences, and the wooden fence in front of the barn. They were led there by the smell of chemicals, and while there, could hear a motor running inside. They shined a flashlight inside and observed a drug lab. Using this information, the agents obtained and executed a search warrant.

ISSUE: Whether the officers' observations were made in the open field?

HELD: Yes. The officers did not intrude on the defendant's reasonable expectation of privacy.

DISCUSSION: The Court held that it will consider four factors in determining if an area is in the open field or curtilage:

1. proximity of the area to the home;

2. whether the area is within an enclosure that also surrounds the home;

3. nature and use to which the area is put; and,

4. steps taken by the resident to protect the area from observation by passers-by.

The Court held that the defendant did not establish the area surrounding his barn as curtilage. Therefore, the officers' intrusion into this area was not a search. Also, the warrantless naked-eye observation of an area of a reasonable expectation of privacy was not a search; nor is the shining of a flashlight into an area of reasonable expectation of privacy.

2. Abandoned Property

California v. Greenwood
486 U.S. 35, 108 S. Ct. 1625 (1988)

FACTS: The police had information indicating that the defendant might be engaged in narcotics trafficking. They obtained garbage bags from his regular trash collection left on the curb in front of his house. The officers developed probable cause and obtained a search warrant based on evidence found in the garbage. The search yielded quantities of controlled substances. The defendant

and others were arrested and released on bail. The police again received information that the defendant continued to engage in narcotics trafficking. Again the police obtained his garbage from the regular trash collector. A second warrant was executed. The police found more evidence of narcotics trafficking.

ISSUE: Whether the defendant has a reasonable expectation of privacy in garbage left for collection outside the curtilage of his home?

HELD: No. The defendant does not have a reasonable expectation of privacy in garbage left for collection outside the curtilage of his home.

DISCUSSION: The defendant can only establish a reasonable expectation of privacy in garbage bags left at the curb outside his curtilage if he manifested a subjective expectation of privacy that society also accepts as objectively reasonable. That the defendant exposed his garbage to the public sufficiently defeats this claim. It is common knowledge that plastic garbage bags left on or at the side of a public street are readily accessible to animals, children, scavengers, snoops, and other members of the public. Moreover, the defendant placed his trash at the curb for the express purpose of conveying it to a third party, the trash collector. The trash collector might have sorted through the trash or permitted others, such the police, to do so. Accordingly, the defendant has no reasonable expectation of privacy in the items discarded.

3. Foreign Searches

United States v. Verdugo-Urquidez
494 U.S. 259, 110 S. Ct. 1056 (1990)

FACTS: The defendant was a citizen and resident of Mexico. A federal court issued a warrant for his arrest for narcotic-related offenses. He was arrested by Mexican officials and turned over to U.S. Marshals in California. Following the arrest, a DEA Agent in concert with Mexican law enforcement searched the defendant's residences located in Mexico. The agent believed the searches would reveal evidence of defendant's narcotics trafficking and his involvement in the torture-murder of a DEA Agent. Arrangements were made with appropriate Mexican officials who authorized the searches. One search uncovered a tally sheet that the government believed reflected the quantities of marijuana smuggled by defendant into the United States.

ISSUE: Whether the Fourth Amendment applies to the search and seizure by U.S. agents of property that is owned by a foreign national and located in a foreign country?

HELD: No. The Fourth Amendment's Warrant Clause has no applicability to searches of non-U.S. citizens' homes located in foreign jurisdictions because U.S. magistrates have no power to authorize such searches.

DISCUSSION: The Fourth Amendment does not apply where American officers search a foreign national who has no "substantial connections" with the United States and where the search takes place outside the United States. The Fourth Amendment protects "The people." The term "the people" refers to a class of persons who are part of a national community or who have otherwise developed sufficient ties with this country to be considered part of that community. This language contrasts with the words "person" and "accused" used in the Fifth and Sixth Amendments regulating procedure in criminal cases.

The Fifth and Sixth Amendment rights are different from Fourth Amendment rights. They are fundamental trial rights; a violation occurs only at trial. A violation of the Fourth Amendment is fully accomplished at the time of an unreasonable intrusion by government agents. Therefore, any possible Fourth Amendment violation occurred in Mexico. The purpose of the Fourth Amendment is to protect the people of the United States against arbitrary action by their own government. It was never intended to restrain the actions of the federal government against aliens outside of the United States territory.

The absence of local judges or magistrates available to issue warrants, the differing and perhaps unascertainable conceptions of reasonableness and privacy that prevail abroad, and the need to cooperate with foreign officials all indicate that the Fourth Amendment warrant requirement should not apply abroad.

4. Private Intrusions

United States v. Jacobsen
466 U.S. 109, 104 S. Ct. 1652 (1984)

FACTS: While examining a damaged package, two private delivery company employees opened the package to check the contents. They observed a white, powdery substance. The substance had been wrapped eight times before being placed in the package. The employees repacked the contents of the package and notified the DEA of their discovery. A DEA agent went to the

company office, removed some of the contents and conducted a field test that identified the substance as cocaine.

ISSUE: Whether the Fourth Amendment required the DEA agent to obtain a search warrant before removing part of the powder and conducting a field test on it?

HELD: No. The defendant's reasonable expectation of privacy in the package had already been destroyed by the actions of the private delivery employees.

DISCUSSION: A "search" under the Fourth Amendment occurs when the government intrudes on an area where an individual has a reasonable expectation of privacy. The Constitution and its amendments do not apply to the activities of private individuals not acting as agents of the government. Here, the initial invasion by the two employees was not subject to the Fourth Amendment. And, once an individual's original expectation of privacy is destroyed, the Fourth Amendment does not prohibit governmental use of the now non-private information. Thus, the DEA agent's viewing of what the employees had freely made available for their inspection did not violate the Fourth Amendment. The additional intrusion of the field test was also determined to be reasonable.

Walter v. United States
447 U.S. 649, 100 S. Ct. 2395 (1980)

FACTS: A private carrier mistakenly delivered a shipment of several packages containing films depicting pornographic activities to a third party. Employees of the third party opened each of the packages, finding individual film boxes. The boxes contained suggestive drawings and explicit descriptions of the contents. One employee opened one or two of the boxes and attempted without success to view portions of the film by holding it up to the light. After the FBI was notified and picked up the packages, agents viewed the films with a projector without first making any effort to obtain a warrant or to communicate with the consignor or the consignee of the shipment.

ISSUE: Whether the viewing of the films constituted a government intrusion on a reasonable expectation of privacy?

HELD: Yes. Though the private parties destroyed any reasonable expectation of privacy regarding the depictions and descriptions found on the film boxes, the agents exceeded this scope by viewing the film.

DISCUSSION: It is well settled that an officer's authority to possess a package is distinct from his authority to examine its contents. When the contents of the package are books or other materials arguably protected by the First Amendment, and when the basis for the seizure is disapproval of the message contained therein, it is especially important that this requirement be scrupulously observed.

Some circumstances -- for example, if the results of the private search are obvious when materials are turned over to the government (see United States v. Jacobsen) -- may justify the government's re-examination of the materials. However, the government may not exceed the scope of the private search unless it has the right to make an independent search. The nature of the contents of the films was indicated by descriptive material on their individual containers. This did not allow the Government's unauthorized screening of the films absent consent, exigency or a warrant. The screening constituted an unreasonable invasion of their owner's constitutionally protected interest in privacy.

5. Third-Party Control

United States v. Miller
425 U.S. 435, 96 S. Ct. 1619 (1976)

FACTS: ATF agents were investigating the defendant. Agents gave grand jury subpoenas to the presidents of banks where the defendant kept accounts. The banks made the documents available to the agents, which were used in their investigation of defendant and at his trial.

ISSUE: Whether the defendant had a reasonable expectation of privacy in records held by the banks?

HELD: No. The defendant had no legitimate expectations of privacy in his bank records, since the bank was a third party to which he disclosed his affairs when he opened his accounts at the bank.

DISCUSSION: There is no reasonable "expectation of privacy" in the contents of the original checks and deposit slips, since the checks are not confidential communications. They are negotiable instruments to be used in commercial transactions, and all the documents obtained contain only information voluntarily conveyed to the banks and exposed to their employees in the ordinary course of business. The Fourth Amendment does not prohibit the obtaining of information revealed to a third party and conveyed by him to government authorities.

NOTE: The requisition of bank records must be in compliance with federal statutes.

Smith v. Maryland
442 U.S. 735, 99 S. Ct. 2577 (1979)

FACTS: The victim of a robbery began receiving phone calls from the person who claimed to be the robber. The police installed a pen register, without a warrant, at the central telephone system in order to determine the identity of the numbers that a suspect, the defendant, was dialing. After the police discovered that petitioner had called the victim, they charged him with robbery.

ISSUE: Whether the use of the pen register constituted a search?

HELD: No. The defendant did not have a reasonable expectation of privacy in the phone numbers he dialed.

DISCUSSION: The Court found that the defendant did not have a legitimate expectation of privacy regarding the numbers he dialed on his phone since those numbers were automatically turned over to a third party, the phone company. Even if the defendant did harbor some subjective expectation that the phone numbers he dialed would remain private, this expectation was not one that society was prepared to recognize as "reasonable." Therefore, the Court concluded that installation of the pen register was not a "search" and no warrant was required.

NOTE: The installation of pen registers must be in compliance with federal statutes.

III. WHAT IS A SEIZURE?

California v. Hodari
499 U.S. 621, 111 S. Ct. 1547 (1991)

FACTS: Two officers were on patrol in a high-crime area. They came upon a group of young people huddled around a car. The youths, including the defendant, fled when they observed the approaching unmarked police car. A police officer, wearing a "raid" jacket, left the patrol car to give chase. The officer took a circuitous route that brought him face to face with the defendant. The defendant was looking behind as he ran and did not turn to see the officer until the officer was almost upon him, whereupon the defendant tossed away a small

rock. The officer tackled him, handcuffed him, and radioed for assistance. The police recovered the rock, which proved to be crack cocaine.

ISSUE: Whether the defendant was "seized" at the time he dropped the controlled substance?

HELD: No. The government had made no effort to seize him at the time he abandoned the controlled substance.

DISCUSSION: To constitute a Fourth Amendment seizure of a person, there must be <u>either</u>:

1. The application of force, however slight; or

2. Submission to an officer's "show of authority" to restrain the subject's freedom of movement.

The defendant was not seized at the time he dropped the drugs. No physical force was applied to the defendant, nor did he submit to a "show of authority." He was not seized until he was tackled.

Assuming that the officer's pursuit constituted a "show of authority" requesting the defendant to halt, the defendant did not submit. He therefore was not seized until he was tackled. The cocaine was abandoned while he was running and was not the fruit of a seizure.

Brower v. Inyo County
489 U.S. 593, 109 S. Ct. 1378 (1989)

FACTS: The decedent was killed one evening when he drove a stolen car through a police roadblock. The roadblock consisted of an unilluminated 18-wheel tractor-trailer placed across both lanes of a two-lane road, behind a curve. A police car, with its headlights on, was placed between the decedent's vehicle and the tractor-trailer. The decedent's estate filed a §1983 action alleging that the police officers, acting under the color of law, violated his Fourth Amendment right to be free from unreasonable seizures.

ISSUE: Whether the officers' actions constituted a seizure under the Fourth Amendment?

HELD: Yes. The officers' action of setting up the roadblock was not a seizure. However, when the decedent crashed into the roadblock he was "seized" within the meaning of the Fourth Amendment.

DISCUSSION: A person is seized within the meaning of the Fourth Amendment whenever the government has terminated a person's freedom of movement through means intentionally applied. A Fourth Amendment seizure, however, does not occur simply because there is a governmentally caused termination of an individual's freedom of movement. Only when that termination is intentionally applied does a Fourth Amendment seizure occur.

Michigan v. Chesternut
486 U.S. 567, 108 S. Ct. 1975 (1988)

FACTS: Police officers riding in a marked car observed the defendant standing on a street corner. When he saw the police car approaching, the defendant began to run. The officers followed him, driving next to him as he ran. While they drove alongside, the officers did not activate their siren or their flashing lights, order the defendant to stop, display any weapons, or use the vehicle to try to block the defendant's path. As the officers observed him, the defendant threw a number of small packets. One of the officers retrieved the packets and identified the contents as a controlled substance. The defendant was arrested and a search of his person revealed other drugs and a hypodermic needle.

ISSUE: Whether the police pursuit of the defendant was a "seizure" within the meaning of the Fourth Amendment?

HELD: No. The officers neither applied force nor demonstrated authority to the defendant.

DISCUSSION: The test for determining when a person is "seized" under the Fourth Amendment is whether, "in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." Here, there was no evidence that the police activated their siren or lights, commanded the defendant to halt, displayed their weapons, or tried to block the defendant's movements with their car. "While the very presence of a police car driving parallel to a running pedestrian could be somewhat intimidating, this kind of police presence does not, standing alone, constitute a seizure." In sum, the police conduct in this case would not have communicated to a reasonable person an attempt to capture or otherwise intrude upon the defendant's freedom of movement. Thus, no "seizure" occurred.

Florida v. Bostick
501 U.S. 429, 111 S. Ct. 2382 (1991)

FACTS: As part of a drug interdiction effort, police officers routinely boarded passenger buses at scheduled stops and asked travelers for permission to search their luggage. Two officers boarded the bus that the defendant was riding. Without articulable suspicion, the officers questioned the defendant and asked for his consent to search his luggage for drugs. They advised the defendant of his right to refuse and he granted his consent. The officers found cocaine and arrested the defendant.

ISSUE: Whether the encounter constituted a "seizure" within the meaning of the Fourth Amendment?

HELD: No. A person is "seized" when their freedom of movement is restricted by government action.

DISCUSSION: In some circumstances, the proper test in deciding whether a person has been seized is not whether a reasonable person would feel free to leave, but whether, a reasonable passenger would feel free to terminate the encounter. Random bus searches pursuant to a passenger's consent are not per se unconstitutional. The cramped confines of a bus is just one factor to be considered in evaluating whether that encounter constitutes a "seizure" within the meaning of the Fourth Amendment.

Even when officers have no basis for suspecting a particular individual of criminal activity, they may generally ask questions of that individual, ask to examine his identification, and request to search his luggage. It is important that they do not convey the impression that compliance with their requests is mandatory.

In this case, the fact that the defendant did not feel free to leave the bus does not mean that the police seized him. His movements were confined in a sense, but this was the natural result of his decision to ride the bus. The officers did not point guns at the defendant, threaten him or otherwise imply that compliance with their request was mandatory. Further, the officers specifically advised him that he could refuse consent. Therefore, the action by the police on the bus did not constitute a Fourth Amendment seizure.

United States v. Drayton
536 U.S. 194, 122 S. Ct. 2105 (2002)

FACTS: Three police officers boarded a bus as part of a routine drug and weapons interdiction effort. One officer knelt on the driver's seat, facing the rear of the bus, while another officer stayed in the rear, facing forward. The third officer worked his way from back to front, speaking with individual passengers as he went. To avoid blocking the aisle, this officer stood next to or just behind each passenger with whom he spoke. He testified that passengers who declined to cooperate or who chose to exit the bus at any time would have been allowed to do so, that most people are willing to cooperate, and that passengers often leave the bus for a break while officers are on board. The officer approached the defendant and his traveling companion, who were seated together, and identified himself. Speaking just loud enough for them to hear, he declared that he was looking for drugs and weapons and asked if the defendants had any bags. Both of them pointed to a bag overhead. The officer asked if they minded if he checked it. The traveling companion agreed, but the search did not reveal anything. The officer then asked the companion whether he minded if the officer checked his person. The companion agreed and the officer felt hard objects similar to drug packages. The officer arrested the companion. The officer then asked the defendant, "Mind if I check you?" When the defendant agreed, a pat-down revealed objects similar to those found on the companion, and the officer arrested the defendant.

ISSUE: Whether the defendant and his traveling companion were coerced (by being seized) into giving consent to search their persons?

HELD: No. The officers did not seize the defendant nor does the Fourth Amendment require police officers to advise bus passengers of their right to refuse cooperation.

DISCUSSION: The Court previously held in Florida v. Bostick that the Fourth Amendment allows officers to approach bus passengers at random to ask questions and request their consent to search. The limitation to this authority is that a reasonable person must feel free to decline the requests or otherwise terminate the encounter. Applying Bostick's rationale in this case demonstrates that the officers did not seize the defendants. The officers gave the passengers no reason to believe that they were required to answer questions. They did not display weapons or make any intimidating movements, and they left the aisle free so that the defendants could exit. The communicating officer spoke to the defendants one by one and in a polite, quiet voice. The Court held that if this encounter occurred on a public street, it would clearly be constitutional. The fact that an encounter takes place on a bus does not transform it into a seizure.

Soldal v. Cook County

506 U.S. 56, 113 S. Ct. 538 (1992)

FACTS: A mobile home park owner requested the presence of deputy sheriffs to deter any resistance during an eviction. Up to five deputy sheriffs were present as park employees disconnected the trailer's sewer and water connections and towed it out of the park, which caused serious damage to the home. The deputies informed the tenant that they were there to prevent him from interfering. Throughout this period, the deputies were aware that the park owner did not have an eviction order and that the eviction was unlawful.

ISSUE: Whether the officers "seized" the mobile home?

HELD: Yes. The officers had "seized" the mobile home within the definition of the Fourth Amendment and could be subject to a § 1983 lawsuit.

DISCUSSION: The Court held that the forcible removal of the trailer home from the park was a "seizure" of the home within the meaning of the Constitution's Fourth Amendment. This was true although the officers did not enter the home or rummage through the homeowner's possessions and did not interfere with the homeowner's liberty during the eviction. The Court cited precedents indicating that the Fourth Amendment protects against unreasonable seizures of property regardless of whether the seizure is the outcome of a search, and protects pure property interests even in a setting other than law enforcement.

A. ARRESTS

1. Premises

Payton v. New York
445 U.S. 573, 100 S. Ct. 1371 (1980)

FACTS: Police officers developed probable cause that the defendant had committed a murder two days earlier. Six officers went to his apartment intending to arrest him. They had not obtained a warrant. Although light and music emanated from the apartment, there was no response to their knock on the metal door. The officers summoned additional assistance and, about thirty minutes later, used crowbars to break open the door and enter the apartment.

No one was there. However, they found a .30 caliber shell casing that was later admitted into evidence at the defendant's murder trial.

ISSUE: Whether the warrantless entry into the apartment was reasonable?

HELD: No. The physical entry into the home is the chief evil against which the wording of the Fourth Amendment is directed.

DISCUSSION: Arrest in the home involves not only the invasion associated to all arrests, but also an invasion of the sanctity of the home. The law has long held that this intrusion is too substantial to allow without a warrant or exigent circumstances.

This applies equally to seizures of property. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant. It is a basic principle of the Fourth Amendment that searches and seizures inside a home without a warrant are presumed to be unreasonable.

New York v. Harris
495 U.S. 14, 110 S. Ct. 1640 (1990)

FACTS: Police officers had probable cause that the defendant committed a murder but they did not have a warrant. The officers went to his apartment to arrest him. When they arrived, they knocked on the door and displayed their guns and badges. The defendant did not consent to their request but the officers entered nonetheless. They read the defendant his Miranda rights and he agreed to answer questions. The defendant admitted his guilt, was arrested, taken to the station house, and was again informed of his Miranda rights. There, he signed a written statement.

ISSUE: Whether the officers could enter the defendant's home to arrest him based on probable cause alone?

HELD: No. The officers needed to have an arrest warrant, the defendant's consent, or some exigency to enter his home for the purpose of placing him under arrest.

DISCUSSION: Probable cause does not, by itself, permit officers to intrude into a home to place someone inside under arrest. They must have a warrant, consent, or be operating under some exigency (such as hot pursuit). The exclusionary rule may bar any evidence discovered inside the home from the government's use, including, in this case, his statement.

However, when the police have probable cause to arrest, the exclusionary rule will not bar the government's use of a statement made by the defendant outside of his home, even though the statement was taken after an arrest in the home in violation of Payton. The rule in Payton was designed to protect the physical integrity of the home, not to grant criminal suspects protection for statements made outside their premises.

Here, the police had justification to question the defendant prior to his arrest. Therefore, his subsequent statement was not an exploitation of the illegal entry into his home. Suppressing that statement would not serve the purpose of the Payton rule, since anything incriminating gathered from the defendant's in-home arrest has already been excluded.

There was no valid claim that the defendant was immune from prosecution because his person was the fruit of an illegal arrest. Nor is there any claim that the warrantless arrest required the police to release the defendant. Because the police had probable cause to arrest the defendant for a crime, the defendant was not unlawfully in custody when he was removed to the station house. The Court noted that any evidence found while illegally in the defendant's house would have been suppressed as fruits of the illegal entry. However, the defendant's statement taken at the police station was not the product of being in unlawful custody (as the officers had probable cause to arrest).

2. Third Party Premises

Pembaur v. Cincinnati
475 U.S. 469, 106 S. Ct. 1292 (1986)

FACTS: Subpoenas were issued for two of the defendant's employees. When they failed to appear, arrest warrants were issued for their arrest. When two Deputy Sheriffs attempted to serve the warrants at the defendant's clinic, he barred the door and refused to let them enter the private part of the clinic. Police officers, whom the defendant had called, appeared and told him to allow the Deputy Sheriffs to enter. The defendant refused. The Deputy Sheriffs then called the County Prosecutor, who instructed the Deputy Sheriffs to "go in and get" the employees. The door was chopped down with an axe. The Deputy Sheriffs entered but were unable to find the two employees.

ISSUE: Whether law enforcement officers have to obtain a search warrant to execute an arrest warrant in areas in which a third party has reasonable expectation of privacy?

HELD: Yes. Generally, officers must obtain a search warrant to execute an arrest warrant in areas where a third party has reasonable expectation of privacy.

DISCUSSION: Absent some exigency, law enforcement officers must have a search warrant to enter a third party's zone of reasonable expectation of privacy to serve an arrest warrant. In ordering Deputy Sheriffs to enter the defendant's clinic to serve arrest warrants on third persons, the county prosecutor was acting as the final decision maker for the county. Therefore, the county could be held liable under 42 U.S.C. § 1983 for a violation of the defendant's Fourth Amendment rights.

Steagald v. United States
451 U.S. 204, 101 S. Ct. 1642 (1981)

FACTS: A DEA agent in Detroit was contacted by a confidential informant who suggested that he might be able to locate Ricky Lyons, a federal fugitive. The informant gave the agent a telephone number in the Atlanta area where, according to the informant, Lyons could be reached during the next twenty-four hours. The information was relayed to DEA in Atlanta. The telephone number was assigned to the house that belonged to the defendant.

Two days later, DEA agents went to the address to execute an arrest warrant for Lyons. They observed two men, Gaultney and the defendant, standing in front of the house. The agents frisked and identified the two men. Several agents proceeded to the house. Gaultney's wife answered the door. She was detained while one agent searched the house for Lyons. Lyons was not found, but during the search of the house the agent observed what he believed to be cocaine. An agent was sent to secure a search warrant and in the meantime, a second search was conducted and incriminating evidence was discovered. During the third search of the house (which was conducted with the search warrant) forty-three pounds of cocaine were found.

ISSUE: Whether the evidence from all three searches was illegally obtained because the agents failed to obtain a search warrant before entering the house?

HELD: Yes. An arrest warrant for a suspect does not imply the authority to enter a third-party's home to effect the arrest. Consent or an exigency is necessary to do so.

DISCUSSION: The Fourth Amendment has drawn a firm line at the entrance to a dwelling, and, absent exigent circumstances or consent, that threshold may not be crossed without a warrant. The purpose of a warrant is to allow a neutral and detached magistrate to assess whether the government has probable cause to make an arrest or conduct a search.

An arrest warrant authorizing police to deprive a person of his liberty also authorizes a limited invasion of that person's privacy when it is necessary to arrest him in his home. However, the arrest warrant does not authorize the police to deprive a third person of his liberty, nor can it embody any derivative authority to deprive that person of their interest in the privacy of their home. Absent exigent circumstances or consent, law enforcement officers cannot search for the subject of an arrest warrant in the home of a third party without first obtaining a search warrant.

3. Arrest Warrants

Whiteley v. Warden
401 U.S. 560, 91 S. Ct. 1031 (1971)

FACTS: A sheriff received information that the defendant had broken into a building and stole property. The sheriff filed a complaint that did not mention nor corroborate this information. It merely contained the officer's conclusion that the defendant had committed the crime. Based on this complaint, the magistrate issued an arrest warrant and the defendant was arrested.

ISSUE: Whether the government can establish probable cause for an arrest warrant on information that was not presented to the issuing judge, but which the government possessed at the time of the warrant application?

HELD: No. An arrest warrant must be based on the facts as they were presented to the issuing judge. Any subsequent arrest based on that arrest warrant alone cannot be sustained by facts that were not presented to the judge.

DISCUSSION: If a warrant is challenged, its validity turns only on the information in the affidavit (or complaint). The government may not present information other than that originally presented to the magistrate judge.

In this case, the arrest warrant was struck down as invalid. Since an objectively reasonable officer in the sheriff's position would have recognized that the affidavit was insufficient, the "good faith exception" of United States v. Leon

does not apply. Also, since the arresting officer did not have information other than the fact that an arrest warrant had been issued, the Court refused to consider information that was not contained in the complaint on which the arrest warrant had been based.

United States v. Watson
423 U.S. 411, 96 S. Ct. 820 (1976)

FACTS: A reliable informant told a Postal Inspector that the defendant had provided the informant with a stolen credit card. The Inspector later verified that the card had been stolen. The informant also said that the defendant had agreed to furnish additional stolen credit cards. A meeting was arranged between the informant and the defendant in a public place. Upon receiving a signal from the informant that the defendant was in possession of additional stolen credit cards, Postal Officers made a warrantless arrest of the defendant. When a search of his person failed to turn up the additional cards, the defendant consented to a search of his nearby vehicle. Two credit cards in the name of other persons were found in the vehicle.

ISSUE: Whether the warrantless arrest of the defendant was a violation of the Fourth Amendment, in that the officers had time to obtain a warrant, but failed to do so?

HELD: No. The officers had probable cause to arrest for the crime and, because the arrest occurred in public, they could do so without first obtaining a warrant.

DISCUSSION: Nothing in the Fourth Amendment requires a warrant before an officer can make an arrest for a felony offense in a public place. Further, cases interpreting the Fourth Amendment have traditionally followed the common law approach, which permitted officers to make warrantless arrests for misdemeanors or felonies that were committed in the officer's presence, as well as for felonies not committed in the officer's presence, but for which probable cause existed. Finally, the arrest of the defendant was based upon a Federal statute that authorized Postal Service officers performing their official duties to make warrantless arrests for Federal felony offenses if probable cause existed. While it might be preferable for officers to obtain an arrest warrant if practicable, it is not constitutionally required. "The necessary inquiry, therefore, was not whether there was a warrant or whether there was time to get one, but whether there was probable cause for the arrest." Based on the facts, the officers had probable cause for the arrest in this case.

Atwater v. City of Lago Vista
532 U.S. 318, 121 S. Ct. 1536 (2001)

FACTS: A police officer observed the defendant violate a state seat belt law. The law is a misdemeanor, punishable only by a fine. The warrantless arrest of anyone violating this statute is expressly authorized by statute, but the police may issue a citation instead of making an arrest. The officer pulled the defendant over, verbally berated her, and handcuffed her. He placed the defendant in his squad car, and drove her to the local police station. Once there, she was searched incident to the arrest and processed in the same manner as all other arrests.

ISSUE: Whether the officer acted unreasonably in arresting the defendant for a crime that only carried the possibility of a fine as a punishment?

HELD: No. The Fourth Amendment does not forbid a warrantless arrest for a minor criminal offense, such as a misdemeanor punishable only by a fine.

DISCUSSION: In interpreting the Fourth Amendment, the Court considers the traditional protections against unreasonable searches and seizures that were afforded by the common law at the time of the Constitution's framing. The Court found the history of the common law conflicted in this area. As a result, it rejected the defendant's request to mint a new rule of constitutional law forbidding custodial arrest, even upon probable cause, when conviction could not ultimately carry any jail time. The Court has traditionally recognized that a responsible Fourth Amendment balance is not well served by standards requiring sensitive, case-by-case determinations of government need. Otherwise, every discretionary judgment in the field could be converted into an occasion for constitutional review.

Maryland v. Buie
494 U.S. 325, 110 S. Ct. 1093 (1990)

FACTS: Two men committed armed robbery in a restaurant. One of the robbers wore a red running suit. After obtaining arrest warrants for the defendant and his suspected accomplice, the police executed the arrest warrant for the defendant at his house. Once inside, the officers fanned out. One of the officers found the defendant in the basement and ordered him out, whereupon he was arrested. Another officer entered the basement "in case there was

someone else down there." While in the basement, he saw a red running suit on a stack of clothing in plain view and seized it. The red running suit was introduced into evidence against the defendant.

ISSUE: Whether the Fourth Amendment permits police officers, in effecting the arrest of a suspect in their home, to conduct a warrantless protective sweep of the premises?

HELD: Yes. A limited protective sweep, in conjunction with an in-home arrest, is permitted when the searching officer possesses a reasonable belief that the area to be swept harbors an individual posing a danger to those on the arrest scene.

DISCUSSION: As an incident to an arrest, police officers may, as a precautionary matter and without probable cause or reasonable suspicion, look inside closets or other spaces immediately adjoining the place of arrest from which an attack could be launched. Beyond that, however, there must be reasonable suspicion that the area to be swept harbors an individual posing a danger.

A protective sweep is a quick and limited search of a premise, incident to an arrest and conducted to protect the safety of police officers or others. Protective sweeps are not automatically permitted. They are also not full searches of the premises, but extend only to a cursory inspection of those spaces where a person may be found as justified by the circumstances. A sweep may last no longer than is necessary to dispel the reasonable suspicion of danger, and in any event, no longer than it takes to complete the arrest and depart the premises.

In this case, possessing an arrest warrant and probable cause to believe that the defendant was in his home, the officers were entitled to search anywhere in the house where he might be found. Once the defendant was found, the search for him ceased, and there was no longer justification for entering any rooms that had not been searched. Nevertheless, the police had an interest in taking steps to assure themselves that the defendant's house was not harboring other people who were dangerous and could unexpectedly launch an attack. The second officer did not go into the basement to search for evidence, but rather to look for the suspected accomplice or anyone else who might pose a threat to the officers. The interest in ensuring the officer's safety was sufficient to outweigh the intrusion this procedure entailed.

B. STOPS

Terry v. Ohio
392 U.S. 1, 88 S. Ct. 1868 (1968)

FACTS: Police Detective McFadden had been a police officer for a total of 39 years. He served 35 of those years as a detective and 30 of those years walking a beat in downtown Cleveland. At approximately 2:30 p.m. on October 31, 1963, Officer McFadden was patrolling in plain clothes. Two men, standing on a corner, [Chilton and the defendant] attracted his attention. He had never seen the men before, and he was unable to say precisely what caught his attention. His interest aroused, Officer McFadden watched the two men. He saw one man leave the other and walk past some stores. The suspect paused and looked in a store window, then walked a short distance, turned around and walked back toward the corner, pausing again to look in the same store window. Then the second suspect did the same. This was repeated approximately a dozen times. At one point, a third man approached the suspects, engaged them in a brief conversation, and left. Chilton and the defendant resumed their routine for another 10-12 minutes before leaving to meet with the third man.

Officer McFadden testified that he suspected the men were "casing a job, a stick-up," and that he feared "they may have a gun." Officer McFadden approached the three men, identified himself and asked for their names. The suspects "mumbled something" in response. Officer McFadden grabbed the defendant, spun him around and patted down the outside of his clothing. Officer McFadden felt a pistol in the defendant's left breast pocket of his overcoat, which he retrieved. Officer McFadden then patted down Chilton. He felt and retrieved another handgun from his overcoat. Officer McFadden patted down the third man, Katz, but found no weapon. The government charged Chilton and the defendant with carrying concealed weapons.

ISSUES:

1. Whether the detective's actions amounted to a seizure?

2. Whether the detective's actions amounted to a search that must be in compliance with the Fourth Amendment?

HELD:

1. Yes. Detective McFadden "seized" the defendant when he grabbed him.

2. Yes. Detective McFadden "searched" the defendant when he put his hands on the defendant's person.

DISCUSSION: The Constitution only prohibits unreasonable searches and seizures. An officer "seizes" a person when he or she restrains the freedom to walk away. Likewise, a "search" occurs when an officer makes a careful

exploration of outer surfaces of person's clothing to attempt to find weapons. These searches and seizures must be reasonable to justify them under the Fourth Amendment.

In justifying any particular intrusion, the government must be able to point to specific and articulable facts that, taken with rational inferences from those facts, reasonably warrant that intrusion. Searches and seizures must be based on more than hunches, and simple good faith on part of the officer is not enough.

The Court permitted Detective McFadden to conduct the limited intrusions of stopping the suspects based on articulable (reasonable) suspicion that criminal activity was afoot. The Court also found that Detective McFadden demonstrated reasonable suspicion that the men were armed and dangerous. Therefore, the Court allowed his limited intrusion onto their persons in search of weapons. While both standards are less than probable cause, the Court acknowledged that limited intrusions, based on articulated, reasonable suspicion can be reasonable.

Delaware v. Prouse
440 U.S. 648, 99 S. Ct. 1391 (1979)

FACTS: A police officer stopped a vehicle occupied by the defendant. The officer testified that, he made the stop only to check the driver's license and the vehicle's registration documents. In making the stop, the officer was not acting pursuant to any standards, guidelines, or procedures promulgated by either his department or the State Attorney General. Upon approaching the vehicle, the officer smelled marijuana. He later seized marijuana in plain view on the floor of the car.

ISSUE: Whether the officer's stop of the vehicle without reasonable suspicion violated of the Fourth Amendment?

HELD: Yes. The officer's stop violated the defendant's Fourth Amendment right to be free from unreasonable seizures.

DISCUSSION: While the State has an interest in ensuring the safety of its roadways, an individual still retains a reasonable expectation of privacy in a vehicle, despite significant governmental regulation of vehicles. If an individual was subjected to unrestricted governmental intrusion every time he or she entered a vehicle, the Fourth Amendment prohibition against unreasonable searches and seizures would be severely undermined. Instead, "except in those situations in which there is at least articulable and reasonable suspicion that a motorist is unlicensed or that an automobile is not registered, or that either the

vehicle or an occupant is otherwise subject to seizure for violation of law, stopping an automobile and detaining the driver in order to check his driver's license and the registration of the vehicle are unreasonable under the Fourth Amendment."

Davis v. Mississippi
394 U.S. 721, 89 S. Ct. 1394 (1969)

FACTS: A rape victim provided a physical description of the perpetrator. Police found fingerprints on a window through which the rapist had apparently entered the victim's home. On December 3, the defendant and several others were taken to police headquarters, without either a warrant or probable cause for an arrest, for fingerprinting and questioning. Over the next five days, the police questioned the defendant on several occasions at a variety of locations, including police headquarters. He was also shown to the victim on several occasions, although she did not identify him as the rapist. On December 12, the defendant was arrested without either probable cause or a warrant. The officers fingerprinted him for a second time two days later. These fingerprints were later matched to those taken from the victim's window.

ISSUE: Whether the fingerprints taken by police on December 14th were obtained through an illegal detention under the Fourth Amendment?

HELD: Yes. Because the defendant's detention on December 12th was unlawful, the fingerprints taken during his confinement were obtained in violation of the Fourth Amendment.

DISCUSSION: The fingerprint evidence taken on December 14th was obtained while the defendant was still confined following his arrest on December 12th. Because the arrest and subsequent confinement were not based on either a warrant or probable cause, both violated the Fourth Amendment. The Court noted that the fingerprints taken on December 3rd were also taken in violation of the Fourth Amendment. There was no evidence that the defendant voluntarily accompanied the police to headquarters and willingly submitted to the fingerprinting. Thus, the seizure of the defendant on either date was constitutionally invalid, as were the fingerprints obtained during the illegal detention.

Florida v. Royer
460 U.S. 491, 103 S. Ct. 1319 (1983)

FACTS: The defendant paid cash for a one-way airline ticket to New York City at Miami International Airport under an assumed name. He also checked his two suitcases bearing identification tags with the assumed name. Two detectives had previously observed him and believed that his characteristics fit a "drug courier profile." They approached him. Upon request the defendant produced his airline ticket and driver's license, which bore his correct name. The defendant explained that a friend had made the ticket reservations in the assumed name. The detectives told the defendant that they were narcotics investigators and that they had reason to suspect him of transporting narcotics. Without returning his ticket or driver's license, the detectives asked him to accompany them to a small room about forty feet away. Without the defendant's consent, one of the officers retrieved his luggage and brought it to the room. Although he did not orally consent to a search of the luggage, the defendant produced a key and unlocked a suitcase in which marijuana was found.

ISSUE: Whether the seizure of the defendant was unreasonable, tainting his consent?

HELD: Yes. Consent granted during an illegal seizure is typically found to be the product of coercion.

DISCUSSION: Investigative detentions must be temporary and last no longer than is necessary to effectuate the purpose of the stop. Investigative methods employed should be the least intrusive means reasonably available to verify or dispel reasonable suspicion in the shortest time possible. The officers did not do that here as they failed to return his ticket and license. They did not have probable cause to either arrest the defendant or search his suitcases. Consent granted during an illegal seizure will typically be held to be invalid.

United States v. Sharpe
470 U.S. 675, 105 S. Ct. 1568 (1985)

FACTS: While patrolling a highway in an area under surveillance for suspected drug trafficking, a DEA agent noticed an apparently overloaded pickup truck. The truck had an attached camper and appeared to be traveling in tandem with a Pontiac. Savage was driving the truck, and the defendant was driving the Pontiac. The windows of the camper were covered with a thick bed-sheet material. After following the two vehicles for about 20 miles, the agent decided to make an "investigative stop" and radioed a highway patrol officer for assistance. The patrol officer and the DEA agent continued to follow the two vehicles. Both suspect vehicles engaged in evasive actions and started speeding as soon as the marked police car began to follow them. When the officers

attempted to stop the vehicles, the defendant pulled over, but the truck continued, pursued by the state officer. The patrol officer stopped the truck, questioned Savage, and told him that he would be held until the DEA agent arrived. The agent arrived at the scene approximately 15 minutes after the truck had been stopped. After confirming his suspicion that the truck was overloaded and upon smelling marihuana, the agent opened the rear of the camper without Savage's permission and observed a number of burlap-wrapped bales resembling bales of marihuana that the agent had seen in previous investigations. The agent then placed Savage and the defendant under arrest.

ISSUE: Whether the seizures met the Fourth Amendment's requirement of brevity governing detentions on less than probable cause?

HELD: Yes. The seizures were reasonable under the Fourth Amendment

DISCUSSION: In evaluating the reasonableness of an investigative stop, this Court examines "whether the officer's action was justified at its inception, and whether it was reasonably related in scope to the circumstances that justified the interference in the first place." In assessing whether a detention is too long to be justified as an investigative stop, it is appropriate to examine whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the defendant.

If an investigative stop continues indefinitely, at some point it can no longer be justified as an investigative stop. However, the Court refused to impose a rigid time limitation on Terry stops. It is clear that the brevity of the invasion of the individual's interests is an important factor in determining whether the seizure is so minimally intrusive as to be justified. As much as a "bright line" rule would be desirable in evaluating whether an investigative detention is unreasonable, the Court held that common sense and ordinary human experience must govern over rigid criteria. Here, the DEA agent diligently pursued his investigation, and involved no unnecessary delay to the investigation. He concluded his investigation as quickly as he could. Therefore, the investigative stops were reasonable.

Pennsylvania v. Mimms
434 U.S. 106, 98 S. Ct. 330 (1977)

FACTS: Police officers lawfully stopped the defendant for driving a vehicle with an expired license plate. One of the officers approached and asked the defendant to step out of the car and produce his driver's license and owner's

card. It was the common practice of the officer to order all drivers out of their vehicles whenever they conducted a stop for a traffic violation. As the defendant got out of the car, the officer noticed a large bulge under the defendant's sport jacket. Fearing that the bulge might be a weapon, the officer frisked the defendant and discovered a loaded handgun. The defendant was immediately arrested for carrying a concealed weapon.

ISSUES:

1. Whether the officer's order to get out of the car during a lawful traffic stop was reasonable under the Fourth Amendment?

2. Whether the frisk of the defendant was lawful under the Fourth Amendment?

HELD:

1. Yes. The officer's order to get out of the car did not violate the Fourth Amendment, since the interest in the officer's safety outweighed what was, at most, a mere inconvenience to the driver.

2. Yes. The frisk of the defendant, conducted when the officer observed a bulge under the defendant's jacket, was lawful under the Fourth Amendment.

DISCUSSION: The key to any Fourth Amendment analysis is whether the challenged conduct was reasonable. The reasonableness of conduct depends on "a balance between the public interest and the individual's right to personal security free from arbitrary interference by police officers." With regard to issue (1), the safety of a police officer is a legitimate (officer will not have to stand near traffic flow, etc.) and weighty concern that outweighs the minimal intrusion suffered by a driver who is asked to get out of a lawfully stopped car. With regard to issue (2), the Court's decision in Terry v. Ohio was controlling. "The bulge in the defendant's jacket permitted the officer to conclude that the defendant was armed and thus posed a serious and present danger to the safety of the officers."

Maryland v. Wilson
519 U.S. 408, 117 S. Ct. 882 (1997)

FACTS: A police officer observed a speeding passenger car with no regular license tag and a torn piece of paper bearing the name of a rental car dangling from the rear of the car. He activated his lights and, after a mile and half, the

suspect's car pulled over. During the traffic stop, the officer noticed that the defendant, a passenger in the vehicle, appeared to be nervous. The officer ordered the defendant out of the vehicle. When he exited the vehicle, a quantity of crack cocaine fell to the ground. The officer placed the defendant under arrest.

ISSUE: Whether the officer's action of ordering the passenger out of the vehicle was reasonable?

HELD: Yes. The Supreme Court extended the rule expressed in Pennsylvania v. Mimms to include passengers in lawfully stopped vehicles.

DISCUSSION: The touchstone of all Fourth Amendment analysis is whether the government's invasion of a person's personal security was reasonable. Reasonableness depends on striking a balance between the public's interest in conducting the search or seizure and the individual's interest in preserved privacy. Here, the public has a great interest in preserving the safety of the officer. The officer must maintain an awareness of the driver and any passengers, any of whom can pose a threat, during the encounter. The passenger is only minimally intruded upon. The only change in their circumstance is that they will be outside the vehicle, where they cannot access concealed weapons found in the vehicle. Therefore, it is reasonable for officers to order passengers of lawfully stopped vehicles out of the conveyance.

United States v. Hensley
469 U.S. 221, 105 S. Ct. 675 (1985)

FACTS: Six days after an armed robbery, a police officer received reliable information that the defendant had been involved as the getaway driver. The officer immediately issued a "wanted flyer" to other police departments in the area, containing the defendant's name, as well as the date and location of the robbery. The flyer stated that the defendant was wanted for investigation of an armed robbery and cautioned that he was considered to be armed and dangerous. Approximately six days later, an officer from a nearby police department stopped the defendant while driving a vehicle, based on the "wanted flyer." The officer was unable to confirm whether a warrant had been issued for the defendant's arrest before approaching the vehicle. The officer ordered the defendant and a passenger out of the vehicle. Another officer arrived on the scene and observed, through the open passenger door of the vehicle, the butt of a revolver. The passenger, a convicted felon, was arrested. Two other weapons were found during the ensuing search and the defendant was arrested.

ISSUES: 1. Whether a Terry stop for a crime that has already been completed is lawful under the Fourth Amendment?

2. Whether a Terry stop can be based on a "wanted flyer" issued by officers who had a reasonable suspicion that the suspect has committed an offense?

HELD: 1. Yes. There is no limitation that the suspect stopped be either in the process of committing, or about to commit, a crime.

2. Yes. The validity of the "wanted flyer" rests on the issuing officer's reasonable suspicion to stop the suspect.

DISCUSSION: Where officers have a reasonable suspicion that the suspect was involved in the commission of a prior crime, the governmental interest in detecting and punishing criminals is served by allowing Terry stops. This interest outweighs the intrusion caused by a Terry stop. However, the Court did not address whether Terry stops to investigate all past crimes are permissible.

Whether the officers who actually stopped the defendant had knowledge of the facts that gave rise to reasonable suspicion is immaterial. What is key is whether the officers who issued the "wanted flyer" had reasonable suspicion to conduct a Terry stop. If so, the suspect may be stopped on the basis of the flyer to "check identification, pose questions to the person, or to detain the person briefly while attempting to obtain further information." Here, the officers who stopped the defendant did so lawfully, in that the officer who issued the flyer had reasonable suspicion for a stop. Because the initial stop was lawful, all evidence seized in plain view or incident to the arrest that followed was admissible.

Hayes v. Florida
470 U.S. 811, 105 S. Ct. 1643 (1985)

FACTS: The police reasonably suspected the defendant was involved in a burglary rape. Without a warrant, they went to his home to obtain fingerprints. Arriving at the home, the police spoke to the defendant on his front porch. When he expressed reluctance to go with the police to the station, one officer said that they would arrest him. The defendant, stating he would rather go to the station than be arrested, went with the officers and was fingerprinted. When the police determined that his prints matched those taken at the scene of the crime, he was arrested.

ISSUE: Whether the police can transport suspects and take their fingerprints on the basis of reasonable suspicion?

HELD: No. Where there is no probable cause to arrest a suspect, no uncoerced consent to journey to the police station, and no prior judicial authorization for detaining him, the investigative detention at the station for fingerprinting purposes violates the Fourth Amendment

DISCUSSION: When the police forcibly remove a person from his home and transport him to the station, the suspect has been seized. The Court refused to characterize this seizure, as brief as it may have been, as an investigative stop. The seizure was comparable to the acts of a traditional arrest. Therefore, the Court held that this seizure required probable cause.

United States v. Montoya de Hernandez
473 U.S. 531, 105 S. Ct. 3304 (1985)

FACTS: The defendant traveled to Los Angeles on a direct flight from Columbia. Her passport indicated that the defendant had made approximately eight recent trips from Columbia to either Miami or Los Angeles. A Customs Inspector, who knew that Bogota was a source city for drugs, discovered that the defendant spoke no English and had no family or friends in the United States. She carried $5,000 in cash, primarily in $50 bills, and claimed that she had come to the United States to buy goods for her husband's store in Bogota. However, she had not set up any meetings with retailers. She did not have hotel reservations. She could not remember how her airline ticket was purchased, and had only four changes of clothing. The defendant only possessed the shoes (high-heeled) she was wearing. She had no checks, credit cards, waybills, or letters of credit. Based upon these facts and his experience, the Inspector suspected the defendant was a "balloon swallower," one who attempts to smuggle drugs into the country through her alimentary canal.

A female Inspector moved the defendant into a private area and conducted a pat-down and strip search. Nothing was found, but a "firm fullness" was noted in the defendant's abdomen area. She was also wearing two pair of underpants with a paper towel lining the crotch area. The defendant was told she was suspected of smuggling drugs in her alimentary canal. When asked to be x-rayed, the defendant agreed, but stated she was pregnant. She agreed to a pregnancy test prior to the x-ray, but later withdrew her consent to the x-ray. For approximately sixteen hours, the defendant refused to eat or drink anything or use the toilet facilities. Customs officials sought a court order authorizing a pregnancy test, an x-ray, and a rectal examination. A Federal magistrate

authorized the rectal examination and an involuntary x-ray, provided the doctor considered the defendant's claim of pregnancy. At a local hospital, the defendant's pregnancy test was negative. During the rectal examination, a balloon was found containing an unknown substance. The defendant was then formally arrested. Over the next four days, the defendant passed a total of 88 balloons containing 528 grams of cocaine.

ISSUES:

1. Whether the government developed a proper level of suspicion to detain the defendant at the border beyond the scope of a routine customs search and inspection?

2. Whether the sixteen-hour detention in this case was unreasonable under the Fourth Amendment?

HELD:

1. Yes. To detain a traveler at the border beyond the scope of a routine customs search and inspection, reasonable suspicion must exist.

2. No. Under the circumstances of this case, the sixteen-hour detention was reasonable and thus did not violate the Fourth Amendment.

DISCUSSION: Under the Fourth Amendment, searches and seizures must be reasonable. The test for "reasonableness" at the international border is significantly different than it is within the interior of the United States. Not only is an individual's expectation of privacy reduced at the border, but the government's interest in protecting the border from those who would bring anything harmful into the country is substantial. With regards to issue (1), the "reasonable suspicion" standard "fits well into the situations involving alimentary canal smuggling at the border: this type of smuggling gives no external signs and Inspectors will rarely possess probable cause to arrest or search, yet governmental interests in stopping smuggling at the border are high indeed." Here, the Inspector had reasonable suspicion to detain the defendant beyond the scope of a routine customs search and inspection. With regard to issue (2), it is obvious that alimentary canal smuggling cannot be detected in the amount of time that most other illegal activities can. The detention in this case was further lengthened by the defendant's own refusal to be either x-rayed or have a bowel movement. The Court refused to charge police with delays in investigatory detentions attributable to the suspect's evasive actions. For these reasons, the sixteen-hour detention was reasonable under the Fourth Amendment.

Almeida-Sanchez v. United States
413 U.S. 266, 93 S. Ct. 2535 (1973)

FACTS: The defendant was stopped and searched by a roving patrol of the U.S. Border Patrol. He challenged the constitutionality of the Border Patrol's warrantless search of his automobile 25 air miles north of the Mexican border. The search, made without probable cause or consent, uncovered marihuana, which was used to convict the defendant of a federal crime. The government sought to justify the search on the basis of a federal law that provided for warrantless searches of automobiles and other conveyances "within a reasonable distance from any external boundary of the United States." Regulations defined "reasonable distance" as "within 100 air miles from any external boundary of the United States."

ISSUE: Whether roving patrols could engage in searches and seizures without probable cause or reasonable suspicion?

HELD: No. The warrantless search of the defendant's automobile, made without probable cause or consent, violated the Fourth Amendment.

DISCUSSION: The government could not justify the search on the basis of any case law applicable to automobile searches, as probable cause was lacking. Nor could the government justify the search by analogy with a border inspection, as the officers had no reason to believe that the defendant had crossed the border (nexus with the border). Nor did the government have the defendant's consent to conduct the search. The Court explained that travelers may be stopped in crossing an international boundary (nexus) because of national self protection. However, the search of the defendant's automobile on a road lying at all points at least 20 miles north of the Mexican border, was different. Those lawfully within the country and entitled to the use of public highways have a right of free passage without interruption or search.

United States v. Martinez-Fuerte
428 U.S. 543, 96 S. Ct. 3074 (1976)

FACTS: The U.S. Border Patrol operated a fixed checkpoint on a major highway directly north of the Mexican border. They stopped vehicles there with no suspicion to determine if the occupants were lawfully in the United States.

ISSUE: Whether the government must demonstrate reasonable suspicion to engage in fixed checkpoint seizures?

HELD: No. The government's seizures are reasonable as they are limited in scope and justified by compelling need.

DISCUSSION: The Court held that the Border Patrol's routine stopping of vehicles at a permanent checkpoint located on a major highway away from the Mexican border for brief questioning of the vehicle's occupants is consistent with the Fourth Amendment. These stops and subsequent questioning may be made at reasonably located checkpoints with no individualized suspicion that the particular vehicle contains illegal aliens. Such a requirement would be impractical because the flow of traffic tends to be too heavy to allow the particularized study of a given car necessary to identify the possibility of illegal aliens. The Court contrasted the level of intrusion at a checkpoint stop (none required) with that of a roving patrol (reasonable suspicion required) and cited relatively low expectation of privacy in an automobile.

IV. LEVELS OF SUSPICION

A. PROBABLE CAUSE

Henry v. United States
361 U.S. 98, 80 S. Ct. 168 (1959)

FACTS: Two federal agents were investigating the theft of an interstate shipment of whiskey. On two separate occasions, they witnessed the defendant and another man drive into an alley, enter a residence, and return with cartons that were placed in a vehicle. Prior to this activity, the defendant was not suspected of any criminal activity. The agents were too far away to determine the size, number, or contents of the cartons. Following the second observation, the agents seized the vehicle without a search or arrest warrant. The vehicle was searched, and both the cartons and the defendant were placed in the agents' vehicle and taken to the agents' office. Once the agents learned the cartons contained stolen radios, the defendant was formally arrested.

ISSUE: Whether the agents had probable cause when they searched the defendant's vehicle?

HELD: No. The agents could not articulate facts to indicate a probability that the defendant was involved in criminal activity or that they would find evidence of criminal activity.

DISCUSSION: While packages had been stolen, that fact did not make every person seen carrying a package subject to arrest and search. It also did not

make every package subject to seizure. The acts of driving a car in an alley, walking inside residential premises, picking up cartons, and carrying the cartons away, were, without more, not indications of criminal activity. There was no evidence that the defendant and the other man were acting secretly or in an evasive manner. The agents had no idea what was in the cartons when they seized the car. Therefore, their observations did not amount to probable cause.

Draper v. United States
358 U.S. 307, 79 S. Ct. 329 (1959)

FACTS: On September 7, a Federal narcotics agent in Denver received information from a reliable source that the defendant would be traveling to Denver from Chicago with three ounces of heroin. The source provided a detailed physical description of the defendant, as well as a description of the clothing he would be wearing. The source stated the defendant would be returning to Denver on a train on either September 8th or 9th, would be carrying "a tan zipper bag," and that he habitually "walked real fast." On September 9, the agent observed the defendant get off an incoming Chicago train, who began walking "fast" toward the exit. The defendant had the exact physical attributes, and was wearing the clothing predicted by the source. He was carrying a tan zipper bag in his right hand. The agent then approached and arrested the defendant. In the subsequent search, heroin and a syringe were found.

ISSUES:

1. Whether hearsay evidence that is not legally admissible in a criminal trial can be used in developing probable cause for an arrest?

2. Whether the officer had probable cause to arrest the defendant?

HELD:

1. Yes. Probable cause for an arrest can be established through hearsay evidence.

2. Yes. The information given to the agent was sufficient to establish probable cause.

DISCUSSION: With regard to issue (1), it is well settled that an arrest may be made upon hearsay evidence. There is a significant difference between what is required to prove guilt in a criminal case and what is required to substantiate the existence of probable cause. While hearsay evidence may not be admissible in a criminal trial, it may be used to establish probable cause.

With regard to issue (2), the agent received information from a reliable source. In pursuing that information, the agent "personally verified every facet of the

information given him by the reliable source, except whether the defendant had three ounces of heroin with him." The Court also stated that "with every other bit of the reliable source's information being personally verified, the agent had probable cause to believe that the remaining bit of unverified information - that the defendant had the heroin with him - was likewise true."

Sibron v. New York
392 U.S. 40, 88 S. Ct. 1889 (1968)

FACTS: Throughout the course of a day and night, a police officer observed the defendant with 9 to 11 known narcotics addicts. At no time did the officer hear any conversation between the defendant and these persons, nor did he witness any exchange between them. After seeing the defendant in a restaurant with three of the known addicts, the officer approached. They went outside. Once outside, the officer said to the defendant, "you know what I am after." The defendant mumbled something and reached into his pocket. At the same time, the officer reached into the defendant's pocket and found a controlled substance. The defendant was convicted of unlawful possession of heroin. At trial, there was nothing to show that the officer's safety was a potential justification for the intrusion into the defendant's pocket.

ISSUE: Whether the officer established probable cause to believe the defendant was in possession of a controlled substance?

HELD: No. The officer could not articulate probable cause that the defendant was in possession of a controlled substance.

DISCUSSION: The officer did not have probable cause to arrest the defendant at the time of the street encounter. While he had seen the defendant in conversation with known drug addicts, the officer was unaware of the topics being discussed. Further, he saw nothing pass between the defendant and any of the addicts. Because no probable cause existed to arrest, the search could not be justified as incident to that arrest. The officer also could not justify the search on the grounds that he reasonably suspected the defendant to be armed and dangerous. At no time did the officer claim that his actions were taken in order to protect himself from potential weapons carried by the defendant. Additionally, the scope of the search exceeded the allowable limits of Terry v. Ohio. The officer did not pat-down the defendant's outer garments searching for weapons, but instead inserted his hand directly into the defendant's pocket to search for a controlled substance.

Peters v. New York
386 U.S. 980, 87 S. Ct. 1291 (1967)

FACTS: An off-duty police officer was in his apartment when he heard his front door knob rattle. He looked into the hallway through the door's peephole and observed "two men tiptoeing out of the alcove toward the stairway." Although he had lived in the apartment for approximately 12 years, he did not recognize either person. After calling the police and arming himself, the officer again looked through the peephole and saw both men tiptoeing. Believing that the two men were attempting to commit burglary, the officer left his apartment, slamming the door as he went into the hallway. Upon hearing the door slam, the men began to run down the stairs. The officer chased them. He caught the defendant, who claimed to be visiting a girlfriend. The officer then frisked the defendant and discovered a hard object in his pocket. Believing the object may be a knife he retrieved it. It was an envelope containing burglar tools.

ISSUE: Whether the officer had probable cause to arrest the defendant?

HELD: Yes. Based on the totality of the circumstances, the officer had probable cause to make the arrest.

DISCUSSION: The officer heard strange noises outside his apartment that lead him to believe someone was trying to get inside. When he investigated, he observed two men engaged in stealth in the hallway. Although he had lived in the apartment for 12 years, he did not recognize either man. When he entered the hallway, the men fled. "Deliberately furtive actions and flight at the approach of strangers or law officers" are highly indicative of criminal intent. Considering these facts, by the time the officer seized the defendant fleeing down the stairway, he had probable cause to arrest him for attempted burglary. When the officer actually "arrested" the defendant was unclear. Nonetheless, what was clear was that the arrest had already occurred when the search commenced. Thus, the search of the defendant was incident to the arrest, and was justified "by the need to seize weapons and other things which might be used to assault an officer or effect an escape, as well as by the need to prevent the destruction of evidence of the crime."

Maryland v. Pringle
124 S. Ct. 795 (2003)

FACTS: After stopping a vehicle for speeding in an early morning hour, a police officer obtained consent from the owner-operator to search. The officer found $763 in the glove compartment and five small bags containing a controlled

substance behind the back-seat armrest. The officer asked all three occupants of the vehicle who owned the drugs and money. When all three denied ownership he placed them under arrest. Ultimately, the defendant admitted to committing the crime.

ISSUE: Whether the officer had probable cause to believe that the defendant committed the crime?

HELD: Yes. Based on the totality of the circumstances, the officer established probable cause that a crime had been committed and the defendant was involved in the crime.

DISCUSSION: The Court held that "[I]t is uncontested in the present case that the officer, upon recovering the five plastic glassine baggies containing suspected cocaine, had probable cause to believe a felony had been committed." The more difficult issue is whether the officer had probable cause that the defendant committed the crime. The Court has held on several previous occasions that probable cause is a "practical, nontechnical conception." See Illinois v. Gates, 462 U. S. 213, 231 (1983) (quoting Brinegar, supra, at 175-176); see, e.g., Ornelas v. United States, 517 U. S. 690, 695 (1996); United States v. Sokolow, 490 U. S. 1, 7-8 (1989). It is futile to assign a precise definition or attempt to quantify by percentages probable cause as its exactness depends on the totality of the circumstances.

In this case, the defendant was understandably assumed to be involved in criminal activity. He was one of three occupants, out very early in the morning, in a vehicle that contained a large amount of cash and a controlled substance (packaged in a manner to indicate drug dealing), both located where the defendant had easy access, and all three failed to provide information about the ownership of these incriminating items. The Court found it reasonable that all three had knowledge of and exercised control over the controlled substance based on these circumstances. Therefore, the officer had probable cause to arrest any or all of the three, including the defendant.

B. REASONABLE SUSPICION

Adams v. Williams
407 U.S. 143, 92 S. Ct. 1921 (1972)

FACTS: In the early morning hours in a high crime neighborhood, a reliable informant told a police officer that the defendant was seated in a nearby car and had narcotics and a weapon on him. The officer approached the car and asked the defendant to get out. The defendant rolled down the window instead. When

he did so, the officer reached into the car and removed the gun from the defendant's waistband. While the gun was not visible from outside the car, it was in the specific location identified by the reliable source. The defendant was arrested for unlawful possession of a firearm. The subsequent search incident to the arrest uncovered a substantial quantity of heroin.

ISSUE: Whether the information provided by the reliable informant justify the stop of the defendant and the seizure of the gun?

HELD: Yes. In Terry v. Ohio, the Court recognized that an officer making an investigatory stop may frisk a suspect when the officer reasonably believes that the suspect is armed and dangerous.

DISCUSSION: Citing Terry, the Court reiterated "so long as [an] officer is entitled to make a forcible stop, and has reason to believe that the suspect is armed and dangerous, he may conduct a weapons search limited in scope to this protective purpose." Here, the officer relied upon information personally provided to him by a reliable informant. While the information may have been insufficient for an arrest or search warrant, it was reliable enough for the officer's investigatory stop of the defendant. The defendant was sitting alone, late at night, in a high crime area, and was reported to be carrying narcotics and a weapon by a reliable source. When asked to get out of the vehicle, the defendant remained inside in a position where his movements could not be clearly seen. These facts gave the officer ample reason to fear for his safety and justified the limited intrusion required to obtain the weapon.

Brown v. Texas
443 U.S. 47, 99 S. Ct. 2637 (1979)

FACTS: A Texas statute made it a crime for any person to refuse to give his name and address to an officer "who has lawfully stopped him and requested the information." Two police officers observed the defendant and another man walk away from one another in an alley located in an area known for drug trafficking. While the men were separated when first observed, both officers believed the two had been meeting, or were about to meet, until the officers approached. Because the situation "looked suspicious" and the officers had never seen him in that area before, the defendant was stopped to ascertain his identity. The defendant was not suspected of any specific misconduct, nor were there any facts to indicate the defendant was armed. Upon being stopped, the defendant refused to identify himself. He was arrested and convicted for violating the Texas statute.

ISSUE: Whether the investigatory stop of the defendant was lawful under the Fourth Amendment?

HELD: No. The officers did not have facts equating to reasonable suspicion that criminal activity was afoot. Thus, the defendant was not "lawfully stopped" as required by the Texas statute.

DISCUSSION: When the defendant was stopped by the officers for the purpose of obtaining his identity, he was "seized" within the meaning of the Fourth Amendment. Whether this seizure was reasonable depends on a balancing between society's interest and an individual's interest in being free from random interference by law enforcement officers. In order for an investigatory stop to be lawful, the officer must have reasonable suspicion, based on articulable facts, that the suspect is involved in criminal activity. Here, the officers did not have reasonable suspicion. While the defendant may have "looked suspicious," the officers could not articulate facts to support this conclusion. The officer conceded that the purpose of the stop was simply to ascertain the defendant's identity. Standing alone, the fact that the defendant was in a drug trafficking area is insufficient to conclude he was engaged in criminal conduct. Because the stop was unlawful, application of the Texas statute to these facts was unconstitutional.

United States v. Brignoni-Ponce
422 U.S. 873, 95 S. Ct. 2574 (1975)

FACTS: Two Border Patrol agents in Southern California were observing northbound traffic from their vehicle parked on the side of an interstate highway. They stopped the defendant's car because "its three occupants appeared to be of Mexican descent." After determining that the defendant had entered the country illegally, the officers arrested him.

ISSUE: Whether a "roving" patrol can stop a vehicle in an area near the border and question its occupants when the only ground for suspicion is that the occupants appear to be of Mexican ancestry?

HELD: No. Except at the border and its functional equivalents, Border Patrol agents in "roving" patrols may stop vehicles only if they have reasonable suspicion that the vehicles contain illegal aliens.

DISCUSSION: The government's substantial interest in effectively deterring illegal aliens from entering this country outweighs the minimal intrusion of a brief stop and questioning of a vehicle and its occupants at the border. However,

the Court held that stops made by "roving" patrols on a random basis were unreasonable under the Fourth Amendment. Only "when an officer's observations lead him reasonably to suspect that a particular vehicle may contain aliens who are illegally in the country, may he stop the car briefly and investigate the circumstances that provoke suspicion." Similarly, the Fourth Amendment prohibits detaining individuals for questioning about their citizenship unless reasonable suspicion exists that the individual is an illegal alien.

Here, the only basis for stopping the vehicle and questioning the occupants was the fact the occupants appeared to be of Mexican ancestry. Standing alone, this does not furnish reasonable suspicion to believe the occupants were illegal aliens. Facts that Border Patrol agents may rely upon to establish reasonable suspicion include (1) the location of the area where the vehicle was encountered, including its proximity to the border, the usual patterns of traffic on the road, and previous experience with alien traffic; (2) information about recent border crossings in the area; (3) the driver's behavior, such as erratic driving or obvious attempts to evade officers; and (4) aspects of the vehicle itself, such as its size, the number of passengers, and whether it appears heavily loaded.

United States v. Sokolow
490 U.S. 1, 109 S. Ct. 1581 (1989)

FACTS: DEA agents developed the following facts concerning the defendant: (1) he paid $2,100 for two airplane tickets from a roll of $20 bills; (2) he was traveling under a name that did not match the name for the telephone number he had given to the ticket agent (which was not illegal at the time); (3) his original destination was Miami, Florida, a known source city for controlled substances; (4) he stayed in Miami for a total of 48 hours; (5) a round-trip flight from Honolulu to Miami takes 20 hours; (5) he appeared nervous during his trip; and (6) he did not check his luggage. Based on these facts, the DEA agents decided to stop the defendant. His shoulder bag was removed from him and a narcotics detection dog signaled that controlled substances were inside. The agents obtained a search warrant, and found 1,063 grams of cocaine in his luggage.

ISSUE: Whether the DEA agents who stopped the defendant had reasonable suspicion that he was involved in criminal activity at the time of the stop?

HELD: Yes. Based on the totality of the circumstances known to the agents at the time of the stop, they had a reasonable suspicion that criminal activity was afoot.

DISCUSSION: "Reasonable suspicion," like probable cause, is difficult to define. In determining the legality of a Terry stop, the totality of the circumstances is considered. None of the factors known to the agents at the time of the stop, standing alone, was proof of illegal activity. However, when considered together, the facts amounted to reasonable suspicion. The Court emphasized that "there could, of course, be circumstances in which wholly lawful conduct might justify the suspicion that criminal activity was afoot."

Alabama v. White
496 U.S. 325, 110 S. Ct. 2412 (1990)

FACTS: Police received an anonymous telephone tip that the defendant would be leaving an apartment complex at a certain time, driving a brown Plymouth station wagon with a broken right taillight lens. The anonymous source stated the defendant would drive to a specific motel and would be in possession of approximately one ounce of cocaine in a brown attaché case. The police did not know if the anonymous caller was reliable or how the caller knew this information. The officers went to the apartment complex and located a Plymouth station wagon with a broken right taillight in the parking lot. They observed the defendant leave the building and enter the station wagon. The officers followed her as she drove to the motel identified by the anonymous source and stopped her. After obtaining the defendant's consent to search the vehicle, the officers found a locked brown attaché case. The defendant provided the combination to the case and upon opening it the officers found marijuana.

ISSUE: Whether the anonymous tip, as corroborated by independent police work, was sufficiently reliable so as to give the officers reasonable suspicion for the stop of the defendant?

HELD: Yes. The corroboration of the anonymous tip by independent police work furnished reasonable suspicion for the stop.

DISCUSSION: The Court held that the "totality of the circumstances" approach for determining probable cause is also relevant for determining reasonable suspicion. While the tip provided in this case does not, by itself, give rise to reasonable suspicion, the corroboration of significant aspects of the tip by independent police investigation provided reliability. The Court found it to be critical that the tipster was able to predict the defendant's future behavior. This showed the tipster possessed "inside information - a special familiarity with the defendant's affairs" that most members of the general public would not have. The corroboration of much of the tipster's information gave reason to believe that

he was "honest" and "well informed." Based on these facts, "it is not unreasonable to conclude in this case that the independent corroboration by the police of significant aspects of the informer's predictions imparted some degree of reliability to the other allegations made by the caller."

Florida v. J. L.
529 U.S. 266, 120 S. Ct. 1375 (2000)

FACTS: The police received a tip from an anonymous caller, who reported that a young black male standing at a particular bus stop and wearing a plaid shirt was carrying a gun. Officers went to the bus stop and saw three black males, one of whom, the defendant, was wearing a plaid shirt. The officers had no reason to suspect any of the three of illegal conduct other than the anonymous report. One officer frisked the defendant and seized a gun from his pocket. The officers arrested the defendant for carrying a concealed firearm without a license and possessing a firearm while under the age of 18.

ISSUE: Whether law enforcement officers can base reasonable suspicion solely on an anonymous tip?

HELD: No. Reasonable suspicion requires something more than an anonymous tip.

DISCUSSION: An officer, for the protection of himself and others, may conduct a frisk for weapons when the officer reasonably suspects a person is armed and presently dangerous. Here, the officer's suspicion that the defendant was carrying a weapon did not develop from his own observations but solely from a call made from an unknown location by an unknown caller. The Court held that this tip lacked sufficient indicia of reliability to provide reasonable suspicion to conduct a frisk. The tip did not provide predictive information that left the police without means to test the informant's knowledge or credibility. Reasonable suspicion to conduct stops and frisks requires that a tip be reliable in its assertion of illegality, not just in its tendency to identify a person.

Illinois v. Wardlow
528 U.S. 119, 120 S. Ct. 673 (2000)

FACTS: The defendant fled upon seeing a caravan of police vehicles converge on an area known for heavy narcotics trafficking. Seeing the defendant run, police officers pursued him. They caught the defendant and conducted a frisk. The officers testified that in their experience there were usually weapons

near narcotics transactions. They discovered a handgun on the defendant and arrested him.

ISSUE: Whether the officers had reasonable suspicion to stop the defendant?

HELD: Yes. Based on the type of area the officers were approaching and the behavior of the suspect, the officers established reasonable suspicion.

DISCUSSION: Where officers have a reasonable, articulable suspicion that criminal activity is afoot, they may conduct a brief, investigatory stop. There must exist at least a minimal level of objective justification for the stop. The Court held that an individual's presence in a "high crime area," standing alone, is not enough to support reasonable suspicion. However, when coupled with the defendant's unprovoked flight, the officers' suspicion became reasonable. An individual has a right to ignore the police and go about his business. However, the Court stated that unprovoked flight is the exact opposite of "going about one's business."

United States v. Arvizu
534 U.S. 266; 122 S. Ct. 744 (2002)

FACTS: A Border Patrol Agent received information that a vehicle sensor had been triggered in a remote area. The agent suspected that the vehicle could be attempting to evade a checkpoint as the timing corresponded with a shift change, leaving the area unpatrolled. The agent located the vehicle, a minivan. He obtained a visual vantage point by pulling off to the side of the road at an angle so he could see the oncoming vehicle as it passed by. The agent observed (1) the vehicle slow considerably as it approached his position, (2) the driver appear stiff and rigid, (3) the driver seemed to pretend the agent was not there, (3) the knees of the passengers (children) in the very back seat were unusually high (as if their feet were elevated by something on the floor). The agent followed the vehicle for a short distance and observed (4) the children, while facing forward, wave at the agent in an abnormal fashion, (5) the strange waving continued intermittently for four to five minutes, (6) the driver signaled for a turn, turned the signal off, then suddenly signaled and turned the vehicle, (7) the turn was the last that would allow the vehicle to avoid the checkpoint, (8) the road is rough and usually utilized by four-wheel-drive vehicles, (9) the vehicle did not appear to be part of the local traffic and (10) there were no recreation areas associated with this road. The agent requested vehicle registration information via the radio and learned that (11) the vehicle was registered to an

address four blocks north of the border in an area known for alien and narcotics smuggling. At this point, the agent decided to conduct a traffic stop.

ISSUE: Whether the agent could articulate reasonable suspicion to conduct a Terry stop considering all observed factors had innocent explanations?

HELD: Yes. Reasonable suspicion is determined by the "totality of the circumstances."

DISCUSSION: The Court stated that "[W]hen discussing how reviewing courts should make reasonable-suspicion determinations, we have said repeatedly that they must look at the 'totality of the circumstances' of each case to see whether the detaining officer has a 'particularized and objective basis' for suspecting legal wrongdoing." In doing so, it is imperative that the officer be allowed to use "their own experience and specialized training to make inferences" about a circumstance. Otherwise innocent actions, considered together, may warrant a further look by a law enforcement officer.

V. SEARCH WARRANTS

A. PROBABLE CAUSE

1. Required

Byars v. United States
273 U.S. 28, 47 S. Ct. 248 (1927)

FACTS: State police officers obtained a search warrant for the defendant's residence. The search warrant application stated only that the affiant "has good reason to believe and does believe the defendant has in his possession intoxicating liquors, instruments and materials." The warrant was invalid as it lacked probable cause. Nonetheless, a search for "intoxicating liquors and instruments and materials used in the manufacture of such liquors" was authorized by the judge. A Federal agent participated in the search. During the search, the Federal agent found some counterfeit whiskey stamps, while a State officer found additional counterfeit stamps. The counterfeit stamps were seized and the defendant was arrested.

ISSUE: Whether the counterfeit stamps seized during the execution of the invalid State search warrant was admissible against the defendant in his Federal trial?

HELD: No. The seizure of the stamps violated the Fourth Amendment and was inadmissible in the defendant's Federal prosecution.

DISCUSSION: The warrant lacked probable cause as required by the Fourth Amendment. An unconstitutional search is not validated by the fact that evidence of a crime is discovered.

Winston v. Lee
470 U.S. 753, 105 S. Ct. 1611 (1985)

FACTS: The defendant shot a victim during an armed robbery, receiving a gunshot wound in the exchange. Shortly after the officers took the victim to a hospital, police found the defendant several blocks away from the shooting. The officers took him to the hospital, where the victim identified him as the assailant. The government asked the court to order the defendant to undergo surgery to remove the bullet lodged under his collarbone. It asserted that the bullet would provide evidence of the defendant's guilt or innocence. Expert testimony suggested that the surgery would only entail a minor incision and could be performed under local anesthesia. The court granted the motion. However, x-rays taken just before surgery showed that the bullet was lodged much deeper than the surgeon had originally believed. The surgeon concluded that a general anesthetic would be desirable.

ISSUE: Whether courts can order surgery to remove evidence of a criminal act from a suspect's body?

HELD: Yes. However, this is a serious intrusion into the suspect's reasonable expectation of privacy and must be used only in extreme circumstances.

DISCUSSION: The Court held that a compelled surgical intrusion into an individual's body for evidence implicates substantial privacy and security issues. Such an intrusion may be unreasonable even if it is likely to produce evidence of a crime. The reasonableness of surgical intrusions beneath the skin depends on a case-by-case approach in which the court must weigh the individual's interests against society's interests in obtaining criminal evidence. The uncertainty about the medical risks, and the intrusion on the defendant's privacy interests and body are severe. This must be counterbalanced by the government's need to intrude into the defendant's body to retrieve the bullet. As the government had available substantial additional evidence that the defendant was the criminal, its need to obtain the bullet was diminished.

2. Establishing P.C. in the Affidavit

United States v. Ventresca
380 U.S. 102, 85 S. Ct. 741 (1965)

FACTS: An affidavit for a search warrant described seven different occasions between July 28 and August 30, when a car was driven into the back yard of the defendant's house. On four occasions the car carried loads of sugar in sixty-pound bags; twice it made two trips loaded with empty tin cans; and once it was observed as being heavily laden. Garry, the car's owner, and Incardone, a passenger, were seen on several occasions loading the car at the defendant's house and later unloading apparently full five-gallon cans at Garry's house. The affidavit went on to state that at about 4 a.m. on August 18, and at about 4 a.m. August 30, "Investigators" smelled the odor of fermenting mash as they walked along the sidewalk in front of the defendant's house. On August 18 they heard, "at or about the same time, . . . certain metallic noises." On August 30, the day before the warrant was applied for, they heard (as they smelled the mash) "sounds similar to that of a motor or a pump coming from the direction of the defendant's house." The affidavit concluded: "The foregoing information is based upon personal knowledge and information which has been obtained from Investigators of the Alcohol, Tobacco Tax Division, Internal Revenue Service, who have been assigned to this investigation."

ISSUE: Whether failure to indicate which facts alleged were hearsay and which were within the affiant's own knowledge destroys the affidavit's reliability?

HELD: No. Courts must determine if probable cause (and an affiant's reliability) exists through common sense analysis.

DISCUSSION: An affidavit which shows probable cause for the issuance of a search warrant is not invalidated for failure to clearly indicate which of the facts alleged are hearsay and which are within the affiant's own knowledge. However, probable cause cannot be established by affidavits which are purely conclusionary, stating only the affiant's or an informer's belief that probable cause exists. The application must detail the underlying circumstances upon which that belief is based. This belief may be based on hearsay evidence. "Affidavits for search warrants . . . must be tested and interpreted by magistrates and courts in a common sense and realistic fashion . . . . A grudging or negative attitude by reviewing courts toward warrants will tend to discourage police officers from submitting their evidence to a judicial officer before acting. When a magistrate has found probable cause, the courts should not invalidate the warrant by interpreting the affidavit in a hypertechnical, rather than a common

sense, manner. Although in a particular case it may not be easy to determine when an affidavit demonstrates the existence of probable cause, the resolution of doubtful or marginal cases in this area should be largely determined by the preference to be accorded to warrants."

Aguilar v. Texas
378 U.S. 108, 84 S. Ct. 1509 (1964)

FACTS: Two police officers applied for a warrant to search the defendant's home for narcotics. Their affidavit recited that: "Affiants have received reliable information from a credible person and do believe that heroin, marijuana, barbiturates and other narcotics and narcotic paraphernalia are being kept at the above described premises for the purpose of sale and use contrary to the provisions of law." The search warrant was issued and narcotics were found.

ISSUE: Whether the affidavit provided a sufficient basis for a finding of probable cause and issuance of a search warrant?

HELD: No. The affidavit did not provide facts on which probable cause could be based.

DISCUSSION: In establishing the validity of a search warrant, a reviewing court may consider only the information brought to a magistrate's attention. A requesting officer must establish facts for a magistrate judge to consider whether probable cause exists or not. The Fourth Amendment does not deny law enforcement the support of usual inferences that reasonable persons may draw from evidence. It does require such inferences be drawn by a neutral and detached magistrate instead of an officer engaged in the competitive enterprise of ferreting out crime.

An affidavit for a search warrant may be based on hearsay information and need not reflect direct personal observations of the affiant. But the magistrate must be informed of some of the underlying circumstances on which the informant based conclusions and some of the underlying circumstances from which an officer concluded that the informant, whose identity need not be disclosed, was "credible" or that his information was reliable. Although the reviewing court will grant substantial deference to judicial determinations of probable cause, the court must still insist that the magistrate perform a "neutral and detached" function and not serve merely as a "rubber stamp."

Spinelli v. United States
393 U.S. 410, 89 S. Ct. 584 (1969)

FACTS: The FBI tracked the defendant, a known bookie and gambler, for five days. The agents had seen him drive from East St. Louis into St. Louis and park in an apartment house lot. They observed him enter a particular apartment in that building. The apartment that the defendant entered had two telephone lines. A confidential informant told the agents that the two phone lines were being used for a gambling operation. However, the informant did not personally observe the defendant at work as a bookmaker, nor had the informant ever place any bets with the defendant. The informant came by his information indirectly, and did not explain why his information was reliable. The agents obtained a search warrant.

ISSUE: Whether the agents established probable cause for a search warrant?

HELD: No. The agents were not able to establish probable cause on this information.

DISCUSSION: An informant's tip must be measured against Aguilar's standards so that its probative value can be assessed. If the tip is found inadequate under Aguilar, then the other allegations that corroborate the information contained in the report should be considered. In this case, all the government could show was that the defendant entered an apartment that contained two telephone lines, had knowledge that he may be a bookmaker and gambler, and had an unconfirmed statement that the phone lines were being used for a gambling operation. This did not establish probable cause for the issuance of a search warrant.

United States v. Harris
403 U.S. 573, 91 S. Ct. 2075 (1971)

FACTS: A federal tax investigator and a local police officer entered the premises of the defendant, pursuant to a search warrant, and seized jugs of whiskey upon which the federal tax had not been paid. The search warrant was issued solely on the basis of the investigator's affidavit, which recited the following:

"Roosevelt Harris has had a reputation with me for over 4 years as being a trafficker of nontaxpaid distilled spirits, and over this period I have received

numerous information [sic] from all types of persons as to his activities. Constable Howard Johnson located a sizeable stash of illicit whiskey in an abandoned house under Harris' control during this period of time. This date, I have received information from a person who fears for their [sic] life and property should their name be revealed. I have interviewed this person, found this person to be a prudent person, and have, under a sworn verbal statement, gained the following information: This person has personal knowledge of and has purchased illicit whiskey from within the residence described, for a period of more than 2 years, and most recently within the past two weeks, has knowledge of a person who purchased illicit whiskey within the past 2 days from the house, has personal knowledge that the illicit whiskey is consumed by purchasers in the outbuilding known as and utilized the 'dance hall' and has seen Roosevelt Harris go to the other outbuilding, located about 50 yards from the residence, on numerous occasions, to obtain the whiskey for this person and other persons."

ISSUE: Whether the officer established probable cause through the use of a confidential partner-in-crime informant?

HELD: Yes. Partners-in-crime are presumed credible.

DISCUSSION: The affidavit purports to relate the personal observations of the informant and recites prior events within the affiant's own knowledge indicating that the defendant had previously trafficked in contraband. A law enforcement officer's knowledge of a suspect's reputation is a practical consideration of everyday life upon which an officer or a magistrate may properly rely in assessing the reliability of an informant's tip.

For purposes of determining whether an affidavit is sufficient to establish probable cause for a search warrant, the informant's declaration against interest is reason to believe his information. The affidavit recited that the informant feared for his life and safety if his identity was revealed and that over the past two years he had often and recently purchased contraband from the defendant. These statements are against the informant's penal interest as they constitute an admission of major elements of an offense. Admissions of crime, like admissions against proprietary interests, carry their own indicia of credibility.

Illinois v. Gates
462 U.S. 213, 103 S. Ct 2317 (1983)

FACTS: Police received an anonymous letter that included statements that the defendants, husband and wife, were selling drugs. The letter indicated Mrs. Gates would drive the Gates' car to Florida on May 3rd to be loaded with drugs, and Mr. Gates would fly down a few days later to drive the car back; that the

car's trunk would be loaded with drugs; and that defendants presently had over $100,000 worth of drugs in their basement. A police officer located the Gates' address and learned that Mr. Gates made a reservation for a May 5th flight to Florida. Arrangements for surveillance of the flight were made with a DEA agent. The surveillance disclosed that Mr. Gates took the flight, stayed overnight in a motel room registered in Mrs. Gates' name, and left the following morning with a woman in a car bearing an Illinois license plate issued to Mr. Gates, heading north on an interstate highway. A search warrant for defendants' residence and automobile was then obtained based on the anonymous letter and the government's corroboration.

ISSUE: Whether the officers' affidavit and the anonymous letter establish sufficient facts to satisfy the Aguilar-Spinelli probable cause test?

HELD: No. However, the Supreme Court created a totality-of-the-circumstances test.

DISCUSSION: The facts failed to meet the "two-pronged test" of (1) revealing the informant's "basis of knowledge" and (2) providing sufficient facts to establish either the informant's "veracity" or the "reliability." However, the Court held that the overly rigid Aguilar-Spinelli test should be set aside when a common-sense test is more useful in determining whether "probable cause" exists. The task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit, there is a fair probability that evidence of a crime will be found in a particular place. The duty of a reviewing court is to ensure that the magistrate has a substantial basis for concluding that probable cause existed. Therefore, the Court created the "totality of the circumstances" test to replace (or supplement) the Aguilar-Spinelli test. In this case, the totality of the circumstances indicated that the information was truthful and created probable cause for the issuance of a search warrant.

3. Neutral and Detached Magistrate

Connelly v. Georgia
429 U.S. 245, 97 S. Ct. 546 (1977)

FACTS: Under Georgia law, Justices of the Peace were authorized to issue search warrants, obtaining fees for this service. A Georgia Justice of the Peace issued the search warrant used to search the defendant's house. The defendant questioned the constitutional impropriety of a system authorizing the issuance of search warrants by interested financial parties.

ISSUE: Whether the pecuniary interests of an issuing magistrate violate the defendant's protection afforded him by the Fourth and Fourteenth Amendments?

HELD: Yes. Issuing magistrates must be neutral and detached.

DISCUSSION: The justice who issued the warrant was not a "neutral and detached magistrate" because he had a financial interest in issuing the warrant. Georgia Justices of the Peace at that time were not salaried. Their compensation was solely based upon how many warrants they issue within a year. This pecuniary interest in issuing search warrants destroyed their neutrality.

Lo-Ji Sales, Inc. v. New York
442 U.S. 319, 99 S. Ct. 2319 (1979)

FACTS: A police investigator purchased two reels of film from the defendant's "adult" bookstore. Upon viewing them, he concluded that they violated local obscenity law. He took them to a town justice who viewed both films in their entirety. The justice concluded the films were obscene.

The investigator applied for a search warrant and requested that the town justice accompany him to the defendant's store for its execution. This would allow the town justice to independently see if any other items at the store were possessed in violation of the law. At the time the town justice signed the warrant, the only "things to be seized" that were described in the warrant were copies of the two films the state investigator had purchased.

The town justice assisted in the execution of the search warrant. He viewed movies and determined which were subject to seizure. He had magazines removed from clear plastic or cellophane wrappings, reviewed them, and determined them to be subject to seizure.

ISSUE: Whether the magistrate was neutral and detached?

HELD: No. The magistrate was not neutral and detached from the criminal investigation.

DISCUSSION: By allowing himself to become a member of the search party, the town justice did not manifest the neutrality and detachment demanded of a judicial officer when presented with an application for a search warrant. The fact that the store invited the public to enter did not constitute consent to a wholesale search and seizure. The town justice viewed the films and magazines in a

manner inconsistent with that of a customer. He did not see these items as a customer would ordinarily see them. Therefore, his involvement in the search led to the loss of his independent stature required of a judicial officer.

4. With Particularity

Andresen v. Maryland
427 U.S. 463, 96 S. Ct. 2737 (1976)

FACTS: A fraud unit began an investigation of suspicious real estate settlement activities. The defendant's activities came under scrutiny, particularly in connection with a transaction involving Lot 13T in a subdivision. The fraud investigators concluded that there was probable cause to believe that the defendant had committed the state crime of false pretenses. They applied for warrants to search the defendant's office and the separate office of Mount Vernon Development Corporation, of which the defendant was incorporator, sole shareholder, resident agent and director. The application sought permission to search for specified documents pertaining to the sale and conveyance of Lot 13T. The warrant was issued.

ISSUE: Whether the warrant was specific enough to meet the "particularity" clause of the Fourth Amendment?

HELD: Yes. The warrant was specific enough to meet the "particularity" clause of the Fourth Amendment.

DISCUSSION: All items in a set of "files" may be examined during a search, provided that a description for identifying the evidence sought is listed in the search warrant - - and followed by the investigators. "We recognize that there are grave dangers inherent in executing a warrant authorizing a search and seizure of a person's papers that are not necessarily present in executing a warrant to search for physical objects whose relevance is more easily ascertainable." In searches for papers, it is likely that some innocuous documents will be examined, in order to determine whether they are among those papers authorized to be seized. Similar dangers are present in executing a warrant for the "seizure" of telephone conversations. In both kinds of searches, responsible officials, including judicial officials, must take care to assure that the search is conducted in a manner that minimizes unwarranted intrusions upon privacy.

Stanford v. Texas
379 U.S. 476, 85 S. Ct. 506 (1965)

FACTS: The magistrate authorized police officers to search the defendant's premises as "a place where books, records, pamphlets, cards, receipts, lists, memoranda, pictures, recordings and other written instruments concerning the Communist Party of Texas, and the operations of the Communist Party in Texas are unlawfully possessed . . . and to take possession of same." Several law enforcement officers went to the defendant's home for the purpose of serving this warrant. By the time they were finished, five hours later, they had seized some 2,000 books, pamphlets, and papers. The officers seized all books including biographies of Pope John XXIII and Justice Black.

ISSUE: Whether the search and seizure amounted to an unconstitutional general search?

HELD: Yes. The warrant did not meet the particularity requirements of the Fourth Amendment.

DISCUSSION: The Fourth Amendment prohibits general warrants that give police roving commissions to search where and to seize what they please. The indiscriminate sweep of a search warrant's language renders it invalid under the Fourth Amendment where the warrant authorizes the seizure of "books, records, pamphlets, cards, receipts, lists, memoranda, pictures, recordings and other written instruments concerning the Communist Party of Texas, and the operation of the Communist Party in Texas." The warrant lacked particularity.

Groh v. Ramirez
124 S. Ct. 1284 (2004)

FACTS: ATF agents constructed a search warrant application to seek "any automatic firearms or parts to automatic weapons, destructive devices to include but not limited to grenades, grenade launchers, rocket launchers, and any and all receipts pertaining to the purchase or manufacture of automatic weapons or explosive devices or launchers." The warrant itself, however, was less specific. In the section of the warrant that calls for a description of the "person or property" to be seized, the agents provided a description of the home to be searched rather than the weapons listed in the application. The magistrate signed the warrant and the following day the agents executed the warrant.

ISSUE: Whether a search warrant that does not particularly describe the things to be seized meets Fourth Amendment standards?

HELD: No. The purpose of the Fourth Amendment's particularity clause is to inform the person whose property is being seized of the bounds of that search.

DISCUSSION: The Court held that "[T]he warrant was plainly invalid." As stated in the Fourth Amendment "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized (underline added)." While the oversight in the warrant might appear to be superficial, and the items to be seized are clearly described in the application, the search warrant serves an important function for the person whose privacy is being intruded upon. It provides notice. The Court stated that the Fourth Amendment does not prohibit warrants from cross referencing other documents if the warrant "uses appropriate words of incorporation, and if the supporting document accompanies the warrant." Here, the warrant did not incorporate by reference any other document. The Court held that the purpose of the Fourth Amendment's particularity requirement is to (1) limit general searches and (2) assure the person whose property is being seized that the officer has authority to conduct a search, the need to search, and the bounds of that search.

Maryland v. Garrison
480 U.S. 79, 107 S. Ct. 1013 (1987)

FACTS: Police officers obtained and executed a warrant to search the person of Lawrence McWebb and "the premises known as 2036 Park Avenue third floor apartment." After an exterior examination and an inquiry of a utility company, the officer who obtained the warrant reasonably concluded that there was only one apartment on the third floor and that it was occupied by McWebb. When police officers executed the warrant, they fortuitously encountered McWebb in front of the building and used his key to gain admittance to the first floor hallway and to the locked door at the top of the stairs to the third floor. As they entered the vestibule on the third floor, they encountered the defendant, who was standing in the hallway area. The police could see into the interior of both McWebb's apartment to the left and the defendant's to the right. Only after the defendant's apartment had been entered and heroin, cash and drug paraphernalia had been found, did any of the officers realize that the third floor contained two apartments. As soon as they became aware of that fact, they discontinued their search. All of the officers believed that they were searching McWebb's apartment.

ISSUE: Whether the search warrant was unreasonably vague and ambiguous, requiring suppression of the evidence?

HELD: No. The officers' behavior was reasonable under the circumstances.

DISCUSSION: The Court held that the police officers acted reasonably when: (1) the warrant authorized a search of "the premises known as 2036 Park Avenue third floor apartment," (2) the objective facts available to the officers at the time of the search suggested no distinction between the named person's apartment and the entire third floor premises, (3) the officers discovered that the third floor was in fact divided into two separate apartments--only after they entered and found contraband in the apartment of the tenant not named in the warrant, and (4) they discontinued the search as soon as they made this discovery. Under these circumstances, the officers' failure to realize the ambiguity of the warrant is objectively understandable and reasonable, and their execution of the warrant was proper whether the warrant is interpreted as authorizing a search of the entire third floor or a search limited to the named person's apartment. The constitutionality of the officers' conduct must be judged in the light of the information available to them at the time they request the warrant.

Steele v. United States
267 U.S. 498, 45 S. Ct. 414 (1925)

FACTS: An affidavit for a search warrant authorized by the issuing judge consisted of the following description:

"The building to be searched was a four-story building in New York City on the south side of West 46th Street, with a sign on it Indian Head Auto Truck Service--Indian Head Storage Warehouse, No. 609 and 611. It was all under lease to Steele. The building could be entered by three entrances from the street, one on the 609 side on the 611 side, and in the middle of the building is an automobile entrance from the street into a garage. There is no partition between 611 and 609 on the ground or garage floor, and there were only partitions above and none which prevented access to the elevator on any floor from either the 609 or 611 side."

ISSUE: Whether a search warrant based on this application was unconstitutional in that the affidavit and the warrant did not particularly describe the place to be searched?

HELD: No. The search was constitutional as the affidavit adequately described both the place to be searched and the things to be seized.

DISCUSSION: The Court held that the description of the building indicated the officers intended to search the whole building. The evidence left no doubt that although the building had two numbers, the garage business covering the first floor, and the storage business above were so related to the elevator that there was no real division of the building. The Court considered the fact that the search did not "go too far." The places searched were all rooms connected with the garage by the elevator. A search warrant authorizing the search of a building described as a garage, located on the first floor of that building and rooms used in connection with that garage, justified the search of storage rooms on the upper floors of the building connected with the garage by an elevator.

5. Knock and Announce (18 U.S.C. § 3109)

Sabbath v. United States
391 U.S. 585, 88 S. Ct. 1755 (1968)

FACTS: A narcotics carrier was intercepted at the border and agreed to make a controlled delivery to the home of the defendant. The carrier entered the defendant's apartment and gave the agents the pre-set signal. Without a warrant, agents knocked on the door, received no response, and opened the door. They entered, arrested the defendant and found narcotics.

ISSUE: Whether federal agents are required to conform with 18 U.S.C. § 3109 when making a warrantless entry to make an arrest?

HELD: Yes. Agents are required to announce their purpose and identity when making a warrantless entry to make an arrest.

DISCUSSION: The government agents had no basis for assuming that the defendant was armed or might resist arrest, or that the cooperating carrier was in any danger. The agents had made no independent investigation of the defendant prior to setting the stage for his arrest with narcotics in his possession. Therefore, the agents had to comply with § 3109 (requiring the announcement of presence and notice of authority or purpose before the agents may use force to enter). The Court identified the opening of a closed but unlocked door, lifting a latch, turning a door knob, unhooking a chain, pushing open a hasp, or pushing open a closed door of entrance to a house, even a closed screen door, as a "breaking" with respect to § 3109.

Wilson v. Arkansas
514 U.S. 927, 115 S. Ct. 1914 (1995)

FACTS: Police officers, in executing a search warrant, entered the defendant's premises through an unlocked screen door without first knocking or announcing their presence. They found contraband inside.

ISSUE: Whether the reasonableness in which police officers enter a dwelling pursuant to a search warrant is subject to review by a court?

HELD: Yes. Failure to enter a dwelling in a reasonable manner, even with a search warrant, can cause the fruit of that search to be suppressed.

DISCUSSION: The Supreme Court held that the common law knock and announce principle forms a part of the Fourth Amendment reasonableness test. An officer's unannounced entry into a home can be, in some circumstances, unreasonable under the Fourth Amendment. In evaluating the scope of the reasonableness requirement, the Court considered the traditional protections against unreasonable searches and seizures afforded by the common law at the time of the framing. Given the longstanding common law endorsement of the practice of announcement, and the great number of commentaries, constitutional provisions, statutes, and cases supporting the knock and announce principle, the Court held that whether officers announced their presence and authority before entering a dwelling should be among the factors to be considered in assessing a search's reasonableness.

Richards v. Wisconsin
520 U.S. 385, 117 S. Ct. 1416 (1997)

FACTS: Officers executed a drug search warrant at the defendant's motel room. To gain entry, one officer hoped to fool the defendant by wearing a maintenance uniform. He knocked on the defendant's hotel room door, which the defendant opened. When the defendant saw a uniformed police officer in the hallway, he slammed the door shut. The officers immediately kicked the door open and apprehended the defendant, who was attempting to climb out the window. They found contraband in the room.

ISSUE: Whether the officers' entry was in compliance with 18 U.S.C. § 3109?

HELD: Yes. Officers are not required to announce their status and intentions with every warrant execution.

DISCUSSION: The Court held that officers do not have to comply with 18 U.S.C. § 3109 requirements when they develop reason to suspect that doing so would be: (1) dangerous, (2) futile, or (3) allow for the destruction of evidence. The Supreme Court rejected the argument that all felony drug cases are inherently dangerous. However, in this case the Court found that the officers' behavior was reasonable.

United States v. Ramirez
523 U.S. 65, 118 S. Ct. 992 (1998)

FACTS: Shelby was a dangerous, escaped convict. An ATF agent learned from a reliable confidential informant that Shelby was probably staying at the defendant's home, also a convicted felon. The informant also stated that the defendant might have a stash of weapons in his garage. Based on this information, Deputy U.S. Marshals obtained a search warrant and permission to enter the premises without complying with 18 U.S.C. § 3109 from a magistrate. Early in the morning, the Deputy Marshals used a loud speaker to announce that they had a search warrant. At the same moment one Deputy Marshal broke a window in the garage. He pointed a gun at the opening to discourage a rush for the weapons feared to be inside. The defendant believed people were burglarizing his home and fired a shot into the ceiling of his garage. Moments later, he realized that the persons attempting to enter his home were law enforcement officers and he submitted to their authority. Shelby was not found. However, the officers found weapons in the premises. The defendant was charged with possession of firearms by a felon.

ISSUE: Whether law enforcement officers are held to a heightened standard of scrutiny when they destroy property pursuant to a "no-knock" entry?

HELD: No. Law enforcement officers' entries during the execution of warrants must only be "reasonable."

DISCUSSION: All searches must be reasonable under the Fourth Amendment. The manner in which the officers entered the premises to conduct the search is subject to review by a court in determining the reasonableness of that search. The Court held that while there is no absolute prohibition against the destruction of property upon entry, it is a factor that should be considered in determining the reasonableness of the search. In the case here, the Court held that the destruction of a single window to provide a deterrent against dangerous individuals that may arm themselves with suspected weapons was reasonable. Therefore, the search met the standards of the Fourth Amendment.

United States v. Banks
124 S. Ct. 521 (2003)

FACTS: Law enforcement officers went to the defendant's home around 2 P.M. with a search warrant for a controlled substance. It was unclear whether anyone was at home at the time. The officers called out "police, search warrant" and knocked on the front door loudly enough to be heard by officers at the back door. The officers waited fifteen to twenty seconds and did not obtain a response. They then broke open the front door and entered the home. The defendant was in the shower and later testified that he heard nothing until the breaking of the door.

ISSUE: Whether the law enforcement officers waited a reasonable amount of time before forcing entry into the home?

HELD: Yes. Reasonableness in the use of force in gaining entry is determined by the "totality of the circumstances."

DISCUSSION: The Supreme Court has held that how law enforcement officers go about their search must meet the Fourth Amendment's reasonableness standard. See Wilson v. Arkansas, 514 U.S. 927 (1995). The length of time an officer must wait before using force to enter a home with a warrant is determined by the "totality of the circumstances." The Court stated that it has "consistently eschewed bright-line rules, instead emphasizing the fact-specific nature of the reasonableness inquiry. There is "no formula for determining reasonableness."

The Court determined that, under the facts of this case, the officers' actions of waiting fifteen to twenty seconds before using force was reasonable. The fact that the defendant was in the shower was unknown to the officers and, therefore, immaterial. It is the actions of the officers, based on their knowledge and inferences at the time that the Court examines for reasonableness. The Court noted that in this case the crucial timeframe is not the time it would have taken the defendant to open the door but rather the time it would have taken him to destroy the evidence. After fifteen to twenty seconds, an exigency existed and the officers were justified in using force to gain entry.

NOTE: This opinion does not state law enforcement officers must wait fifteen to twenty seconds before using force with a warrant. The Court's opinion here is that, under these factors, fifteen to twenty seconds was enough time to

wait before using force. A shorter amount of time could have been acceptable to the Court. In other circumstances, a longer period may be required.

6. Persons at the Premises

Michigan v. Summers
452 U.S. 692, 101 S. Ct. 2587 (1981)

FACTS: As police officers were about to execute a warrant to search a house for narcotics, they encountered the defendant descending the front steps. They detained him while they searched the premises. The defendant was not free to leave the premises while the officers were searching his home. After finding narcotics in the basement and confirming that the defendant owned the house, the police arrested him, searched his person, and found a controlled substance in his coat pocket.

ISSUE: Whether law enforcement officers may seize the resident of a house during an execution of a search warrant?

HELD: Yes. It was reasonable to detain the suspect while they executed the search warrant.

DISCUSSION: The Court states three reasons supporting the defendant's seizure:

1. The law enforcement interest in preventing flight in the event that incriminating evidence is found.

2. The interest in minimizing the risk of harm to the police and occupants. The execution of a search warrant for narcotics is the kind of transaction that may give rise to sudden violence or frantic efforts to conceal or destroy evidence.

3. The orderly completion of the search may be facilitated if the residents are present, i.e. to open locked doors or locked containers to avoid the use of force that not only is damaging to property but may also delay the completion of the task at hand.

Some seizures constitute such a limited intrusion of those detained and are justified by a substantial law enforcement interest that they may be supported on less than probable cause. The Court found this to be one of those occasions. The seizure here was reasonable under the Fourth Amendment.

NOTE: The Supreme Court held that the government's substantial interest was enhanced in this situation because the officers had a search warrant for a controlled substance. Circuit courts have extended the Summers doctrine to situations other than those that included controlled substances (1st Circuit, 3rd Circuit, 4th Circuit and 11th Circuit).

Ybarra v. Illinois
444 U.S. 85, 100 S. Ct. 338 (1979)

FACTS: A search warrant was issued for the Aurora Tap Tavern and the person of Greg, the bartender. Upon entering the tavern, the officers announced their purpose and advised all those present that they were going to conduct a "cursory search for weapons." One of the officers patted down each of the nine to thirteen customers present in the tavern, while the remaining officers engaged in an extensive search of the premises.

The officer who frisked the patrons felt what he described as "a cigarette pack with objects in it" on the defendant. He did not remove this pack from the defendant's pocket. Instead, he moved on and proceeded to frisk other customers.

After completing this process the officer returned to the defendant and frisked him once again. The officer relocated and retrieved the cigarette pack from the defendant's pants pocket. Inside he found six tin foil packets containing a brown powdery substance that was later determined to be heroin.

ISSUE: Whether the frisk of the defendant was justified based on the fact that he was at the scene of a search warrant?

HELD: No. Frisks are only authorized if the officer has reason to suspect that the person is armed and dangerous.

DISCUSSION: Search warrants do not authorize frisks of persons who, at the commencement of the search, are on the premises subject to a search warrant. A person's proximity to others independently suspected of criminal activity does not, without more, justify a frisk.

The officer's justification for the search of the defendant rested on a state statute permitting a police officer, in the execution of a search warrant, to reasonably detain and search any person on the premises to either protect himself from attack, or to prevent the disposal or concealment of anything particularly described in the warrant. This statute offends the Fourth Amendment where:

1. No probable cause existed at the time the search warrant was issued for the authorities to believe that any person found in the tavern other than the employee would be violating the law;

2. There was no probable cause to search the defendant at the time the warrant was executed;

3. The customers in the tavern maintained their own protection against an unreasonable search or seizure which was separate and distinct from that possessed by the proprietor of the tavern or by the employee, and;

4. The initial frisk of the customer was not supported by a reasonable suspicion that he was armed and dangerous.

Illinois v. McArthur
531 U.S. 326, 121 S. Ct. 946 (2001)

FACTS: Police officers developed probable cause to believe that the defendant had marijuana in his home. While some of the officers sought a search warrant with this information, others prevented the defendant from entering his home unless accompanied by a law enforcement officer. This prohibition lasted for approximately two hours. Once a warrant was secured, the officers entered the home and found drug paraphernalia and marijuana.

ISSUE: Whether the officers' denial of the defendant access to his home without the accompaniment of an officer was an unreasonable seizure of the dwelling?

HELD: No. The brief seizure, given the circumstances, was reasonable under the Fourth Amendment.

DISCUSSION: The Court found that the warrantless seizure was reasonable, since it involved exigent circumstances. The restraint employed by the officers was adapted to the circumstances, avoiding significant intrusion into the home itself. The Court balanced the privacy-related and law enforcement-related concerns. The police had probable cause to believe the defendant's home contained evidence, and had valid reason to fear that, unless restrained, the defendant would destroy it before the police could return with a warrant. The officers made reasonable efforts to reconcile their needs with the demands of

personal privacy, and imposed the restraint for a limited period, two hours. Given the nature of the intrusion and the law enforcement interest at stake, the brief seizure of the premises was permissible.

7. Associated Issues

United States v. Van Leeuwen
397 U.S. 249, 90 S. Ct. 1029 (1970)

FACTS: At about 1:30 p.m., March 28, two 12-pound packages, each insured for $10,000, were deposited "airmail registered" at a post office in Mount Vernon, WA, near the Canadian border. The mailer declared that they contained coins. One package was addressed to a post office box in Van Nuys, CA, and the other to a post office box in Nashville, TN. The postal clerk told a policeman that he was suspicious of the packages. The policeman at once noticed that the return address on the packages was a vacant housing area and the license plates of the mailer's car were from British Columbia. The policeman contacted the Canadian police, who called Customs in Seattle. At 3 p.m., Customs learned that one addressee was under investigation in Van Nuys for trafficking in illegal coins. Due to the time differential, Customs was unable to reach Nashville until the following morning when they learned that the second addressee was also being investigated for the same crime. A search warrant was issued at 4 p.m. and executed at 6:30 p.m., March 29th. The packages were opened, inspected, resealed, and promptly sent on their way.

ISSUE: Whether the twenty-nine hour delay in obtaining a search warrant for the packages was unreasonable under the Fourth Amendment?

HELD: No. Under the circumstances of coordination with officials in a distant location and time difference, 29 hours was reasonable.

DISCUSSION: The nature and weight of a 12-pound "airmail registered" package, the mailer's fictitious return address and Canadian license plates, and the knowledge that the addressee is under investigation for trafficking in illegal coins, constituted probable cause for the issuance of a warrant to search the packages. Twenty-nine hours is not "unreasonable" within the meaning of the Fourth Amendment, where officials in the distant destination could not be reached sooner because of the time differential.

Segura v. United States
468 U.S. 796, 104 S. Ct. 3380 (1984)

FACTS: Two people were arrested for being in possession of a controlled substance. They told the agents that they had purchased the cocaine from the defendant.

A U.S. Attorney told the agents to arrest the defendant. The agents were also told that a search warrant for the defendant's apartment probably could not be obtained until the following day but to secure the apartment in the meantime to prevent the destruction of evidence.

The agents arrested the defendant in the lobby of his apartment building, took him to the apartment, knocked on his door, and when it was opened by Colon, entered the apartment without requesting or receiving permission. The agents conducted a limited security check of the apartment and in the process, observed in plain view various drug paraphernalia. Colon was arrested and he and the defendant were taken into custody. Two agents remained in the apartment awaiting the warrant, but because of administrative delay, the warrant was not issued until nineteen hours after the initial entry. In the search pursuant to the warrant, the agents discovered cocaine and records of narcotics transactions.

ISSUE: Whether the initial entry by the officers was lawful?

HELD: Yes. When officers, having probable cause, enter a premises, and secure the premises while others, in good faith, are in the process of obtaining a search warrant, they do not offend the Fourth Amendment.

DISCUSSION: A seizure affects possessory interests. A search affects privacy interests. Therefore, a warrantless seizure of a person's property can be reasonable on the basis of probable cause but a warrantless search might be unreasonable.

In this case, the agents had probable cause in advance to believe that there was a criminal enterprise being conducted in the defendant's apartment. Securing the premises from within was no greater an interference with the defendant's possessory interests (a seizure) than a perimeter stakeout. Under either method, agents control the apartment pending the arrival of a search warrant. Further, there was no evidence that the agents exploited the defendant's privacy interests while in the apartment. They simply awaited issuance of the warrant.

As a secondary point, the exclusionary rule suppresses evidence not only obtained as a direct result of an illegal search or seizure, but also evidence later found to be derivative of that illegal venture. However, evidence is not to be excluded if the connection between the illegal police conduct and the discovery

and seizure of the evidence is so attenuated as to dissipate the illegal taint. Therefore, whether the initial entry was legal is irrelevant to the admissibility of the evidence because there was an independent source for the warrant. None of the information on which the warrant was secured was based on the initial entry into the defendant's apartment.

Sgro v. United States
287 U.S. 206, 53 S. Ct. 138 (1932)

FACTS: A magistrate issued a search warrant on July 6th and it was not executed until after the ten day limit had expired.

ISSUE: Whether the warrant was still valid?

HELD: No. Search warrants must be served within ten days of their issue.

DISCUSSION: The proof of probable cause that must be made before a search warrant can be issued must be closely related in time to the issuance of the warrant. Whether the proof meets this test is determined by the circumstances of each case.

"While the statute does not fix the time within which proof of probable cause must be taken by the judge or commissioner, it is manifest that the proof must be of facts so closely related to the time of the issue of the warrant as to justify a finding of probable cause at that time. Whether the proof meets this test must be determined by the circumstances of each case. It is in the light of the requirement that probable cause must properly appear when the warrant issues that we must read the provision which in explicit terms makes a warrant void unless executed within ten days after its date. That period marks the permitted duration of the proceeding in which the warrant is issued. There is no provision which authorizes the commissioner to extend its life or to revive it." Issuing judges may not extend the 10-day time limit for search warrants. The rules permit judges to issue new warrants if probable cause still exists at a later time.

Gooding v. United States
416 U.S. 430, 94 S. Ct. 1780 (1974)

FACTS: The government secured a search warrant for the defendant's apartment to search for evidence of controlled substances. The warrant stated

that the officers could make the search "at any time in the day or night." The officers executed the warrant at nighttime and they uncovered a substantial quantity of contraband.

ISSUE: Whether the government must make any special showing for a nighttime entry with a search warrant to search for a controlled substance?

HELD: No. The government may rely on 21 U.S.C. § 879, which allows for nighttime entry to search for controlled substances without any special showing.

DISCUSSION: Federal Criminal Procedure Rule 41 specifically requires that search warrants be served in the daytime (6 a.m. to 10 p.m.) unless a special need to search at night is shown. The government did not make that showing here. However, the Supreme Court ruled that 21 U.S.C. § 879 governed this search as it involved a controlled substance. This statute permits a nighttime search without any special showing by the government. The statute provides that officers may serve a warrant at any time of the day or night if the issuing judge is satisfied that there is probable cause to believe that grounds exist for the warrant and for its service at such time. Title 21 U.S.C. § 879(a) requires no special showing for need of a nighttime search, other than a showing that the contraband is likely to be on the property or person to be searched.

Dalia v. United States
441 U.S. 238, 99 S. Ct. 1682 (1979)

FACTS: A federal court authorized a Title III order after finding probable cause that an individual was a co-conspirator in the violation of federal law. The defendant and others were using his office in the alleged conspiracy. Officers entered the defendant's office secretly at night and spent three hours in the building installing an electronic interception device. Several weeks later they returned to the office and removed the device.

ISSUE: Whether a Title III order also entails the authority to enter a premises to install the necessary equipment to engage in surreptitious recordings?

HELD: Yes. Without specifically stating this authority, a Title III order implies the authority to enter the target premises to install the necessary equipment to engage in surreptitious recordings.

DISCUSSION: The Supreme Court held that the Fourth Amendment did not prohibit *per se* a law enforcement officer's covert entry into a private premises. The Fourth Amendment's requirement is that such entry be reasonable. Although Title III of the Omnibus Crime Control and Safe Streets Act did not refer explicitly to covert entry, the language, structure, and history of the statute indicated that Congress had conferred power upon the courts to authorize covert entries for enforcement of the law. The Court stated that the Fourth Amendment does not require that an electronic surveillance order issued by a court under Title III include a specific authorization to enter covertly the premises described in the order.

Franks v. Delaware
438 U.S. 154, 98 S. Ct. 2674 (1978)

FACTS: Police obtained a search warrant to search the defendant's premises for clothing worn during a rape. The defendant claimed the affidavit for the search warrant contained untrue statements. He moved to suppress the search warrant based on the untruthfulness of the affidavit.

ISSUE: Whether the defendant is entitled to a hearing when he makes specific allegations of recklessly used material false statements in an affidavit upon which a search warrant was issued?

HELD: Yes. The defendant is entitled to challenge the affidavit upon which a search warrant has been issued.

DISCUSSION: "Where the defendant makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause, the Fourth Amendment requires that a hearing be held at the defendant's request. . ."

Wilson v. Layne
526 U.S. 603, 119 S. Ct. 1692 (1999)

FACTS: Deputy U.S. Marshals attempted to execute an arrest warrant for Dominic Wilson, at his last know place of residence. Unbeknownst to the Deputy Marshals, the address was actually that of his parents. The arrest team invited a newspaper photographer and reporter to accompany them on the execution of the arrest warrant. The Deputy Marshals entered Wilson's parents'

home in a futile effort to arrest him. The reporter and photographer also entered the home, and the photographer took many pictures of the event. After learning that the subject of the warrant was not at the premises, the Deputy Marshals and the newspaper reporter and photographer left the premises. The Wilsons sued the Deputy Marshals in a Bivens action for violating their Fourth Amendment right to be free from unreasonable searches and seizures.

ISSUE: Whether the inclusion of third parties on the arrest team that do not assist in the execution of a warrant is unreasonable?

HELD: Yes. A warrant only authorizes third parties to enter a premises that will assist in the purpose of the intrusion.

DISCUSSION: The Court found no problem with the Deputy Marshals' entry into the dwelling to execute an arrest warrant. However, the intrusion that the arrest warrant permitted is limited in scope to making an arrest. The government could not state a valid claim for the intrusion into the private home of a newspaper reporter and photographer as they in no way assisted in the objective of the arrest warrant. Therefore, the Court held their participation to be an unreasonable intrusion, and prohibited by the Fourth Amendment.

The Court also stated that because the Deputy Marshals could not have known at the time of the entry that the inclusion of nonessential third parties was a violation of the Wilson's Fourth Amendment protections, the officers were entitled to qualified immunity. The Court allowed the civil case against the Deputy Marshals to be dismissed on those grounds.

Hanlon v. Berger
526 U.S. 808, 119 S. Ct. 1706 (1999)

FACTS: The defendants sued federal agents for violating their Fourth Amendment rights. The defendants lived on a 75,000-acre ranch. A magistrate issued a warrant authorizing the search of "The Paul W. Berger ranch with appurtenant structures, excluding the residence" for evidence of "the taking of wildlife in violation of Federal laws." About a week later, a multiple-vehicle caravan consisting of government agents and a crew of photographers and reporters from CNN proceeded to a point near the ranch. The agents executed the warrant and explained that "Over the course of the day, the officers searched the ranch and its outbuildings pursuant to the authority conferred by the search warrant. The CNN media crew accompanied the officers and recorded the officers' conduct in executing the warrant."

ISSUE: Whether the officers can be held liable under Bivens for allowing persons not assisting in the execution of the warrant to intrude on the defendant's privacy?

HELD: Yes. Courts granted the government permission to intrude on privacy with the use of a search warrant for a singular purpose, to obtain items expressed in the warrant. Allowing a search warrant to be used for other, additional purposes is unreasonable.

DISCUSSION: The Supreme Court held in Wilson v. Layne that Fourth Amendment rights of homeowners were violated when officers allow members of the media to accompany them during the execution of a warrant. The inclusion of personnel that are not necessary for the successful completion of the search warrant is an unreasonable intrusion into the privacy of the defendants. However, the Supreme Court had not clearly established this right at the time the officers executed the search warrant at the defendant's ranch. Therefore, they were entitled to qualified immunity.

VI. SEARCH WARRANT EXCEPTIONS - NEED P.C.

A. PLAIN VIEW

Horton v. California
496 U.S. 128, 110 S. Ct. 2301 (1990)

FACTS: A police officer determined that there was probable cause to search the defendant's home for evidence of a robbery. His affidavit for a search warrant referred to the weapons used in the crime as well as the proceeds, but the search warrant issued by the Magistrate only authorized a search for the proceeds.
During the execution of the warrant, the officer did not find the stolen property. However, he discovered the weapons in the course of the search and seized them. The officer testified that while he was searching for the proceeds, he also was interested in finding other evidence connecting the defendant to the robbery. Thus, the seized evidence was not discovered "inadvertently."

ISSUE: Whether the warrantless seizure of evidence of crime in plain view must be inadvertent?

HELD: No. The discovery of evidence of crime under the Plain View Doctrine does not have to be inadvertent.

DISCUSSION: An essential and initial predicate to a valid plain view seizure is that the officer did not violate the Fourth Amendment in arriving at the place from which the evidence was plainly viewed. The officer must be lawfully present in the area in which the item is seized. Second, the incriminating character of the object must also be "immediately apparent."

The items seized from defendant's home were discovered during a lawful search authorized by a valid warrant. The officer was legally present. When the items were discovered, it was immediately apparent to the officer that they constituted incriminating evidence. In this case, the seizure was reasonable.

Arizona v. Hicks
480 U.S. 321, 107 S. Ct. 1149 (1987)

FACTS: A bullet was fired through the floor of defendant's apartment, injuring a man in the apartment below. Police officers arrived and entered the defendant's apartment to search for the shooter, victims, and weapons. They found and arrested two combatants and seized some weapons.

During this engagement, an officer noticed two sets of expensive stereo components, "which seemed out of place in the squalid and otherwise ill-appointed apartment." Suspecting that they were stolen, he picked up some of the components, read and recorded their serial numbers. The officer then reported by phone to his headquarters. After being told that the turntable had been stolen in an armed robbery, he immediately seized it. It was later determined that some of the other serial numbers matched those on other stereo equipment taken in the same armed robbery, and a warrant was obtained to seize that equipment as well.

ISSUE: Whether the evidence seized was obtained under the "plain view" doctrine?

HELD: No. The evidence could not be seized under the "plain view" doctrine because the evidence was not immediately apparent to be evidence of a crime at the time of the seizure.

DISCUSSION: The officer's moving of the equipment constituted a "seizure" separate from the search for the shooter, victims, and weapons that were the lawful objectives of his entry into the apartment. The state conceded that the officer did not have probable cause, but only reasonable suspicion to move the stereo components. Absent special operational necessity, any seizure that is unrelated to the original exigency that justified the officer's warrantless

entry must be supported by probable cause. As the officer did not have probable cause at the time he seized the stereo components, the "plain view" doctrine did not apply.

Texas v. Brown
460 U.S. 730, 103 S. Ct. 1535 (1983)

FACTS: A police officer stopped the defendant's automobile at night at a routine driver's license checkpoint. The officer asked the defendant for his license, shined his flashlight into the car, and saw an opaque, green party balloon, knotted near the tip, fall from the defendant's hand to the seat beside him. Based on his experience in drug offense arrests, the officer was aware that narcotics were frequently packaged in this manner. While the defendant was looking in the glove compartment for his license, the officer shifted his position to obtain a better view and noticed small plastic vials, loose white powder, and an open bag of party balloons in the glove compartment. After the defendant stated that he did not have a driver's license in his possession, he complied with the officer's request to get out of the car. The officer picked up the green balloon, which seemed to contain a powdery substance within its tied-off portion. He placed the defendant under arrest and a search of the car was conducted. Other items were seized.

ISSUE: Whether the evidence was obtained "in plain view?"

HELD: Yes. "Plain view" is an expression used to describe the legal seizure of evidence obtained by an officer intruding into an area in which he or she has a right to be and observes something in which he or she has probable cause ("immediately apparent") to believe is evidence of a crime.

DISCUSSION: The Court held that the police officer did not violate the Fourth Amendment in seizing the balloon. The "plain view" doctrine provides grounds for a warrantless seizure of a suspicious item when the officer's access to the item has some prior justification under the Fourth Amendment. Here, the officer's initial stop of the defendant's vehicle was valid, and his actions in shining his flashlight into the car and changing his position to see what was inside did not violate any privacy rights. The "immediately apparent" requirement of the "plain view" doctrine does not mean that a police officer "know" that certain items are contraband or evidence of a crime. The officer must only have probable cause at the moment of seizure. Probable cause is a flexible, common sense standard, merely requiring that the facts available to the officer would warrant a person of reasonable caution to believe that certain items

may be contraband or stolen property or useful as evidence of a crime. The officer had probable cause to believe that the balloon contained a controlled substance.

B. MOBILE CONVEYANCES

Carroll v. United States
267 U.S. 132, 45 S. Ct. 280 (1925)

FACTS: Undercover prohibition agents met with the defendant and two accomplices to buy illegal whiskey. The defendant left to get the whiskey but could not do so because his source was not available. One of his accomplices informed the undercover agents they would deliver it the next day. The officers observed the vehicle and registration number the defendant and his accomplices were using during these negotiations.

The defendant did not make the arranged delivery the following day. A week later, while patrolling a highway commonly used to smuggle whiskey into the country the agents saw the defendant in the same car as before. They gave pursuit but lost the car. Two months after that, the agents again saw the defendant in the same car on the same road. The agents believed they had probable cause because the highway was much used in the illegal transportation of liquor, and they had information previously obtained by them that the car and its occupants were engaged in the illegal business of "bootlegging." The agents stopped the defendant, searched the car, and found sixty-eight bottles of illegal whiskey.

ISSUE: Whether the search of the defendant's automobile, without a warrant violated the Fourth Amendment?

HELD: No. If an officer stops a car based on probable cause and conducts a search in order to preserve evidence due to the automobile's mobility, the search may be conducted without a warrant.

DISCUSSION: The guarantee of freedom from unreasonable searches and seizures by the Fourth Amendment has been construed as recognizing a necessary difference between a search of a structure (whereby a warrant can readily be obtained) and a search of a vehicle (where it is not practical to secure a warrant because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought). Therefore, contraband goods concealed and illegally transported in an automobile or other vehicle may be searched for without a warrant if the agent has probable cause to believe the vehicle contains contraband.

Chambers v. Maroney
399 U.S. 42, 90 S. Ct. 1975 (1970)

FACTS: Officers developed probable cause that a specific vehicle was involved in a crime. Within an hour, a vehicle meeting the description and carrying four men was stopped by the police about two miles from the crime scene. The defendant was one of the men in the station wagon. The occupants were arrested and the car was driven to the police station where it was thoroughly searched without a warrant. The search revealed two .38 caliber revolvers in a compartment under the dashboard and other evidence related to the crime.

ISSUE: Whether the warrantless search of the automobile and the seizure of the evidence was lawful?

HELD: Yes. A warrantless search of a vehicle is valid despite the fact that a warrant could have been procured without endangering the preservation of evidence.

DISCUSSION: Automobiles and other conveyances may be searched without a warrant, provided there is probable cause to believe that the car contains articles that the officers are entitled to seize. Having established that contraband concealed in a vehicle may be searched for without a warrant, the Court considered the circumstances under which such search may be made.

The Court saw no distinction in seizing and holding a car before presenting probable cause to a magistrate, and carrying out an immediate search without a warrant. Given probable cause to search, the Court held that either course is reasonable under the Fourth Amendment. The light blue station wagon could have been searched on the spot where it was stopped since there was probable cause to search. Thus, the warrantless search that took place was reasonable.

United States v. Ross
456 U.S. 798, 102 S. Ct. 2157 (1982)

FACTS: Police officers had probable cause that the defendant was selling controlled substances out of his car. They told the defendant to get out of the car. A search revealed a bullet on the car's front seat. The officer searched the interior of the car and found a pistol in the glove compartment. The defendant was then arrested and handcuffed. Another officer searched the trunk of the car and found a closed brown paper bag that contained heroin. The car was moved

to the police station where it was again searched. In the trunk the officer found a zippered red leather pouch that contained $3,200 in cash.

ISSUE: Whether officers, with probable cause to believe that contraband is concealed somewhere within a vehicle can conduct a search of compartments and containers within the vehicle whose contents are not openly visible?

HELD: Yes. If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search.

DISCUSSION: Since the police lawfully stopped the automobile and had probable cause to believe that contraband was contained in it, they could conduct a warrantless search of the vehicle. The search could be as thorough as one authorized by a warrant issued by a magistrate. Every part of the vehicle where the contraband might be stored could be searched. This includes all recepticles and packages that could possibly contain the object of the search.

Michigan v. Thomas
458 U.S. 259, 102 S. Ct. 3079 (1982)

FACTS: The defendant was the front-seat passenger of a lawfully stopped vehicle. The officers noticed a bottle of alcohol between the defendant's feet and arrested him for being in possession of open intoxicants in a motor vehicle. The driver of the car was cited for not having an operator's license. A tow truck was summoned and an officer, pursuant to departmental policy, searched the vehicle as it was being impounded. He found marijuana in the glove compartment. Based on this discovery, he continued his search and found a gun in an air vent.

ISSUE: Whether the officer was entitled to search under the mobile conveyance exception after conducting an inventory search?

HELD: Yes. The officer was reasonable in conducting a mobile conveyance search even after conducting an inventory search.

DISCUSSION: It was reasonable for the officers to search the motor vehicle under the inventory policy, as they were responsible for the contents therein. This led to the discovery of marijuana, giving the officers probable cause that other contraband could be found in the car. The Court held that once the officers established probable cause, they were entitled to search despite the fact that the car had previously been searched through the inventory policy. This led to the

lawful discovery of the handgun in the air vent. The fact that the car was immobilized for want of an operator was inconsequential.

Florida v. Myers
466 U.S. 380, 104 S. Ct. 1852 (1984)

FACTS: The defendant was charged with sexual battery. At the time of his arrest, police officers searched his automobile and seized several items. A wrecker subsequently towed the automobile where it was impounded in a locked and secure area. Eight hours later, a police officer went to the compound and, without obtaining a warrant, searched the car again. Additional evidence was seized.

ISSUE: Whether a search conducted under the mobile conveyance doctrine, conducted after a search incident to an arrest and after the automobile was impounded and in police custody, violates the Fourth Amendment?

HELD: No. The officers may conduct a warrantless search of an impounded automobile eight hours after a valid initial search, if the officers have probable cause.

DISCUSSION: In Michigan v. Thomas, the Court upheld a warrantless search of an automobile even though the automobile was in police custody and a prior inventory search of the car had already been conducted. That case specifically rejected the argument that the justification to conduct a warrantless search vanishes once the car has been taken into police custody and impounded. The justification for the initial warrantless search did not vanish once the car had been immobilized. To conduct a mobile conveyance search, the government only needs to establish probable cause that the evidence sought is located in the mobile conveyance.

United States v. Johns
469 U.S. 478, 105 S. Ct. 881 (1985)

FACTS: Pursuant to an investigation of a suspected drug smuggling operation, officers observed two pickup trucks as they traveled to a remote, private landing strip, and the arrival and departure of two small airplanes. The officers smelled the odor of marihuana as they approached the trucks and

observed packages wrapped in dark green plastic and sealed with tape, a common method of packaging marihuana. The officers arrested the defendant and took the pickup trucks to their headquarters. Three days later, without obtaining a search warrant, the agents opened some of the packages and took samples that proved to be marihuana.

ISSUE: Whether a warrantless search of the packages three days after they were removed from vehicles is justified under the mobile conveyance exception to the warrant requirement?

HELD: Yes. The Supreme Court held that if the officers have probable cause to look for evidence in a mobile conveyance, they do not need to obtain a warrant.

DISCUSSION: The warrantless search of the packages was not unreasonable merely because it occurred three days after the packages were seized. The Ross case established that the officers could have searched the packages when they were first discovered in the trucks at the airstrip. Moreover, there is no requirement that a Carroll search of a vehicle occur contemporaneously with its lawful seizure.

Because the officers had probable cause to believe that the trucks and packages contained contraband, any expectation of privacy in the vehicles or their contents was subject to the officers' authority to conduct a warrantless search. The warrantless search was not unreasonable merely because the officers returned to headquarters and placed the packages in storage rather than immediately open them.

Pennsylvania v. Labron
518 U.S. 938, 116 S. Ct. 2485 (1996)

FACTS: Police observed the defendant engage in a drug transaction. They pulled him over and arrested him. The police searched his car and found cocaine in the trunk. The Supreme Court of Pennsylvania suppressed the cocaine because the officers could have obtained a search warrant before they searched the defendant's car under the Carroll doctrine.

ISSUE: Whether the officers need to establish exigent circumstances before searching a car under the mobile conveyance exception to the Fourth Amendment's warrant requirement?

HELD: No. Once the officers establish probable cause to search a car under the mobile conveyance exception, they do not need to obtain a warrant.

DISCUSSION: The Supreme Court founded the mobile conveyance exception to the warrant requirement of the Fourth Amendment because of the necessity of coping with rapidly disappearing objects. However, the Court has also focused this exception on the fact that persons have only a reduced expectation of privacy in an automobile. The Court discarded the original requirement that the government establish that the automobile searched was in immediate danger of disappearing. The Court stated "if a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment thus permits police to search the vehicle without more." If the officer has probable cause and the automobile is capable of mobility, the mobile conveyance rule applies to the search.

Maryland v. Dyson
527 U.S.465, 119 S. Ct. 2013 (1999)

FACTS: A Deputy Sheriff received a tip from a reliable informant that the defendant was about to transport cocaine from New York. The informant stated that the defendant had rented a red Toyota Corolla with the license plate number of DDY 787 for the transportation. The deputy verified that the defendant, a known drug dealer, rented such a vehicle. Several hours later, law enforcement officers stopped this vehicle and searched it. They found cocaine in the trunk. The Maryland appellate court found the officers had probable cause but suppressed the evidence because the officers had time to secure a search warrant but failed to do so.

ISSUE: Whether officers must obtain a search warrant for a mobile conveyance, after developing probable cause, if they have the time to secure one?

HELD: No. Officers are not required to obtain a search warrant for a mobile conveyance even if they have time to secure one.

DISCUSSION: Generally, the Court requires a search warrant to conduct a search under the Fourth Amendment. However, the Supreme Court has offered a variety of exceptions to the warrant requirement. One of these exceptions is the mobile conveyance, or automobile, exception. The Supreme Court originally created the automobile exception to the warrant requirement because of the exigency caused by their mobility. In an earlier line of cases, the Supreme Court

held that if the government had time to secure a warrant, it must do so. However, the Supreme Court discarded this principle. Now, the government may conduct a search of an automobile if it has probable cause and the item to be searched is immediately mobile (an automobile).

California v. Carney
471 U.S. 386, 105 S. Ct. 2066 (1985)

FACTS: The DEA had information that the defendant was exchanging marijuana for sex in a motor home parked in a lot in downtown San Diego. DEA agents stopped a youth, who had entered and then left the motor home. He stated he had received marijuana in return for sexual contact. The youth, at the agent's request, went back to the motor home, knocked on the door, and the defendant stepped out. The agent went inside and observed marijuana. A subsequent search revealed additional marijuana. The motor home was the defendant's residence.

ISSUE: Whether a motor home used as a residence is a motor vehicle for purposes of the motor vehicle exception?

HELD: Yes. A motor home is treated as a vehicle, rather than a dwelling, if it is immediately mobile.

DISCUSSION: When a vehicle is being used on highways or is capable of that use and is found stationary in a place not regularly used for residential purposes, two justifications for the vehicle exception to the warrant requirement came into play. First, that the vehicle is readily mobile. Second, there is a reduced expectation of privacy stemming from the pervasive regulation of vehicles. Under these circumstances, the overriding societal interests in effective law enforcement justify an immediate search before the vehicle and its occupants become mobile.

In this case, the defendant's vehicle possessed many attributes of a home. However, the vehicle falls within the scope of the automobile exception since the defendant's motor home was readily mobile. While the vehicle is capable of functioning as a home, to distinguish between a motor home and a typical car would require that the auto exception be applied depending upon the size of the vehicle and the quality of its appointments. The Court was not willing to make this distinction. Therefore, under the vehicle exception to the warrant requirement, the search of the defendant's motor home was reasonable.

California v. Acevedo
500 U.S. 565, 111 S. Ct. 1982 (1991)

FACTS: The police made a controlled delivery of marijuana. The dealer took the packages to his apartment. The police then observed the defendant enter the dealer's apartment, where he stayed for about ten minutes. The defendant then reappeared carrying a brown paper bag that appeared full. The bag was the size of one of the wrapped marijuana packages. The defendant placed the package in the trunk of his car and began to drive away. Fearing the loss of evidence, police officers, without a warrant, stopped him, opened the trunk and the bag, and found the marijuana.

ISSUE: Whether the Fourth Amendment requires the police to obtain a warrant to open a container found in a vehicle?

HELD: No. In a search extending to a container located in an automobile, police may search the container without a warrant where they have probable cause to believe that it holds contraband or evidence.

DISCUSSION: The Court in Ross took the critical step of holding that closed containers in vehicles can be searched without a warrant because of their presence within that vehicle. The Court saw no principled distinction between the paper bag found by the police in Ross and the paper bag found by the police here.

Ross now applies to all searches of containers found in an automobile; i.e., the police may search an automobile and the containers within it if they have probable cause to believe that contraband or evidence is located inside. "The scope of a warrantless search of an automobile . . . is not defined by the nature of the container in which the contraband is secreted. Rather, it is defined by the object of the search and the places in which there is probable cause to believe that it may be found." However, the Court reaffirmed the principle that "probable cause to believe that a container placed in the trunk of a taxi contains contraband or evidence does not justify a search of the entire cab."

Wyoming v. Houghton
526 U.S. 295, 119 S. Ct. 1297 (1999)

FACTS: The defendant was one of two female passengers in a lawfully stopped automobile. While the law enforcement officer was questioning the driver, David Young, he noticed a syringe in Young's shirt pocket. The officer asked Young to step out of the car and asked why he had a syringe. Young

stated the syringe was used to take drugs. The officer conducted a search of the automobile, in search of contraband. On the back seat of the automobile, he found a purse, which was claimed by the defendant. Inside the purse the officer located a wallet containing her driver's license, a brown pouch and a black, wallet-type container. The defendant admitted that the black wallet belonged to her but denied ownership of the brown pouch. The officer found contraband in both containers.

ISSUE: Whether a law enforcement officer is justified in searching passengers' containers under the mobile conveyance exception to the Fourth Amendment's warrant requirement?

HELD: Yes. The mobile conveyance exception to the Fourth Amendment's warrant requirement allows the officers to search passengers' containers.

DISCUSSION: The Supreme Court stated that the officer's probable cause to search the automobile was incontestable. Once the Court found probable cause existed, it limited its discussion to determining the scope of the search. Citing United States v. Ross, 456 U.S. 798, at 825 (1982), the Supreme Court stated that "[I]f probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search." In the case at hand, the Court held that this would include containers that belong to passengers. In doing so, the Court rejected ownership as a factor to be considered by the officer before conducting an automobile search. While the Court held that the containers of passengers were subject to a search of the mobile conveyance, this same rationale could not be applied to the body of the passengers because of the significantly heightened protection traditionally provided to one's person.

C. DESTRUCTION OF EVIDENCE

Cupp v. Murphy
412 U.S. 291, 93 S. Ct. 2000 (1973)

FACTS: The defendant's wife was murdered by strangulation. Soon thereafter, the defendant and his attorney voluntarily went to the police station for questioning. The police noticed a dark spot on the defendant's finger. Suspecting that the spot might be dried blood and knowing that evidence of strangulation is often found under an assailant's fingernails, the police asked the defendant if they could take a scraping sample from his fingernails. He refused, put his hands behind his back and appeared to rub them together. The defendant then put his hands in his pockets and appeared to be cleaning them.

Without a warrant, the police forcefully took the samples, which turned out to contain traces of skin and blood, and fabric from the victim's nightgown.

ISSUE: Whether the warrantless search of the defendant's fingernails was an unreasonable search?

HELD: No. The Court found that the existence of probable cause and the very limited intrusion to preserve the readily destructible evidence was not an unconstitutional search.

DISCUSSION: The search of the defendant's fingernails went beyond observing the physical characteristics constantly exposed to the public. It constituted the type of severe, though brief, intrusion upon personal security that is subject to the Fourth Amendment.

Even though the defendant was not arrested, he was sufficiently apprised of his suspected role in the crime to motivate him to attempt to destroy what evidence he could. His actions of putting his hands behind his back and then into his pockets were a sufficient indication of the likelihood of the destruction of evidence. While a full Chimel search incident to arrest would not be justified (the defendant had not been placed under arrest) the Court held that a limited intrusion to preserve evidence is warranted. These actions by the defendant, along with the existence of probable cause, justified the limited intrusion undertaken by the police to preserve the evidence under the defendant's fingernails.

NOTE: This case is often cited as a "search incident to arrest" case, and justifiably so. However, it is placed in this section to serve as an example of the urgency brought about by the possibility of the destruction of evidence. As the Court stated "On the facts of this case, considering the existence of probable cause, the very limited intrusion undertaken incident to the station house detention, and the ready destructibility of the evidence, we cannot say that this search violated the Fourth and Fourteenth Amendments (underline added)."

Schmerber v. California
384 U.S. 757, 86 S. Ct. 1826 (1966)

FACTS: The defendant was involved in an accident. Police officers arrested him at a hospital for driving an automobile while under the influence of intoxicating liquor. At the direction of a police officer, a physician at the hospital took a blood sample from the defendant's body. The chemical analysis of the sample indicated that the defendant was intoxicated at the time of the accident.

ISSUE: Whether the warrantless, nonconsensual blood sample taken from the defendant violated the Fourth Amendment right to be free from unreasonable searches and seizures?

HELD: No. The Fourth Amendment does not prohibit the government from conducting minor intrusions into an individual's body under stringently limited conditions.

DISCUSSION: The police had probable cause to arrest the defendant and charge him with driving an automobile while under the influence of intoxicating liquor. The officer who arrived at the scene shortly after the accident smelled liquor on the defendant's breath and testified that the defendant exhibited symptoms of intoxication. The officer believed that he was confronted with an exigency in which the delay necessary to obtain a warrant threatened the destruction of evidence since alcohol in the blood diminishes with time. The Court stated "[T]he officer in the present case, however, might reasonably have believed that he was confronted with an emergency, in which the delay necessary to obtain a warrant, under the circumstances, threatened 'the destruction of evidence,'" citing Preston v. United States, 376 U.S. 364 (1964). Therefore, the attempt to secure evidence of blood-alcohol content in this case was appropriate.

The test chosen to measure the defendant's blood-alcohol level was a reasonable one. Extraction of blood samples for testing is a highly effective means of determining the degree to which a person is under the influence of alcohol. The quantity of blood extracted is minimal and the procedure involves virtually no risk, trauma, or pain. Finally, the test was performed in a reasonable manner. The blood was taken by a physician at a hospital according to accepted medical practices. Therefore, there was no violation of the Fourth Amendment.

D. HOT PURSUIT

Warden v. Hayden
387 U.S. 294, 87 S. Ct. 1642 (1967)

FACTS: A man robbed the office of a cab company and ran. Two cab drivers, attracted by the shouts of "holdup," followed the man to a residence. One driver notified the company dispatcher by radio, giving a description of the man and the address he entered. The dispatcher relayed this information to the police who arrived at the scene within five minutes. The officers entered the house without a warrant, and spread out through the first and second floors and

the cellar in search of the robber. The defendant was found in an upstairs bedroom feigning sleep. He was arrested.

Meanwhile, an officer was attracted to an adjoining bathroom by the noise of running water, and discovered a shotgun and a pistol in a flush tank. Another officer who "was searching the cellar for a man or the money" (and the Court said it should be noted that he was also looking for weapons), found a jacket and trousers in a washing machine of the type the fleeing man was said to have worn. A clip of ammunition for the pistol and a cap were found under the mattress of the defendant's bed. Ammunition for the shotgun was found in a bureau drawer in the defendant's room. At the time these searches were made, the officers did not know that the defendant had been arrested. All these items of evidence were introduced against the defendant at his trial.

ISSUE: Whether the entry into the house, without a warrant, and the search for the robber and for weapons, was reasonable?

HELD: Yes. The Hot Pursuit Doctrine allows officers to make warrant-less entries into zones of privacy for suspected persons and weapons.

DISCUSSION: The officers acted reasonably when they entered the house and began to search for a man and for weapons that might be used against them. Neither the entry without a warrant to search for the robber, nor the search for him or his weapons was invalid as there were exigent circumstances. The officers acted reasonably when they entered the house and began to "search for the man... <u>and</u> for weapons which he had used in the robbery and might use against them (underline added)." "Speed here was essential, and only a thorough search of the house for persons <u>and</u> weapons could have insured that Hayden was the only man present and that the police had control of all weapons which could be used against them or to affect an escape." "The permissible scope of search must, therefore, at the least, be as broad as may reasonably be necessary to prevent the dangers that the suspect at large in the house may resist or escape."

Welsh v. Wisconsin
466 U.S. 740, 104 S. Ct. 2091 (1984)

FACTS: A witness observed a car driving erratically that swerved off the road and came to a stop in an open field. No damage to any person or property occurred and the driver walked away from the scene. The police arrived a few minutes later and were told by the witness that the driver was either inebriated or sick. The police checked the car's registration then went to the defendant's

house. After entering his home, the police arrested the defendant for driving under the influence of an intoxicant. The penalty for a first offense under this statute was a noncriminal violation subject to a civil forfeiture proceeding for a maximum fine of $200.

ISSUE: Whether the Fourth Amendment allows the police to make a warrantless entry of a person's house in order to arrest the person for a nonjailable traffic offense?

HELD: No. The exigent circumstances exception in the context of a home entry is limited to the investigation of serious crimes. Misdemeanors typically do not justify a warrantless entry.

DISCUSSION: Before officers may invade the sanctity of the home, the government must demonstrate exigent circumstances that overcome the presumption of unreasonableness that is inherent in all warrantless entries. An important factor to be considered is the gravity of the underlying offense for which the arrest is being made.

Probable cause to believe that a serious crime has been committed does not, by itself, create an exigency. Even a finding of an exigency rarely sanctions an intrusion if only a minor offense has been committed.

The defendant's warrantless arrest in his home for a non-criminal traffic offense cannot be justified on the basis of the hot pursuit doctrine because there was no immediate or continuous pursuit of the defendant from the scene of the crime. Also, his arrest cannot be justified on the basis of public safety because the defendant had already arrived home and had abandoned his car at the scene of the accident. Finally, the defendant's warrantless arrest cannot be justified as an emergency simply because evidence of the defendant's blood-alcohol level might have dissipated while the police obtained a warrant. Therefore, the defendant's arrest was invalid.

United States v. Santana
427 U.S. 38, 96 S. Ct. 2406 (1976)

FACTS: Police officers had probable cause to believe that the defendant possessed marked money that had earlier been used in an undercover heroin buy. Upon arriving at the defendant's residence, but without a warrant, officers observed her standing in the doorway to her home holding a paper bag. They got out of their vehicle, shouted "police," and displayed their identification. The defendant turned and ran into the entryway of her home, where the officers

pursued and seized her. The defendant struggled to escape the officers, at which time "two bundles of glazed paper packets with a white powder" fell out of the paper bag onto the floor. During a search of the defendant's person, some of the marked money was discovered. The powder was later identified as heroin.

ISSUE: Whether the officers' warrantless entry into the defendant's home was justified under the Fourth Amendment?

HELD: Yes. The officers' entry into the defendant's home was justified because the officers were in "hot pursuit" of the defendant.

DISCUSSION: The Fourth Amendment is not violated when officers make a warrantless arrest in a public place for a felony offense. The question here is whether the defendant was in a public place. She was standing in her doorway when the officers first attempted to arrest her. "She was not merely visible to the public, but was as exposed to public view, speech, hearing, and touch as if she had been standing completely outside her house." Once the defendant ran into her home, the officers were in "hot pursuit" of her. Had the officers failed to act quickly in this case, "there was a realistic expectation that any delay would result in the destruction of evidence." For that reason, the warrantless entry into the defendant's home was reasonable under the Fourth Amendment. After her lawful arrest, the search that produced the drugs and the marked money was incident to that arrest and, thus, lawful.

E. EMERGENCY SCENES

Michigan v. Tyler
436 U.S. 499, 98 S. Ct. 1942 (1978)

FACTS: A fire broke out in the defendant's furniture store and the local fire department responded. When the fire chief arrived two hours later, the discovery of plastic containers of flammable liquid was reported to him. The chief summoned a detective to investigate possible arson. The detective took pictures but stopped the investigation because of the smoke. Two hours later, the fire was extinguished and the firefighters departed. The fire chief and detective removed the containers and left. There was neither consent nor a warrant for any of these entries or for the removal of the containers. Four hours later, the chief and his assistant returned for a cursory examination of the building and removed more pieces of evidence. Three weeks later, a state police officer took pictures at the store and made an inspection where further evidence was collected. Further entries were also made, all without warrants.

ISSUE: Whether all warrantless governmental intrusions were reasonable?

HELD: No. Official entries to investigate the cause of a fire must adhere to the warrant procedures of the Fourth Amendment, unless the entry falls within one of the exceptions to the warrant requirement.

DISCUSSION: A Fourth Amendment search occurs whenever the government intrudes on a reasonable expectation of privacy. All entries are presumed illegal if no warrant is obtained. The Court has recognized several exceptions to this rule. A burning building presents an emergency of sufficient proportions to permit a warrantless entry under the Fourth Amendment. Once firefighters are inside a building, they may remain there for the duration of the emergency. While there, the government may investigate the cause of the fire and may seize evidence of arson that is in plain view. In this case, no Fourth Amendment violation occurred by the firefighters' entry to extinguish the fire at the defendant's store, nor by the chief's removal of the plastic containers. Similarly, no warrant was required for the re-entries into the building and for the seizure of evidence after the departure of the fire chief and other personnel since these were a continuation of the first entry that was temporarily interrupted by smoke.

However, if investigating officials require further access after the emergency ceases, they must obtain a warrant. To secure a warrant to investigate the cause of a fire, an official must show more than the bare fact that a fire has occurred. The government must establish probable cause that arson was committed. As this was not done for the non-emergency entries, they were considered unreasonable under the Fourth Amendment.

Michigan v. Clifford
464 U.S. 287, 104 S. Ct. 641 (1984)

FACTS: The defendant's house caught fire. Local firefighters went to his house and extinguished the blaze. The fire had been doused and all fire officials and police left the premises at 7:04 a.m. Arson investigators entered the defendant's residence without consent or a warrant about 1:30 p.m. When the investigators arrived at the scene, a work crew was boarding up the house and pumping water out of the basement. Firefighters who fought the blaze found a fuel can in the basement and placed it in the driveway where the arson investigators seized it. In the basement, where the fire had originated, the arson investigators found two more fuel cans and a suspiciously positioned crock-pot. The investigators then made an extensive and thorough search of the rest of the house, calling in a photographer to take pictures.

ISSUE: Whether the arson investigators needed a warrant to search the contents of the dwelling?

HELD: Yes. Once the emergency presented by the fire was terminated, the government needed consent or a warrant to intrude.

DISCUSSION: Non-consensual entries onto fire-damaged premises normally turns on several factors, including whether there are legitimate privacy interests in the fire-damaged property that are protected by the Fourth Amendment, whether exigent circumstances justify the government intrusion regardless of any reasonable expectations of privacy, and whether the object of the search is to determine the cause of the fire or to gather evidence of criminal activity. In this case, the defendant retained reasonable privacy interests in his fire-damaged home.

The firefighters' initial entry was valid as an emergency scene exception to the warrant requirement of the Fourth Amendment. However, by the time the arson investigators arrived at the dwelling, the emergency was no longer in existence. This was not merely a continuation of the earlier valid entry by firefighters.

Where a warrant is necessary to search a fire-damaged premises, an administrative warrant suffices if the primary object of the search is to determine the cause and origin of the fire. A criminal search warrant, obtained with probable cause, is required if the primary object of the search is to gather evidence of criminal activity. While the evidence found inside the home by the arson investigators was unreasonably seized, the fuel can seized in the driveway by the arson investigators was admissible whether seized in the basement by firefighters or in the driveway by arson investigators.

Mincey v. Arizona
437 U.S. 385, 98 S. Ct. 2408 (1978)

FACTS: Narcotics agents raided the defendant's apartment for narcotics. During the raid, an officer was shot and killed. The defendant was wounded, as were two other persons in the apartment. The narcotics agents, pursuant to a police department directive that stated that police officers should not investigate incidents in which they are involved, made no further investigation. Homicide detectives arrived on the scene and proceeded to conduct a four-day warrantless search of the defendant's apartment.

ISSUE: Whether the evidence from the warrantless search of the defendant's apartment was lawfully obtained under a "murder scene" exception?

HELD: No. The "murder scene" exception does not exist. The fact that a homicide occurs does not, by itself, give rise to exigent circumstances to justify a warrantless search.

DISCUSSION: When the police come upon the scene of a homicide they may make a prompt warrantless search of the area to see if there are other victims or if a killer is still on the premises. The police may also seize any evidence that is in plain view during the course of their legitimate emergency activities. But such a warrantless search must be strictly limited by the emergency that justifies its initiation.

In this case, all the persons in the defendant's apartment had been located before the investigating homicide officers arrived and began their search. There was no indication that evidence would be lost, destroyed, or removed during the time required to obtain a search warrant. Therefore, the four-day search of the defendant's apartment was unreasonable under the Fourth Amendment.

Thompson v. Louisiana
469 U.S. 17, 105 S. Ct. 409 (1984)

FACTS: The defendant shot her husband and ingested a quantity of pills in a suicide attempt. She then called her adult daughter, informed her of the situation and requested help. The daughter immediately called emergency services. Several deputies arrived at the defendant's home in response to this information. The deputies entered the house, made a cursory search and discovered the defendant's deceased husband. The defendant was lying unconscious in another bedroom due to an apparent drug overdose.

The officers immediately transported the defendant to the hospital and secured the scene. Thirty-five minutes later, two members of the homicide unit arrived and conducted a follow-up investigation of the homicide and attempted suicide. The deputies conducted a search of the house and found, among other things, a pistol inside a chest of drawers in the same room as the deceased body, a torn up note in a wastepaper basket in an adjoining bathroom, and another letter (alleged to be a suicide note) folded up inside an envelope containing a Christmas card on the top of a chest of drawers.

ISSUE: Whether these discoveries are admissible under the "murder scene" exception to the search warrant?

HELD: No. There is no "murder scene" exception to the Fourth Amendment's warrant requirement.

DISCUSSION: Although the homicide investigators in this case had probable cause to search the premises, it is undisputed that they did not have a warrant. Therefore, for the search to be valid, it must fall within one of the narrowly and specifically delineated exceptions to the warrant requirement. In Mincey v. Arizona, the Supreme Court unanimously rejected the existence of a murder scene exception. The Court noted that the police may make warrantless entries on premises where they reasonably believe that a person within is in need of immediate aid, and that they may make a prompt warrantless search of the area to see if there are other victims or a killer is on the premises.

Likewise, the warrantless search and seizure conducted at the home of the defendant by investigators who arrived at the scene thirty-five minutes after the woman was sent to the hospital is not valid on the ground that there was a diminished expectation of privacy in the woman's home. The woman's call for medical help cannot be seen as an invitation to the general public that would have converted her home into the sort of public place for which no warrant to search would be necessary. Therefore, the warrantless search after the defendant was taken to the hospital was unreasonable.

Flippo v. West Virginia
528 U.S. 11, 120 S. Ct. 7 (1999)

FACTS: In response to an emergency telephone call, police officers went to a state park. They found the defendant sitting outside a cabin with apparent injuries. They went into the cabin and found the body of a woman with fatal head wounds. Some officers took the defendant to a hospital. Others closed off the area and searched the cabin and the area around it. They spent more than 16 hours inside the cabin, took photographs, collected evidence, and searched through the contents of the cabin. During the search, the officers found and opened a closed briefcase. The briefcase contained evidence that incriminated the woman's husband, the defendant.

ISSUE: Whether the discovery of a body authorized the officers to engage in the warrantless search of the defendant's cabin?

HELD: No. After a homicide crime scene is secured for police investigation, the police are not entitled to make a warrantless search of anything within the crime scene area.

DISCUSSION: The Court held that after a homicide crime scene is secured for police investigation, the police are not entitled to make a warrantless search

of the crime scene area. The Court reaffirmed its long held position that there is no such "homicide crime scene" exception. In Mincey v. Arizona, the Court noted that police may make warrantless entries into premises if they reasonably believe a person is in need of immediate aid and may make prompt warrantless searches of a homicide scene for possible other victims or a killer on the premises. However, the Court explicitly rejected any general "murder scene," "homicide scene," or "crime scene" exception to the Fourth Amendment's warrant requirement. The officers would have been entitled to remove the victims for medical attention, secure the premises, and then obtain a warrant to conduct a search.

VII. SEARCH WARRANT EXCEPTIONS - P.C. NOT NEEDED

A. FRISKS

Michigan v. Long
463 U.S. 1032, 103 S. Ct. 3469 (1983)

FACTS: Police officers observed a vehicle driving erratically and speeding. They watched as the vehicle swerved off the road into a ditch. As the officers stopped to investigate, the defendant got out, leaving the driver's side door open, and met the officers near the rear of the vehicle. The officers noted that the defendant appeared to be under the influence of either alcohol or drugs. The defendant initially failed to provide his license, although he complied following a second request. When asked to produce the vehicle's registration, the defendant again failed to comply and, after a second request, began walking towards the open door of the vehicle. Both officers followed him and observed a large knife on the floorboard of the vehicle. Stopping the defendant, the officers conducted a frisk of his person, although no weapons were recovered. One of the officers shined his flashlight into the vehicle's passenger compartment to search for other weapons. When the officer noticed something sticking out from under the armrest, he lifted it and found an open pouch containing what appeared to be marijuana inside. The defendant was arrested for possession of marijuana.

ISSUE: Whether police officers can conduct a frisk of the passenger compartment of a vehicle following a lawful investigatory stop of the vehicle?

HELD: Yes. Officers may frisk the passenger compartment of a vehicle, limited to those areas in which a weapon may be found, if the officers reasonably believe that the suspect is dangerous and may gain immediate control of weapons.

DISCUSSION: The Court's decision in Terry v. Ohio does not restrict frisks to the body of the suspect. "Past cases indicate that (1) the protection of police officers, as well as others, may justify protective searches when police have a reasonable belief that the suspect poses a danger; (2) roadside encounters between police and suspects are especially hazardous; and (3) danger may arise from the possible presence of weapons in the area surrounding a suspect." The frisk of a passenger compartment of an automobile, restricted to those areas in which a weapon may be placed or hidden, is reasonable if the officers can articulate a reasonable belief that the suspect is armed and dangerous.

Minnesota v. Dickerson
508 U.S. 366, 113 S. Ct. 2130 (1993)

FACTS: Police officers developed reasonable suspicion that the defendant was recently involved in a drug transaction. They frisked him but did not find any weapons. However, the officer conducting the frisk felt a small lump in the defendant's jacket pocket. The officer believed it to be a lump of crack cocaine upon examining it further with his fingers. He reached into the defendant's pocket and retrieved a small bag of cocaine.

ISSUE: Whether the intrusion into the defendant's pocket was reasonable?

HELD: No. The police may seize contraband detected through the sense of touch during frisks only if the evidence is immediately apparent to be such at the moment it was touched.

DISCUSSION: In Terry v. Ohio the Supreme Court permitted officers to conduct brief stops of persons whose suspicious conduct leads an officer to conclude that criminal activity may be afoot. The Supreme Court authorized a frisk for weapons if the officer reasonably suspects that the person may be armed and presently dangerous. Frisks are not meant to discover evidence of crime, but must be strictly limited to that which is necessary for the discovery of weapons. If the protective search intrudes beyond what is necessary to learn if the suspect is armed, it is no longer valid under Terry and its fruits will be suppressed. However, once an officer has lawfully frisked a suspect, and the officer feels an object whose contour or mass makes its identity "immediately apparent," there has been no invasion of the suspect's privacy beyond that already authorized by the officer's search for weapons. If the object is contraband, its warrantless seizure is justified. Application of these principles to the facts of this case does not demonstrate that the officer conducting the frisk had probable cause (immediately apparent) to believe that the lump in the defendant's jacket was

contraband. He decided that it was contraband only after he squeezed, slid, and otherwise manipulated the pocket's contents. While Terry entitled him to place his hands on the defendant's jacket and to feel the lump in the pocket, his continued manipulation of the pocket after he concluded that it did not contain a weapon was unrelated to the Terry frisk. Therefore, his intrusion into the defendant's jacket was unreasonable.

B. SEARCHES INCIDENT TO ARREST

Chimel v. California
395 U.S. 752, 89 S. Ct. 2034 (1969)

FACTS: Three officers arrived at the defendant's home with a warrant for his arrest. The officers knocked on the door, identified themselves to the defendant's wife, and asked if they could come inside. She let the officers in the house where they waited for the defendant to return home from work. When the defendant entered the house, an officer handed him the arrest warrant. One of the officers asked the defendant if he could look around. He said no, but was advised that on the basis of the lawful arrest the officers would nonetheless conduct a search.

The officers, accompanied by the defendant's wife, searched the entire house. In the master bedroom, the officers directed the wife to open drawers and to physically move their contents from side to side so that they might view any items that would have come from the crime. The officers seized numerous items that constituted evidence of the crime.

ISSUE: Whether the warrantless search of the defendant's entire house can be conducted incident to his arrest?

HELD: No. The warrantless search of the defendant's entire house, incident to his arrest, was unreasonable as it extended beyond the defendant's person and the area under his immediate control.

DISCUSSION: When an arrest is made, it is reasonable for an officer to search the person arrested to remove any weapons that the arrestee might use to resist arrest. It is also reasonable for an officer to search and seize any evidence on the arrestee's person to prevent its concealment or destruction and for the means of committing an escape.

The area that an officer may search is that area within an arrestee's immediate control; the area that the person might gain possession of a weapon, means of escape, or destructible evidence. There is, however, no justification for routinely

searching any room other than that in which an arrest occurs, or for that matter, for searching through desk drawers or other closed areas in that room itself. Such searches, in the absence of well-recognized exceptions, may be made only under the authority of a search warrant.

The search in this case went beyond the defendant's person and the area that he might have obtained a weapon, a means of escape, or something that could have been used as evidence against him. There was no constitutional justification, in the absence of a search warrant, for extending the search beyond the area from which the defendant was arrested.

United States v. Robinson
414 U.S. 218, 94 S. Ct. 467 (1973)

FACTS: An officer learned that the defendant's license had been revoked. Four days later, he observed the defendant driving an automobile. He stopped the car and informed the defendant that he was under arrest for driving while his license was revoked. The officer conducted a search incident to arrest. During the search, he felt an object in the defendant's coat but could not determine what it was. The officer reached into the pocket and pulled out the object, a crumpled up cigarette package. He opened the package and found capsules he believed to be heroin.

ISSUE: Whether a full body search of a suspect for items other than evidence of the crime for which a suspect is arrested is within the scope of the search incident to an arrest?

HELD: Yes. During a lawful arrest, a full search of the person may be made by virtue of the lawful arrest.

DISCUSSION: A lawful arrest establishes the authority to search. It is immaterial that the officer did not fear or suspect that the defendant was armed. Having discovered the crumpled package of cigarettes, the officer was entitled to search it as well as to seize it when the search revealed the heroin capsules.

Shipley v. California
395 U.S. 818, 89 S. Ct. 2053 (1969)

FACTS: Police officers, informed that the defendant was involved in a robbery, went to his residence. The defendant was not at home but his wife allowed the officers to enter the home and examine her possessions. They found

some rings taken by the robbers. The officers then "staked out" the house. When the defendant arrived he parked 15 or 20 feet from the house. The officers arrested him as he got out of his car. They searched the defendant's car, and without permission or a warrant, again searched the house. They found a jewelry case stolen in the robbery, which was admitted into evidence at the defendant's trial.

ISSUE: Whether the second search of the defendant's house was authorized as a search incident to arrest?

HELD: No. The search of the defendant's home was not justified by his arrest.

DISCUSSION: The Court has consistently held that a search "can be incident to an arrest only if it is substantially contemporaneous with the arrest and is confined to the immediate vicinity of the arrest." Stoner v. California, 376 U.S. 483 (1964). The Court has never construed the Fourth Amendment to allow the police, in the absence of an exigency, to arrest a person outside his home and then take him inside for the purpose of conducting a warrantless search. On the contrary, "it has always been assumed that one's house cannot lawfully be searched without a search warrant, except as an incident to a lawful arrest therein." Agnello v. United States, 269 U.S. 20 (1925).

Vale v. Louisiana
399 U.S. 30, 90 S. Ct. 1969 (1970)

FACTS: Police officers, armed with an arrest warrant for the defendant, were watching the house where he resided. They observed what they suspected was a narcotics exchange between a known addict and the defendant outside the house. They arrested the defendant at the front steps and announced that they would search the house. Their search of the then-unoccupied house disclosed narcotics in a bedroom.

ISSUE: Whether the house could be searched incident to the defendant's arrest?

HELD: No. The arrest of the defendant does not justify a search of his home.

DISCUSSION: The Court stated that even if holding that the warrantless search of a house can be justified as incident to a lawful arrest, the search must be confined to the area within the arrestee's reach (the area from within which he

might gain possession of a weapon or destructible evidence). A search may be incident to an arrest only if it is substantially contemporaneous with the arrest and is confined to the immediate vicinity of the arrest. If a search of a house is to be upheld as incident to an arrest, that arrest must take place inside the house, not somewhere outside. Belief, however well founded, that evidence sought is concealed in a dwelling furnishes no justification for a search of that place without a warrant. A warrantless search of a dwelling is constitutionally valid only in "a few specifically established and well-delineated exceptions," none of which the government had shown here.

United States v. Edwards
415 U.S. 800, 94 S. Ct. 1234 (1974)

FACTS: Shortly after 11 p.m. the defendant was lawfully arrested and placed in jail for attempting to break into a post office. The attempted entry into the post office had been made through a window, leaving paint chips on the windowsill and wire mesh screen. Because the defendant was arrested late at night, no clothing was available to replace what he was wearing. The following morning, trousers and a shirt were purchased for him to replace the clothing he had been wearing since his arrest. The clothing removed from him contained paint chips matching samples that had been taken from the post office window. The clothing was seized and held as evidence.

ISSUE: Whether the clothing seized from the defendant on the morning following his arrest was obtained in violation of the Fourth Amendment?

HELD: No. The delay in seizing the defendant's clothes under the circumstances was reasonable.

DISCUSSION: One of the exceptions to the warrant requirement of the Fourth Amendment is the warrantless search incident to a lawful arrest. There is no doubt "that clothing or other belongings may be seized upon arrival of the accused at the place of detention and later subjected to laboratory analysis or that the test results are admissible at trial. In taking the defendant's clothing, the police did no more than take from him the effects in his immediate possession that constituted evidence of a crime." Such action is incidental to custodial arrest. A reasonable delay [the defendant did not have replacement clothing] in conducting the search does not change the fact that the defendant was no more imposed upon than he could have been at the time and place of the arrest. "When it became apparent that the articles of clothing were evidence of the crime for which the defendant was being held, the police were entitled to take,

examine, and preserve them for use as evidence, just as they are normally permitted to seize evidence of crime when it is lawfully encountered."

Preston v. United States
376 U.S. 364, 84 S. Ct. 881 (1964)

FACTS: The defendant, along with two others, was arrested while sitting in a parked vehicle. He was searched for weapons and taken to the police station. The vehicle, which was not searched at the time of the arrest, was towed to a garage. Shortly after the defendant had been booked at the police station, officers went to the garage, without a warrant, to search the car. They found evidence indicating that the defendant and his companions were preparing for a robbery. All three individuals were convicted of conspiracy to rob a bank, largely on evidence obtained from the search of the vehicle.

ISSUE: Whether the search of the vehicle at the garage was reasonable under the Fourth Amendment as a "search incident to arrest?"

HELD: No. The evidence obtained from the car was inadmissible because the warrantless search was too remote in time or place to be treated as incidental to the arrest.

DISCUSSION: Courts permit searches that are reasonable. "When a person is lawfully arrested, the police have the right, without a warrant, to make a contemporaneous search of the person of the accused for weapons or for the fruits of or implements used to commit the crime. This rule is justified by the need to seize weapons and other things that might be used to affect an arrest, as well as by the need to prevent the destruction of evidence of the crime. However, these justifications are absent where a search is remote in time or place from the arrest. Once a defendant is under arrest and in custody, a search made at another place, without a warrant, is simply not incident to the arrest (underline added)."

Cooper v. California
386 U.S. 58, 87 S. Ct. 788 (1967)

FACTS: Police officers arrested the defendant and seized his car for a narcotics violation in which the car was used. A state law directed any officer

making an arrest for a narcotics violation to seize and deliver any vehicle used to store, conceal, transport, sell, or facilitate the possession of narcotics. "Such vehicle to be held as evidence until a forfeiture has been declared or a release order issued." A search of the automobile a week later revealed evidence used in trial against the defendant.

ISSUE: Whether the warrantless search of the defendant's automobile, seized by the authority of a forfeiture statute, made a week after his arrest, and not incidental thereto, was reasonable by Fourth Amendment standards?

HELD: Yes. Law enforcement officers are permitted to search a car that they are going to retain for a significant period of time.

DISCUSSION: Evidence showed that the car had been used to carry on his narcotics possession and transportation activities. A state statute required police in such circumstances to seize the vehicle and hold it as evidence until forfeiture was declared or a release ordered. A warrantless search of an arrested person's automobile, made a week after his arrest and not incident to that arrest, is reasonable where the vehicle is seized for forfeiture.

It is not a defense that the police could have obtained a search warrant. The relevant test is not whether it is reasonable to procure a search warrant, but whether it is reasonable to search. Under the circumstances of this case, it was reasonable under the Fourth Amendment to search the defendant's car validly held by officers for use as evidence in a forfeiture proceeding.

New York v. Belton
453 U.S. 454, 101 S. Ct. 2860 (1981)

FACTS: A police officer stopped a car for speeding in which the defendant and four other men were riding. None of the men owned the car or were related to its owner. The officer smelled marijuana and saw an envelope on the floor of the car that he suspected contained marijuana. The officer picked up the envelope and found marijuana inside. He ordered the men out of the car and arrested them. He searched the men and the passenger compartment of the car. On the back seat of the car the officer found a black jacket that belonged to the defendant. He unzipped one of the pockets of the jacket and discovered cocaine.

ISSUE: Whether the scope of a search incident to an arrest includes the containers located in the passenger compartment of the automobile in which the arrestee was riding?

HELD: Yes. Once a lawful arrest of an occupant of an automobile is made, the officer may examine the contents of any containers found within the passenger compartment, including open or closed containers.

DISCUSSION: When a police officer makes a lawful arrest, the officer may, incident to that arrest, search the arrestee and the immediate surrounding area. Such searches are valid because of the need to remove any weapons the arrestee might access to resist arrest and to prevent the destruction or concealment of evidence. However, the scope of the search may not stray beyond the area within the immediate control of the arrestee. Articles inside the relatively narrow area of the automobile passenger compartment are generally within the area into which an arrestee might reach in order to grab a weapon or evidentiary item. Therefore, once a police officer has made a lawful arrest of the occupant of an automobile, the officer may, incident to that arrest, search the passenger compartment of that automobile. It follows that an officer may examine the contents of any containers found within the passenger compartment. If the passenger compartment is within the reach of the arrestee, so are containers within it. Such a container may be searched whether it is open or closed. In this case, the defendant was the subject of a lawful arrest. His jacket, located in the passenger compartment of the car, was within the immediate control of the defendant. The subsequent search of the defendant's jacket was a lawful search incident to his arrest.

Thornton v. United States
124 S. Ct. 2127 (2004)

FACTS: Before a police officer had the opportunity to stop the defendant for a license plate violation, the defendant pulled into a parking lot, parked, and got out of his vehicle. He was walking away from his parked vehicle as the officer pulled in behind him. The officer stopped him, and asked for his driver's license. During this encounter, the officer obtained the defendant's consent to pat him down for weapons and narcotics. He found a controlled substance and placed the defendant, a convicted felon, under arrest. The officer then opened the defendant's vehicle and searched. There he found a weapon.

ISSUE: Whether the Belton Bright-Line rule (a lawful, custodial arrest of the occupant of an automobile allows a search of the passenger compartment of that automobile) allows the officer to search the passenger's compartment of a vehicle the arrestee has walked away from?

HELD: Yes. The law enforcement officer has the same safety concerns about a suspect either in or near a motor vehicle.

DISCUSSION: The Court held that the arrest of a defendant who is near a vehicle presents the same safety concerns and the destruction of evidence as the arrest of a defendant who is inside the vehicle. The stresses associated with an arrest, the Court determined, are not lessened by the fact that the arrestee exited the vehicle before an officer initiated the contact. Therefore, the Belton Bright Line Rule is extended to include "occupants" and "recent occupants" of motor vehicles.

United States v. Chadwick
433 U.S. 1, 97 S. Ct. 2476 (1977)

FACTS: Police officers developed probable cause that the defendant was transporting a controlled substance in a footlocker. They placed him under arrest and seized the footlocker. The footlocker remained under the exclusive control of law enforcement officers at all times. The agents did not have any reason to believe that the footlocker contained explosives or other inherently dangerous items or that it contained evidence that would lose its evidentiary value unless the footlocker was opened immediately. An hour and a half after the men were arrested, the agents opened the footlocker without a search warrant. Large amounts of marijuana were found in the footlocker.

ISSUE: Whether a search incident to an arrest is reasonable significantly after the arrest?

HELD: No. Searches incident to arrest must occur at about the same time as the arrest.

DISCUSSION: The search cannot be justified as a search incident to an arrest if the search is remote in time or place from the arrest. When an arrest is made, it is reasonable for police to conduct a prompt, warrantless search of the arrestee's person and the area in which the arrestee might gain possession of a weapon or destructible evidence. However, warrantless searches of a footlocker or luggage seized at the time of an arrest cannot be justified as incident to that arrest if the search is remote in either time or place from that arrest or no exigency exists. Here, there were no exigent circumstances.

Knowles v. Iowa

525 U.S. 113, 119 S. Ct. 484 (1998)

FACTS: The defendant was lawfully stopped and issued a citation for speeding. Under Iowa law, the officer could have either arrested him or followed the more traditional route of issuing a traffic citation. Another section of Iowa law stated that the issuance of a citation in lieu of an arrest does not defeat the officer's authority to conduct an otherwise lawful search as if the arrest had occurred. The Iowa Supreme Court interpreted this statute as providing law enforcement officers the ability to search any automobile that has been lawfully stopped for a traffic violation. The search conducted pursuant to the defendant's traffic stop yielded contraband.

ISSUE: Whether law enforcement officers are justified in conducting searches of automobiles based solely on the fact that it has been stopped for a traffic violation.

HELD: No. Law enforcement officers are not justified in conducting searches incident to traffic citations.

DISCUSSION: The Supreme Court called the Iowa Supreme Court's interpretation of its statute a "search incident to citation," a derivative of a search incident to arrest. The Supreme Court stated that a search incident to arrest was a valid exception to the Fourth Amendment's warrant requirement because of the need to disarm the suspect and to preserve evidence for later use at trial.

The Court dismissed the consideration of officer's safety in allowing a search incident to citation because it did not believe the issuance of a citation is as dangerous as an arrest. The officer will not spend as much time with the defendant while issuing a citation, stress levels are not as great, and the outcome is not as uncertain as during an arrest. The Supreme Court also held that the second rationale for a search incident to arrest, to secure evidence for latter use, is not logical because it is unlikely the law enforcement officer will find other evidence of the traffic violation by searching the automobile.

C. CONSENT

United States v. Mendenhall,
446 U.S. 544, 100 S. Ct. 1870 (1980)

FACTS: The defendant arrived at the Detroit airport from Los Angeles. As she disembarked, she was observed by two DEA agents to fit a "drug courier profile." The agents approached the defendant, identified themselves as federal agents, and asked to see her identification and airline ticket. Her driver's license

identified her as Sylvia Mendenhall. Her airline ticket, however, was issued to "Annette Ford." The defendant explained that she just felt like using that name and that she had been in California for two days. After one agent specifically identified himself as a federal narcotics agent, the defendant became shaken, extremely nervous and had difficulty speaking.

After returning the airline ticket and driver's license to her, the agent asked the defendant if she would accompany him to the airport DEA office located about fifty feet away. Without a verbal response, she did so. The agent asked her if he could search her person and handbag and told her that she had the right to decline the search if she so desired. She responded, "go ahead." He found an airline ticket issued to "F. Bush" three days earlier for a flight to Los Angeles. She acknowledged that this was the ticket she used for her flight to California. A policewoman asked the defendant to consent to a search of her person, and she agreed. The policewoman asked her to disrobe, and she said that she had a plane to catch. The policewoman assured her that if she were not carrying narcotics, there would be no problem. She began to disrobe without further comment, handing over two small packets, one of which contained heroin.

ISSUE: Whether the defendant voluntarily consented to the search?

HELD: Yes. Consent is based on the voluntary actions of the consenter.

DISCUSSION: Not every encounter between a police officer and a citizen is an intrusion requiring justification. A person is seized only when, by means of physical force or a show of authority, his freedom of movement is restrained. As long as the person remains free to disregard the questions and walk away, there has been no constitutional intrusion upon the person's liberty.

Some examples of circumstances that might indicate a seizure are: the threatening presence of several officers, the display of a weapon by an officer, some physical touching of person, or the use of language or tone of voice indicating that compliance might be compelled. In this case no seizure occurred. The events took place in the public concourse; the agents wore no uniforms and displayed no weapons; they did not summons the defendant to their presence, but instead, approached her and identified themselves as federal agents; they requested, but did not demand, to see her identification and ticket.

The final question is whether the defendant acted voluntarily. The Court gave importance to the facts that she was twenty-two years old, had not graduated from high school, a black female, and the officers were white males. While they were relevant, they were not decisive. The Court found her consent to be voluntarily granted.

Schneckloth v. Bustamonte
412 U.S. 218, 93 S. Ct. 2041 (1973)

FACTS: A police officer stopped a car when he observed that its license plate light and a headlight were inoperable. Six men, including the defendant, were in the car. After the driver failed to produce a driver's license, the officer asked if any of the other five men had any identification. One of them produced a license and explained that he was the brother of the car's owner, from whom the car had been borrowed. After the six men had stepped out of the car at the officer's request, and after two more police officers had arrived, the officer who had stopped the car asked the owner's brother if he could search the car. He replied "Sure, go ahead." The owner's brother helped in the search by opening the trunk and the glove compartment. The officers found some stolen checks under a seat.

ISSUE: Whether the owner's brother could grant consent to the search of the car?

HELD: Yes. The validity of consent to search is determined by the totality of the circumstances.

DISCUSSION: For consent to be valid, it must be proven from the totality of the circumstances that the consent was freely and voluntarily given. Consent cannot result from duress or coercion, expressed or implied. The consenter's ignorance of his right to refuse consent is only one factor to be considered in ascertaining the validity of the consent. The Fourth Amendment requires that consent to search not be coerced, by explicit or implicit means, by implied threat or covert force.

Ohio v. Robinette
519 U.S. 33, 117 S. Ct. 417 (1996)

FACTS: The defendant was lawfully stopped for a speeding violation. After the law enforcement officer gave the defendant a verbal warning, the officer asked him if he had any illegal drugs in his car. The defendant said no and gave the officer consent to search the car. The officer found a controlled substance in a film container located inside the automobile.

ISSUE: Whether the officer must inform the detainee that he had a right to leave before attempting to obtain his voluntary consent to search the automobile?

HELD: No. Whether the detainee knew that he had a right to leave is only one factor in determining if his consent was voluntary.

DISCUSSION: The key to all Fourth Amendment issues is whether the officer acted in a reasonable manner. The Court stated that this question is usually answered after reviewing the facts that surround the situation at hand. The Court prefers to avoid the establishment of bright-line rules in Fourth Amendment areas. In Schneckloth v. Bustamonte, the Supreme Court rejected a comparable bright-line rule that would have required a consenter to be informed of their right to refuse consent before their choice would be considered voluntary. While a reviewing court should consider whether a detainee knew of his right to leave at the time his consent is requested, the Court did not find this fact alone to be decisive. The voluntariness of consent is to be determined by a consideration of all the circumstances.

Frazier v. Cupp
394 U.S. 731, 89 S. Ct. 1420 (1969)

FACTS: The defendant and co-defendant were arrested for murder. Police asked the co-defendant for consent to search a duffle bag used by both defendants. He consented and evidence was found incriminating the defendant.

ISSUE: Whether a joint user of a container has the authority to consent to a search?

HELD: Yes. Persons with a reasonable expectation of privacy in a container can grant consent to search it.

DISCUSSION: The defendant and the co-defendant were using the duffle bag jointly. Since the co-defendant was a co-user of the bag, he had authority to consent to its search. The defendant, in allowing the co-defendant to use the bag and in leaving it in his house, assumed the risk that the co-defendant would allow someone else to look inside.

United States v. Matlock
415 U.S. 164, 94 S. Ct. 988 (1974)

FACTS: The defendant was arrested in front of the home in which he rented a room. Several people lived in the home, including Ms. Graff. The officers approached Ms. Graff, who stated she shared a bedroom with the defendant in

the home. The officers obtained Ms. Graff's consent to search the house for money and a gun. They found these items in the bedroom shared by Ms. Graff and the defendant.

ISSUE: Whether Mrs. Graff had the ability to grant consent to the search?

HELD: Yes. If a third party and the defendant have joint authority over the premises, then the third-party's consent to a search will be binding on the defendant.

DISCUSSION: When the prosecution seeks to justify a warrantless search by proof of voluntary consent, it may show that permission was obtained from a third party who possessed common authority over the item. Common authority can not be implied from the mere property interest that a third-party has in the property. The authority that justifies the third-party consent rests on mutual use of the property by persons having joint access or control. Any of the co-inhabitants have the right to permit an inspection and that the others have assumed the risk that any of their co-inhabitants might permit the common area to be searched.

Chapman v. United States
365 U.S. 610, 81 S. Ct. 776 (1961)

FACTS: The defendant's landlord summoned the police after detecting the odor of whiskey mash on the premises. Police officers, acting without a warrant but with the consent of the landlord, entered the defendant's rented house in his absence through an unlocked window. They found an unregistered still and a quantity of mash

ISSUE: Whether the landlord had the authority to grant consent to search the house?

HELD: No. The landlord, while owner of the property, could not authorize law enforcement officers to enter the defendant's home.

DISCUSSION: Belief, however well founded, that an article sought is concealed in a dwelling is not justification for a search of that place without a warrant, consent or exigency. Such searches are unreasonable even with undeniable facts of probable cause. The officers did not obtain a warrant, despite having time to do so. The landlord did not have authority to forcibly enter the property without the defendant's consent. No exigency was engaged. Therefore, the intrusion was unreasonable and the evidence suppressed.

Stoner v. California
376 U.S. 483, 84 S. Ct. 889 (1964)

FACTS: Officers suspected the defendant had committed a robbery and was presently located in a hotel room. They went to the hotel. The officers had neither search nor arrest warrants. They obtained the consent of the hotel clerk to enter and search the defendant's room. After doing so, they located evidence of the defendant's participation in the robbery.

ISSUE: Whether the hotel clerk had the authority to grant consent to search the defendant's hotel room?

HELD: No. The clerk did not have the authority to waive the defendant's constitutional protection of the Fourth Amendment.

DISCUSSION: The Court held that it was important to bear in mind that it was the defendant's constitutional right which was at stake here, and not the night clerk's nor the hotel's. It was a right, therefore, which only the petitioner could waive by word or deed, either directly or through an agent. While the night clerk clearly and unambiguously consented to the search, there is nothing to indicate that the police had any basis to believe that the night clerk had been authorized by the defendant to permit the police to search his room.

Illinois v. Rodriguez
497 U.S. 177, 110 S. Ct. 2793 (1990)

FACTS: A witness told police that the defendant had beaten her. She also told police that the defendant was in "our" apartment, and that she had clothes and furniture there. Officers went with her to the apartment without an arrest or search warrant. She opened the door with a key and gave officers permission to enter. Once inside, the officers saw drugs and paraphernalia in plain view. At that time, the defendant was asleep in the apartment. However, it became evident that the witness was no longer a resident of the apartment, having moved out weeks earlier.

ISSUE: Whether a warrantless entry is valid under the Fourth Amendment when it is based upon the consent of a third party that the police reasonably believe to possess authority over the premises, but in fact does not?

HELD: Yes. A consent search will be valid if a person whom the police reasonably, but mistakenly, believe has the authority to grant consent.

DISCUSSION: The Fourth Amendment generally prohibits the warrantless entry of a person's home, whether to make an arrest or to search for specific objects. The prohibition does not apply, however, to situations in which voluntary consent has been obtained, either from the individual whose property is searched, or from a third party who possesses common authority over the premises.

The Fourth Amendment prohibits "unreasonable" searches and seizures. Where the police make a factual determination about a search, their reasonable mistake on the issue of authority to consent does not transform the search into an unreasonable one. To satisfy the reasonableness requirement of the Fourth Amendment, law enforcement officers must not always be correct, but they must always be reasonable.

This is not to say that the police may always act on someone's invitation to enter the premises. Even if the invitation is accompanied by an explicit assertion that the person lives there, the surrounding circumstances could be such that a reasonable person would doubt its truth.

In this case, the witness did not have the common authority over the apartment that was necessary to give the officers valid permission to enter or search the apartment. She was an "infrequent visitor" rather than a "usual resident." However, the police were reasonably mistaken in their belief that the witness had authority to consent. Their search based on that apparent authority was reasonable.

Bumper v. North Carolina
391 U.S. 543, 88 S. Ct. 1788 (1968)

FACTS: Police officers went to the house of a grandmother to investigate a rape in which her grandson was suspected. The officers falsely asserted that they had a search warrant and the grandmother consented to a search. The officers did not tell her anything about the crime they were investigating or that her grandson was suspected. Police found a rifle used in the rape.

ISSUE: Whether the grandmother's consent was voluntarily given if the police falsely stated that they had a search warrant?

HELD: No. Where officers falsely assert that they have a search warrant and then procure "consent," the consent is invalid.

DISCUSSION: The government has the burden of proving that consent was freely and voluntarily given. The grandmother's consent was not voluntarily given because it had been procured through a wrongful claim of authority. A search cannot be justified as lawful on the basis of consent where that consent has been given only after the official conducting the search has wrongfully asserted that he possessed a warrant. When a law enforcement officer claims authority to search a home pursuant to a warrant, they announce in effect that the occupant has no right to resist the search.

Lewis v. United States
385 U.S. 206, 87 S. Ct. 424 (1966)

FACTS: An undercover narcotics agent telephoned the defendant's home about the possibility of purchasing marijuana. The agent misrepresented his identity to the defendant and was invited to the defendant's home on two occasions where he subsequently bought marijuana.

ISSUE: Whether the consent granted was voluntary when a government agent, by misrepresenting his identity, is invited into a defendant's home?

HELD: Yes. Where a defendant invites an undercover government agent into his home for the specific purpose of executing the felonious sale of narcotics, the agent's misrepresentation of his identity does not offend the Fourth Amendment.

DISCUSSION: The government is entitled to use decoys and to conceal the identity of its agents in the detection of many types of crimes. A rule prohibiting the use of undercover agents in any manner would severely hamper the government in ferreting out those organized criminal activities that are characterized by crimes that involve victims who either cannot or do not protest.

The home is accorded the full range of Fourth Amendment protection. However, when the home is converted into a commercial center to which outsiders are invited for purposes of transacting unlawful business, that business is entitled to no greater protection than if it were carried on in a store, garage, car, or on the street. A government agent, in the same manner as a private person, may accept an invitation to do business and may enter upon the premises as long as it is for

the purpose contemplated by the occupant and the entry is not used to conduct a general search for incriminating materials.

In this case, the defendant invited the undercover agent into his home for the purpose of executing a felonious sale of narcotics. The agent did not commit any acts that were beyond the scope of the business, such as conducting a surreptitious search, for which he had been invited into the house. Thus, the defendant's Fourth Amendment rights were not violated.

Florida v. Jimeno
500 U.S. 248, 111 S. Ct. 1801 (1991)

FACTS: An officer pulled the defendant over to issue a traffic citation. The officer told the defendant that he had been stopped for a traffic infraction, but went on to explain that he had reason to suspect that the defendant was carrying narcotics in the car, and asked permission to search. The officer told the defendant that he did not have to consent to a search of the car. The defendant stated that he had nothing to hide, and gave permission to search the car. The officer found a folded brown paper bag on the floorboard on the passenger side of the car. He opened it and found cocaine inside.

ISSUE: Whether it is reasonable for an officer to consider a suspect's general consent to a search of his car to include consent to examine containers therein?

HELD: Yes. The officer's request to search the car for narcotics reasonably included containers in which narcotics could be found.

DISCUSSION: The Fourth Amendment is satisfied when, under the circumstances, it is objectively reasonable for the officer to believe that the scope of the suspect's consent permitted him to open a particular container within the automobile. The touchstone of the Fourth Amendment is reasonableness. The Fourth Amendment does not proscribe all searches, only those which are unreasonable.

The Court has long approved consensual searches because it is reasonable for the police to conduct a search once they have been permitted to do so. However, scope of a search is generally defined by its expressed object. A suspect may limit the scope of the search to which he consents. In this case, the terms of the authorization to search were simple. The defendant granted the officer permission to search his car for drugs and did not place any express limitation on the scope of the search. It was reasonable for the police to conclude that the

general consent to search the car included consent to search containers within that car that might contain drugs.

D. INVENTORIES

South Dakota v. Opperman
428 U.S. 364, 96 S. Ct. 3092 (1976)

FACTS: The defendant's car was impounded for violations of municipal parking ordinances. At the impound lot, an officer noticed a watch on the dashboard of the car and other personal items on the backseat and back floorboard. The police opened the car doors. Following standard procedures, the officer inventoried the contents of the car including the contents of the unlocked glove compartment. The officer found marijuana in the glove compartment and the defendant was arrested.

ISSUE: Whether the Fourth Amendment allows the police to conduct an inventory search of a car lawfully impounded, without a warrant or probable cause, pursuant to standard police procedures?

HELD: Yes. Law enforcement officers are entitled to make an inventory of items in their custody for reasons of accountability.

DISCUSSION: When vehicles are impounded, the police routinely follow care-taking procedures by securing and inventorying the car's contents. These procedures developed in response to three distinct needs: (1) to protect the owner's property while it remains in police custody, (2) to protect the police against claims of lost or stolen property, and (3) to protect the police from the potential danger of the contents of the car.

In this case, the police were engaged in a care taking search of a lawfully impounded automobile. The reasonableness of the search was enhanced by the fact that the owner was not present at the time of impoundment to claim his property, and by the fact that a watch was visible to the police through the window before they made a search. The police followed standard procedures, and therefore, their conduct was reasonable under the Fourth Amendment.

Harris v. United States
390 U.S. 234, 88 S. Ct. 992 (1968)

FACTS: The defendant's car was seen leaving the site of a robbery. The car was traced and the defendant was arrested as he was entering the car near his

home. After a cursory search of the car, an officer took the defendant to the police station. The car was impounded as evidence. A police regulation stated that an impounded vehicle had to be searched in order to remove all valuables from it. Pursuant to this regulation and without a warrant, an officer searched the car. While he was securing the window, however, he saw and seized the registration card with the name of the robbery victim on it.

ISSUE: Whether the officer discovered the registration card by means of an illegal search?

HELD: No. The discovery of the registration card occurred as a result of reasonable measures taken to protect the car while it was in police custody.

DISCUSSION: The Fourth Amendment does not require the police to obtain a warrant for standard inventories. Once the door of the car had lawfully been opened, the registration card, with the name of the robbery victim on it, was plainly visible. Objects falling in the plain view of an officer who has a right to be in the position to have that view are lawfully discovered.

Colorado v. Bertine
479 U.S. 367, 107 S. Ct. 738 (1987)

FACTS: Police arrested the defendant for driving under the influence of alcohol. They called a tow truck, searched the defendant's car and inventoried its contents in accordance with police procedures. An officer opened a closed backpack in which he found a controlled substance, cocaine paraphernalia, and a large amount of cash.

ISSUE: Whether the police can enter a closed container during an inventory?

HELD: Yes. A warrantless inventory search of an impounded vehicle may include places where personal items can be found, including a search of the contents of closed containers found inside the vehicle.

DISCUSSION: Inventories are a well-defined exception to the warrant requirement. However, two conditions must be met before an inventory search of an impounded vehicle is lawful. First, that there was no showing that the police acted in bad faith, that is, they were not conducting the inventory to advance a criminal investigation. Second, that the police must follow standardized procedures so that the searching officer does not have unbridled discretion to determine the scope of the search.

In this case, the police were responsible for the property taken into custody. By securing the property, the police were protecting the property from unauthorized access. Also, knowledge of the precise nature of the property helped guard against claims of theft, vandalism, or negligence. This knowledge also helped to avert any danger to police or others that may have been presented by the potential danger of the property.

Illinois v. Lafayette
462 U.S. 640, 103 S. Ct. 2605 (1983)

FACTS: The defendant was arrested for disturbing the peace and taken to the police station. Without obtaining a warrant and in the process of booking him and inventorying his possessions, the police removed the contents of his shoulder bag. They found amphetamine pills.

ISSUE: Whether it is reasonable for the police to inventory the personal effects of a person under lawful arrest as part of the procedure at a police station house?

HELD: Yes. Consistent with the Fourth Amendment, it is reasonable for police to search the personal effects of a person under lawful arrest as part of the routine administrative procedure at a police station incident to booking and jailing the suspect.

DISCUSSION: The justification for these searches does not rest on probable cause. Therefore, the absence of a warrant is immaterial to the reasonableness of the search. However, in determining whether an inventory search is reasonable under the Fourth Amendment, government interests are balanced against the intrusion on an individual's Fourth Amendment interests. The government has a legitimate interest in protecting the owner's property from theft or false claims of theft by persons employed in police activities. A standardized procedure for making an inventory as soon as is reasonable after reaching the station house protects the owner's property while it is in police custody. The fact that the protection of an arrestee's property might have been achieved by less intrusive means does not, in itself, render an inventory search unreasonable.

Florida v. Wells
495 U.S. 1, 110 S. Ct. 1632 (1990)

FACTS: The defendant was arrested for DUI. During an inventory search of the car, the officer found a locked suitcase in the trunk. The officer opened the suitcase and found marijuana.

ISSUE: Whether a container found during an inventory search may be opened where there is no police policy regarding the opening of containers?

HELD: No. Absent a routine police policy regarding the opening of containers found during an inventory search, a container may not be opened.

DISCUSSION: An established routine must regulate inventory searches. This is to ensure that an inventory search is not a ruse for a general rummaging of the car in order to discover incriminating evidence. Policies governing inventory searches should be designed to produce an inventory.

In this case, there was no evidence of any policy on the opening of containers found during inventory searches. Therefore, absent such a policy, the inventory was not sufficiently regulated to satisfy the Fourth Amendment, and the seizure of the marijuana was unlawful. The Court also stated that if a standard inventory policy permitted officers to inventory the contents of locked containers, the inventory of such would be reasonable.

E. INSPECTIONS

See v. City of Seattle
387 U.S. 541, 87 S. Ct. 1737 (1967)

FACTS: The defendant refused to allow a city representative to enter and inspect the defendant's locked commercial warehouse without a warrant and without probable cause to believe that a violation of any municipal ordinance existed. The inspection was part of a routine, periodic city-wide canvass to obtain compliance with the fire code. After the defendant refused the inspector access, he was arrested.

ISSUE: Whether a search warrant is required to conduct inspections of municipal fire, health, and housing inspection?

HELD: No. Legitimate government inspections are an exception to the Fourth Amendment's warrant requirement, though an inspection warrant may be required.

DISCUSSION: The search of private commercial property, as well as the search of private houses, is presumptively unreasonable if conducted without a warrant. An administrative agency's demand for access to commercial premises for inspection under a municipal fire, health, or housing inspection program is measured against a flexible standard of reasonableness. Administrative entry, without consent, into areas not open to the public, may only be compelled with an inspection warrant.

Business premises may reasonably be inspected in many more situations than private homes. Any constitutional challenge to the reasonableness of inspection of business premises, such as for licensing purposes, can only be resolved on a case-by-case basis under the Fourth Amendment. The Fourth Amendment bars prosecution of a person who has refused to permit a fire inspector to inspect his locked warehouse without a warrant. While a search warrant is not required, the government must obtain an inspection warrant or consent to conduct the inspection.

Camara v. Municipal Court
387 U.S. 523, 87 S. Ct. 1727 (1967)

FACTS: An inspector entered an apartment building to make a routine annual inspection for possible violations of the City's housing code. The building manager informed the inspector that the defendant, a lessee of the ground floor, was using the rear of his leasehold as a personal residence. The defendant refused to allow the inspector to enter his residence. The defendant was charged with the criminal violation of the code section which punished obstruction to inspect.

ISSUE: Whether inspectors can make warrantless entries to carry out their duties?

HELD: No. Inspectors must rely on consent, an exigency, or an inspection warrant to enter a premises to conduct an inspection.

DISCUSSION: At one time, the Supreme Court authorized warrantless entries for the purpose of conducting safety inspections. However, the Court altered its position because of three factors: 1) the occupant does not know if his or her premises is covered by the inspection authority, 2) the occupant does not

know the inspector's authority, and 3) the occupant does not know if the inspector is acting under proper authority.

The Court did not hold that inspectors may only enter with the use of an inspection warrant. Typically, most entries can be obtained with consent from an occupant. Some entries can be justified by the exigency posed to public health (such as putrid food conditions). However, the remaining entries must be supported by a warrant.

The Court restated that the primary principle of the Fourth Amendment was to prohibit unreasonable searches. This usually means that searches must be supported by a warrant. "The warrant procedure is designed to guarantee that a decision to search private property is justified by a reasonable governmental interest." In criminal cases, the government must establish probable cause of criminal activity.

For inspection warrants, the government's burden will depend on the type of inspection contemplated. "This is not to suggest that a health official need show the same kind of proof to a magistrate to obtain a warrant as one must who would search for the fruits or instrumentalities of crime. . . Experience may show the need for periodic inspections of certain facilities without a further showing of cause to believe that substandard conditions dangerous to the public are being maintained [citing Frank v. Maryland, 359 U.S. 360]." In some instances, the passage of time may justify an inspection warrant.

Marshall v. Barlow's Inc
436 U.S. 307, 98 S. Ct. 1816 (1978)

FACTS: An OSHA inspector entered the customer service area of Barlow's, Inc., an electrical and plumbing installation business. Mr. Barlow, president and general manager, was on hand. The OSHA inspector informed Mr. Barlow that he wished to conduct a search of the working areas of the business. Mr. Barlow inquired whether any complaint had been received about his company. The inspector said no, but that Barlow's, Inc., had simply turned up in the agency's selection process. The inspector again asked to enter the nonpublic area of the business. Mr. Barlow asked whether the inspector had a search warrant. The inspector did not. Mr. Barlow refused the inspector admission to the employee area of his business. Three months later, the Secretary of Labor petitioned the United States District Court to issue an order compelling Mr. Barlow to admit the inspector.

ISSUE: Whether a District Court order to allow an inspection of nonpublic areas of a business without sufficient reason is reasonable under the Fourth Amendment?

HELD: No. The law that authorized inspections without an inspection warrant or its equivalent was unconstitutional in these circumstances.

DISCUSSION: Section 8(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. § 657(a)) empowers agents of the Secretary of Labor to search the work area of any employment facilities within the Act's jurisdiction in order to inspect for safety hazards and regulatory violations. An inspection of those documents specified in 29 U.S.C. § 1903.3, includes among the OSHA inspector's powers the authority "to review records required by the Act and regulations published in this chapter, and other records which are directly related to the purpose of the inspection," may not be effected without a warrant.

" . . .[P]robable cause justifying the issuance of a warrant may be based on not only specific evidence of an existing violation, but also on a showing that reasonable legislative or administrative standards for conducting an inspection are satisfied with respect to a particular establishment; a warrant showing that a specific business has been chosen for a search on the basis of a general administrative plan for the enforcement of the Act derived from neutral sources such as, for example, dispersion of employees in various types of industries across a given area, and the desired frequency of search in any of the lesser divisions of the area, will protect an employer's Fourth Amendment rights."

" . . . [T]he Act is unconstitutional insofar as it purports to authorize inspections without a warrant or its equivalent . . . . Without a warrant the inspector stands in no better position than a member of the public. What is observable by the public is observable, without a warrant, by the government inspector as well." Air Pollution Variance Bd. v. Western Alfalfa Corp., 416 U.S. 861, 94 S. Ct. 2114 (1974).

Donovan v. Dewey
452 U.S. 594, 101 S. Ct. 2534 (1980)

FACTS: A federal mine inspector attempted to inspect the premises of a stone quarry operator under authority granted by federal law. The pertinent statute provided that federal mine inspectors are to inspect all mines at set intervals to insure compliance with health and safety standards and to make follow-up inspections to determine whether previously discovered violations had been corrected. Mine inspectors were authorized to inspect any mine

without having to obtain a warrant. In this case, the inspection was a follow-up to one that uncovered numerous safety and health violations. The quarry operator refused to allow the inspection to be completed because the inspector did not have a search warrant.

ISSUE: Whether a statute can authorize the government to engage in a non-consensual inspection without a search warrant?

HELD: Yes. Under specific circumstances, such intrusions are reasonable.

DISCUSSION: The Court held that there are certain situations in which the government can engage in warrantless inspections. The Court stated "[T]he greater latitude to conduct warrantless inspections of commercial property reflects the fact that the expectation of privacy that the owner of commercial property enjoys in such property differs significantly from the sanctity accorded an individual's home, and that this privacy interest may, in certain circumstances, be adequately protected by regulatory schemes authorizing warrantless inspections."

Determining when an inspection warrant is required to conduct these types of searches rests on whether (1) Congress has reasonably determined that warrantless searches are necessary to further a regulatory scheme and (2) the regulatory practices are sufficiently comprehensive and defined that the commercial operator cannot help but be aware that his business will be subject to episodic inspections for explicit purposes.

The warrantless inspections here were justified, then, because the statute (1) notified the operator that inspections will be performed on a regular basis, (2) informed the operator of what health and safety standards must be met, thus curtailing the discretion of government officials to determine what facilities to search and what violations to search for, and (3) prohibited forcible entries. Should entry to perform an inspection be denied, the government was compelled to file a civil action in federal court to obtain an injunction against future refusals.

New York v. Burger
482 U.S. 691, 107 S. Ct. 2636 (1987)

FACTS: The defendant operated a wrecking yard that dismantled automobiles and sold their parts. Pursuant to a state statue authorizing warrantless inspections of automobile junkyards, police officers entered his junkyard and asked to see his license and records as to automobiles and parts.

The defendant did not have the license. The officers conducted an inspection of the junkyard and discovered stolen vehicles and parts.

ISSUES:

1. Whether the warrantless search of an automobile junkyard, conducted pursuant to a statute authorizing such a search, falls within the exception to the warrant requirement for administrative inspections of pervasively regulated industries?

2. Whether an otherwise proper administrative inspection is unconstitutional because the inspection may disclose violations not only of the regulatory statute but also of criminal statutes?

HELD:

1. It depends.

2. No. Law enforcement officers are entitled to recover evidence of crime they observe while lawfully conducting an inspection.

DISCUSSION: The warrantless search of an automobile junkyard, conducted pursuant to a statute authorizing such a search, may fall within the exception to the warrant requirement. A business owner's expectation of privacy in commercial property is attenuated with respect to commercial property employed in a "closely regulated" industry. Where the owner's privacy interest is weakened and the government's interest in regulating particular businesses is heightened, a warrantless inspection of commercial premises is reasonable. This warrantless inspection, even in the context of a pervasively regulated business, will be deemed to be reasonable only so long as three criteria are met:

1. There must be a "substantial" government interest. Because of the auto theft problem, the state has a substantial interest in regulating the auto dismantling industry.

2. The warrantless inspections must be "necessary to further [the] regulatory scheme."

3. The statute's inspection program, in terms of certainty and regularity of its application, must provide a constitutionally adequate substitute for a warrant. The Court found that this statute provided a constitutionally adequate substitute for a warrant. It informed a business operator that regular inspections will be made, and also sets forth the scope of the inspection, notifying him of how

to comply with the statute and who is authorized to conduct the inspection.

However, the time, place, and scope of the inspection is limited to impose appropriate restraints upon the inspecting officers' discretion. The administrative scheme is not unconstitutional simply because, in the course of enforcing it, an inspecting officer may discover evidence of crimes, in addition to violations of regulations.

Michigan v. Sitz
496 U.S. 444, 110 S. Ct. 2481 (1990)

FACTS: The Michigan State Police established a sobriety checkpoint program pursuant to advisory committee guidelines. Checkpoints could be set up at selected sites along state roads. During operation of the checkpoints, all vehicles would be briefly stopped and the drivers examined for signs of intoxication. If such signs were detected, the individual would be taken out of the flow of traffic and have their driver's license and registration checked. If necessary, additional sobriety tests would be performed. If officers found the driver to be intoxicated, the driver would be arrested. If not, the driver would be immediately allowed to resume his or her journey. A checkpoint was set up under these guidelines. One hundred twenty six vehicles passed through, with an average delay of approximately 25 seconds per vehicle.

ISSUE: Whether the government's use of highway sobriety checkpoints was a violation of the Fourth Amendment?

HELD: No. In balancing the interests of the state in eradicating drunk driving with the minimal intrusion upon individual motorists, the checkpoints were reasonable under the Fourth Amendment.

DISCUSSION: Whenever a vehicle is stopped at a checkpoint, a "seizure" under the Fourth Amendment occurs. In Brown v. Texas, the Court outlined a balancing test that applied in this case. Here, the test consisted of "balancing the State's interest in preventing accidents caused by drunk drivers, the effectiveness of sobriety checkpoints in achieving that goal, and the level of intrusion on an individual's privacy caused by the checkpoints." Applying this test, the sobriety checkpoints were constitutional. The States have a substantial interest in eradicating the problem of drunk driving. Alternatively, the intrusion on individual motorists was slight. "In sum, the balance of the State's interest in preventing drunk driving, the extent to which the system can reasonably be said

to advance that interest, and the degree of intrusion upon individual motorists who are briefly stopped, weighs in favor of the State program."

City of Indianapolis v. Edmond
531 U.S. 32, 121 S. Ct. 447 (2000)

FACTS: The City of Indianapolis operated vehicle checkpoints to interdict unlawful drug use and transportation. At each checkpoint, the police stopped a predetermined number of vehicles. Pursuant to written directives, an officer advised the driver that he or she was being stopped at a drug checkpoint and asked the driver to produce a license and registration. The officer looked for signs of impairment and conducted an open-view examination of the vehicle from the outside. Meanwhile, a narcotics-detection dog walked around the outside of each stopped vehicle.

ISSUE: Whether the checkpoint seizures without any suspicion were reasonable?

HELD: No. Previously approved suspicion-less checkpoints were approved for traffic reasons. See Michigan v. Sitz.

DISCUSSION: The Court has approved very few warrantless, suspicion-less searches and seizures. When it has done so, it was always with great uneasiness. For example, the Court has upheld brief, suspicion-less seizures at a fixed checkpoint designed to intercept illegal aliens, United States v. Martinez-Fuerte, and at a sobriety checkpoint aimed at removing drunk drivers from the road, Michigan v. Sitz. The Court has also suggested that a similar roadblock to verify drivers' licenses and registrations would be permissible to serve a highway safety interest. Delaware v. Prouse. These checkpoints were designed to serve purposes closely related to the problems of policing the border or the necessity of ensuring roadway safety.

Here, the Court was concerned that this checkpoint program's primary purpose was indistinguishable from the general interest in crime control. In determining whether individualized suspicion is required to accompany a seizure, the Court considers the nature of the interests threatened and their connection to the law enforcement practice. The Supreme Court is particularly reluctant to create exceptions to suspicion requirements where governmental authorities are primarily pursuing general crime control. As the Court has never approved a checkpoint program whose primary purpose was to detect evidence of ordinary criminal wrongdoing, they found the seizures here to be unreasonable.

Illinois v. Lidster
124 S. Ct. 885 (2004)

FACTS: Police officers set up a highway checkpoint a week after a fatal hit-and-run accident in an effort to garner information about the perpetrator. As each vehicle approached the checkpoint, an officer would stop the vehicle for 10 to 15 seconds, ask the occupants if they had any information about the offense, and hand the driver an informational flyer. The defendant drove his vehicle in an erratic manner toward the checkpoint. When stopped, the officer detected the odor of alcohol on the defendant's person, asked him to perform a field sobriety test, and arrested him for driving under the influence of alcohol.

ISSUE: Whether a checkpoint to gather information from potential witnesses to a crime violates the Fourth Amendment?

HELD: No. As the government minimized the disruptive features of a checkpoint seizure and had a compelling reason for seeking the information, their seizure was reasonable.

DISCUSSION: In City of Indianapolis v. Edmond, the Supreme Court held that traffic checkpoints designed for general crime control purposes were unconstitutional. However, the checkpoint in this case is appreciably different as its primary purpose was to seek information from the public about a serious crime that was committed by someone else.

Specialized governmental interests can justify traffic checkpoints that are not supported by individualized suspicion. See Michigan v. Sitz, 496 U. S. 444 (1990); United States v. Martinez-Fuerte, 428 U.S. 543 (1976). In a situation in which the government is seeking information from the public, individualized suspicion is irrelevant to the government's purpose. Also, such brief government-public encounters are unlikely to provoke anxiety or become intrusive. The government is not apt to ask questions that make members of the public uncomfortable or incriminate themselves. The checkpoint "advanced this grave public concern to a significant degree. The police appropriately tailored their checkpoint stops to fit important criminal investigatory needs. The stops took place about one week after the hit-and-run accident, on the same highway near the location of the accident, and at about the same time of night. And police used the stops to obtain information from drivers, some of whom might well have been in the vicinity of the crime at the time it occurred." Based on these factors, the Court held the minimal intrusion of the checkpoint was reasonable.

United States v. Biswell
406 U.S. 311, 92 S. Ct. 1593 (1972)

FACTS: The defendant was federally licensed to deal in sporting weapons. An ATF inspector inspected the defendant's books and requested entry into his locked gun storeroom. The defendant asked the inspector if he had a search warrant. The inspector explained that the Gun Control Act, 18 U.S.C. § 921, authorized such searches, known as compliance checks. After the search, the inspector seized two sawed-off rifles that the defendant was not licensed to possess.

ISSUE: Whether the search of the business premises was reasonable?

HELD: Yes. Compliance checks are reasonable because the defendant chose to engage in "pervasively regulated" business and to accept a federal license. In doing so, he acknowledged that his business records, firearms, and ammunition would be subject to effective inspection.

DISCUSSION: It is plain that inspections for compliance with the Gun Control Act, 18 U.S.C. § 923, pose only limited threats to the dealer's justifiable expectations of privacy. When a person chooses to engage in a "pervasively regulated" business such as dealing in firearms and accepts a federal license, he must do so with the knowledge that his business records, firearms, and ammunition will be subject to effective inspection. The government annually furnishes each licensee with a revised compilation of ordinances that describe his obligations and define the inspector's authority.

Wyman v. James
400 U.S. 309, 91 S. Ct. 381 (1971)

FACTS: A state's Aid to Families with Dependent Children (AFDC) program stressed "close contact" with beneficiaries, requiring home visits by caseworkers as a condition for assistance. This rule prohibited visitation with a beneficiary outside working hours, who is the primary source of information to welfare authorities as to eligibility for assistance, and forcible entry. The defendant, a beneficiary under the AFDC program, refused to permit a caseworker to visit her home after receiving several days' advance notice. She received notice that the government would consequently cancel her assistance.

ISSUE: Whether a home visitation is an unreasonable search and, when not consented to or supported by a warrant based on probable cause, would violate the defendant's Fourth Amendment rights?

HELD: No. The home visitation provided for by law concerning the AFDC program is a reasonable administrative tool and does not violate the Fourth Amendment.

DISCUSSION: The Court held, assuming that the home visit has some of the characteristics of a traditional search, the state's program was reasonable. The Court found multiple reasons for concluding the intrusion was reasonable. The home visit served the paramount needs of the dependent child, it enabled the state to detect that the intended objects of the benefits were receiving them, the program stressed privacy by not unnecessarily intruding on the beneficiary's rights in her home, provided the government with essential information not obtainable through other sources, was conducted, not by a law enforcement officer, but by a caseworker, and was not a criminal investigation. Finally, the consequence of refusal to permit a home visitation, which does not involve a search for violations, is not a criminal prosecution but only the cancellation of benefits.

Skinner v. Railway Labor Executives' Association
489 U.S. 602, 109 S. Ct. 1402 (1989)

FACTS: Upon learning that alcohol and drug abuse by railroad employees had caused or contributed to a number of significant train accidents, the Federal Railroad Administration (FRA) promulgated regulations under the Secretary of Transportation's authority to adopt safety standards for the industry. The regulations required blood and urine tests of covered employees to be conducted following certain major train accidents or incidents and authorized, but did not require, railroads to administer breath or urine tests to covered employees who violate certain safety rules. The Railway Labor Executives' Association and members of labor organizations brought suit in the Federal court to enjoin the regulations.

ISSUE: Whether the regulations were so overly intrusive as to constitute an unreasonable search of the employees' persons?

HELD: No. The government has a special need in protecting the public from intoxicated operators of the railway system that allows suspicion-less, warrantless searches.

DISCUSSION: Though those conducting the testing were not government employees, the Fourth Amendment is applicable to drug and alcohol testing mandated or authorized by the FRA regulations. A railroad that complies with the regulations does so by compulsion of sovereign authority and therefore must be viewed as an agent of the government. Similarly, even though some of the regulations do not compel railroads to test, such testing is not primarily the result of private initiative. Specific features of the regulations combine to establish that the government has actively encouraged, endorsed, and participated in the testing.

The collection and analysis of the samples required or authorized by the regulations constitute searches. The Court has long recognized that a compelled intrusion into the body for blood to be tested for alcohol content constitutes a search. Similarly, subjecting a person to the breath test authorized by the regulations is deemed a search, since it requires the production of "deep lung" breath and thereby implicates concerns about bodily integrity. Although the collection and testing of urine under the regulations do not entail any intrusion into the body, they nevertheless constitute searches since they intrude upon expectations of privacy as to medical information.

Even though the regulations compel searches, the mandate of the Fourth Amendment is that all searches be reasonable. The drug and alcohol tests regulations are reasonable under the Fourth Amendment even though there is no requirement of a warrant or a reasonable suspicion that any particular employee is impaired, since the government has a compelling interest that outweighs employees' privacy concerns. The government's interest in regulating the conduct of railroad employees engaged in safety-sensitive tasks in order to ensure the safety of the traveling public and of the employees themselves justifies prohibiting such employees from using alcohol or drugs while on duty or on call for duty. The proposed tests are not an unduly extensive imposition on an individual's privacy. The government's interest presents "special needs" beyond normal law enforcement that may justify departures from the usual warrant and probable-cause requirements.

National Treasury Employees Union v. Von Raab
489 U.S. 656, 109 S. Ct. 1384 (1989)

FACTS: The U.S. Customs Service, which has one of its primary enforcement missions the interdiction and seizure of illegal drugs smuggled into the country, implemented a drug-screening program requiring urinalysis tests of employees seeking transfer or promotion to a position that has either a direct involvement in drug interdiction or requiring the incumbent to carry firearms or

to handle "classified" material. Among other things, the program required that an applicant be notified that selection is contingent upon successful completion of drug screening, set forth procedures for collection and analysis of samples, and limited the intrusion on employee privacy. The test results could not be turned over to any other agency, including criminal prosecutors, without the employee's written consent.

ISSUE: Whether the Custom's program constituted and an unreasonable intrusion into its employees' privacy?

HELD: No. The program constituted a reasonable effort that met the government's special interests.

DISCUSSION: The program's intrusions are searches that must meet the reasonableness requirement of the Fourth Amendment. However, the government's testing program is not designed to serve the ordinary needs of criminal evidence collection. The purposes of the program are to deter drug use among those eligible for promotion to sensitive positions and to prevent the promotion of drug users to those positions. Therefore, the Court balanced the public interest in the program against the employee's privacy concerns. The government's compelling interest is that certain employees must be physically fit and have unimpeachable integrity and judgment. It also has a compelling interest in preventing the risk to the life of the citizenry posed by the potential use of deadly force by persons suffering from impaired perception and judgment.

A warrant is not required because of the balance of privacy and governmental interests in this case. Such a requirement would serve only to divert valuable agency resources from the Service's primary mission that would be compromised if warrants were necessary in connection with routine, yet sensitive, employment decisions. Furthermore, a search or inspection warrant would provide little or no additional protection of personal privacy, since the government's program defines narrowly and specifically the circumstances justifying testing and the permissible limits of such intrusions. Affected employees know that they must be tested, are aware of the testing procedures that the government must follow, and are not subject to the discretion of officials in the field. The government's testing of employees who apply for promotion to positions directly involving the interdiction of illegal drugs, or to positions that require the incumbent to carry firearms, is reasonable despite the absence of probable cause or some other level of individualized suspicion.

Ferguson v. City of Charleston
532 U.S. 67, 121 S. Ct. 1281 (2001)

FACTS: Staff members at a public hospital became concerned about an apparent increase in the use of cocaine by patients who were receiving prenatal treatment. The staff offered to cooperate with the city in prosecuting mothers whose children tested positive for drugs at birth. A task force made up of hospital representatives, police, and local officials developed a policy which set forth procedures for identifying and testing pregnant patients suspected of drug use.

ISSUE: Whether the policy-imposed drug tests constituted an unreasonable search?

HELD: Yes. These drug tests conducted for criminal investigatory purposes were searches and not justified without consent, exigency or a warrant.

DISCUSSION: A state hospital's performance of a diagnostic test to obtain evidence of a patient's criminal conduct for law enforcement purposes is a search. The interest in using the threat of criminal sanctions to deter pregnant women from using cocaine does not justify a departure from the general rule that a search is unconstitutional if not authorized by a valid warrant, or warrant exception.

This case differed from the four previous cases in which the Court considered whether comparable drug tests fit within the closely guarded category of constitutionally permissible suspicionless searches. Those cases employed a balancing test weighing the intrusion on the individual's privacy interest against the "special needs" of the government that supported the program. In previous cases, there was no misunderstanding about the purpose of the test or the potential use of the test results, and there were protections against the dissemination of the results to third parties. The critical difference lies in the nature of the "special need" asserted. In each of the prior cases, the "special need" was one divorced from the government's general law enforcement interest. Here, the policy's central feature was the use of law enforcement to coerce patients into substance abuse treatment.

While the ultimate goal of the program may well have been to get the women in question into substance abuse treatment and off drugs, the immediate objective of the searches was to generate evidence for law enforcement purposes in order to reach that goal. Given that purpose and given the extensive involvement of

law enforcement officials at every stage of the policy, this case did not fit within the closely guarded category of "special needs."

VIII. RELATED SEARCH AND SEIZURE ISSUES

Whren v. United States
517 U.S. 806, 116 S. Ct. 1769 (1996)

FACTS: Plain clothes drug detectives were patrolling a known drug-use area in an unmarked police car. The detectives noticed the defendant's vehicle because of its suspicious, though legal, activity. As the officers made a U-turn to get a closer look at the vehicle, it suddenly turned without signaling and sped off at an unreasonable speed. Within a short distance, the vehicle stopped behind other traffic at a red light. One plainclothes detective got out of the unmarked car, approached the vehicle, identified himself as a police officer, and directed the operator to park his vehicle. The officer acknowledged that the purpose of his direction was to get a better look at the suspect, not issue a traffic ticket. The officer observed two large plastic bags of what appeared to be crack cocaine in the defendant's hands. The detective arrested the defendant and the subsequent search of the vehicle yielded several types of illegal drugs.

ISSUE: Whether the officer's pretextual detention of a motorist for a traffic violation rendered the seizure unreasonable under the Fourth Amendment?

HELD: No. The reasonableness of the officer's seize turns on whether the officer had the authority to make the seizure.

DISCUSSION: The Supreme Court found probable cause that the defendant's vehicle was involved in a traffic violation. The Court also found that the plainclothes officers would not have stopped the vehicle but for their concern that the vehicle might be involved in drug activity. As a general matter, the Court held that stopping an automobile is reasonable if the police officer has probable cause to believe that a traffic violation has occurred. Therefore, the Court was only left to consider whether the officers' pretextual intent in stopping the vehicle converted an otherwise reasonable police activity into an unlawful stop. While previous decisions left no doubt that the officer's motive can invalidate inventory searches and administrative inspections, the Court has never held the officer's motives relevant in any other area. The Court held that "subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis." The seizure was lawful.

Arkansas v. Sullivan

532 U.S. 769, 121 S. Ct. 1876 (2001)

FACTS: A police officer stopped the defendant for speeding and for having an improperly tinted windshield. After a brief discussion with the defendant, the officer realized that he was aware of "intelligence on [the defendant] regarding narcotics." The officer noticed a weapon when the defendant opened the car door in an (unsuccessful) attempt to locate his registration and insurance papers. He placed the defendant under arrest for speeding, driving without his registration and insurance documentation, carrying a weapon, and improper window tinting with the expectation of conducting an inventory search of the defendant's vehicle. During an inventory of the vehicle's contents, the officer discovered a controlled substance. The defendant moved to suppress this evidence on the grounds that the arrest was a pretext and sham to search.

ISSUE: Whether the officer's subjective intent is relevant in determining the reasonableness of a seizure?

HELD: No. The officer's subjective intent is immaterial in determining whether a seizure is reasonable.

DISCUSSION: The Supreme Court reaffirmed its holding in Whren, in which it noted its "unwillingness to entertain Fourth Amendment challenges based on the actual motivations of individual officers." The subjective intentions of the officer making the seizure play no role in determining whether probable cause to affect a seizure exists.

The State Supreme Court also held that it may interpret the United States Constitution to provide greater protection than the Supreme Court. The Supreme Court also rejected this. The Court held that "a State is free as a matter of its own law to impose greater restrictions on police activity than those this Court holds to be necessary upon federal constitutional standards," it "may not impose such greater restrictions as a matter of federal constitutional law when this Court specifically refrains from imposing them [quoting Oregon v. Hass, 420 U.S. 714 (1975)]."

G. M. Leasing Corp. v. United States
429 U.S. 338, 97 S. Ct. 619 (1977)

FACTS: The IRS seized certain property of a corporation that was determined to be the alter ego of a delinquent taxpayer. Government agents

seized automobiles registered in the corporation's name, acting without warrants, on public streets, parking lots, and other open places. They also went to the defendant's office, a cottage-type building, and made a warrantless forced entry. Pending further information as to whether the cottage was an office or a residence, the agents made no initial seizures. However, two days later they again entered the cottage without a warrant and seized books, records, and other property.

ISSUES:

1. Whether the seizure of the defendant's property in public had to be accompanied by a warrant?

2. Whether the warrantless intrusion into corporate property was reasonable?

HELD:

1. No. The Fourth Amendment was not violated by the warrantless seizures of the corporation's automobiles, since the seizures took place on public streets, parking lots, or other open places, and did not involve any invasion of privacy.

2. No. The warrantless entry into the corporation's business office constituted an unconstitutional intrusion into privacy that violated the Fourth Amendment.

DISCUSSION: The Court held that the warrantless automobile seizures, which occurred in public streets, parking lots, or other open areas, involved no invasion of privacy and were constitutional. The property was validly subject to seizure and securing the property in public did not invoke any further privacy interest of the defendant's. However, the warrantless entry into the privacy of the defendant's office violated the Fourth Amendment, since "except in certain carefully defined classes of cases, a search of private property without proper consent is 'unreasonable' unless it has been authorized by a valid search warrant." The Fourth Amendment protects business premises, and corporations have Fourth Amendment rights.

Florida v. White
526 U.S. 559, 119 S. Ct. 1555 (1999)

FACTS: Police officers observed the defendant use his car to deliver cocaine. This subjected the car to forfeiture under a state statute that prohibited the use of motor vehicles in the transportation of contraband. Several months later, the officers arrested the defendant at his place of employment for an unrelated crime. His car was parked in the employee parking lot. The police

seized his car, without a warrant, because they believed it was subject to the forfeiture statute.

ISSUE: Whether the officers may make a warrantless seizure of a car subject to forfeiture in a public place?

HELD: Yes. Officers may make a warrantless seizure of a car subject to forfeiture in a public place. The automobile could be seized in a public place because it did not involve any greater intrusion than that authorized by law.

DISCUSSION: After the defendant used the automobile in violation of the forfeiture statute, the Court considered the automobile contraband. As the contraband was readily movable, the officers were reasonable in their warrantless seizure. This is to be distinguished from a seizure that takes place on private property as entry to make a seizure there constitutes an invasion of privacy. To seize an automobile on private property officers must obtain a search warrant.

Kolender v. Lawson
461 U.S. 352, 103 S. Ct. 1855 (1983)

FACTS: A state statute required persons who loiter or wander on the streets to identify themselves and to account for their presence when requested by a peace officer. The state appellate court construed the statute to require a person to provide "credible and reliable" identification when requested by a police officer who has reasonable suspicion of criminal activity sufficient to justify a Terry stop. The defendant had been arrested and convicted under the statute

ISSUE: Whether the state statute was constitutionally valid?

HELD: No. The statute, as drafted and as construed by the state court, was unconstitutionally vague on its face within the meaning of the Due Process Clause of the Fourteenth Amendment.

DISCUSSION: A state criminal statute that requires persons to identify themselves and to account for their presence when requested by a peace officer under circumstances that would justify a valid stop is unconstitutionally vague. This statute encourages arbitrary enforcement by failing to clarify what is contemplated by the requirement that a suspect provide a "credible and reliable identification." The statute vests virtually complete discretion in the hands of the police to determine whether the suspect has satisfied the statute and must be permitted to go on his way in the absence of probable cause to arrest. Therefore,

the statute is void-for-vagueness. The void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.

Hiibel v. Sixth Judicial Dist. Court
124 S. Ct. 1494 (2003)

FACTS: A police officer developed reasonable suspicion that the defendant was involved in an assault. He approached the defendant, explained he was investigating a crime, and asked to see the defendant's identification. The defendant refused to comply. In fact, the defendant refused 11 requests by the officer to provide identification. The officer arrested the defendant for violating a state law that prohibited "obstructing a public officer in discharging . . . any legal duty of his office." The legal duty that the defendant obstructed was a statute that provided "Any person so detained (Terry stop) shall identify himself, but may not be compelled to answer any other inquiry of any peace officer (underline added)."

ISSUE: Whether the state statute is constitutional in that it requires persons to identify themselves during a Terry stop?

HELD: Yes. "Stop and identify" statutes do not change the nature of the seizure itself and the information obtained typically satisfies a significant governmental interest.

DISCUSSION: The Fourth Amendment requires all seizures to be reasonable. Reasonableness is determined "by balancing its intrusion on the individual's Fourth Amendment interests against its promotion of legitimate government interests." Delaware v. Prouse, 440 U.S. 648 (1979). The Court held that the state statute satisfies this standard. The statute does not change the character, duration or location of the stop and the officer's demand for identity had an immediate purpose for the Terry stop.

The defendant's Fifth Amendment argument failed to persuade the Court because disclosure of his name presented no real danger of incrimination. The Court has previously determined that the Fifth Amendment privilege only covers those communications that are testimonial, compelled, and incriminating. The defendant's "refusal to disclose his name was not based on any articulated real and appreciable fear that his name would be used to incriminate him."

Zurcher v. Stanford Daily
436 U.S. 547, 98 S. Ct. 1970 (1978)

FACTS: During a civil disturbance, a group of demonstrators attacked a group of nine police officers. One officer was knocked to the ground and was struck repeatedly on the head. Another officer suffered a broken shoulder. All nine were injured. The officers were only able to identify two of their assailants, but one saw a photographer recording the assault. A special edition of the Stanford Daily, a student newspaper published at Stanford University, carried articles and photographs devoted to the protest. The photographs carried the byline of a Daily staff member and indicated that he had been in the area of the assault on the nine officers. A warrant was issued for an immediate search of the Daily's offices for negatives, film, and pictures showing the events at the demonstration.

ISSUE: Whether the newspaper's reasonable expectation of privacy is also protected by a First Amendment "freedom of the press" protection from the government intrusion?

HELD: No. Organizations involved in traditional First Amendment activities are not provided extra constitutional protections.

DISCUSSION: A search of the premises of a newspaper is not unreasonable within the meaning of the Fourth Amendment and does not violate the First Amendment. There is no constitutional requirement that when the innocent party of a search is a newspaper, criminal evidence must generally be secured through a subpoena *duces tecum* rather than a search warrant. Where the government seeks materials presumptively protected by the First Amendment, the warrant requirement of the Fourth Amendment should be administered to leave as little as possible to the discretion or whim of the officer in the field.

NOTE: This decision led to the enactment of 42 U.S.C. § 2000aa (Privacy Protection Act) that places some additional burdens on government officials attempting to secure a search warrant of premises traditionally operated in First Amendment activities.

THE FIFTH AMENDMENT

I. FIFTH AMENDMENT

Malloy v. Hogan
378 U.S. 1, 84 S. Ct. 1489 (1964)

FACTS: While on probation, the defendant was ordered to testify before a county referee conducting an investigation into gambling in the local area. He refused to answer any questions on the grounds the answers might incriminate him. The court held the defendant in contempt for failing to answer the questions.

ISSUE: Whether the Fifth Amendment's self-incrimination clause applies to state actions?

HELD: Yes. Through the Fourteenth Amendment, the states must abide by the legal principles of the Fifth Amendment's Self-Incrimination Clause.

DISCUSSION: The Court held that the Due Process Clause of the Fourteenth Amendment to the Constitution requires states to respect the self-incrimination principles of the Fifth Amendment. The defendant may refrain from answering questions that would support a confession or provide a link in the chain of evidence needed to prosecute. If it is evident from the question that responding could incriminate the suspect, a Fifth Amendment self-incrimination protection exists.

Brogan v. United States
522 U.S. 398, 118 S. Ct. 805 (1998)

FACTS: The defendant falsely answered "no" when federal agents asked whether he had illegally received any cash or gifts as a company officer. He was indicted on federal bribery charges and for making a false statement within the jurisdiction of a federal agency in violation of 18 U.S.C. § 1001 (false statements).

ISSUE: Whether the defendant has the right to assert a false defense to federal investigators?

HELD: No. Defendants have a constitutional right to remain silent during investigations, but no right to mislead investigations.

DISCUSSION: Although many Court of Appeals decisions had embraced the "exculpatory no" doctrine, the Court held that it is not supported by § 1001's plain language. By its terms, § 1001 covers "any" false statement including the use of the word "no" in response to a question. The defendant's argument that § 1001 does not criminalize simple denials of guilt proceeded from two mistaken premises: that the statute criminalizes only those statements that "pervert governmental functions," and that simple denials of guilt do not do so. The Fifth Amendment confers a privilege to remain silent. It does not confer a privilege to lie.

Mitchell v. United States
526 U.S. 314, 119 S. Ct. 1307 (1999)

FACTS: The defendant pled guilty to one count of conspiring to distribute five or more kilograms of cocaine. The quantity of drugs involved was crucial, because this amount would be used by the court in sentencing. The defendant reserved the right to challenge the drug quantity attributable to her under the conspiracy count. The trial court advised her the drug quantity would be determined at her sentencing hearing. During the sentencing proceeding, the government offered testimony from others involved in the conspiracy to establish both the number of transactions in which the defendant had participated, as well as the amount of cocaine she had sold. The defendant did not testify at the sentencing proceedings, relying instead on her attorney's attacks on the credibility of the government witnesses. The judge expressly stated that he was drawing an adverse inference from the defendant's failure to testify at her sentencing hearing.

ISSUE: Whether a defendant waives her privilege against self-incrimination in the sentencing phase of the case by pleading guilty?

HELD: No. A defendant who pleads guilty does not waive her Fifth Amendment right against self-incrimination in the sentencing phase of the case.

DISCUSSION: Nothing prevents a defendant from relying upon a Fifth Amendment privilege at a sentencing proceeding. "Treating a guilty plea as a waiver of the privilege at sentencing would be a grave encroachment on the rights of defendants." Otherwise, the government could compel a defendant to take the witness stand and under questioning, elicit information from the defendant that could contribute to an enhanced sentence. "Where a sentence has not yet been imposed, a defendant may have a legitimate fear of adverse

consequences from further testimony." The government retains the burden of presenting facts "relevant to the crime at the sentencing phase and cannot enlist the defendant in this process at the expense of the self-incrimination privilege." By holding her silence against her, the judge impermissibly interfered with the defendant's exercise of her Fifth Amendment right against compulsory self-incrimination.

A. FOURTH AMENDMENT VIOLATIONS

Dunaway v. New York
442 U.S. 200, 99 S. Ct. 2248 (1979)

FACTS: Following a robbery and murder, the police received information from an informant that implicated the defendant. Even with this information, the police did not have probable cause to arrest the defendant. Nevertheless, the defendant was illegally seized at a neighbor's house and brought to the police station. Once at the station, the officers placed the defendant in an interrogation room, where he was questioned after being given his Miranda rights. The defendant waived his rights and, within an hour of reaching the police station, made statements and drew sketches that implicated him in the crime.

ISSUE: Whether the statements and sketches made by the defendant are admissible if the police violate his Fourth Amendment rights?

HELD: No. The statements and sketches provided by the defendant were inadmissible, as they were the product of an illegal seizure under the Fourth Amendment.

DISCUSSION: The police effectively arrested the defendant when they seized him at his neighbor's house and took him to the police station for questioning. While the police did not characterize the seizure as an "arrest," there was no practical difference between how the defendant was treated and a traditional arrest. For that reason, the police were required to have probable cause. Because they did not, the defendant's seizure was in violation of the Fourth Amendment.

As for the statements, the Court considered "whether the connection between the unconstitutional police conduct and the incriminating statements and sketches obtained during the defendant's illegal detention were nevertheless sufficiently attenuated to permit their use at trial." Among the factors to be considered are the time between "the arrest and the confession, the presence of intervening circumstances, and, particularly, the purpose and flagrancy of the official misconduct." Applying these factors, the Court found a direct connection

between the illegal arrest of the defendant and the statements and sketches obtained from him. Less than two hours had elapsed between the arrest and the statements; there were no "intervening" circumstances; and the clear purpose of the officers in taking the defendant into custody was to interrogate him. Although the defendant was properly advised of his Miranda rights and his statements were given "voluntarily," these facts are not enough to break the direct causal connection between the illegal arrest and his statements.

New York v. Harris
495 U.S. 14, 110 S. Ct. 1640 (1990)

FACTS: Police officers had probable cause that the defendant committed a murder. They went to his apartment to arrest him without a warrant (illegal per Payton v. New York). After arriving, the officers knocked on the door, displayed their guns and badges, and entered the defendant's apartment without consent. Once inside, the police read the defendant his Miranda rights, which he waived. In response to the officers' questions, the defendant admitted his guilt in an oral statement and was arrested. He was taken to the station house and again informed of his Miranda rights. For a second time, the defendant admitted his guilt, this time in a signed, written statement. A third statement, this time videotaped, was later obtained from the defendant, even though he indicated that he wanted to end the interrogation. At trial, the defendant's first and third statements were suppressed, while his second statement was admitted into evidence. The defendant was convicted of second-degree murder.

ISSUE: Whether the defendant's second statement (the written statement taken at the police station) should have been suppressed because the police violated his Fourth Amendment protections?

HELD: No. Where the police have probable cause to arrest a suspect, the exclusionary rule does not bar the government's use of a statement made by the defendant outside of his home, even though the statement was obtained after an illegal entry into the home.

DISCUSSION: In Payton v. New York, the Court held that "the Fourth Amendment prohibits the police from affecting a warrantless and nonconsensual entry into a suspect's home in order to make a routine felony arrest." Here, while the police had probable cause to arrest the defendant, they entered his home without an arrest warrant and without his consent. Their entry into the defendant's home violated the Fourth Amendment. Any evidence obtained during this illegal entry is excluded as the fruit of an unreasonable search. However, "the rule in Payton was designed to protect the physical integrity of

the home; it was not intended to grant criminal suspects, like the defendant, protection for statements made outside their premises where the police have probable cause to make an arrest." In this case, the police had probable cause to arrest the defendant prior to entering his home. Because of this, the defendant "was not unlawfully in custody when he was removed to the station house, given Miranda warnings, and allowed to talk." While the entry into the defendant's home was illegal, his continued custody outside of the home was lawful. Accordingly, the statement taken at the station house "was not an exploitation of the illegal entry into the defendant's home" and the exclusionary rule should not apply.

Brown v. Illinois
422 U.S. 590, 95 S. Ct. 2254 (1975)

FACTS: The police arrested the defendant without probable cause and without a warrant, and under circumstances indicating that the arrest was part of an investigation. The defendant made two in-custody incriminating statements after he had been given the warnings prescribed by Miranda v. Arizona.

ISSUE: Whether being advised of his Miranda protections adequately removed the taint of the illegal arrest so as to allow the government the right to use the statements against the defendant at his trial?

HELD: It depends. Providing Miranda warnings to a suspect that was illegally arrested is only one factor in determining whether the "taint" of the illegal seizure has evaporated.

DISCUSSION: The Court held that the exclusionary rule serves different interests and policies under the Fourth and Fifth Amendment. The state court erred in adopting a per se rule that Miranda warnings in and of themselves break the causal chain between an illegal seizure (Fourth Amendment) and any subsequent statement (Fifth Amendment). Miranda warnings do not automatically protect an accused's Fourth Amendment rights. Thus, even if the statements in this case were found to be voluntary under the Fifth Amendment, the Fourth Amendment issue remained.

The question whether a confession is voluntary must be answered on the facts of each case. Though the Miranda warnings are an important factor in resolving the issue, other factors must be considered. Other factors trial courts should consider include the temporal proximity of the arrest to the confession, the intervening circumstances, and, particularly, the purpose and flagrancy of the official misconduct. The burden of showing admissibility of in-custody

statements of persons who have been illegally arrested rests with the government.

Kaupp v. Texas
538 U.S. 626, 123 S. Ct. 1843 (2003)

FACTS: Suspecting (but without probable cause) that the 17-year old defendant was involved in a murder, three police officers went to his home at 3 a.m. on a January morning. They were granted entry to the home by the defendant's father, and immediately went to the defendant's room, where they found him asleep. One of the officer's awoke the defendant with a flashlight, identified himself, and stated, "we need to go and talk." The defendant's reply was "Okay." The officers handcuffed the defendant and led him out of the house and into a patrol car. The defendant was shoeless and wearing only boxer shorts and a T-shirt. At not point did the officers tell the defendant that he was free to decline to go. The officers took the defendant to their interview room, removed the handcuffs, and advised him of his Miranda rights. After initially denying his involvement, the defendant then made incriminating statements.

ISSUE: Whether the defendant's illegal arrest tainted his subsequent statements about his involvement in the crime?

HELD: Yes. Unless the government can demonstrate that the statements were not directly the result of an illegal arrest, the statements are not considered voluntarily obtained.

DISCUSSION: The Court did not consider the defendant's statement "Okay" as a basis for a consensual encounter. It found that the "removal from one's house in handcuffs on a January night with nothing on but underwear for a trip to a crime scene on the way to an interview room at law enforcement headquarters" to be a seizure. Though the Supreme Court has authorized certain seizures on something less than probable cause, it has never approved the involuntary removal of a suspect from his home for investigative purposes absent probable cause or judicial authorization.

This illegal arrest requires suppression of any subsequent statements unless the government can demonstrate they were made as "an act of free will [sufficient] to purge the primary taint of the unlawful invasion" (citing Wong Sun v. United States, 371 U.S. 471 (1963). Significant factors to examine include the providing of Miranda warnings, the sequential nearness of the illegal arrest and the statement, intervening circumstances, and, especially, the reason and flagrancy of the government's misbehavior. In this case, the Court noted that only one of

these factors (providing of Miranda warnings) supported the government. The Court held previously that the provision of Miranda warnings does not, by itself, always break the misconduct chain. All other factors favored the defendant's position.

B. DUE PROCESS

Foster v. California
394 U.S. 440, 89 S. Ct. 1127 (1969)

FACTS: Following a robbery, the police presented a lineup to the only witness to the crime. The defendant was placed in the lineup with two other men. While the defendant was approximately six feet tall, the other two men were six to seven inches shorter. Additionally, the defendant wore a leather jacket that the witness stated was similar to one worn by the robber. When the witness was unable to identify the defendant as the robber, he requested, and was granted, the opportunity to speak with the defendant without the other line up participants. He was still unable to identify the defendant as the robber. Approximately 10 days later, a second lineup was held, this time with five men. The defendant was the only man in the second lineup that had also appeared in the first lineup. This time, the witness positively identified him as the robber. He was ultimately convicted of robbery.

ISSUE: Whether the lineup procedures were conducted in a manner that could produce mistaken identification so as to deny due process of law?

HELD: Yes. Judged by the "totality of the circumstances," the lineup was unnecessarily suggestive of the defendant as the criminal.

DISCUSSION: The Supreme Court held that the identification procedures utilized by the police violated the defendant's right to due process. Looking at the "totality of the circumstances" in this case, "the suggestive elements in this identification procedure made it all but inevitable that the witness would identify the defendant as the robber, whether or not he was in fact the man." In the first lineup, the defendant stood out from the other two men due to the physical differences. He was also the only participant in the lineup wearing clothing similar to that worn by the actual robber. Because the witness was still unable to identify the defendant, the police permitted a "one on one" confrontation between the witness and the defendant. "The practice of showing suspects singly to persons for the purpose of identification, and not as part of a lineup, has been widely condemned." The second lineup was unfairly suggestive because the defendant was the only participant who was also in the

first lineup. "In effect, the police repeatedly said to the witness, 'This is the man.' This procedure so undermined the reliability of the eyewitness identification so as to violate due process."

Stovall v. Denno
388 U.S. 293, 87 S. Ct. 1967 (1967)

FACTS: A doctor was stabbed to death in his home. His wife was also stabbed by the attacker, but survived. She underwent major surgery to save her life, but it was unclear whether she would survive. The police found evidence at the crime scene that led them to the defendant, who was arrested the day after the assault. On the next day, the police arranged to have the defendant brought to the injured woman's hospital room to see if she could identify the defendant as the murderer. During this identification process, the defendant was handcuffed to one of the five police officers accompanying him, and was the only African-American in the room. The defendant was also required to say some words for the purpose of voice identification. The victim identified the defendant as the murderer.

ISSUE: Whether the identification procedures utilized by the police were so unnecessarily suggestive so as to violate the defendant's due process rights?

HELD: No. Judged by the "totality of the circumstances," the identification procedures were not so unnecessarily suggestive as to violate the defendant's due process rights.

DISCUSSION: "The practice of showing suspects singly to persons for the purpose of identification, and not as part of a lineup, has been widely condemned." Nonetheless, whether identification procedures constitute a due process violation requires the Court to look to the "totality of the circumstances" surrounding the identification. In this case, it was clear that the procedures utilized by the police were necessary. The victim was the only person who could either identify the defendant or exonerate him for the crime. "Her words, and only her words, could have resulted in freedom for the defendant. The hospital was not far from the courthouse and jail. No one knew how long the victim might live. Faced with the responsibility of identifying the attacker, with the need for immediate action and with the knowledge that the victim could not visit the jail, the police followed the only feasible procedure and took the defendant to the hospital room."

Neil v. Biggers
409 U.S. 188, 93 S. Ct. 375 (1972)

FACTS: The defendant was convicted of rape. Some of the evidence consisted of testimony concerning the victim's visual and voice identification at a stationhouse show-up that occurred seven months after the crime. The victim had been in the presence of the assailant for a significant amount of time and had several opportunities to directly observe him both indoors and outdoors. She testified that she had "no doubt" that the defendant was her assailant. She had previously given the police a description of her assailant that was confirmed by a police officer. The victim had not identified any of the others who were presented at previous show-ups, lineups, or through photographs. The police asserted that they used the show-up technique because they had difficulty in finding other individuals generally fitting the defendant's description as given by the victim for a lineup.

ISSUE: Whether the show-up was impermissibly suggestive of the defendant's identification as the perpetrator, to deprive him of his right to due process?

HELD: No. While the station-house identification may have been suggestive, under the "totality of the circumstances," the victim's identification of the defendant was reliable.

DISCUSSION: The Supreme Court held that the identification of the defendant was reliable. Eyewitness identification at trial following a pretrial identification will be set aside only if the pretrial identification procedure was so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification. The factors to be considered in evaluating the likelihood of misidentification include:

1. the opportunity of the witness to view the criminal at the time of the crime

2. the witness' degree of attention

3. the accuracy of the witness' prior description of the criminal

4. the level of certainty demonstrated by the witness at the confrontation

5. the length of time between the crime and the confrontation.

Based on these factors, the witness' identification of the defendant was reliable.

Simmons v. United States
390 U.S. 377, 88 S. Ct. 967 (1968)

FACTS: Two men robbed a bank. Five bank employees witnessed the robbery, and on that same day gave the FBI written statements. The next morning FBI agents obtained and showed separately to each of the witnesses some snapshots consisting mostly of group pictures of the defendants, and others. Each witness identified the defendant as one of the robbers from the pictures.

ISSUE: Whether the use of photographs to identify the defendant as the culprit was a deprivation of his due process rights?

HELD: No. The use of photographs is an effective way to identify perpetrators of crime if done in a fair manner.

DISCUSSION: The Court came to this determination in light of the "totality of the circumstances." Each case involving pretrial identification by photographs has to be considered on its own facts. The Court will set aside convictions based on eyewitness identification at trial on the grounds of prejudice only if the pretrial identification procedure was so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification. In this case, the use of photographic identification by the FBI was necessary: a serious felony had been committed; the perpetrators were at large; the inconclusive clues led to the defendant; and the agents had to determine swiftly if they were on the right track.

Manson v. Brathwaite
432 U.S. 98, 97 S. Ct. 2243 (1977)

FACTS: An undercover police officer purchased heroin from a seller through the open doorway of an apartment. The transaction took two or three minutes while the officer stood within two feet of the seller in a hallway illuminated by natural light. The undercover officer described the seller to another police officer, who suspected the defendant based on this description. Later, the suspecting officer left a police photograph of the defendant in the undercover officer's office. He viewed it two days later and identified it as the

picture of the seller. The defendant was charged with, and convicted of, possession and sale of heroin.

ISSUE: Whether the photograph tainted the undercover officer's identification of the defendant?

HELD: No. Based on the "totality of the circumstances" the eyewitness' identification of the defendant was reliable.

DISCUSSION: Reliability is the linchpin in determining the admissibility of identification testimony for identifications occurring prior to and after arrest. Reliability depends on the "totality of the circumstances." The factors to be weighed against the corrupting effect of the suggestive procedure in assessing reliability are whether the witness had an opportunity to view the criminal at the time of the crime, the witness' degree of attention, the accuracy of his prior description of the criminal, the level of certainty demonstrated at the confrontation, and the time between the crime and the confrontation. Under the "totality of the circumstances" in this case, there does not exist a very substantial likelihood of irreparable misidentification. A trained police officer with a sufficient opportunity to view the suspect, who accurately described him, positively identified the defendant's photograph as that of the suspect, and made the photograph identification only two days after the crime is reliable.

C. TESTIMONIAL EVIDENCE

Schmerber v. California
384 U.S. 757, 86 S. Ct. 1826 (1966)

FACTS: The defendant was the apparent driver involved in an accident. At the direction of a police officer, and without the defendant's consent, a physician at the hospital drew blood from the defendant's body. The chemical analysis of this sample indicated that the defendant was intoxicated. At trial, the chemical analysis was admitted into evidence against the defendant over his objection. Specifically, the defendant claimed that the withdrawal of the blood violated a variety of constitutional rights, including his Fifth Amendment privilege against compelled self-incrimination.

ISSUE: Whether the withdrawal of the defendant's blood, as well as the admission of the chemical analysis, violated the defendant's Fifth Amendment privilege against compelled self-incrimination?

HELD: No. The defendant's blood does not constitute a testimonial admission.

DISCUSSION: The Court held that the Fifth Amendment privilege against self-incrimination "protects an accused only from being compelled to testify against himself, or otherwise provide the State with evidence of a testimonial or communicative nature, and that the withdrawal of blood and use of the analysis in question did not involve compulsion to these ends." The right against self-incrimination protects a suspect's communications, in whatever form they may take. However, the privilege does not protect a suspect from providing "real or physical evidence," such as fingerprints, DNA or blood for identification.

United States v. Dionisio
410 U.S. 1, 93 S. Ct. 764 (1973)

FACTS: A federal grand jury subpoenaed various individuals, including the defendant, to obtain voice exemplars to compare them to previously recorded conversations. The defendant refused to comply, claiming that providing the voice exemplars would violate his Fifth Amendment right to be free from compelled self-incrimination.

ISSUE: Whether compelling a defendant to provide voice exemplars violated the defendant's Fifth Amendment right against self-incrimination?

HELD: No. The sound of a suspect's voice is not testimonial in nature and is not protected by the defendant's Fifth Amendment right against self-incrimination.

DISCUSSION: The privilege against self-incrimination "offers no protection against compulsion to submit to fingerprinting, photographing, or measurements, to write or speak for identification, to appear in court, to stand, to assume a stance, to walk, or to make a particular gesture." The privilege prohibits compelling communications or testimony. In this case the voice recordings were to be used solely to measure the physical properties of the witnesses' voice, not for the communicative content of what was said.

United States v. Mara
410 U.S. 19, 93 S. Ct. 774 (1973)

FACTS: A federal grand jury twice subpoenaed the defendant to appear and provide handwriting and printing exemplars for comparison with documents already in the grand jury's possession. The defendant refused, asserting that requiring him to produce the exemplars would violate his Fifth

Amendment protections. Because he had not seen the documents in the grand jury's possession, the defendant alleged that the government might actually be seeking "testimonial" communications (i.e., the contents of the handwriting exemplars, as opposed to the physical characteristics of his writing) in violation of his Fifth Amendment rights.

ISSUE: Whether compelling a defendant to provide handwriting exemplars violates the defendant's Fifth Amendment right against self-incrimination?

HELD: No. Compelling a defendant to provide handwriting exemplars does not require the defendant to make a communicative assertion.

DISCUSSION: The Supreme Court emphasized that the Fifth Amendment protection against self-incrimination did not protect the production of handwriting exemplars. "If the Government should seek more than the physical characteristics of the witness' handwriting - if, for example, it should seek to obtain written answers to incriminating questions or a signature on an incriminating statement - then, of course, the witness could assert his Fifth Amendment privilege against compulsory self-incrimination." Here, the grand jury was not concerned with the contents of the writings, but rather with the physical characteristics of the individual writer.

1. Compelled

Brown v. Mississippi
297 U.S. 278, 56 S. Ct. 461 (1936)

FACTS: The defendants were convicted of murder. The only evidence offered against the defendants were confessions obtained from them through various forms of torture. For example, one of the defendants was repeatedly hung by the neck from a tree in an attempt to get him to confess. He ultimately confessed to the crime only after he was beaten and threatened with continued beatings. Two other defendants confessed only after they were laid over chairs and had their backs cut to pieces with a leather strap.

ISSUE: Whether the defendants' convictions, which rested solely upon confessions secured by violence, were void under the due process clause of the Fourteenth Amendment?

HELD: Yes. The convictions were not obtained in a fundamentally fair way.

DISCUSSION: While states are allowed some latitude in regulating the procedures of their courts, they are still required to comply with the due process clause of the Fourteenth Amendment. "The rack and torture chamber may not be substituted for the witness stand." In this case, the methods used by the police to obtain the confessions were so egregious that they deprived the defendants of their right to the due process of law guaranteed by the Fourteenth Amendment. As stated by the Court: "It would be difficult to conceive of methods more revolting to the sense of justice than those taken to procure the confessions" in this case.

Andresen v. Maryland
427 U.S. 463, 96 S. Ct. 2737 (1976)

FACTS: The defendant, an attorney, was being investigated for fraud. Officers obtained a search warrant to search his office for business records containing statements made by the defendant. Various business records, some of which contained statements made by the defendant, were found and used in a criminal trial against him.

ISSUE: Whether the defendant's business records were obtained in violation of his Fifth Amendment right to be free from self-incrimination?

HELD: No. The government neither compelled the defendant to make the statements nor compelled him to bring the statements to the courthouse for use against him.

DISCUSSION: The Fifth Amendment serves as a prohibition against compelling individuals to bear witness against himself or herself. The Court noted that the defendant was not compelled to do or say anything. The government did not compel the defendant to create the records, bring the records to the criminal courtroom, or identify the records as his property. The Court quoted Mr. Justice Holmes in stating, "A party is privileged from producing the evidence but not from its production," cited in Johnson v. United States, 228 U.S. 457 (1913).

United States v. Doe
465 U.S. 605, 104 S. Ct. 1237 (1984)

FACTS: The defendant owned several sole proprietorships. During a grand jury investigation of corruption in the awarding of government contracts, the grand jury served subpoenas on the defendant, seeking the production of voluntarily prepared business records of the sole proprietorships. The defendant moved to quash the subpoenas on two grounds. First, he claimed that the subpoenaed records were privileged under the Fifth Amendment. Second, he claimed that the act of producing the requested documents was privileged under the Fifth Amendment.

ISSUES:

1. Whether voluntarily created business records are protected by the Fifth Amendment privilege against self-incrimination?

2. Whether the act of compelling the production of the requested business records is protected by the Fifth Amendment privilege against self-incrimination?

HELD:

1. No. Business records that are voluntarily created are not protected by the Fifth Amendment privilege against self-incrimination as they are not compelled.

2. Yes. The act of compelling the production of requested business records (by subpoena) is protected by the Fifth Amendment privilege against self-incrimination.

DISCUSSION: The Fifth Amendment protects the defendant only from compelled self-incrimination. However, "where the preparation of business records is voluntary, no compulsion is present." In other words, "if the party asserting the Fifth Amendment privilege has voluntarily compiled the document, no compulsion is present and the contents of the document are not privileged."

While the contents of the subpoenaed business records are not privileged under the Fifth Amendment, the act of producing the records is privileged. By producing the documents requested in the subpoena, the defendant is admitting the document's existence, that the defendant has possession or control over the document, and that the documents being turned over are authentic. These acts "may have testimonial aspects and an incriminating effect." However, the government could compel the defendant to produce the documents by providing him with "use" immunity, pursuant to 18 U.S.C. §§ 6002-6003, or secure them through the use of a search warrant.

United States v. Hubbell

530 U.S. 27, 120 S. Ct. 2037 (2000)

FACTS: The defendant pled guilty to charges of mail fraud and tax evasion arising out of his practice as a member of a law firm. The plea agreement required the defendant to provide the prosecution with "full, complete, accurate, and truthful information" about matters relating to another investigation. The subsequent prosecution of the defendant resulted from the government's determination that the defendant had violated that plea agreement. While incarcerated, the defendant was served with a grand jury subpoena calling for the production of eleven broad categories of documents. Subsequently, the defendant appeared before the grand jury and invoked his Fifth Amendment privilege against self-incrimination. In response to questioning, the defendant refused "to state whether there [were] documents within [his] possession, custody, or control responsive to the subpoena." He was then granted "use" immunity under 18 U.S.C. § 6002, and produced documents related to the subpoena. The contents of the documents provided the prosecutor with the information that led to a second prosecution of the defendant.

ISSUES:

1. Whether the Fifth Amendment privilege against self-incrimination protects a witness from being compelled to disclose the existence of incriminating documents that the government is unable to describe with reasonable particularity?

2. Whether "use" immunity under 18 U.S.C. § 6002 prevents the government from using information produced by a witness pursuant to a grant of immunity in preparing criminal charges against that witness?

HELD:

1. Yes. The constitutional privilege against self-incrimination protects the target of a grand jury investigation from being compelled to answer questions designed to elicit information about the existence of sources of potentially incriminating evidence.

2. Yes. The "derivative use" of the testimonial act of producing the records is covered by the immunity granted under 18 U.S.C. § 6002.

DISCUSSION: The Court held that "the act of production" itself may implicitly communicate "statements of fact." By "producing documents in compliance with a subpoena, the witness would admit that the papers existed, were in his possession or control, and were authentic." Here, the answers to the

prosecutor's questions and the act of production could certainly communicate information about the existence, custody, and authenticity of the documents. In addition, the Fifth Amendment protection extends to compelled statements that lead to the discovery of incriminating evidence, even though the statements themselves are not incriminating and are not introduced into evidence. It is undeniable that providing a catalog of existing documents fitting within any of the eleven broadly worded subpoena categories could provide a prosecutor with a "lead to incriminating evidence" or "a link in the chain of evidence needed to prosecute." Additionally, it was necessary for the defendant to make extensive use of "the contents of his own mind" in identifying the hundreds of documents responsive to the requests in the subpoena.

United States v. Balsys
524 U.S. 666, 118 S. Ct. 2218 (1998)

FACTS: The Office of Special Investigations (OSI), which was created to institute denaturalization and deportation proceedings against suspected Nazi war criminals, began investigating the defendant to determine if he had participated in Nazi persecution during World War II. If proven, this participation could have resulted in the defendant being deported. Pursuant to a subpoena issued by OSI, the defendant appeared to testify at a deposition, but refused to answer questions about his wartime service and his immigration to the United States. He invoked his Fifth Amendment right against compelled self-incrimination, claiming that his answers could subject him to criminal prosecution by Lithuania, Israel, and Germany.

ISSUE: Whether an individual can claim the Fifth Amendment privilege against self-incrimination based upon fear of prosecution by a foreign nation?

HELD: No. The Fifth Amendment privilege against self-incrimination may only be based upon fear of prosecution within the United States.

DISCUSSION: The self-incrimination clause of the Fifth Amendment provides a privilege against self-incrimination in "any criminal case." This means that an individual has a right against compelled self-incrimination if what he says "could be used in a criminal proceeding against him brought by the Government of either the United States or one of the States." However, in this case, the defendant did not invoke the privilege based upon a fear of prosecution by the United States or one of the states. The Court held that possible criminal prosecution by a foreign government is not subject to our constitutional

guarantees and, therefore, is beyond the scope of the Fifth Amendment's protections.

2. Holder of the Privilege

Braswell v. United States
487 U.S. 99, 108 S. Ct. 2284 (1988)

FACTS: The defendant incorporated a business in which he was the sole shareholder. The defendant moved to quash a grand jury subpoena for the corporate records on the basis that the act of producing the records would violate his Fifth Amendment right to be free from self-incrimination.

ISSUE: Whether a sole shareholder of a corporation, as custodian of the records, may resist a subpoena for such records on the ground that the act of production would incriminate him in violation of his Fifth Amendment rights?

HELD: No. Corporations do not enjoy the Fifth Amendment self-incrimination protection.

DISCUSSION: Corporations do not enjoy a Fifth Amendment privilege. The Fifth Amendment protects only private papers and records. However, the act of producing the documents may not be used against the individual custodian, only against the corporation.

Couch v. United States
409 U.S. 322, 93 S. Ct. 611 (1973)

FACTS: The defendant turned over various business and tax records to her accountant for several years. The IRS summoned the accountant to bring these records to a court proceeding. The accountant, ignoring the summons, turned the records over to the defendant's attorney.

ISSUE: Whether a defendant may invoke a Fifth Amendment privilege against self-incrimination to prevent the production of her business and tax records in possession of her accountant?

HELD: No. Since the defendant was not in possession of the records, she could not object to the production by her accountant. The defendant was not compelled to do or say anything.

DISCUSSION: The Fifth Amendment privilege is a personal privilege that adheres to the person and not to the information that may incriminate. A person cannot be compelled to produce information but they cannot prevent the production of incriminating documents that are in the hands of others through the self-incrimination protection.

Doe v. United States
487 U.S. 201, 108 S. Ct. 2341 (1988)

FACTS: The defendant was the target of a federal grand jury investigation. He was subpoenaed to produce records concerning accounts in foreign banks. However, the defendant invoked his Fifth Amendment privilege against self-incrimination when questioned about the existence or location of additional bank records. The foreign banks refused to comply with subpoenas to produce any account records without the customer's consent. The government sought a court order directing the defendant to sign a consent form authorizing the foreign banks to disclose the defendant's records.

ISSUE: Whether a court can compel a target of a grand jury investigation to authorize foreign banks to disclose records of his accounts?

HELD: Yes. However, the court may not require the defendant to explain the contents of these records or acknowledge their existence.

DISCUSSION: The Supreme Court held that a court order compelling the target of the grand jury investigation to authorize foreign banks to disclose records of his accounts, without identifying those documents or acknowledging their existence does not violate the target's Fifth Amendment privilege against self-incrimination. The consent form itself was not testimonial in nature. In order to be "testimonial," an accused's oral or written communication or act of production must itself, explicitly or implicitly, relate a factual assertion or disclose information. The privilege may be asserted only to resist compelled explicit or implicit disclosures of incriminating information.

Fisher v. United States
425 U.S. 391, 96 S. Ct.1569 (1976)

FACTS: In each of these cases, the defendants were under investigation for civil or criminal liability under the federal income tax laws. The defendants retrieved documents prepared by their respective tax accountants and

transferred the documents to their respective attorneys to assist in defense of these investigations. Subsequently, the IRS served summonses on the attorneys directing them to produce the documents. The attorneys refused to comply. The government then brought enforcement actions.

ISSUE: Whether documents delivered by the defendant to his attorney are protected by the self-incrimination clause?

HELD: No. Compelled production of the documents from the attorneys does not implicate whatever Fifth Amendment privilege the defendants may have enjoyed themselves from being compelled to produce the documents.

DISCUSSION: The Fifth Amendment may have barred a subpoena compelling the defendants to produce the documents while the documents were in their possession. However, enforcing the summons against another does not violate this privilege. Such action in no way would compel the defendant to be a "witness" against himself. See Couch v. United States. The fact that the attorneys were agents of the taxpayers does not change this result.

The attorney-client privilege applies to documents in the hands of a client that would have been privileged in the hands of the attorney. However, the Fifth Amendment would not protect the defendants from producing these documents. The government could have secured them through the use of a search warrant. Production of the documents themselves does not involve incriminating testimony. The Fifth Amendment does not prohibit the compelled production of all incriminating evidence. It only prohibits compelling the accused to make a testimonial communication that is incriminating. However incriminating the contents of the documents might be, the act of delivering them to the government under order does not involve testimonial self-incrimination.

Bellis v. United States
417 U.S. 85, 94 S. Ct. 2179 (1974)

FACTS: During the defendant's tenure as a law partner in Bellis, Kolsby & Wolf, the partnership's financial records were maintained in his office. After the partnership dissolved, the defendant left to join another law firm. The partnership records remained in the partnership's previous location for approximately three years. Later, the defendant's secretary, acting at the defendant's request, removed the records and brought them to his new office. Approximately two months later, the defendant was subpoenaed by a grand jury and ordered to appear and testify and to bring with him "all partnership records currently in your possession for the partnership of Bellis, Kolsby & Wolf for the

years 1968 and 1969." The defendant refused to produce the partnership's records, claiming his Fifth Amendment right against self-incrimination.

ISSUE: Whether a defendant who holds partnership records in a representative capacity has a Fifth Amendment privilege against self-incrimination to avoid producing those partnership records, where the records might incriminate him personally?

HELD: No. The self-incrimination clause is a personal right, not one belonging to an artificial entity such as a partnership.

DISCUSSION: "It has long been established that the Fifth Amendment privilege against compulsory self-incrimination protects an individual from compelled production of his personal papers and effects as well as compelled oral testimony." This protection may extend to the business records of a sole proprietor or sole practitioner. However, the Fifth Amendment right against compulsory self-incrimination is a purely private right that cannot be invoked by any artificial entity, such as a corporation or a partnership. "It follows that an individual acting in his official capacity on behalf of the organization may likewise not take advantage of his personal privilege." Instead, "the papers and effects which the privilege protects must be the private property of the person claiming the privilege, or at least in his possession in a purely personal capacity." This rule applies even where the records sought might personally incriminate the individual who holds them provided that the records sought are those of the organization and not the individual. Here, it was clear, based on nature of the records sought, that they constituted records of the partnership, not the personal records of the defendant. The defendant had no ownership rights in these records, and could not use the records for anything other than partnership purposes.

D. VOLUNTARY

Rogers v. Richmond
365 U.S. 534, 81 S. Ct. 735 (1961)

FACTS: The defendant was arrested for robbery. The officers found a weapon on him that was connected to a murder. The defendant denied committing the murder for the first six hours of the interview. Then, within the hearing of the defendant, a police officer pretended to place a phone call directing other officers to prepare to bring the defendant's wife in for questioning. The defendant remained silent from that point on until he was told by the police officer that his wife was about to be taken into custody. The defendant then confessed. The next day, the local coroner directed that the

defendant be held incommunicado at the jail. When the defendant's lawyer tried to visit the defendant, he was turned away. The defendant was then taken to the coroner's office where he was placed under oath and confessed again. In ruling on the admissibility of the defendant's confessions, the trial judge took into account the probable truth or falsity of the confessions in determining whether or not they had been voluntarily given. The statements were admitted into evidence and the defendant was convicted of murder.

ISSUE: Whether the correct legal standard in determining the admissibility of the defendant's statements is the likelihood of truthfulness?

HELD: No. In determining the voluntariness of a confession, the correct legal standard is whether the police conduct was such as to overbear the defendant's will to resist.

DISCUSSION: The Court stated that the correct standard is "whether the behavior of the State's law enforcement officials was such as to overbear the petitioner's will to resist and bring about confessions not freely self-determined...." This question must be answered without regard to whether the defendant was speaking truthfully when he made the confession. The standard used by the trial judge in this case was improper. The Court reiterated its holdings in previous decisions that "convictions following the admission into evidence of confessions which are involuntary, i.e., the product of coercion, either physical or psychological, cannot stand." This is not because the confessions are unlikely to be true, but because due process of law requires the State to establish a defendant's guilt "by evidence independently and freely secured, and may not by coercion prove its charge against an accused out of his own mouth."

Lynumn v. Illinois
372 U.S. 528, 83 S. Ct. 917 (1963)

FACTS: The police watched a confidential informant enter the defendant's apartment where he allegedly engaged in a narcotics deal with the defendant. Police officers arrested the defendant outside her apartment for selling marijuana and took her back inside to question her. While inside the apartment, the defendant initially denied she had sold marijuana to the man. Later, she confessed to the crime after being told by the police that state aid to her infant children would be cut off and her children taken from her if she did not

"cooperate." Specifically, the defendant was told that she "had better do what she was told if she wanted to see her kids again." These threats were made while three police officers and the confidential informant surrounded the defendant. The defendant had no previous criminal experiences; had no friend or adviser to whom she could speak; and had no reason to believe that the police did not have the power to carry out the threats they were making. The confession was used to convict the defendant at her trial.

ISSUE: Whether the defendant's statement was voluntarily given?

HELD: No. The police cannot use statements obtained by overcoming the defendant's will to remain silent through coercion.

DISCUSSION: In determining whether a defendant is "voluntarily" giving a statement, the question is "whether the defendant's will was overborne at the time he confessed." The statement must be "the product of a rational intellect and a free will." Looking at the totality of the circumstances, the Court held that the statement given by the defendant was not given voluntarily.

Colorado v. Connelly
479 U.S. 157, 107 S. Ct. 515 (1986)

FACTS: The defendant approached a police officer and stated that he had committed murder and wanted to talk about it. The officer advised the defendant of his Miranda rights. The defendant said that he understood his rights but still wanted to talk about the murder. Shortly thereafter, a detective arrived and again advised the defendant of his rights. After the defendant responded that he had traveled all the way from Boston to confess to the murder, he was taken to police headquarters. He then confessed and pointed out the exact location of the murder. Subsequent psychiatric evaluation revealed that the defendant was following the "voice of God" in confessing to the murder.

ISSUE: Whether the defendant's waiver of his Miranda rights and his statements were coerced?

HELD: No. Coercion must originate in the government's actions.

DISCUSSION: Voluntariness of a waiver of the privilege of the Fifth Amendment depends upon absence of police overreaching. The sole concern of the Fifth Amendment is governmental coercion. The Fifth Amendment privilege is not concerned with moral and psychological pressures to confess coming from sources other than government coercion. The statements made by the defendant

are admissible. The government need prove only by a preponderance of the evidence that the defendant knowingly, voluntarily and intelligently waived his Miranda rights.

Arizona v. Fulminante
499 U.S. 279, 111 S. Ct. 1246 (1991)

FACTS: After the defendant's stepdaughter was murdered in Arizona, he left the state. He was convicted of an unrelated crime and was incarcerated in New York. There, Sarivola, a fellow inmate who was also a paid informant of the FBI, befriended him. Sarivola told the defendant that he knew the defendant was getting harsh treatment from other inmates because of a rumor he was a child murderer. Sarivola offered him protection in exchange for the truth. The defendant admitted to Sarivola that he had killed his stepdaughter, and he provided details. The defendant made the same confession to Sarivola's wife. Subsequently, he was indicted for murder.

ISSUE: Whether the defendant's confession coerced?

HELD: Yes. The confession was the result of mental coercion.

DISCUSSION: The Court reasoned that the defendant was motivated to confess by a fear of physical violence, absent protection from Sarivola. The Court found that a credible threat of physical violence is sufficient to support a finding that the subsequent confession is unreliable.

Beecher v. Alabama
408 U.S. 234, 92 S. Ct. 2282 (1972)

FACTS: The defendant made a series of incriminating statements after being threatened by various government authorities. In a 1967 decision, the Supreme Court rejected the use of those statements by the government from the point of his arrest to written statements he made five days later. The Court held that the "stream of events" was such that the defendant did not make the statements voluntarily. Nonetheless, the government retried the defendant with the use of statements the defendant made to an attending physician. One hour after his arrest, the defendant was taken to a hospital for treatment for a gunshot wound, which required two large morphine injections. Within the presence of the attending physician but not the police officers, the defendant made several incriminating statements, presumably while under the influence of the morphine injections.

ISSUE: Whether the statements made to the attending physician were made voluntarily?

HELD: No. The defendant's statements were made during the "stream of events" that had been prompted by government coercion.

DISCUSSION: The Court held that the statements made to the attending physician were a part of the "stream of events" that was involuntary in nature. This "stream of events" was so infected with gross coercion that the Court did not feel comfortable that any statements made under these circumstances were voluntary. The Due Process Clause demands such inherently untrustworthy evidence to be excluded from the government's use.

Haynes v. Washington
373 U.S. 503, 83 S. Ct. 1336 (1963)

FACTS: The defendant was arrested for robbery. The police took him to the station house and questioned him about the crime. The defendant asked to call either his wife or his attorney. The police officers told him that he could do so once he had "cooperated." The defendant then made several incriminating statements.

ISSUE: Whether the defendant's statements were voluntarily made?

HELD: No. The defendant's statements were made in an atmosphere dominated by substantial coercion.

DISCUSSION: The test of admissibility of a suspect's statement is whether it was made freely, voluntarily and without compulsion or inducement of any sort. The issue of coercion or improper inducement can only be determined by examining "all the attendant circumstances," or, the "totality of the circumstances." As the suspect had initially resisted giving any kind of statement, and only made statements after repeated denials of his request to contact his wife or attorney, the Court held that the defendant did not voluntarily make the statements.

Townsend v. Sain
372 U.S. 293, 83 S. Ct. 745 (1963)

FACTS: The defendant, a confirmed heroin addict, was arrested for his suspected involvement in a murder. When questioned, he denied any involvement. Several hours later the defendant complained of withdrawal sickness. A police physician was summoned and administered a dosage of Phenobarbital and hyoscine. After the doctor left, a police officer and a state's attorney questioned the defendant. The defendant gave a complete confession to the murder. The defendant later alleged that these drugs had the effect of a "truth serum." The officers testified that they were unaware of the potential effects of the doctor's treatment.

ISSUE: Whether the confession was voluntarily made?

HELD: No. Courts must consider the mental state of a person that makes statements before considering their voluntariness.

DISCUSSION: Statements are not voluntary if the individual's will is overborne, or not the product of his rational intellect or free will. The Court stated that coercion could take place either through physical or psychological pressure. Factors that play a role in determining psychological pressure include the mental competency, the youth or inexperience, or the effects drugs have on the suspect. It was immaterial to the Court that the officers did not know of the potential "truth serum" characteristics of the medication administered to the suspect. "Any questioning by officers which in fact produces a confession which is not the product of a free intellect renders that confession inadmissible."

Lego v. Twomey
404 U.S. 477, 92 S. Ct. 619 (1972)

FACTS: The defendant was arrested for and confessed to committing armed robbery. The confession was included at trial. The defendant denied making the confession voluntarily. The state law provided that a challenged confession could be admitted into evidence if, at a hearing outside the presence of the jury, the judge found it voluntary by a preponderance of the evidence.

ISSUE: Whether the standard of proof for voluntariness of confessions is a preponderance of the evidence?

HELD: Yes. Proof of the voluntariness of a confession by a preponderance of the evidence is constitutionally adequate.

DISCUSSION: When the government seeks to use a confession challenged as involuntary, the defendant is entitled to a reliable and clear-cut determination

that the confession was in fact voluntarily rendered. The Court held that this is accomplished by requiring the government to prove at least by a preponderance of the evidence that the confession was voluntary. The exclusion of unreliable confessions is not the purpose of a voluntariness hearing. The sole issue in such a hearing is whether a confession was coerced.

E. IMMUNITY

Murphy et. al. v. Waterfront Commission of New York Harbor
378 U.S. 52, 84 S. Ct. 1594 (1964)

FACTS: The defendants were subpoenaed to testify in front of the Waterfront Commission of New York Harbor. When they refused to answer questions asked of them, they were granted immunity from prosecution under the laws of both New Jersey and New York. They still refused to testify, contending that their answers might tend to incriminate them under federal law, to which the grant of immunity did not extend. They were then held in civil and criminal contempt.

ISSUE: Whether a state can compel a witness, whom it has immunized from prosecution under its laws, to give testimony which might then be used to convict him of a crime in federal court?

HELD: No. The threatened use of a compelled statement in either a state or federal criminal court iquites the self-incrimination protection.

DISCUSSION: The Court looked to the policies and purposes of the Fifth Amendment right to be free from compulsory self-incrimination. "Most, if not all, of these policies and purposes are defeated when a witness 'can be whipsawed into incriminating himself under both state and federal law even though' the constitutional privilege against self-incrimination is applicable to each." The Fifth Amendment right against compulsory self-incrimination protects a "state witness against incrimination under federal as well as state law and a federal witness against incrimination under state as well as federal law." Accordingly, the Court held that "a state witness may not be compelled to give testimony which may be incriminating under federal law unless the compelled testimony and its fruits cannot be used in any manner by federal officials in connection with a criminal prosecution against him."

Kastigar v. United States
406 U.S. 441, 92 S. Ct. 1653 (1972)

FACTS: The defendants were subpoenaed to testify before a federal grand jury. Anticipating that the defendants would invoke their Fifth Amendment right against self-incrimination, the government sought an order to compel the defendants to testify under a grant of immunity pursuant to 18 U.S.C. §§ 6002-6003. The immunity granted to the defendants provided them protection from the use of their compelled testimony in subsequent criminal proceedings, as well as immunity from the use of evidence derived from the testimony (use and derivative use immunity) but not from the crimes themselves. The order was granted over the objection of the defendants. When the defendants appeared before the grand jury, all invoked their privilege against self-incrimination and refused to testify. The District Court held the defendants in contempt and placed them in custody until such time as they answered the grand jury's questions or the grand jury's term expired.

ISSUES:

1. Whether the government can compel testimony from an unwilling witness who invokes his Fifth Amendment privilege against self-incrimination by granting the witness immunity?

2. Whether the government must grant use or transactional immunity?

HELD:

1. Yes. The government can compel testimony from an unwilling witness who invokes his Fifth Amendment privilege against self-incrimination by granting the witness immunity.

2. The grant of use immunity to the witness is all that the Fifth Amendment guarantees.

DISCUSSION: The power to compel individuals to testify before grand juries and in courts is well settled. However, this power is not absolute and is subject to a variety of exemptions, most notably the Fifth Amendment privilege against self-incrimination. In this case, the defendants asserted that, at a minimum, a statute must afford them full transactional immunity in order to comply with the Fifth Amendment privilege. The Court rejected this argument, noting, "the statute's explicit proscription of the use in any criminal case of 'testimony or other information compelled under the order (or any information directly or indirectly derived from such testimony or other information)' is

consonant with the Fifth Amendment standards." Accordingly, the Court held "that such immunity from use and derivative use is coextensive with the scope of the privilege against self-incrimination, and therefore is sufficient to compel testimony over a claim of the privilege."

Transactional immunity, on the other hand, provides a defendant a much broader protection than does the Fifth Amendment privilege, in that a defendant is afforded full immunity from prosecution. "While a grant of immunity must afford protection commensurate with that afforded by the Fifth Amendment privilege, it need not be broader." In sum, the Court concluded "the immunity provided by 18 U.S.C. § 6002 leaves the witness and the prosecutorial authorities in substantially the same position as if the witness had claimed the Fifth Amendment privilege."

Ohio v. Reiner
532 U.S. 17, 121 S. Ct. 1252 (2001)

FACTS: The defendant was charged with involuntary manslaughter in connection with the death of his child. He alleged that abuse by the family's babysitter caused his child's death. Upon advice of counsel, the babysitter invoked her privilege against self-incrimination, although she denied any wrongdoing. The trial court granted transactional immunity for the babysitter's testimony, the jury was advised of the grant of immunity, and the babysitter testified that she had nothing to do with the child's injuries.

ISSUE: Whether babysitter's claim of innocence precluded her ability to invoke her rights under the Fifth Amendment?

HELD: No. The babysitter had a reasonable apprehension that her answers could have been used to incriminate her, and, therefore, had a right to invoke her self-incrimination protection.

DISCUSSION: The United States Supreme Court held that, while the self-incrimination privilege's protection only extended to witnesses who had reasonable cause to apprehend danger from a direct answer, the babysitter's expression of innocence did not by itself eliminate the babysitter's privilege. It was reasonable for the babysitter to fear that answers to possible questions might tend to incriminate her, despite her asserted innocence

The witness' assertion of innocence did not, by itself, preclude her invocation of the privilege against self-incrimination. Therefore, the court's grant of immunity to the witness was not prejudicial. In view of the defense accusation that the

witness committed the child abuse, the witness had reasonable ground to fear that answers might tend to incriminate her.

F. MIRANDA v. ARIZONA

Miranda v. Arizona
384 U.S. 436, 86 S. Ct. 1602 (1966)

FACTS: The defendant was arrested at his home for a rape and taken to the police station. While there, the victim identified him as the rapist. The police took the defendant to an interrogation room, where he was questioned by two police officers. These officers later testified at trial that the defendant was not advised that he had a right to have an attorney present during his questioning. The officers also testified that they did not tell the defendant he had the right to be free from self-incrimination. The defendant signed a statement that contained a pre-prepared clause stating that he had "full knowledge" of his "legal rights." At trial, the written confession was admitted against the defendant and he was convicted.

ISSUE: Whether the written confession given by the defendant was obtained in violation of the defendant's Fifth Amendment right to be free from compulsion?

HELD: Yes. The written confession by the defendant was obtained in violation of the defendant's Fifth Amendment privilege against compulsory self-incrimination.

DISCUSSION: The Court held that "the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination." The Court defined a "custodial interrogation" as "<u>questioning</u> initiated by <u>law enforcement officers</u> after a person has been taken into <u>custody</u> or otherwise deprived of his freedom of action in any significant way [underline added]." The procedural safeguards required by the Court consisted of four warnings that must be provided to the suspect before a custodial interrogation can take place. First, the suspect must be notified that he has the right to remain silent. Second, the suspect must be notified that any statement made may be used as evidence against him. Third, that the suspect has the right to consult with a lawyer and have the lawyer present during the questioning. And fourth, the suspect must be informed that if he cannot afford to retain a lawyer, one will be appointed to represent him prior to any questioning.

Once these warnings have been given, then and only then, can the individual voluntarily, knowingly, and intelligently waive these rights. However, "if the individual indicates in any manner that he wishes to remain silent, the interrogation must cease." Similarly, "if the individual states that he wants an attorney, the interrogation must cease until an attorney is present."

1. Police

Illinois v. Perkins
496 U.S. 292, 110 S. Ct. 2394 (1990)

FACTS: The police suspected the defendant had information concerning a murder. They placed an undercover agent in a jail cellblock with the defendant when he was incarcerated on unrelated charges. The agent engaged the defendant in conversation about plans to escape. When the agent asked him if he had ever killed anyone, the defendant made statements implicating himself in the murder. The defendant was then charged with the murder. The defendant filed a motion to suppress the statements because the agent had not given him Miranda warnings.

ISSUE: Whether the officer must provide a suspect in custody Miranda warnings if the suspect does not know the officer represents the government?

HELD: No. Miranda warnings only apply to the police-dominated environment in which a known police officer controls the conditions.

DISCUSSION: The Miranda doctrine must be strictly enforced, but only in situations where the concerns underlying that decision are present (i.e., a police-dominated atmosphere whereby the suspect may feel compelled to speak by the fear of reprisal or in the hope of more lenient treatment should he confess). That coercive atmosphere is not present when an incarcerated person speaks freely to someone whom he believes to be a fellow inmate. In such circumstances, Miranda does not forbid mere strategic deception by taking advantage of a suspect's misplaced trust. The Miranda warnings were not meant to protect suspects from boasting about their criminal activities in front of persons whom they believe to be their cellmates. Note that Massiah v. United States, which held that the government could not use an undercover agent to circumvent the Sixth Amendment right to counsel once a suspect has been charged, is inapplicable here since no murder charges had been filed at the time of the interrogation (the Sixth Amendment had not attached).

Coercion is determined from the perspective of the suspect. The inherent coerciveness of custodial interrogation is not present when the target is unaware that he is talking with authorities. Miranda is not concerned with ploys to mislead a suspect or lull him into a false sense of security that do not rise to the level of compulsion or coercion to speak.

Arizona v. Mauro
481 U.S. 520, 107 S. Ct. 1931 (1987)

FACTS: The defendant was arrested for killing his son. After being read the Miranda warnings, he invoked his right to counsel and stated that he did not wish to answer any questions until a lawyer was present. The defendant's wife insisted that she be allowed to speak with the defendant. The police allowed the meeting on the condition that an officer be present during the encounter. Using a tape recorder in plain sight, the officer taped a brief conversation during which the defendant told his wife not to answer any questions until a lawyer was present. At trial, the prosecution used the tape to rebut defendant's insanity defense.

ISSUE: Whether the police impermissibly interrogated the defendant in violation of his Miranda rights?

HELD: No. The defendant, who had asserted his right to counsel, was not subjected to interrogation or its functional equivalent when police allowed defendant's wife to speak with defendant in the presence of an officer.

DISCUSSION: The purpose of Miranda is to prevent the government from using the coercive nature of confinement to extract confessions that would not be given in an unrestrained environment. This fear was not implicated here because the defendant was not subjected to compelling influences, psychological ploys, or direct questioning by the government. From the defendant's perspective, it is improbable that he felt he was being coerced to incriminate himself simply because he was told his wife would be allowed to speak to him.

2. Custody

Berkemer v. McCarty
468 U.S. 420, 104 S. Ct. 3138 (1984)

FACTS: After observing the defendant's car weave, a police officer stopped him and asked him to get out of the vehicle. Noticing that the defendant was

having difficulty standing, the officer concluded that he would arrest the defendant for drunk driving. The officer did not communicate his intent to the defendant. The defendant failed field sobriety tests, whereupon the officer asked if he had been using intoxicants. The defendant replied that he had consumed two beers and had smoked marihuana a short time before. The officer formally arrested the defendant and took him to a county jail. At no time did the officer provide the defendant with Miranda warnings.

ISSUE: Whether the defendant was in custody for Miranda purposes?

HELD: No. Routine traffic stops do not create the police-dominated atmosphere, which concerned the court in Miranda.

DISCUSSION: A person subjected to custodial interrogation by police officers is entitled to Miranda warnings. However, roadside questioning of a motorist detained pursuant to a routine traffic stop does not constitute "custodial interrogation." The Miranda warnings are applicable as soon as a suspect's freedom of action is curtailed to a degree associated with formal arrest. A police officer's unarticulated plan to arrest a motorist and charge him with a traffic offense does not amount to custody. The relevant inquiry was how a reasonable person in the motorist's position would have understood the situation.

Pennsylvania v. Bruder
488 U.S. 9, 109 S. Ct. 205 (1988)

FACTS: An officer observed a motorist driving erratically and ignoring a red light. He stopped the defendant's vehicle. After smelling alcohol and observing the defendant's stumbling movements, the officer administered field sobriety tests to the defendant, including asking the defendant to recite the alphabet. The officer inquired about the defendant's use of alcohol. The defendant stated that he had been drinking. The defendant also failed the sobriety tests, whereupon the officer arrested the defendant, placed him in a police car, and administered Miranda warnings.

ISSUE: Whether the defendant was in custody at the time he was asked if he had been drinking?

HELD: No. Routine traffic stops do not amount to "custody" for purposes of triggering Miranda warnings.

DISCUSSION: The rule of Berkemer v. McCarty, that ordinary traffic stops do not involve custody for the purposes of Miranda, governs this case. Although unquestionably a seizure, this stop had the same noncoercive aspects as the Berkemer seizure: a single police officer asking the defendant a modest number of questions and requesting him to perform simple tests in a location visible to passing motorists. The defendant was not in custody. Therefore, the officer did not have to administer Miranda warnings before questioning.

Oregon v. Mathiason
429 U.S. 492, 97 S. Ct. 711 (1977)

FACTS: The defendant, a parolee, was suspected of being involved in a residential burglary. The officer investigating the burglary left his card at the defendant's apartment, with a note asking him to call the officer "to discuss something." The defendant called the officer the next day. When the officer asked the defendant where it would be convenient to meet, the defendant expressed no preference. The officer asked if the defendant could come to the police station to meet. The defendant agreed and voluntarily went to the station. The officer met the defendant in the hallway, shook his hand, and took him into an office. He told the defendant that he was not under arrest. The officer closed the office door and the two sat down. The officer explained that he wanted to talk to the defendant about a burglary, and that the district attorney or judge would possibly consider his truthfulness. The officer then told the defendant that he was suspected of committing the burglary and his fingerprints had been found at the scene of the crime (which was false). The defendant considered this information, then admitted his involvement in the burglary. At that point, the officer advised the defendant of his Miranda rights for the first time, obtained a waiver, and obtained a taped confession. Once the taping had been completed, the defendant was released and told that the matter would be turned over to the district attorney for a determination on whether charges would be filed.

ISSUE: Whether the defendant was in "custody" when he made his initial incriminating statement?

HELD: No. At the time he was being questioned, the defendant was not in "custody."

DISCUSSION: Police officers must provide Miranda warnings to any person who is being subjected to a "custodial interrogation." The phrase "custodial interrogation" means "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his

freedom of action in any significant way." Here, the defendant voluntarily came to the patrol station where the officer immediately advised him that he was not under arrest. At the close of the interview, the defendant was allowed to leave. For these reasons, the Court held that the defendant was not in "custody" or "otherwise deprived of his freedom of action in any significant way."

Beckwith v. United States
425 U.S. 341, 96 S. Ct. 1612 (1976)

FACTS: The IRS was investigating the defendant for tax fraud. Two IRS agents met with the defendant in a private home where he sometimes stayed. One of the agents testified that they went to see the defendant at this residence at approximately 8:00 a.m. in order to spare him the possible embarrassment of being interviewed at his place of employment, which opened at 10:00 a.m. Upon arrival, the agents were invited into the house and, when the defendant entered the room, they introduced themselves. The defendant excused himself for a period of approximately five minutes to finish dressing. When he returned, the three sat at a dining room table where the agents presented their credentials, informed the defendant of why they wanted to speak with him, and read him some, but not all, of his Miranda warnings. The defendant acknowledged that he understood his rights and the agents interviewed him until approximately 11:00 a.m. The agents described the conversation as "friendly" and "relaxed," while the defendant noted that the agents did not "press" him on any question he could not or chose not to answer. Before ending the interview, the agents requested permission to examine certain records. When the defendant indicated the records were maintained at his place of employment, the agents asked if they could meet him there later. The agents met him approximately 45 minutes later at his place of employment. The senior agent advised the defendant that he was not required to furnish any books or records, but the defendant supplied the books to the agents nonetheless. Prior to trial, the defendant moved to suppress all of the statements made to the agents and any evidence obtained as a result of those statements on the grounds that he was in custody at the time of the interview and had not been fully advised of his Miranda warnings.

ISSUE: Whether the defendant was in custody at the time of the interview?

HELD: No. The defendant could not have reasonably believed he was in custody at the time of the interview.

DISCUSSION: Miranda warnings are necessary whenever law enforcement officers question an individual who has been "taken into custody or otherwise deprived of his freedom of action in any significant way." The defendant was

neither arrested nor detained against his will by the agents. While he was clearly the "focus" of the agents' investigation, "he hardly found himself in the custodial situation described by the Miranda Court as the basis for its holding." The agents were not required to read him his Miranda warnings, and any statements he made and any evidence derived from those statements were admissible against him at his later trial.

Orozco v. Texas
394 U.S. 324, 89 S. Ct. 1095 (1969)

FACTS: The defendant was a murder suspect. At approximately 4:00 a.m., four police officers arrived at the defendant's boardinghouse. They were told that the defendant was asleep in his bedroom. All four officers entered the bedroom, notified the defendant that he was under arrest, and began to question him. The officers did not read the defendant his Miranda rights. In response to questioning, he admitted being at the murder scene on the night in question. When asked if he owned a pistol, the defendant replied that he did. He later told the officers where the pistol was located, and ballistics tests performed on the weapon indicated that it was the gun used in the murder.

ISSUE: Whether the defendant was in custody at the time of his statements?

HELD: Yes. The officers were required to read the defendant his Miranda warnings because he was in custody or otherwise deprived of his freedom of action in a significant way.

DISCUSSION: In Miranda v. Arizona, the Supreme Court held that warnings were required whenever a suspect being interrogated was "in custody at the station or otherwise deprived of his freedom of action in any significant way." Here, the State argued that since the defendant was interrogated in his own bedroom, in familiar surroundings, Miranda should not apply. However, the Court disagreed, noting that the Miranda decision "iterated and reiterated the absolute necessity for officers interrogating people 'in custody' to give the described warnings." According to one of the officer's testimony, the defendant in this case "was under arrest and not free to leave when he was questioned in his bedroom in the early hours of the morning." For this reason, the admissions made by the defendant, without the benefit of Miranda warnings, were obtained

in violation of the Fifth Amendment privilege against compelled self-incrimination.

Mathis v. United States
391 U.S. 1, 88 S. Ct. 1503 (1968)

FACTS: The defendant was serving a state prison sentence when an IRS agent questioned him about tax returns. Prior to the questioning, the defendant was not notified of his Miranda rights by the investigator. Documents and oral statements obtained from him during this interrogation were introduced at his criminal trial for filing false claims for tax refunds.

ISSUE: Whether the defendant was in custody at the time of the questioning about the income tax investigation?

HELD: Yes. Prison confinement effectively places the defendant in custody.

DISCUSSION: The government claimed that Miranda warnings were not required in this case for two reasons: First, the questions were asked as part of a routine tax investigation that would not necessarily result in criminal charges; and second, the defendant was not placed in jail by the officer questioning him, but was there for an entirely separate offense. The Court disagreed with both of these positions. First, while tax investigations "may be initiated for the purpose of civil action rather than criminal prosecution," these investigations frequently lead to criminal prosecutions, just as occurred here. Further, there was always the possibility that the investigation could end up in a criminal prosecution. Thus, "routine tax investigations" still require that Miranda warnings be given to a person in custody. Second, the reason the defendant was in custody was irrelevant for Miranda purposes. According to the Court, there is "nothing in the Miranda opinion that calls for a curtailment of the warnings to be given persons under interrogation by officers based on the reason why the person is in custody."

Stansbury v. California
511 U.S. 318, 114 S. Ct. 1526 (1994)

FACTS: The defendant was thought to be a witness in a homicide. When he was contacted by three police officers at his home, the defendant agreed to go to the police station for an interview. Upon arrival, the defendant was questioned by police officers about his whereabouts at the time of the murder. The officer

did not provide the defendant with Miranda warnings before asking these questions. However, when the defendant mentioned that he had been driving a vehicle that matched the description given by another witness, one of the officers suspected that the defendant was involved in the murder. When the defendant then admitted that he had previously been convicted of rape, kidnapping, and child molestation, the officers terminated the interview and a different officer advised the defendant of his Miranda rights. The defendant declined to answer any further questions, requested an attorney, and was arrested. At trial, the defendant filed a motion to suppress his statements made to the police, as well as all evidence discovered as a result of those statements.

ISSUE: Whether a police officer's subjective view concerning whether the person being interviewed is a suspect is relevant to whether the person is in "custody?"

HELD: No. A police officer's subjective view that the individual being interrogated is a suspect is irrelevant to the assessment of whether the person is in "custody."

DISCUSSION: A police officer is required to administer Miranda warnings whenever an individual is questioned while in custody or otherwise deprived of his freedom of action in any significant way. In determining whether an individual is in custody for purposes of Miranda, a "totality of the circumstances" test is used. Previous decisions of the Court, however, clearly provide that "the initial determination of custody depends on the objective circumstances of the interrogation, not on the subjective views harbored by either the interrogating officers or the person being questioned." The requirement to administer Miranda warnings does not depend on whether the person being questioned is the focus of the police investigation, but on "how a reasonable man in the suspect's position would have understood his situation." A police officer's "subjective view that the individual under questioning is a suspect, if not disclosed to the individual, does not bear upon the question of whether the individual is in custody for purposes of Miranda." However, if the officer communicates his views to the suspect, this fact weighs upon the question of custody. "In sum, an officer's views concerning the nature of an interrogation, or beliefs concerning the potential culpability of the individual being questioned, may be one among many factors that bear upon the assessment of whether that individual was in custody, but only if the officer's views or beliefs were somehow manifested to the individual under interrogation and would have affected how a reasonable person in that position would perceive his or her freedom to leave."

California v. Beheler
463 U.S. 1121; 103 S. Ct. 3517 (1983)

FACTS: After the defendant called the police to report a homicide in which he was involved, he voluntarily accompanied them to the station house. The police told the defendant that he was not under arrest. At the station house, the defendant talked about the murder in an interview that lasted less than 30 minutes. The police did not advise him of his Miranda rights. The defendant was permitted to return to his home, and he was arrested five days later. After he was advised of his Miranda rights at that time, he waived those rights and gave a second confession.

ISSUE: Whether the defendant was in custody at the time of his first interview?

HELD: No. A person is not in custody if he or she voluntarily goes to a police station and is allowed to leave unhindered by the police after a brief interview.

DISCUSSION: The Court held that Miranda warnings were not required at the defendant's first interview with the police. Miranda warnings are not necessary unless there is police custodial interrogation. The Court found that the defendant was neither taken into custody for the first interview nor significantly deprived of his freedom of action. Although the circumstances of each case must be considered in determining whether a suspect is "in custody," the ultimate inquiry is whether there is a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest. Miranda warnings are not required simply because the questioning takes place in a coercive environment in the station house or because the questioned person is one whom the police suspect. Also, the length of time that elapses between the commission of a crime and a police interview that takes place when a person voluntarily comes to the police station has no relevance in determining whether a Miranda warning is required. The fact that a person who voluntarily engages in an interview with police is unaware of the consequences of his participation does not transform the voluntary interview into custody.

Thompson v. Keohane
516 U.S. 99, 116 S. Ct. 457 (1995)

FACTS: A defendant, upon the request of a police officer, presented himself at police headquarters. Once there, during a 2-hour tape-recorded session, he was questioned by police officers about the murder of his former wife. During the questioning, the officers repeatedly told the accused that he was free to leave, but also told him that they knew he had killed the victim. The accused was not informed of his Miranda rights. Eventually, he told the officers that he had killed his former wife. Following the interview, the defendant was allowed to leave the police headquarters. He was arrested 2 hours later and charged with first-degree murder. The state court found that the defendant was not in custody at the time of the statements.

ISSUE: Whether the state court's determination of the custody issue has a presumption of correctness?

HELD: No. The determination of whether a person is in custody is a mixed question of fact and law.

DISCUSSION: Trial courts are given great deference in issues of credibility. However, two discrete inquiries are essential to the determination whether there was "a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest." California v. Beheler. The first inquiry, what circumstances surrounded the interrogation, is distinctly factual. The second inquiry, would a reasonable person have felt at liberty to terminate the interrogation and leave, calls for application of the controlling legal standard. In these inquiries, the trial court's superior capacity to resolve credibility issues is not the foremost factor.

Yarborough v. Alvarado
124 S. Ct. 2140 (2004)

FACTS: The 17-year old defendant became involved in a murder. About a month later, at the request of a police officer, the defendant's parents brought him to a police station. With only the officer and the defendant present, the officer conducted a two-hour interview. At the conclusion of this interview, the defendant made incriminating statements. At no time did the officer offer the defendant his Miranda warnings.

ISSUE: Whether the defendant's youth and inexperience must be evaluated in determining whether a reasonable person in his position would have felt free to leave?

HELD: No. The Court stated that its prior "opinions applying the Miranda custody test have not mentioned the suspect's age, much less mandated its consideration."

DISCUSSION: Custody must be determined based on a how a reasonable person in the suspect's situation would perceive the circumstances. In making this determination, the Supreme Court has never held that "a suspect's age or experience is relevant to the Miranda custody analysis." These factors (as well as education and intelligence) are useful in viewing whether a suspect engaged in a voluntary act, such as make a statement to law enforcement officers. However, age and experience are not proper factors in determining custody.

3. Interrogation

Rhode Island v. Innis
446 U.S. 291, 100 S. Ct. 1682 (1980)

FACTS: A robbery victim identified the defendant in a photo display. Nearly four hours later, a police officer spotted the defendant. The defendant was arrested and advised of his Miranda rights. He was not in the possession of the shotgun used in the robbery at the time of his arrest. Within minutes of the arrest, additional police officers arrived on the scene. After being advised of his rights, the defendant requested to speak with a lawyer. A supervisor on scene had the defendant placed in a vehicle, along with three officers. Before departing, the supervisor advised the officers in the vehicle "not to question the defendant or intimidate or coerce him in any way." While traveling to the police station, two of the patrolmen discussed the possibility that a handicapped child from a nearby school might find the loaded weapon and get hurt. The defendant, who overheard the conversation, interrupted the conversation and told the officers to turn the car around so that he could show them where the shotgun was located. The police returned to the scene of the arrest, where the defendant was again advised of his Miranda rights. He replied that he understood his rights, but that he "wanted to get the gun out of the way because of the kids in the area in the school." The defendant then led the police to a nearby field, where he pointed out the hidden shotgun. At trial, both the shotgun and the testimony relating to its discovery were introduced against the defendant.

ISSUE: Whether the police officers "interrogated" the defendant after he had invoked his Miranda rights?

HELD: No. The police officers' actions did not amount to "interrogation" of the defendant.

DISCUSSION: The procedural safeguards of Miranda apply "whenever a person in custody is subjected to either express questioning or its functional equivalent." The Court stated "the term 'interrogation' under Miranda refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect." In this case, the defendant had not been "interrogated" since there had been neither "express" questioning, nor the "functional equivalent" of questioning. There was no "express" questioning in that the conversation was entirely between two officers in the vehicle, and not directed to the defendant. Similarly, the officers did not subject the defendant to the "functional equivalent" of questioning. "There is nothing in the record to suggest that the officers were aware that the defendant was peculiarly susceptible to an appeal to his conscience concerning the safety of handicapped children. Nor is there anything in the record to suggest that the police knew that the respondent (defendant) was unusually disoriented or upset at the time of his arrest."

NOTE: Compare this case to Brewer v. Williams (1977).

Pennsylvania v. Muniz
496 U.S. 582, 110 S. Ct. 2638 (1990)

FACTS: The defendant was stopped by a police officer on suspicion of driving while intoxicated. He performed poorly on a series of field sobriety tests and was placed under arrest. The officer took the defendant to a booking center. Officers there, following the usual practice with drunk-driving suspects, videotaped the booking proceedings, during which the defendant, who was informed of the videotaping, responded to questions as to his name, address, height, weight, eye color, date of birth, and current age, stumbling over his address and age. In response to a question about whether he knew the date of his sixth birthday, the defendant stated, "No, I don't." He did poorly in the repeated sobriety tests. The defendant refused to take a breathalyzer test after asking a number of questions about the law and commenting in the process on his state of inebriation. The defendant was then advised of his Miranda rights for the first time, signed a statement waiving those rights, and admitted under questioning that he had been driving while intoxicated.

ISSUE: Whether the officers interrogated the defendant before providing him with his Miranda warnings?

HELD: Yes. The defendant's Fifth Amendment rights were violated by the admission of that part of the videotape in which the suspect responded to the question as to the date of his sixth birthday. However, the admission of the portions of the videotape in which the suspect performed the sobriety tests, refused to submit to the breathalyzer test, and responded to booking questions was not interrogation.

DISCUSSION: The privilege against self-incrimination protects an "accused from being compelled to testify against himself, or otherwise, provide the State with evidence of a testimonial or communicative nature," but not from being compelled by the State to produce "real or physical evidence," Schmerber v. California. To be testimonial, the communication must, "explicitly or implicitly, relate a factual assertion or disclose information," Doe v. United States. The defendant's answers to direct questions are not rendered inadmissible by Miranda merely because the slurred nature of his speech was incriminating. Any slurring of speech and other evidence of lack of muscular coordination revealed by the defendant's responses constitute nontestimonial components of those responses. Requiring a suspect to reveal the physical manner in which he articulates words, like requiring him to reveal the physical properties of the sound of his voice by reading a transcript, does not, without more, compel him to provide a "testimonial" response for purposes of the privilege. The defendant's incriminating utterances made during the sobriety tests and the officer's request to submit to a breathalyzer test were not prompted by an interrogation as the officer's dialogue with him concerning the tests consisted primarily of carefully scripted instructions as to how the tests were to be performed. Therefore, they were not "words or actions" constituting custodial interrogation.

However, the defendant's response to the sixth birthday question was testimonial because the content of his answer supported an inference that his mental state was confused. He was required to communicate an express or implied assertion of fact or belief and, thus, was confronted with the "trilemma" of truth, falsity, or silence, the historical abuse against which the privilege against self-incrimination was aimed.

4. Right to Silence

Jenkins v. Anderson
447 U.S. 231, 100 S. Ct. 2124 (1980)

FACTS: The defendant was suspected of a homicide. He turned himself in two weeks later. At his trial for first-degree murder, the defendant took the

witness stand and contended that the killing was the result of self-defense. The prosecutor argued that the defendant's two-week delay in reporting the incident was inconsistent with self-defense.

ISSUE: Whether the government's use of the defendant's pre-arrest silence violated his constitutional right to remain free from self-incrimination?

HELD: No. The use of the defendant's pre-arrest silence was not contemplated by the Fifth Amendment privilege from self-incrimination.

DISCUSSION: The Court long ago held that the "immunity from giving testimony is one in which the defendant may waive by offering himself as a witness," citing Raffel v. United States, 271 U.S. 494 (1926). When the defendant took the witness stand in this case, the prosecution was entitled to impeach his testimony as inconsistent with his previous actions. Courts have repeatedly allowed the impeachment of witnesses with their failure to state a fact under circumstances in which it would have been natural to do so. If the defendant does not want to face this standard trial practice, he may decline to testify.

Fletcher v. Weir
455 U.S. 603, 102 S. Ct. 1309 (1982)

FACTS: The defendant was involved in an altercation that led to the death of another man. The defendant immediately left the scene and did not report the incident to the police. He was later arrested for murder but at no time was he provided Miranda warnings. At his trial, the defendant took the witness stand. He admitted to accidentally stabbing the victim but claimed to have acted in self-defense. This was the first time the defendant had offered an exculpatory explanation of the events. On cross-examination, the prosecution asked why the defendant had not offered this explanation to the police at the time of his arrest, or disclosed the location of the knife.

ISSUE: Whether the government may use the defendant's silence to impeach his testimony?

HELD: Yes. The government may use the defendant's silence against him if no Miranda warnings were provided.

DISCUSSION: It is fundamentally unfair and a deprivation of due process to use a person's silence against them after they have accepted the protections of their Miranda rights. The government should not be able to coax a suspect into remaining silent through a reading of the Miranda rights and then use that silence against him at trial. However, the defendant here was not promised that his silence would not be used against him, as he was not read his Miranda rights. The Court found that, absent this promise, the government was free to introduce the defendant's silence against him at trial for purposes of impeachment, as his silence was inconsistent with his defense. It would have been reasonable to assume that a person would want to explain their involvement in an accidental stabbing rather than face a murder charge.

United States v. Hale
422 U.S. 171, 95 S. Ct. 2133 (1975)

FACTS: The defendant was arrested for robbery. He was advised of his Miranda rights, searched, and found to be in possession of a small amount of currency. The defendant made no response when the officer asked him where he got the money. At trial, the defendant testified that he met the victim on the day of the robbery but did not commit the crime. He claimed the money found on him belonged to his wife and was for the purpose of purchasing money orders. On cross-examination, the prosecutor asked the defendant why he did not mention these facts to the arresting officer.

ISSUE: Whether the government can inquire into why a suspect remained silent after invoking his right to remain silent?

HELD: No. It is not unusual (or inconsistent) for a suspect to remain silent after being advised of his right to remain silent.

DISCUSSION: It is a basic principle of the law of evidence that a witness can be impeached with prior inconsistent statements they have made. However, there must be a connection between the initial statement (or lack thereof) and the testimony at trial. In most circumstances, silence does not amount to prior inconsistency (but see Jenkins v. Anderson). The act of silence amounts to a prior inconsistent statement only if it would have been natural to object to the question when it was put to the witness. This was not the case at the time the question was put to the defendant at his arrest. The guilty and innocent alike could find an arrest so intimidating that they choose to remain silent.

Michigan v. Mosley
423 U.S. 96, 96 S. Ct. 321 (1975)

FACTS: The defendant was arrested for two robberies. Once in custody, a police officer attempted to interview him regarding the robberies. The defendant was brought to an office in the police headquarters building, where the officer advised the defendant of his Miranda rights and had him read and sign a notification certificate. He also had the defendant orally acknowledge an understanding of his rights. When the officer attempted to question him, the defendant stated that he did not wish to answer any questions about the robberies. He did not, however, invoke his right to counsel. The officer immediately ceased the interrogation and took the defendant to a cell. Over two hours later, a homicide detective had the defendant moved to a different office building for questioning about a homicide that was unrelated to the robberies for which the defendant had been arrested. Again, the defendant was read his Miranda rights and signed a notification certificate. Within 15 minutes, the defendant made a statement implicating himself in the homicide. At no time during this interview did the defendant request a lawyer or indicate that he did not wish to discuss the homicide. Additionally, at no time was the defendant asked any questions regarding the robberies for which he had been arrested. The incriminating statement was introduced at the defendant's trial and he was convicted of first-degree murder.

ISSUE: Whether the police violated the defendant's right to remain silent by questioning him after he had invoked his right to remain silent?

HELD: No. The police may re-approach the defendant after he invoked his right to remain silent.

DISCUSSION: In answering this question, the Court relied almost entirely on a single passage from Miranda v. Arizona: "If the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease." The Miranda decision never addressed "under what circumstances, if any, a resumption of questioning is permissible." What was clear, however, was that nothing in the Miranda opinion "can sensibly be read to create a *per se* proscription of indefinite duration upon any further questioning by any police officer on any subject, once the person in custody has indicated a desire to remain silent."

The Court concluded "that the admissibility of statements obtained after the person in custody has decided to remain silent depends under Miranda on whether his right to cut off questioning was 'scrupulously honored.'" In this case, a review of the circumstances led the Court to hold that the defendant's right to cut off questioning was "scrupulously honored." First, before his initial interrogation, the defendant was fully informed of his Miranda rights, orally

acknowledged an understanding of those rights, and signed a notification certificate. Second, when the defendant stated that he did not wish to answer questions about the robberies, all questioning immediately ceased. Third, a significant period of time (more than two hours) passed before a different officer, in a different location, regarding a different crime, next questioned the defendant. Fourth, before his second interview, the defendant was again fully advised of his Miranda rights.

5. Right to Counsel

Edwards v. Arizona
451 U.S. 477, 101 S. Ct. 1880 (1981)

FACTS: After being arrested on a criminal charge and being advised of his Miranda rights, the defendant was questioned by the police until he said that he wanted an attorney. The officers ceased their questioning. The next day, the police went to the jail, again advised defendant of his Miranda rights, and obtained a confession.

ISSUE: Whether the officers may approach a suspect who has invoked his Fifth Amendment right to counsel?

HELD: No. An accused, having expressed his desire to deal with the police only through counsel, may not be subject to further interrogation until counsel has been made available to him, unless the accused has initiated further communication with the police.

DISCUSSION: The use of the defendant's confession violated his rights under the Fifth Amendment to have counsel present during custodial interrogation. When an accused has invoked his right to have counsel present during custodial interrogation, a valid waiver of that right cannot be established by showing only that he responded to police-initiated interrogation after again being advised of his rights. In this case, the authorities initiated the second interrogation. The defendant's confession, made without counsel present, did not amount to a valid waiver.

Arizona v. Roberson
486 U.S. 675, 108 S. Ct. 2093 (1988)

FACTS: After being arrested at the scene of a burglary and given Miranda warnings, the defendant said he "wanted a lawyer before answering any questions." Three days later, while still in custody, and without a lawyer having been appointed, a different officer approached the defendant about an unrelated crime. This officer was unaware of the defendant's previous request for an attorney. He provided the defendant with Miranda warnings, which the defendant waived. The defendant gave an incriminating statement about the crime for which he had not yet been arrested.

ISSUE: Whether the Edwards rule bars custodial interrogation by another law enforcement officer on other offenses after a defendant has invoked his right to counsel under Miranda?

HELD: Yes. A request for counsel under the Fifth Amendment prohibits the government from approaching the defendant about any crime, unless counsel is present.

DISCUSSION: The principle of Edwards v. Arizona was designed to provide a bright-line rule for law enforcement officers that bars further law enforcement- initiated custodial interrogation of a suspect who has requested counsel. It is immaterial whether it is a different law enforcement officer or that the questions are about a different offense. Subsequent law enforcement officer-initiated interrogation will result only in an invalid waiver. Such interrogation may occur only in the presence of counsel or if initiated by the defendant.

Minnick v. Mississippi
498 U.S. 146, 111 S. Ct. 486 (1990)

FACTS: The defendant was arrested for murders committed in Mississippi. He was captured in California. The day after his arrest, two FBI agents sought to interview the defendant. The defendant was advised of his Miranda rights and agreed to speak with the two agents. After answering some questions, the defendant stopped, telling the agents to "Come back Monday, when I have a lawyer," and stating that he would "make a more complete statement then with his lawyer present." The agents then terminated the interview. Three days later, after the defendant had consulted with his lawyer on two or three occasions, a Sheriff from Mississippi arrived in California to question the defendant. The defendant was told that he "had to talk" to the Sheriff, and that he "could not refuse." The defendant declined to sign a written waiver of his Miranda rights, but agreed to talk to the Sheriff and made an incriminating statement. The defendant's lawyer was not present during this interview.

ISSUE: Whether the defendant's Fifth Amendment right to counsel was violated by the police-initiated questioning that was conducted after he had requested counsel, even though he had been given the opportunity to consult with his counsel?

HELD: Yes. The defendant's Fifth Amendment right to counsel was violated. The questioning was initiated by the police after he had requested counsel.

DISCUSSION: In Miranda v. Arizona, the Court held that "the police must terminate an interrogation of an accused in custody if the accused requests the assistance of counsel." To ensure compliance with this mandate, the Court held in Arizona v. Edwards that "once an accused requests counsel, officials may not reinitiate questioning 'until counsel has been made available' to him." The issue in this case was whether the police could reinitiate questioning after a defendant, who requested counsel, has been given the opportunity to consult with counsel. The Court relied upon the language in its Miranda decision for the holding that "the Fifth Amendment protection of Edwards is not terminated or suspended by consultation with counsel." In other words, "when counsel is requested, interrogation must cease, and officials may not reinitiate interrogation without counsel present, whether or not the accused has consulted with his attorney." The need for counsel to protect a suspect's Fifth Amendment right against self-incrimination includes not only the right to consult with counsel, but also to have counsel present during any questioning, if the suspect so desires.

Davis v. United States
512 U.S. 452, 114 S. Ct. 2350 (1994)

FACTS: Police officers suspected the defendant of committing a murder and brought him to their office. After being read his rights under the Uniform Code of Military Justice (similar to Miranda rights), the defendant waived his rights and agreed to be interviewed by the officers. About a half hour into the interview, the defendant stated "Maybe I should talk to a lawyer." The officers stated this request would be respected if the defendant wanted to speak to an attorney. The defendant stated "No, I'm not asking for a lawyer," and continued with the interview for another hour. At that point, the defendant confirmed that he wanted to speak to an attorney before saying anything else and the interview was terminated. The government used several incriminating statements made during the interview at the defendant's court-martial.

ISSUE: Whether the defendant's statement questioning whether he should speak to a lawyer was a legal request for an attorney?

HELD: No. The defendant's request for counsel must be unequivocal.

DISCUSSION: The right to request counsel during custodial interrogation was designed to act as a safeguard against the police badgering a defendant into waiving previously asserted Miranda rights. At that moment, the police must discontinue their efforts to interview a suspect. However, the suspect must assert his right before this safeguard takes effect. The Supreme Court noted that it has a long history of denying the assertion of rights based on ambiguous references by a suspect. The suspect must articulate his desire to have counsel present in a sufficiently clear manner so that a reasonable police officer would understand that such articulation is a request for counsel. Otherwise, questioning of the suspect may continue.

Smith v. Illinois
469 U.S. 91, 105 S. Ct. 490 (1984)

FACTS: Shortly after his arrest in connection with a robbery, the 18-year-old defendant was taken to an interrogation room for questioning by two police detectives. When the detectives informed him that he had a right to his counsel's presence at the interrogation, the accused responded "Uh, yeah. I'd like to do that." Despite this response, the detectives continued with their questioning, and when they subsequently asked the accused whether he wished to talk to them without a lawyer being present, the accused responded "Yeah and no, uh, I don't know what's what, really," and "All right. I'll talk to you then." The defendant then told the detectives that he knew in advance about the planned robbery but claimed that he was not a participant. After considerable probing by the detectives, he confessed, but he then reasserted his earlier story that he only knew about the planned crime. Upon further questioning, the defendant again requested a lawyer saying "I wanta get a lawyer." This time the detectives honored the request and terminated the interrogation.

ISSUE: Whether the defendant's initial request for counsel was ambiguous in light of his responses to further police questioning?

HELD: No. The defendant's responses to continued police questioning did not render his initial request for counsel ambiguous under rule that all questioning must cease after an accused requests counsel.

DISCUSSION: The Court held that the accused's initial request for counsel when he stated "Uh, yeah. I'd like to do that," was not ambiguous. The officers should have terminated their questioning at that point. The defendant's post-request responses to further interrogation could not be used to cast doubt on the

clarity of his initial request for counsel. A valid waiver of an accused's right to have his counsel present during police interrogation cannot be established by showing only that the accused responded to further police-initiated custodial interrogation.

McNeil v. Wisconsin
501 U.S. 171, 111 S. Ct. 2204 (1991)

FACTS: The defendant was arrested for armed robbery. Two officers advised him of his Miranda rights, and sought to question him. The defendant refused to answer any questions, but did not request an attorney. The officers ended the interview. The defendant appeared at a bail hearing on the armed robbery charge and accepted representation by a public defender. Later that day, an officer visited the defendant as a part of an investigation of an unrelated murder. The officer advised the defendant of his Miranda rights. The defendant signed a waiver form and made admissions regarding the murder.

ISSUE: Whether an accused's request for counsel at an initial appearance on a charged offense constitutes an invocation of his Fifth Amendment right to counsel that precludes police interrogation on unrelated, uncharged offenses?

HELD: No. An accused's invocation of his Sixth Amendment right to counsel during a judicial proceeding does not constitute an invocation of the right to counsel derived from Miranda rights.

DISCUSSION: The Sixth Amendment right to counsel does not attach until the initiation of the adversarial judicial process. Even then, it only serves to guarantee the right to have counsel present for critical stages of the adversarial process that has initiated the right in the first place. Miranda warnings apply to uncharged matters but only if the suspect is placed in custody and confronted with government interrogation.

The defendant's invocation of his Sixth Amendment right with respect to the armed robbery poses no bar to admitting his statements regarding uncharged offenses. The Miranda right to counsel is not offense-specific. Once asserted, it prevents any further police-initiated interrogation outside the presence of counsel. Yet, the invocation of the Sixth Amendment right does not impart a Miranda right. The two different rights to counsel have different purposes and effects. The Miranda protections are intended to ensure the suspect's "desire to deal with the police only through counsel" for any encounter. The Sixth Amendment right is intended to protect the unaided layman at critical

confrontations with the government after the initiation of the adversarial process with respect to a particular crime.

Oregon v. Bradshaw
462 U.S. 1039, 103 S. Ct. 2830 (1983)

FACTS: Following the death of a minor in a vehicle accident, the defendant was given his Miranda rights and questioned by police officers. The defendant was suspected of being the driver of the vehicle. While he denied driving the vehicle, the defendant admitted to furnishing alcohol to the minor. He was arrested for furnishing alcohol to a minor and again informed of his Miranda rights. Upon being told that he was suspected of being the driver of the vehicle, the defendant invoked his right to counsel and the conversation ended. Shortly thereafter, the defendant was being transported to the county jail, when he asked a police officer, "Well, what is going to happen to me now?" The officer reminded the defendant he did not have to speak to the police and that if he chose to do so it would have to be of his free will. The defendant stated that he understood and a discussion followed in which the officer suggested that the defendant take a polygraph examination. The defendant agreed. The next day, before the polygraph examination, the defendant was read his Miranda warnings for a third time. When the polygrapher stated that he did not believe the defendant was being truthful, the defendant admitted to driving the vehicle at the time of the fatal accident.

ISSUE: Whether there exist circumstances in which the police can continue to interrogate a defendant that has invoked his Fifth Amendment right to counsel?

HELD: Yes. If the defendant initiated the conversation with the police after invoking his right, the interrogation can resume.

DISCUSSION: The Court held that once a suspect invokes his right to counsel, that request must be strictly honored and all questioning must cease. Only after the suspect "initiates further communication, exchanges, or conversation with the police" can further interrogation take place. In other words, "before a suspect in custody can be subjected to further interrogation after he requests an attorney, there must be a showing that the 'suspect himself initiates dialogue with the authorities.'" In this case, the defendant's question to the officer, "Well, what is going to happen to me now?" showed a clear desire on the defendant's part "for a generalized discussion about the investigation." The defendant's comment was distinct from some of the routine questions that necessarily arise when a suspect is in custody, such as a request to use the

bathroom. Even if the accused initiates a conversation, the government still bears the burden of showing that the suspect waived his right to have counsel present.

6. Waiver

Colorado v. Spring
479 U.S. 564, 107 S. Ct. 851 (1987)

FACTS: The defendant killed a person named Walker in Colorado. Thereafter, an informant told ATF agents that the defendant was engaged in the interstate transportation of stolen firearms, and that the defendant had discussed his participation in the Colorado killing. Based on this information, ATF agents set up an undercover purchase of firearms from the defendant. After the purchase was made, the agents arrested the defendant and advised him of his rights. The defendant waived his Miranda rights and the agents questioned him about the firearms transactions. They also asked him about the Colorado murder. The defendant stated that he had "shot another guy once." When asked if the defendant had shot a man named Walker, the defendant said "no." Some time later, state officers read the defendant his Miranda rights. After he waived these rights he confessed to the Colorado murder.

ISSUE: Whether a suspect must be advised of all the subjects about which he will be questioned in order to make a valid waiver of his Miranda rights?

HELD: No. The purpose of reading Miranda rights is to ensure the defendant does not feel compelled to make any statement.

DISCUSSION: A suspect's awareness of all the crimes about which he could be questioned is not relevant in determining the validity of the decision to waive his rights. The Court is only interested in whether the suspect waived his or her Miranda rights in a voluntary, knowing, and intelligent manner. The Court set out a two-part test to determine if a waiver was obtained through coercion: (1) whether the defendant relinquished the right voluntarily, and (2) if it was given with full awareness of the nature of the right being abandoned and the consequences of the decision to abandon it.

Connecticut v. Barrett
479 U.S. 523, 107 S. Ct. 828 (1987)

FACTS: The defendant, while in custody for sexual assault, was advised of his Miranda warnings three times. On each occasion, after signing and dating an acknowledgment that he had been informed of his rights, the defendant indicated to the police that he would not make a written statement. However, he was willing to talk about the incident that led to his arrest. After the second and third warnings, the defendant added that he would not make a written statement outside the presence of counsel. He then orally admitted to his involvement in the sexual assault.

ISSUE: Whether the defendant's limited invocation of his right to counsel prohibits all interrogation?

HELD: No. As long as the officers scrupulously abided by the defendant's requests they can proceed with the interrogation.

DISCUSSION: The fundamental purpose of Miranda rights is "to assure that the individual's right to choose between speech and silence remains unfettered throughout the interrogation process." Once the suspect is warned, he is free to exercise his own will in deciding whether or not to make a statement. The defendant's limited requests for counsel were accompanied by affirmative announcements of his willingness to speak with the officers. The defendant's decision need not be logical. It only needs to be voluntary.

California v. Prysock
453 U.S. 355, 101 S. Ct. 2806 (1981)

FACTS: The defendant was arrested for committing a murder. Prior to questioning, a police officer informed the defendant as follows:

You have the right to remain silent. If you give up the right to remain silent, anything you say can and will be used as evidence against you in a court of law. You have the right to talk to a lawyer before you are questioned, have him present with you while you are being questioned, and all during the questioning. You have the right to have a lawyer appointed to represent you at no cost to yourself.

The defendant acknowledged that he understood these rights and then provided a taped statement to the officer. Based in part on his taped statement, the defendant was convicted of first-degree murder. The defendant's conviction was overturned on appeal because the officer did not use the precise language contained in the Miranda decision when notifying the defendant of his rights.

ISSUE: Whether an officer must use the precise language contained in the Miranda case?

HELD: No. An officer is not required to use the precise language contained in the Miranda case when notifying a defendant of his or her Miranda warnings.

DISCUSSION: The Supreme Court does not require that an officer use the precise language contained in the Miranda case when notifying defendants of their Miranda warnings. The Court actually stated in Miranda that "the warnings required and the waiver necessary ... are, in the absence of a fully effective equivalent, prerequisites to the admissibility of any statement made by a defendant (emphasis added)." Further, in Rhode Island v. Innis, the Court discussed the Miranda case and noted that what was required was "the now familiar Miranda warnings ... or their equivalent." In this case, "nothing in the warnings given the [defendant] suggested any limitation on the right to the presence of appointed counsel different from the clearly conveyed rights to a lawyer in general, including the right 'to a lawyer before you are questioned ... while you are being questioned, and all during the questioning."

Duckworth v. Eagan
492 U.S. 195, 109 S. Ct. 2875(1989)

FACTS: The defendant agreed to go to the police station for questioning about a stabbing. The officer read the defendant a form purporting to be his Miranda rights. The defendant signed the form which contained all required Miranda warnings but added "You have this right to the advice and presence of a lawyer even if you cannot afford to hire one. We have no way of giving you a lawyer, but one will be appointed for you if you wish, if and when you go to court." The defendant claimed his innocence but was taken into custody. Twenty-nine hours later, he was interrogated and confessed after reading and signing a warning without the conditional provision previously added.

ISSUE: Whether informing a suspect that an attorney would be appointed for him "if and when you go to court" renders the Miranda warnings inadequate?

HELD: No. The law only requires that the suspect be informed that he has the right to an attorney before and during questioning, and that an attorney would be appointed for him if he could not afford one.

DISCUSSION: The Miranda decision required that certain warnings be given as a prerequisite to the admissibility of a custodial statement. However, the Court has never held that these must be given in the form set forth in the Miranda case. That form or a fully effective equivalent is sufficient. Miranda compliance does not require that attorneys be produced on call, but only that the suspect be informed, as he was here, that he has the right to an attorney before and during questioning, and that an attorney would be appointed for him if he could not afford one. If a law enforcement officer cannot provide appointed counsel, Miranda requires only that the officer not question a suspect unless he waives his right to counsel.

North Carolina v. Butler
441 U.S. 369, 99 S. Ct.1755 (1979)

FACTS: The defendant was involved in the armed robbery of a gas station. At the time of his arrest on a fugitive warrant, the defendant was fully advised of his Miranda rights, although he was not questioned at that time. Later, after it was determined that the defendant had an 11th grade education and was literate, he was given an "Advice of Rights" form containing the Miranda warnings, which he read. When asked if he understood his rights, the defendant stated that he did. However, the defendant refused to sign the waiver at the bottom of the form. He was then told that he did not need to either speak or sign the form, but that the agents would like to speak to him. The defendant stated, "I will talk to you, but I am not signing any form." He then made an incriminating statement. The defendant said nothing when he was advised of his right to counsel, and at no time did he request counsel or attempt to terminate the questioning.

ISSUE: Whether the defendant validly waived his right to counsel at the time he made the incriminating statement, as required by Miranda?

HELD: Yes. Waivers may be made orally or in writing.

DISCUSSION: In Miranda, the Court held that an "express" statement (e.g., "I waive my right") could constitute a valid waiver. However, the Court never made an express statement a requirement for obtaining a valid waiver. "An express written or oral statement of waiver of the right to remain silent or of the right to counsel is usually strong proof of the validity of that waiver, but is not inevitably either necessary or sufficient to establish waiver." What is required, regardless of the form of the waiver, is that it be voluntary and knowing, considering "the particular facts and circumstances surrounding the case, including the background, experience, and conduct of the accused." While the Court in Miranda held that mere silence, standing alone, is not enough to establish a valid waiver of rights, "that does not mean that the defendant's silence, coupled with an understanding of his rights and a course of conduct

indicating waiver, may never support a conclusion that a defendant has waived his rights." In this case, the defendant's waiver of his right to counsel can be inferred from his actions and words.

Oregon v. Elstad
470 U.S. 298, 105 S. Ct. 1285 (1985)

FACTS: The defendant was identified as the suspect in a burglary. Two officers obtained an arrest warrant and went to the defendant's home. They found him laying on his bed and asked the defendant to get dressed and accompany them to the living room. One of the officers, without providing the defendant his Miranda warnings, asked the defendant if he knew why the officers were there. When the defendant responded that he did not, the officer told him that they believed the defendant was involved in the burglary. The defendant stated that he had been at the victim's home. Upon arriving at the police station, the defendant was advised for the first time of his Miranda rights. After indicating that he understood his rights, the defendant waived them and gave the officers a full written confession. The defendant conceded that the officers made no threats or promises either at his residence or at the station house. At trial, the defendant contended that the first statement (given at the home) should be suppressed because no Miranda warnings had been provided, and that the second statement (given at the police station) should be suppressed under the "fruit of the poisonous tree" doctrine.

ISSUE: Whether the officers' initial failure to read the defendant his Miranda warnings, without more, "tainted" the subsequent confession given by the defendant after he had been advised of, and agreed to waive, his Miranda rights?

HELD: No. The officers' initial failure to read the defendant his Miranda warnings, without more, did not "taint" the subsequent confession given by the defendant.

DISCUSSION: A police officer's failure to administer Miranda warnings creates a presumption of compulsion. However, "a procedural Miranda violation differs in significant respects from violations of the Fourth Amendment, which have traditionally mandated a broad application of the 'fruit of the poisonous tree' doctrine." While the defendant's unwarned statement must be suppressed, "the admissibility of any subsequent statement should turn solely on whether it is knowingly and voluntarily given." The Court concluded that, "absent deliberately coercive or improper tactics in obtaining the initial statement, the mere fact that a suspect has made an unwarned admission does

not warrant a presumption of compulsion" with regard to any subsequent statements. Providing Miranda warnings to a suspect who has previously given a voluntary, but unwarned, statement "ordinarily should suffice to remove the conditions that precluded admission of the earlier statement."

Missouri v. Seibert
124 S. Ct. 2601 (2004)

FACTS: The defendant was arrested for participating in a murder. The officers specifically refrained from providing her with Miranda warnings and took her to the police station. After 30 to 40 minutes of interrogation, she admitted to her role in the crime. The officers gave the defendant a short break, turned on a tape recorder, provided the Miranda warnings, and obtained a signed waiver of those protections. The officer then resumed questioning the defendant and she repeated her admissions. The officer testified that he made a "conscious decision" to withhold Miranda warnings from the defendant; using an interrogation technique he had been taught.

ISSUE: Whether Miranda warnings provided to the defendant after being placed in custody and thoroughly questioned are adequate?

HELD: No. Such "question-first" interrogation tactics invalidate subsequent Miranda warnings.

DISCUSSION: The Court noted that "Miranda addressed 'interrogation practices … likely … to disable [an individual] from making a free and rational choice' about speaking. [quoting Miranda v. Arizona]" The purpose of the "question-first" tactic is to seek a particularly opportune moment to give them, after a confession has already been secured. By withholding warnings until after a successful interrogation, the warnings are ineffective in preparing the suspect for the follow-up interrogation; close in time and similar in nature. The Court found that the "question-first" tactic is likely to lead to confusion on the part of the suspect because of the "perplexity about the reason for discussing rights at that point, bewilderment being an unpromising frame of mind for knowledgeable decision."

This case is different from Oregon v. Elstad, 470 U.S. 298 (1985). In Elstad the Court held that an officer's initial failure to warn was an "oversight" rather than an intentional design. The connection between the first (pre-Miranda) and second (post-Miranda) interviews with the police was "speculative and attenuated." In Elstad, the questioning at a station house was significantly different from the short conversation in the defendant's home. In the case at

hand, the pre-Miranda interrogation occurred at the station house, the questioning was methodical and extensive. At the conclusion of the interrogation, most of the incrimination statements had been divulged. The defendant was only allowed 15 to 20 minutes to break and the post-Miranda interrogation transpired in the same place.

United States v. Patane
124 S. Ct. 2620 (2004)

FACTS: Officers approached the defendant at his home to discuss his possible connection to a gun crime and for violating a restraining order. After placing the defendant under arrest for violating the order, one of the officers began to read him the Miranda warnings. The defendant interrupted the officer, claiming to understand his rights. Without completing the Miranda warnings, the officer began questioning the defendant about a gun. The defendant volunteered several statements. He told the officers the gun was located in his residence and granted consent for its retrieval.

ISSUE: Whether the failure to provide adequate Miranda warnings prohibits the government from using physical evidence located as a result of that violation?

HELD: No. The Miranda rule protects against violations of the Self-incrimination Clause. This clause is not implicated by the admission into evidence of the physical evidence found from a voluntary statement.

DISCUSSION: The Court held that "[T]he Miranda rule is not a code of police conduct, and police do not violate the Constitution (or even the Miranda rule, for that matter) by mere failures to warn." The primary protection afforded by the self-incrimination clause is a prohibition on compelling a defendant to testify against himself at trial. "Potential violations occur, if at all, only upon the admission of unwarned statements into evidence at trial." The Court recognized that the Miranda rule sweeps beyond those protections actually found in the Self-Incrimination Clause and is, therefore, reluctant to extend its reach without significant justification.

In the case at hand, the introduction of the non-testimonial fruit of a voluntary statement does not implicate the self-incrimination clause. "The admission of such fruit presents no risk that a defendant's coerced statements (however defined) will be used against him at a criminal trial." Exclusion of the statements themselves serves as a complete remedy for any perceived Miranda violation.

Note that the fruit of involuntary (through force or other coercive means) statements will continue to be suppressed.

Moran v. Burbine
475 U.S. 412, 106 S. Ct. 1135 (1986)

FACTS: The defendant was arrested for burglary. They obtained evidence suggesting that the defendant might be also responsible for the murder of a woman in Providence earlier that year. The officers telephoned the Providence police and an hour later they arrived at the Cranston headquarters to question the defendant. That same evening the defendant's sister telephoned the Public Defender's Office to obtain legal assistance for the defendant for the burglary charge. She was unaware that he was also suspected of involvement in a murder. At 8:15 p.m., an Assistant Public Defender telephoned the police station, stated that she would act as the defendant's counsel if the police intended to question him, and was told that he would not be questioned further until the next day. The Public Defender was not informed that the Providence police were there or that the defendant was a murder suspect. Less than an hour later, the Providence police interviewed the defendant after providing him with his Miranda warnings. The defendant admitted to committing the murder. At all relevant times, the defendant was unaware of his sister's efforts to retain counsel and of the attorney's telephone call, but at no time did he request an attorney.

ISSUE: Whether the police violated either the defendant's Miranda rights or his Sixth Amendment right to counsel?

HELD: No. The defendant knowingly and voluntarily waived his Fifth Amendment rights and his Sixth Amendment right to counsel had not yet attached.

DISCUSSION: The Court held that the officer's failure to inform the defendant of the attorney's telephone call did not deprive him of information essential to his ability to knowingly waive his Fifth Amendment rights. Events occurring outside of a suspect's presence and entirely unknown to him can have no bearing on the capacity to comprehend and knowingly relinquish a constitutional protection. Once it is demonstrated that a suspect's decision to waive his rights was uncoerced, that he at all times knew he could stand mute and request a lawyer, and that he was aware of the government's intention to use his statements to secure a conviction, the analysis is complete and the waiver is valid as a matter of law. The level of the officer's culpability in failing to inform the defendant of the telephone call has no bearing on the validity of the waiver.

Further, the conduct of the police did not violate the defendant's Sixth Amendment right to counsel. This right initially attaches only after the first formal charging procedure, whereas the police conduct here occurred before the defendant's initial appearance. The Sixth Amendment becomes applicable only when the government's role shifts from investigation to accusation through the initiation of the adversarial judicial process. Nor was the asserted police misconduct so offensive as to deprive the defendant of the fundamental fairness guaranteed by due process. Although on facts more egregious than those presented here police deception might rise to a level of a due process violation, the conduct challenged here falls short of the kind of misbehavior that so shocks the sensibilities of civilized society.

7. Government Employees

Gardner v. Broderick
392 U.S. 273, 88 S. Ct. 1913 (1968)

FACTS: The defendant was a police officer. He was subpoenaed to testify before a grand jury that was investigating alleged bribery and corruption of police officers. He was told that the grand jury proposed to examine him concerning the performance of his official duties. The defendant was advised of his privilege against self-incrimination, but was asked to sign a "waiver of immunity" so that the grand jury could continue to look into his potential wrongdoing. He was told that he would be fired if he did not sign. Following his refusal, he was given an administrative hearing and was discharged solely for this refusal.

ISSUE: Whether a government employee who refuses to waive the privilege against self-incrimination may be dismissed because of that refusal?

HELD: No. The threat of the loss of financial position amounts to coercion.

DISCUSSION: The defendant's testimony was demanded before the grand jury in part so that it could be used in a criminal case, and not just for the purpose of securing an accounting of his official duties. The mandate of the self-incrimination clause prohibits the attempt to coerce a statement on penalty of the loss of employment. However, if a government employee refuses to answer questions relating to performance of his official duties after being granted immunity (his statements could not be used in a criminal case), the privilege against self-incrimination does not prevent his dismissal.

Garrity v. New Jersey
385 U.S. 493, 87 S. Ct. 616 (1967)

FACTS: The defendant was a police officer. A state statute required state employees to answer questions or forfeit their job and pension. The defendant was told:

1. anything he said could be used against him in a criminal prosecution;

2. he could refuse to answer questions if the answers could tend to incriminate him; and

3. if he refused to answer he could be removed from his job.

The defendant made admissions and was convicted of a criminal offense in part based on the evidence consisting of his admissions.

ISSUE: Whether the defendant was deprived of his Fifth Amendment rights in view of the state statute?

HELD: Yes. The protection of the individual under the Fifth Amendment against coerced statements prohibits the use in subsequent criminal proceedings of statements obtained under threat of removal from a job.

DISCUSSION: Coercion that drives a confession can be mental as well as physical. The choice the government gave the defendant was between self-incrimination or job forfeiture. These choices were likely to exert such pressure as to prevent the defendant from making a free and rational choice. Because of the state statute, the defendant had a choice between a "rock and a whirlpool." Making such a choice cannot be voluntary. The protection of the individual under the Fifth Amendment against coerced statements prohibits the use of these statements in subsequent criminal proceedings. However, the Fifth Amendment does not prohibit the use of these statements in administrative or civil matters.

Kalkines v. United States
473 F.2d 1391 (1973)

FACTS: The defendant was a federal employee who was suspected of taking money in return for favorable treatment. There was an on-going criminal

investigation of the defendant concurrent with this civil/administrative inquiry. He was called for four interviews. In three of those interviews, the defendant was not informed that his answers could not be used against him in a criminal prosecution. In one interview he was told of this fact. The defendant was fired for violating a personnel policy that required employees to provide information in their possession about agency matters and to allow agents to obtain information on employee financial matters.

ISSUE: Whether the defendant was advised of his options and the consequences of his choice and was adequately assured of the protection against the use of his answers or their fruits in any criminal prosecution?

HELD: No. The government must provide sufficient warnings to aprise the employee of the potential outcomes of his silence or speech.

DISCUSSION: In citing Gardner v. Broderick, the appellate court reaffirmed that a person cannot be discharged simply because he invokes his Fifth Amendment right against self-incrimination in refusing to respond. The appellate court also cited Garrity v. New Jersey, holding that a later prosecution cannot constitutionally use statements, or their fruits, coerced from a government employee in an earlier disciplinary investigation by threat of removal from office if he fails to answer questions. A government employer can insist on answers or remove an employee for refusal to answer if the employee is adequately informed both that he is subject to discharge for not answering and that his replies (and their fruits) cannot be used against him in a criminal case.

Lefkowitz v. Turley
414 U.S. 70, 94 S. Ct. 316 (1973)

FACTS: New York Municipal law required public contracts to provide that if a contractor refused to answer questions concerning a contract, the contract may be canceled and the contractor shall be disqualified from further public transactions. The defendants were subpoenaed to testify before a grand jury investigating charges of conspiracy. They refused to waive their right to remain silent. The state then initiated proceedings to terminate their current contracts.

ISSUE: Whether the government can compel public contractors to waive their right to be free from self-incrimination?

HELD: No. The government can only secure self-incriminating statements from witnesses if it first agrees that those statements will not be used in criminal prosecutions against the witnesses.

DISCUSSION: The purpose of the Fifth Amendment is to insure that persons are not compelled to give testimony that may be used against them in a criminal prosecution. While the state has a strong public interest in ferreting out fraud and other criminal activity as it relates to their contracts, it does not outweigh the importance of the self-incrimination clause. The Court further stated that a waiver of a right secured under threat of substantial economic sanction is not voluntarily made. If the state desires this testimony, it must ensure that any information gathered would not be used against the defendant in a criminal trial.

LaChance v. Erickson
522 U.S. 262, 118 S. Ct. 753 (1998)

FACTS: The defendants, federal employees, were subjected to adverse actions by their agencies. Each made false statements to agency investigators with respect to the misconduct with which they were charged. In each case, the agency additionally charged the false statement as a ground for adverse action, and the actions taken against the employees were based in part on the added charge.

ISSUE: Whether the government may take adverse action against an employee for making a false statement during an agency investigation?

HELD: Yes. If answering an agency's investigatory question could expose an employee to a criminal prosecution, he could exercise his Fifth Amendment right to remain silent, but not lie.

DISCUSSION: The American legal system provides methods for challenging the government's right to ask questions -- lying is not one of them. A citizen can decline to answer the government's question, or answer it honestly. However, a citizen may not knowingly and willfully answer the government with a falsehood without repercussion.

If answering an agency's investigatory question could expose an employee to a criminal prosecution, he may exercise his Fifth Amendment right to remain

silent. The Court stated that "it may well be that an agency, in ascertaining the truth or falsity of the charge, would take into consideration the failure of the employee to respond." The Fifth Amendment does not forbid adverse inferences against parties in civil or administrative actions when they refuse to testify. The Fifth Amendment's right to remain silent applies only to those cases with criminal ramifications.

NASA v. FLRA
527 U.S. 229, 119 S. Ct. 1979 (1999)

FACTS: The Federal Service Labor-Management Relations Statute (FSLMRS) permits union participation at an employee examination conducted "by a representative of the agency" if the employee believes that the examination will result in disciplinary action and requests such representation. The NASA Office of Inspector General (OIG) began investigating a government employee. An investigator from the OIG's office interviewed the employee and, while a union representative was allowed to attend the interview, the representative's participation was curtailed. Because of this limitation on the representative's participation, the union filed an unfair labor charge with the Federal Labor Relations Authority (FLRA).

ISSUE: Whether the NASA OIG investigator was a "representative" of NASA under the terms of the FSLMRS, so that the employee had a right to union representation during the interview in the first place?

HELD: Yes. The NASA OIG investigator qualified as a "representative" of NASA under the terms of the law.

DISCUSSION: NASA and its OIG claimed that the term "representative" referred only to a member of agency management – "the entity that has a collective bargaining relationship with the employee's union." However, the Supreme Court disagreed. The statute refers to "representatives of the agency," and is not limited solely to those individuals who have the type of relationship claimed by NASA and its OIG. The term "representative" therefore includes OIG investigators of NASA. Because the employee was entitled to union representation, the investigator's action in preventing active union representative participation was a violation of the FSLMRS.

8. <u>Miranda</u> Exceptions

Harris v. New York
401 U.S. 222, 91 S. Ct. 643 (1971)

FACTS: The defendant was on trial for selling a controlled substance to an undercover police officer. At the time of his arrest, police secured statements from the defendant in violation of his Miranda protections. The defendant testified at trial that the content of the bag sold to the officer was represented as a controlled substance but was actually baking powder. This testimony contradicted those statements obtained in violation of his Miranda rights. On cross-examination, the prosecution asked the defendant if he recalled making incriminating statements after his arrest. The defendant testified that he could not recall those statements.

ISSUE: Whether the government can introduce statements that were obtained in violation of the defendant's Miranda rights to impeach his testimony?

HELD: Yes. The government is permitted to introduce statements that were obtained in violation of the defendant's Miranda rights but only for the limited purposes of impeaching his testimony.

DISCUSSION: The prosecution may not use Miranda-tainted statements in its case-in-chief. However, that does not preclude the use of these statements altogether. The Court noted that the impeachment process serves an invaluable function to the jury in assessing a witness' credibility. The defendant's right to testify does not include a right to commit perjury. Provided that the statements were trustworthy, such evidence can be used to impeach the defendant's testimony.

New York v. Quarles
467 U.S. 649, 104 S. Ct. 2626 (1984)

FACTS: A woman approached two police officers, told them she had just been raped, provided a description of the suspect, and stated that the suspect had just entered a nearby supermarket carrying a gun. One of the officers entered the supermarket, spotted the defendant (who matched the description given by the victim), and began to chase him. The officer ordered the defendant to stop. Upon frisking the defendant, the officer discovered that he was wearing an empty shoulder holster. After handcuffing the defendant, the officer asked him where the gun was. The defendant nodded toward some empty cartons and stated that "the gun is over there."

ISSUE: Whether the officer was required to read the defendant his Miranda warnings before asking him where the gun was located?

HELD: No. The interest of public safety allows the officer to ask about the gun without first reading the defendant his Miranda warnings.

DISCUSSION: The defendant was in custody at the time the officer asked him where the gun was located. Nonetheless, the Court held that there is an overriding "public safety" exception to the requirement that Miranda warnings be provided before a custodial interrogation. The Court noted that Miranda warnings are not required when "police officers ask questions reasonably prompted by a concern for public safety." Here, the police officer was "confronted with the immediate necessity of ascertaining the whereabouts of a gun which [he] had every reason to believe the suspect had just removed from his empty holster and discarded in the supermarket." While the gun remained concealed in the supermarket, it posed numerous dangers to public safety. The officer "needed an answer to his question not simply to make his case against [the defendant], but to insure that further danger to the public did not result from the concealment of the gun in a public area."

THE SIXTH AMENDMENT

A. ATTACHMENT OF RIGHT

Kirby v. Illinois
406 U.S. 682, 92 S. Ct. 1877 (1972)

FACTS: The victim of a robbery was at the police station for the purpose of identifying the defendant as a robber. The defendant had been arrested in connection with an unrelated criminal offense. At the time of the confrontation the defendant had not been advised of the right to counsel, nor did he ask for or receive legal assistance.

ISSUE: Whether the defendant was entitled to representation during the "show-up" under the Sixth Amendment?

HELD: No. The government had not yet initiated the adversarial process against the defendant for the robbery.

DISCUSSION: A person's Sixth Amendment right to counsel attaches only at or after the time that adversary judicial proceedings have been initiated against him. This is not to say that a defendant in a criminal case has a constitutional right to counsel only at the trial itself. The right attaches at the time the process begins--whether by way of formal charge, preliminary hearing, indictment, information, or arraignment. The defendant, in this case, had no Sixth Amendment right to counsel.

United States v. Gouveia
467 U.S. 180, 104 S. Ct. 2292 (1984)

FACTS: Four defendants, all of whom were inmates in a federal prison, were placed in administrative detention in individual cells pending the investigation of a fellow inmate's death. They remained in administrative detention without appointed counsel for approximately 19 months before their indictment for murder and their arraignment, when counsel was appointed for them.

ISSUE: Whether the defendants were entitled to appointed counsel during their administrative detention?

HELD: No. The Sixth Amendment right to counsel is not effective until the government has initiated adversarial proceedings.

DISCUSSION: The Court held that the defendants were not constitutionally entitled to the appointment of counsel while they were in administrative segregation and before any adversary judicial proceedings had been initiated against them. The right to counsel attaches only at or after the initiation of adversary judicial proceedings against a defendant. This interpretation of the Sixth Amendment right to counsel is consistent not only with the literal language of the Amendment, which requires the existence of both a "criminal [prosecution]" and an "accused," but also with the purposes that the right to counsel serves, including assuring aid at trial and at "critical" pretrial proceedings when the accused is confronted with the intricacies of criminal law or with the expert advocacy of the public prosecutor, or both. The right to counsel is triggered by the initiation of formal criminal proceedings even in the prison context.

B. CRITICAL STAGES

1. Questioning

Brewer v. Williams
430 U.S. 387, 97 S. Ct. 1232 (1977)

FACTS: The defendant was suspected of abducting and murdering a 10-year old girl. He was arrested, arraigned, and committed to jail 160 miles away from the crime scene. His attorney advised him not to make any statements. The police officers accompanying the defendant on his return trip agreed not to question him during the trip. One of the police officers, who knew that the defendant was a former mental patient and was deeply religious, engaged him in a conversation covering a wide range of topics, including religion. The officer delivered what has been referred to as the "Christian burial speech." He addressed the defendant as "Reverend" and said:

I want to give you something to think about.... They are predicting several inches of snow for tonight...you are the only person that knows where this little girl's body is.... And since we are going right past the area...I feel we could stop and locate the body, that the parents of this little girl should be entitled to a Christian burial for the little girl.... We should stop and locate it...rather than waiting until... a snowstorm....

The officer stated: "I do not want you to answer me.... Just think about it...." The defendant made incriminating statements and directed the officers to evidence and the victim's body.

ISSUE: Whether the defendant was "questioned" within the meaning of the Sixth Amendment?

HELD: Yes. The officer's actions were designed to motivate the defendant into revealing information.

DISCUSSION: The right to counsel means at least that a person is entitled to the help of a lawyer at or after the time judicial proceedings have been commenced against him, whether by way of formal charge, preliminary hearing, indictment, information or arraignment. The Court found little doubt that the officer deliberately set out to elicit information from the defendant just as surely as, and perhaps more effectively than, if he had formally interrogated him. The "Christian burial speech" was equivalent to questioning. As the defendant had been interrogated without his attorney present, the officer violated his Sixth Amendment right to assistance of counsel.

Patterson v. Illinois
487 U.S. 285, 108 S. Ct. 2389 (1988)

FACTS: The defendant was arrested as a result of a gang fight in which one member of a rival gang was killed. Following his arrest, the defendant was advised of and waived his Miranda rights. He then acknowledged his involvement in the fight, but denied culpability in the murder. Two days later, while still in custody, the defendant was indicted. When he learned that one particular gang member had not been indicted, the defendant asked the officer, "Why wasn't he indicted, he did everything?" The defendant then began to explain his involvement in the crime. At that point, the officer interrupted the defendant and handed him a Miranda waiver form. The defendant initialed each of the warnings, signed the waiver form, and gave a lengthy statement implicating himself in the murder. Later that day, the defendant gave a second incriminating statement to a prosecutor. Before doing so, the defendant had again been advised of his Miranda rights and waived them. At trial, the defendant claimed that, because he had been indicted and had a Sixth Amendment right to counsel, the police officer and the attorney could not initiate an interrogation with him. The defendant also contended that while Miranda warnings are sufficient to waive a suspect's Fifth Amendment rights, they are insufficient to waive the Sixth Amendment right to counsel.

ISSUES: 1. Whether once the Sixth Amendment right to counsel attaches the police are prohibited from questioning a suspect?

2. Whether a waiver of Miranda rights is sufficient to waive a suspect's Sixth Amendment right to counsel?

HELD: 1. No. Even though the Sixth Amendment right to counsel attaches the police are not barred from questioning a suspect in all cases.

2. Yes. A waiver of Miranda rights is sufficient to waive a suspect's Sixth Amendment right to counsel.

DISCUSSION: Because the defendant had been indicted at the time he was interrogated by the officer and the prosecutor, he had a Sixth Amendment right to have the assistance of counsel at both interrogations. However, the fact that the defendant's Sixth Amendment right to counsel was in existence at the time of the questioning does not mean that he exercised that right. In this case, the defendant never sought to exercise his right to have counsel present at either interrogation. "Had the defendant indicated he wanted the assistance of counsel, the authorities interview with him would have stopped, and further questioning would have been forbidden (unless the defendant called for such a meeting)."

The Court held that "as a general matter, an accused who is admonished with the warnings required by Miranda has been sufficiently appraised of the nature of his Sixth Amendment rights, and of the consequences of abandoning those rights, so that his waiver on that basis will be considered a knowing and intelligent one." First, the accused is specifically notified of his right to counsel in the Miranda warnings. Second, the accused is advised of the "ultimate adverse consequence" of proceeding without a lawyer, namely, that any statement he chooses to make can be used against him in any subsequent criminal proceedings. However, the Court made clear that there are circumstances where the post-indictment questioning of a suspect will not survive a Sixth Amendment challenge, even though the challenged practice would be constitutional under Miranda. For example, the Court has "permitted a Miranda waiver to stand where a suspect was not told that his lawyer was trying to reach him during questioning," whereas under the Sixth Amendment this waiver would not be valid. Also, "a surreptitious conversation between an undercover police officer and an unindicted suspect would not give rise to any Miranda violation as long as the 'interrogation' was not in a custodial setting; however, once the accused is indicted, such questioning would be prohibited."

United States v. Henry
447 U.S. 264, 100 S. Ct. 2183 (1980)

FACTS: The defendant was indicted and arrested for armed robbery of a bank. While he was in jail pending trial, government agents contacted an informant who was then an inmate confined in the same cellblock as the defendant. An agent instructed the informant to be alert to any statements made by prisoners but not to initiate conversations with or question respondent regarding the charges against him. After the informant had been released from jail, he reported to the agent that he and the defendant had engaged in conversation and that the defendant made incriminating statements about the robbery. The agent paid the informant for furnishing the information.

ISSUE: Whether the use of the informant infringed on the defendant's Sixth Amendment right to counsel?

HELD: Yes. By intentionally creating a situation likely to induce the defendant to make incriminating statements without the assistance of counsel, the government had violated defendant's Sixth Amendment right to counsel.

DISCUSSION: The Court noted that the defendant's Sixth Amendment right to counsel had attached at the time he made the statements. Further, the Court held that the government's specific mention of the defendant to the undercover informant, who was paid on a contingency fee basis, constituted the type of affirmative steps to secure incriminating information from defendant outside the presence of his counsel. Under these facts, that the informant was acting under instructions as a paid informant for the government, and that the defendant was in custody and under indictment at the time, incriminating statements were "deliberately elicited" from the defendant within the meaning of Massiah. This is the type of evidence collection prohibited by the Sixth Amendment.

Kuhlmann v. Wilson
477 U.S. 436, 106 S. Ct. 2616 (1986)

FACTS: The defendant was arrested for murder. After his initial appearance, he was placed in a holding cell with a police informant. The informant was to listen to the defendant's comments and report them to the police. He was not to ask any questions but to "keep his ears open." The defendant made several incriminating statements to the informant.

ISSUE: Whether the government deprived the defendant of his right to counsel by placing an informant in his jail cell?

HELD: No. The government is not compelled to ignore the statements of a talkative defendant.

DISCUSSION: Once the right to counsel has attached, the government is precluded from deliberately eliciting incriminating statements in the absence of the defendant's lawyer. While the Court held in United States v. Henry that informants that use their positions of trust to elicit remarks are engaged in interrogation, that did not occur here. The defendant must show the police took some action that was deliberately designed to elicit incriminating statements.

Fellers v. United States
124 S. Ct. 1019 (2004)

FACTS: A grand jury indicted the defendant for conspiracy to distribute a controlled substance. Police officers went to his home and informed the defendant that he had been indicted, that they had a warrant for his arrest and they wanted to talk to him about his participation. The officers explained that the indictment referred to the defendant's association with others, and named four individuals. The defendant made incriminating statements about his involvement with these individuals. The officers took the defendant to a local jail and, for the first time, advised him of his Miranda rights. The defendant signed a Miranda waiver form and repeated his incriminating remarks.

ISSUE: Whether the statements made at his home were the result of adversarial government questioning in violation of the Sixth Amendment?

HELD: Yes. The government deliberately elicited incriminating information from a defendant after the adversarial process had been initiated and without counsel present or obtaining the defendant's waiver of counsel.

DISCUSSION: An indictment initiates the adversarial process. From that moment onward, the government is prohibited from deliberately eliciting incriminating information from a defendant unless the defendant waives his right to assistance of counsel (Sixth Amendment). The Court had no doubt that the government deliberately elicited information from the defendant at his home. In fact, the officers told the defendant that they wanted to speak to him about his involvement in the crime for which he had been indicted. These statements were taken in violation of the defendant's Sixth Amendment right to have counsel present.

As for the defendant's statements made at the jailhouse, the Court noted that it had not had the occasion to consider whether the Fifth Amendment's Elstad taint rule (from Oregon v. Elstad, 470 U.S. 298 (1985)) was applicable to a Sixth Amendment violation. The Court sent this issue back to the appellate court for further review.

2. Line Ups

Gilbert v. California
388 U.S. 263, 87 S. Ct. 1951 (1967)

FACTS: The defendant was suspected of various robberies in which the robber used a handwritten note to demand money. He was arrested and indicted. Approximately 16 days after his indictment and after he had been appointed counsel, police officers required the defendant to participate in a lineup without notice to his counsel. Numerous witnesses identified the defendant during this lineup and later identified him in court.

ISSUE: Whether the post-indictment lineup, conducted without notice to the defendant's appointed counsel, violated the defendant's Sixth Amendment right to counsel?

HELD: Yes. The defendant had a right to have counsel present at all critical stages, including line-ups.

DISCUSSION: "Post-indictment pretrial lineups at which the accused is exhibited to identifying witnesses is a critical stage of the criminal prosecution." Accordingly, the accused had a Sixth Amendment right to counsel at this proceeding. The "conduct of such a lineup without notice to and in the absence of the defendant's appointed counsel denied him his Sixth Amendment right to counsel and calls in question the admissibility at trial of the in-court identifications of the defendant by witnesses who attended the lineup."

United States v. Wade
388 U.S. 218, 87 S. Ct. 1926 (1967)

FACTS: Several weeks after the defendant was indicted for robbery he was, without notice to his appointed counsel, placed in a lineup. Each person in the lineup wore strips of tape on his face, as the robber allegedly had done. Upon direction each repeated words like those the robber allegedly had used. Two witnesses identified the defendant as the robber.

ISSUE: Whether the defendant was deprived of his Sixth Amendment right to counsel at the lineup?

HELD: Yes. Once the Sixth Amendment right to counsel attaches, the defendant is entitled to have counsel present at all critical stages.

DISCUSSION: The Sixth Amendment guarantees an accused the right to counsel at trial and any critical confrontation by the prosecution. This includes pretrial proceedings where the results could determine his fate and where the absence of counsel might deny his right to a fair trial. A post-indictment lineup is a critical confrontation at which the defendant is entitled to the aid of counsel. There is a great possibility of unfairness to the accused in line-ups because of how they are frequently conducted: the dangers inherent in eyewitness identification, the suggestibility inherent in the context of the confrontations, and the unlikelihood that the accused can reconstruct what occurred in later hearings.

C. RIGHT TO COUNSEL

Michigan v. Jackson
475 U.S. 625, 106 S. Ct. 1404 (1986)

FACTS: The defendant was involved in a murder conspiracy. Arrested on an unrelated charge, he was read his Miranda warnings and made a series of six statements to police officers about the murder prior to his initial appearance. The defendant requested that counsel be appointed for him at his initial appearance. The following morning, before he had an opportunity to consult with counsel, two police officers approached the defendant and obtained another statement from him to "confirm" that he was the person who shot the victim. As with his six previous statements, the defendant was provided his Miranda warnings and waived them prior to this seventh statement. The defendant was convicted of second-degree murder and conspiracy to commit second-degree murder.

ISSUES:

1. Whether the defendant's Sixth Amendment right to counsel was violated by the police-initiated questioning that took place after the defendant was arraigned and formally requested counsel?

2. Whether the defendant's waiver of his Sixth Amendment right at the post-arraignment questioning was valid?

HELD: 1. Yes. The defendant's Sixth Amendment right to counsel was violated by the police-initiated questioning that took place after the defendant was arraigned and formally requested counsel.

2. No. The defendant's waiver of his Sixth Amendment rights at the post-arraignment questioning was invalid.

DISCUSSION: In Edwards v. Arizona, the Court held that "an accused person in custody who has expressed his desire to deal with the police only through counsel, is not subject to further interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further communication, exchanges, or conversations with the police." While that case dealt with a defendant's Fifth Amendment right to counsel at custodial interrogations, the same rule is applicable in cases involving a defendant's Sixth Amendment right to counsel. The Sixth Amendment right to counsel attaches at the initiation of the "adversarial judicial process," which includes indictment, information, or the initial appearance. Once the right attaches, a defendant is entitled to have counsel present at all "critical stages" thereafter, including questioning by law enforcement officers. Once the Sixth Amendment right to counsel attaches, "the right to be furnished counsel does not depend upon a request by the defendant." The rule barring police-initiated questioning after a defendant has invoked his Sixth Amendment right to counsel applies even where the police may not know that a defendant has requested counsel at arraignment.

The Court, citing Edwards, noted that "just as written waivers are insufficient to justify police-initiated interrogations after the request for counsel in a Fifth Amendment analysis, so too they are insufficient to justify police-initiated interrogations after the request for counsel in a Sixth Amendment analysis." Thus, "if police initiate interrogation after a defendant's assertion, at an arraignment or similar proceeding, of his right to counsel, any waiver of the defendant's right to counsel for that police-initiated interrogation is invalid."

Massiah v. United States
377 U.S. 201, 84 S. Ct. 1199 (1964)

FACTS: The defendant was indicted, along with another individual, for violating narcotics laws. The defendant retained a lawyer, pled not guilty, and was released on bail. Shortly after the defendant was released, his co-conspirator agreed to cooperate with the government in their continued investigation of the defendant. This individual permitted an agent to install a radio transmitter under the front seat of his automobile that would allow the agent to monitor

conversations carried on in the vehicle. One evening, the individual and the defendant had a lengthy conversation in the vehicle that was overheard by the agent. During this conversation, the defendant made several incriminating statements. The statements made by the defendant were used to convict him at his subsequent trial.

ISSUE: Whether the defendant's statements to the individual, after indictment and in the absence of his counsel, were obtained in violation of the Sixth Amendment?

HELD: Yes. The defendant has a Sixth Amendment right to the presence of counsel during any government questioning during the adversarial process related to those charges pending in the adversarial process.

DISCUSSION: A defendant's Sixth Amendment right to counsel attaches at the beginning of the "adversarial judicial process." Once the adversarial judicial process begins, a defendant has a right to have counsel present at all "critical stages" of the process, including when any agent of the government questions the defendant. In this case, the defendant was denied the basic protections of the Sixth Amendment "when there was used against him at his trial evidence of his own incriminating words, which federal agents had deliberately elicited from him after he had been indicted and in the absence of his counsel."

D. CRIME SPECIFIC

Maine v. Moulton
474 U.S. 159, 106 S. Ct. 477 (1985)

FACTS: The defendant and co-defendant Colson were indicted for possession of stolen automobiles and parts. They appeared with their attorneys at arraignment and were released on bail. Before trial, Colson reported to the police that he had received threatening phone calls. Colson and his lawyer met with the police and Colson confessed to his participation with the defendant in the pending charges. He agreed to testify against the defendant and cooperate with the investigation. Colson also consented to have a recording device placed on his telephone to record his conversations with the defendant and to wear a body wire transmitter to record a meeting with the defendant during which he would discuss the pending charges. The defendant made incriminating statements during an encounter with Colson.

ISSUE: Whether the defendant's Sixth Amendment right to counsel was violated by admission at trial of incriminating statements made to a government informant after indictment?

HELD: Yes. The defendant has a right to the presence of counsel for any government questioning that occurs after the Sixth Amendment has attached.

DISCUSSION: The Sixth Amendment guarantees the right to assistance of counsel. This assistance is not limited to participation in the trial but encompasses all critical stages (court hearings, line-ups and government questioning). The right to counsel attaches at or after the time that adversarial judicial proceedings have been initiated. This occurs at the indictment or the filing of information. This can occur at the initial appearance if the defendant expresses a desire to be represented by counsel. The co-defendant's participation in the meeting was the "functional equivalent" of interrogation and violates this Sixth Amendment right. However, incriminating statements pertaining to other crimes, as to which the Sixth Amendment right has not yet attached, are admissible at a trial for those offenses.

Texas v. Cobb
532 U.S. 162, 121 S. Ct. 1335 (2001)

FACTS: While under arrest for an unrelated offense, the defendant confessed to a home burglary. However, he denied knowledge of a woman and child's disappearance from the home. He was indicted for the burglary, and counsel was appointed to represent him. He later confessed to his father that he had killed the woman and child, and his father then contacted the police. While in custody, the defendant waived his Miranda rights and confessed to the murders. This confession was used against him in the murder trial. The defendant argued that the government deprived him of his Sixth Amendment right to counsel since the adversarial process had been initiated for a related offense (the burglary).

ISSUE: Whether the officers must provide counsel for closely related but uncharged criminal matters if counsel already represents the defendant?

HELD: No. The Sixth Amendment right to counsel only attaches to the crimes for which a defendant has been formally charged.

DISCUSSION: The Supreme Court held that, regardless of whether the murder charge was closely related factually to the burglary offense, the right to

counsel was specific to the charged offense. Since the two offenses required different elements of proof, they are separate offenses. As prosecution had not been initiated for the murder offense at the time of the interrogation, no Sixth Amendment right to counsel had attached to it. The defendant had no right to the presence of his previously appointed counsel during the interrogation concerning the murder charge, and the confession resulting from that interrogation was admissible.

Although the Sixth Amendment right to counsel attaches only to charged offenses, the Court has recognized that the definition of an "offense" is not limited to the four corners of a charging document. The test to determine whether there are two different offenses or only one is whether each provision requires proof of a fact which the other does not. See Blockburger v. United States, 284 U.S. 299, 304, 52 S. Ct. 180 (1932). The Blockburger test has been applied to delineate the scope of the Fifth Amendment's Double Jeopardy Clause, which prevents multiple or successive prosecutions for the "same offense." When the Sixth Amendment right to counsel attaches, it encompasses offenses that, even if not formally charged, would be considered the same offense under the Blockburger test.

ADDITIONAL CASES OF INTEREST

Graham v. Connor
490 U.S. 386, 109 S. Ct. 1865 (1989)

FACTS: Graham, a diabetic, felt the onset of an insulin reaction and desired to purchase some orange juice to counteract the reaction. Berry, a friend of the Graham's, drove him to a convenience store. Graham, concerned about the number of people ahead of him at the checkout line, rushed out of the store and returned to Berry's automobile. He asked Berry to take him to a friend's house. Officer Connor observed Graham hastily enter and leave the store and became suspicious. Connor made an investigative stop of the automobile. Although Berry explained that his friend was suffering from a "sugar reaction," the officer ordered Berry and Graham to wait while he found out what had happened in the convenience store. When Connor returned to his patrol car to call for backup, Graham got out of the car, ran around it twice, and sat down on the curb, where he passed out briefly. A number of police officers responded to Connor's request for backup. One of the officers rolled Graham over on the sidewalk and cuffed his hands tightly behind his back, ignoring Berry's pleas to get him some sugar. Another officer said "I've seen a lot of people with sugar diabetes that never acted like this. Ain't nothing wrong with the M. F. but drunk. Lock the S. B. up." Several officers then lifted Graham up from behind, carried him over to Berry's car, and placed him face down on its hood. Regaining consciousness, Graham asked the officers to check in his wallet for a diabetic decal that he carried. One of the officers told him to "shut up" and shoved his face down against the hood of the car. Four officers grabbed Graham and threw him headfirst into the police car. A friend of Graham's brought some orange juice to the car, but the officers refused to let him have it. After receiving a report that Graham had done nothing wrong in the convenience store, and the officers drove him home and released him. Graham sustained a broken foot, cuts on his wrists, a bruised forehead, and an injured shoulder; he also claimed to have developed a permanent loud ringing in his right ear. He sued the officers under Title 42 U.S.C. § 1983, alleging that they had used excessive force in making the investigatory stop.

ISSUE: Whether "reasonableness" is the standard that governs a citizen's claim that a law enforcement officer used excessive force?

HELD: Yes. Claims of excessive use of force in the course of making an arrest, investigatory stop, or other "seizure" of a person are examined under the Fourth Amendment's "objective reasonableness" standard.

DISCUSSION: When an excessive force claim arises in the context of a seizure, it is most properly characterized as one invoking the protections of the Fourth Amendment. Accordingly, all claims that law enforcement officers have used excessive force - deadly or not - in the course of an arrest, investigatory stop, or other "seizure" should be analyzed under the Fourth Amendment and its "reasonableness" standard. The "reasonableness" of a seizure depends not only on when it is made, but also on how it is carried out. The Supreme Court has long recognized that the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it.

In determining whether the use of force in a given situation was "reasonable," courts should consider all of the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight. The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. With respect to a claim of excessive force, the same standard of reasonableness at the moment applies. The determination of reasonableness must allow for the fact that police officers are often forced to make split-second judgments - in circumstances that are tense, uncertain, and rapidly evolving - about the amount of force that is necessary in a particular situation. Finally, as in other Fourth Amendment contexts, the "reasonableness" inquiry in an excessive force case is an objective one: the question is whether the officers' actions are "objectively reasonable" in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.

Tennessee v. Garner
471 U.S. 1, 105 S. Ct. 1694 (1985)

FACTS: At about 10:45 p.m. two police officers were dispatched to answer a "prowler inside call." As the officer went behind the house, he heard a door slam and saw someone run across the backyard. The defendant, stopped at a 6-feet-high chain link fence at the edge of the yard. With the aid of a flashlight, the officer was able to see his face and hands. He saw no sign of a weapon, and, though not certain, was "reasonably sure" and "figured" that the defendant was unarmed. The officer testified he thought the defendant was 17 or 18 years old and about 5'5" or 5'7" tall. In fact, the defendant, an eighth-grader, was 15. He was 5'4" tall and weighed somewhere around 100 or 110 pounds. While the defendant was crouched at the base of the fence, the officer called out "police, halt" and took a few steps toward him. The defendant began to climb over the

fence. Convinced that if he made it over the fence he would elude capture, the officer shot him. The bullet hit the defendant in the back of the head. The defendant later died on the operating table. In using deadly force to prevent the escape, the officer was acting under the authority of a state statute and pursuant to his department's policy. The statute provided that "[if], after notice of the intention to arrest the defendant, either flees or forcibly resists, the officer may use all the necessary means to effect the arrest." The department policy was slightly more restrictive than the statute, but still allowed the use of deadly force in cases of burglary. The defendant's father brought suit under Title 42 U.S.C. § 1983, alleging, among other things, that his son's Fourth Amendment rights had been violated by the use of deadly force in this situation.

ISSUE: Whether deadly force may be used to prevent the escape of an apparently unarmed suspected felon?

HELD: No. Deadly force may not be used unless it is necessary to prevent the escape and the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.

DISCUSSION: Apprehension by the use of deadly force is a seizure subject to the reasonableness requirement of the Fourth Amendment. To determine the constitutionality of a seizure a court must balance the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion. The "reasonableness" of a seizure depends on not only when a seizure is made, but also how it is carried out.

An officer may not always seize a suspect by killing him. The use of deadly force to prevent the escape of all felony suspects, without considering the circumstances, is constitutionally unreasonable. It is not better that all felony suspects die than that they escape. Where the suspect poses no immediate threat to the officer and no threat to others, the harm resulting from failing to apprehend him does not justify the use of deadly force. For this reason, the state statute was found to be unconstitutional insofar as it authorized the use of deadly force against such fleeing suspects.

It was not, however, unconstitutional on its face. Where an officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is constitutionally reasonable to prevent escape by using deadly force. Thus, if the suspect threatened the officer with a weapon or there is probable cause to believe that he has committed a crime involving the

infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape, and if, where feasible, some warning has been given. In this case, the officer could not reasonably have believed that the defendant - young, slight, and unarmed - posed any threat. While the defendant was suspected of burglary, this fact could not, without regard to the other circumstances, automatically justify the use of deadly force. The officer did not have probable cause to believe that the defendant whom he correctly believed to be unarmed, posed any physical danger to himself or others.

Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics
403 U.S. 388, 91 S. Ct. 1999 (1971)

FACTS: Agents searched Bivens apartment without a warrant, then placed him under arrest for violating narcotics laws. The charges against Bivens were ultimately dismissed. Bivens alleged the search and his arrest were conducted "in an unreasonable manner" and sued. Initially, the court dismissed Biven's lawsuit because Title 42 U.S.C. § 1983 was inapplicable to actions performed by federal officials. This ruling was affirmed by the court of appeals, and Bivens appealed to the Supreme Court.

ISSUE: Whether a violation of the Fourth Amendment by a federal official acting under color of federal authority gives rise to a cause of action for damages in federal court?

HELD: Yes. When a federal official acting under color of law violates the Fourth Amendment, a cause of action for damages may be pursued in federal court.

DISCUSSION: The Fourth Amendment guarantees to citizens of the United States the right to be free from unreasonable searches and seizures carried out by virtue of federal authority. And where federally protected rights have been violated, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief to those who have been victimized. While the Fourth Amendment does not provide for its enforcement by an award of money damages for the consequences of its violation, it is well settled that where legal rights have been invaded, and a federal statute provides for a general right to sue for such invasion, federal courts may use any available remedy to make good the wrong done. Here, Bivens' complaint stated a cause of action under the Fourth Amendment, and he was entitled to recover money damages for any injuries he suffered as a result of the agents' violation of that Amendment.

County Of Sacramento v. Lewis
523 U.S. 833, 118 S. Ct. 1708 (1998)

FACTS: After a failed attempt to stop two suspects on a motorcycle, a police officer pursued them at a high rate of speed. For 75 seconds over a course of 1.3 miles in a residential neighborhood, the motorcycle wove in and out of oncoming traffic, forcing two cars and a bicycle to swerve off of the road. The motorcycle and patrol car reached speeds up to 100 miles an hour, with the officer following at a distance as short as 100 feet. The pursuit ended after the motorcycle tipped over. By the time the officer slammed on his brakes, the operator of the motorcycle was out of the way, but his passenger was not. The patrol car skidded into him at 40 miles an hour, causing fatal injuries. The decedent's family filed a lawsuit under Title 42 U.S.C. § 1983, alleging that decedent's Fourteenth Amendment substantive due process right to life had been violated.

ISSUE: Whether a police officer violates the Fourteenth Amendment's guarantee of substantive due process in a high-speed automobile chase aimed at apprehending a suspected offender?

HELD: It depends. In high-speed automobile chases, the standard to be used in determining whether a violation of the Fourteenth Amendment's substantive due process clause occurred is whether the officer's conduct "shocks the conscience."

DISCUSSION: The Supreme Court first noted that the Fourth Amendment's "objective reasonableness" test was inapplicable in this case, because no "seizure" had taken place. A police pursuit does not amount to a "seizure" within the meaning of the Fourth Amendment.

Substantive due process claims protect the individual against arbitrary action of government officials. The Court has repeatedly recognized the "shocks the conscience" standard as appropriate in due process cases, and found it applicable here. In pursuit cases, a police officer deciding whether to give chase must balance on one hand the need to stop a suspect, and, on the other, the high-speed threat to all persons within the pursuit range. Accordingly, the Court held that high-speed chases with no intent to harm suspects do not give rise to liability under the Fourteenth Amendment. Here, the officer was faced with a course of lawless behavior for which the police were not to blame. They had done nothing to cause the motorcycle operator's high-speed driving in the first place, nothing to excuse his flouting of the commonly understood law enforcement authority to control traffic, and nothing (beyond a refusal to call off

the chase) to encourage him to race through traffic at excessive speeds. While prudence would have repressed the officer's response, the officer's instinct was to do his job as a law enforcement officer.

Malley v. Briggs
475 U.S. 335, 106 S. Ct. 1092 (1986)

FACTS: State Police were conducting a court-authorized wiretap on the telephone of a suspect. A log sheet of one of the calls intercepted during this operation appeared to contain incriminating references to marijuana use. The trooper in charge of the investigation reviewed this log sheet and another from a second call monitored the same day. Based on these two calls, he prepared felony complaints, along with unsigned warrants for the arrest of various people, and supporting affidavits describing the two intercepted calls. The judge issued over 20 arrest warrants for various individuals identified through the wiretap evidence. Ultimately, charges against the defendant and others were dropped when the grand jury did not return an indictment. A lawsuit was then brought pursuant to Title 42 U.S.C. § 1983, alleging that, by applying for arrest warrants, the state trooper had violated their Fourth and Fourteenth Amendment rights.

ISSUE: Whether immunity is proper for a law enforcement officer who causes a person to be unconstitutionally arrested by presenting a judge with a complaint and a supporting affidavit that fails to establish probable cause?

HELD: Yes. A law enforcement officer who causes a person to be unconstitutionally arrested by presenting an affidavit that fails to establish probable cause is entitled to "qualified" immunity, rather than "absolute" immunity.

DISCUSSION: The Court noted that, as the qualified immunity defense has evolved, it provides ample protection to all but the plainly incompetent or those who knowingly violate the law. Thus, a defendant will not be immune if it is obvious that no reasonably competent officer would have concluded that a warrant should issue. However, if officers of reasonable competence could disagree on this issue, immunity should be recognized.

Only where the warrant application is so lacking in indicia of probable cause as to render official belief in its existence unreasonable will the shield of immunity be lost. The appropriate question to be answered is such cases is: Whether a reasonably well-trained officer in the defendant's position would have known

that his affidavit failed to establish probable cause and that he should not have applied for the warrant.

Saucier v. Katz
533 U.S. 194, 121 S. Ct. 2151 (2001)

FACTS: Katz attended a speech by the Vice President to express his opposition. During the speech, Katz attempted to unfurl a banner. Military police officers had been warned by superiors of the possibility of demonstrations, and Katz had been identified as a potential protestor. As Katz began placing the banner on the side of a fence, the military police officers grabbed him from behind, took the banner, and rushed him out of the area. Officers had each of Katz's arms, half-walking, half-dragging him, with his feet barely touching the ground. Katz was wearing a visible, knee-high leg brace, although one of the officers testified he did not remember noticing it at the time. The officers took Katz to a nearby military van, where, Katz claimed, he was shoved or thrown inside. As a result of the shove, Katz fell to the floor of the van, where he caught himself just in time to avoid any injury. Katz sued one of the officers for using excessive force during this encounter.

ISSUE: Whether the military police officer was entitled to qualified immunity on the claim of excessive force brought by Katz?

HELD: Yes. The military police officer was entitled to qualified immunity on the claim of excessive force because there was no clearly established rule that prevented the officer from using the amount of force that he did in arresting Katz.

DISCUSSION: Even if a constitutional violation occurred, an officer is still entitled to qualified immunity if the right violated was not clearly established at the time. In determining whether a right is clearly established for qualified immunity purposes, the contours of the right must be sufficiently clear that a reasonable officer would understand that what he is doing violates that right. In excessive force cases, an officer might correctly perceive all of the relevant facts, but have a mistaken understanding as to whether a particular amount of force is legal in those circumstances. If the officer's mistake as to what the law requires is reasonable, however, the officer is entitled to the immunity defense.

In this case, the Court first assumed a Fourth Amendment violation had occurred. They then addressed whether the military officer should reasonably have known that the force he used in this instance was excessive under the circumstances. In finding that the officer's conduct did not violate a clearly

established right, the Court relied upon the following: First, the officer did not know the full extent of the threat Katz posed or how many other persons there might be who, in concert with Katz, posed a threat to the security of the Vice President. Second, there were other potential protestors in the crowd, and at least one other individual was arrested and placed into the van with respondent. Third, in carrying out the detention, as it was assumed the officers had the right to do, the officer was required to recognize the necessity to protect the Vice President by securing Katz and restoring order to the scene. Accordingly, it cannot be said there was a clearly established rule that would prohibit using the force the officer did to place Katz into the van to accomplish these objectives. Finally, regarding the shove into the van, the Court reiterated that not every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers, violates the Fourth Amendment.

Brady v. Maryland
373 U.S. 83, 83 S. Ct. 1194 (1963)

FACTS: Brady and his companion, Boblit, were found guilty of murder in the first degree and were sentenced to death. Their trials were separate, with Brady being tried first. At his trial, Brady took the stand and admitted his participation in the crime, but he claimed that Boblit did the actual killing. Brady's counsel conceded that Brady was guilty of murder in the first degree, asking only that the jury return that verdict "without capital punishment." Prior to the trial, Brady's counsel had requested to examine Boblit's out of court statements. Several of those statements were shown to him, in which Boblit confessed to the actual homicide, was not provided to the defense and did not come to Brady's notice until after he had been tried, convicted, and sentenced, and after his conviction had been affirmed. Brady moved for a new trial based on the newly discovered evidence.

ISSUE: Whether the prosecution's failure to provide Boblit's confession to Brady violate the Due Process Clause of the Fourteenth Amendment?

HELD: Yes. The prosecution's failure to provide Boblit's confession to Brady violated the Due Process Clause of the Fourteenth Amendment.

DISCUSSION: Society wins not only when the guilty are convicted, but when criminal trials are fair. Our system of justice suffers when any accused is treated unfairly. A prosecution that withholds evidence from the defendant that would tend to exculpate him or reduce the penalty helps shape a trial that bears

heavily on the defendant. Accordingly, the Court held the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.

Banks v. Dretke
124 S. Ct. 1256 (2004)

FACTS: Before the defendant's murder trial, the government provided the defendant with the following statement "[W]e will, without the necessity of motions[,] provide you with all discovery to which you are entitled." Thereafter, the government presented two witnesses to the jury and failed to draw attention to their false testimony. One witness stated he was not a paid informant when in fact that was so and another witness perjured himself about his pretrial preparation. The witness testified on three occasions that "he had not talked to anyone about his testimony." However, the witness actually engaged in at least one "pretrial practice sessio[n]" in which prosecutors and a police officer coached him.

ISSUE: Whether the government's concealment of offering a witness that was a paid informant and its involvement in coaching a witness is exculpatory evidence subject to Brady v. Maryland?

HELD: Yes.

DISCUSSION: In Brady v. Maryland (1963), the Court held that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." In Strickler v. Greene, 527 U.S. 263 (1999), the Court further clarified that to establish an effective Brady claim, (1) the evidence must be favorable to the accused (2) the evidence must have been suppressed by the government (intentionally or unintentionally) and (3) the accused must have been harmed as a result.

In his case, the Court found that the defendant demonstrated the standards for a Brady claim. A government witness that is a paid informant qualifies as evidence advantageous to the defendant. The prosecution repeatedly allowed false testimony to stand uncorrected. The government represented that it held nothing back yet was silent when its witnesses perjured themselves. The Court concluded that the defendant was harmed by these suppressions as he could not properly impeach key witnesses for the government.

Giglio v. United States
405 U.S. 150, 92 S. Ct. 763 (1972)

FACTS: Giglio was charged with passing forged money orders. At his trial, the Government's key witness was named Taliento. Under cross-examination, Taliento denied that any promises had been made to him in exchange for his testimony, and the Government attorney stated in his summation to the jury that Taliento "received no promises that he would not be indicted." Giglio was convicted. While his appeal was pending, Giglio's defense counsel discovered new evidence indicating the Government had failed to disclose an alleged promise made to Taliento that he would not be prosecuted if he testified for the Government. The defense made a motion for a new trial based upon this newly discovered evidence.

ISSUE: Whether the Government's failure to disclose evidence that could affect the credibility of its witness was a violation of the Due Process Clause?

HELD: Yes, the Government's failure to disclose evidence that could affect the credibility of its witness violated the Due Process Clause.

DISCUSSION: In Brady v. Maryland, the Supreme Court held the suppression of material evidence justifies a new trial irrespective of the good faith or bad faith of the prosecution. When the reliability of a given witness may determine the guilt or innocence, nondisclosure of evidence affecting credibility falls within this general rule. The Court does not, however, automatically require a new trial whenever a combing of the prosecutors' files after the trial has disclosed evidence possibly useful to the defense, but not likely to have changed the verdict. A finding of materiality of the evidence is required under Brady. A new trial is required if the false testimony could in any reasonable likelihood have affected the judgment of the jury. Whether the nondisclosure in this case was a result of negligence or design was irrelevant. It is the responsibility of the prosecutor. The prosecutor's office is an entity and as such it is the spokesman for the Government. A promise made by one attorney must be attributed, for these purposes, to the Government. Further, the Government's case against Giglio depended almost entirely on Taliento's testimony; without it there could have been no indictment and no evidence to carry the case to the jury. Taliento's credibility as a witness was therefore an important issue in the case, and evidence of any understanding or agreement as to a future prosecution would be relevant to his credibility

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