**SEARCHES**

* Fourth Amendment: The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and 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.
* Is it a search?
	+ Was there a physical intrusion/trespass? (*Katz*)
		- If yes, traditionally🡪 search (no longer true).
	+ Did defendant have a reasonable (subjective) expectation of privacy? (*Katz*)
		- If yes🡪search.
		- Subscribers have a reasonable expectation of privacy in e-mails sent through ISP🡪seizure violates 4th amendment.
	+ Did gov’t use sophisticated technology?
		- Pen register🡪no reasonable or subjective expectation of privacy ≠ search (*Smith*).
		- Electronic tracking device🡪could have been secured by visual surveillance ≠ search (*Knotts*).
			* Exception: if revealing information that could not have been obtained through visual surveillance🡪search (*Karo*).
			* Maynard
	+ Was the alleged search of a home?
		- Hotel room = home.
		- Building attached to or used for intimate activities of home = home.
		- Curtilage (immediately surrounding) = home.
			* Not a search if occurs from publicly navigable airspace, is conducted in a physically non-intrusive manner, and does not reveal intimate activities traditionally connected with home/cartilage.
		- Open field ≠ home (no legitimate expectation of privacy) (*Riley, Oliver*)
		- Any details about the inside of the home are protected (thermal imaging)🡪search (*Kyllo*)
	+ If outside the home, does the method have the potential to reveal intimate personal information?
		- Physical or tactile search of an item of which the owner had a reasonable expectation of privacy in🡪search (*Bond*)
		- Dog sniff ≠ search, whether in public (*Place*) or of a car (*Caballes*)
			* Mere presence as opposed to personal use.
	+ Was there voluntary assumption of the risk (third party doctrine)?
		- Garbage bags🡪no reasonable expectation of privacy in items handed over to third parties ≠ search (*Greenwood*)
			* Even if the items inside are shredded! (*Scott*)
		- Bank records🡪no reasonable expectation of privacy in items handed over to third parties ≠ search (*Miller*)
		- If given to a third party🡪waive 4th amendment rights.
	+ Goldman (slap mike)
	+ Was postal mail? (*Jackson*)
		- If sealed, outside and weight can be inspected
		- If opened and contents read🡪search.
	+ Hudson v. Palmer
	+ Dow Chemical
* Is it reasonable? EITHER
	+ Probable Cause AND warrant OR
	+ Exception
* Was there a warrant?
	+ Yes, but they picked something up to look at it/moved it during the search🡪unreasonable (*Hicks*)
	+ Was it obtained from a neutral and detached magistrate capable of determining if probable cause existed? (*Shadwick*)
		- If later same magistrate part of adversary process 🡪 no (*Coolidge*)
		- If only paid for warrants issued 🡪 no (*Connally*)
		- If went to a second magistrate after the first denied the warrant 🡪 no (*Davis*)
	+ Was the place to be searched described with particularity?
		- If enough details that an officer with a warrant could ascertain/ID 🡪 yes (*Steele*)
		- If the details mostly fit, but there is a small discrepancy but no real doubt 🡪 yes (*Blackburn*)
		- If the warrant was overly broad but failure of officer to realize is objectively understandable and reasonable 🡪 yes (*Garrison*)
	+ Was the warrant executed in good faith?
		- Was there a nighttime search? Need additional justification for why (*Gooding*)
		- Was there a sneak-and-peek?
		- If no-knock entry, was there reasonable suspicion that announcing entrance would be dangerous/inhibit effective investigation of the crime? Then okay. (*Richards*)
		- Did enough time pass that the police could conclude they have been refused admittance? Then okay. (*Banks*)
	+ Was there probable cause?
		- Were there facts and circumstances within the officer who made the warrant’s personal knowledge, about which he has reasonably trustworthy information, sufficient to warrant a person of reasonable caution (objective) to believe that
			* Arrest: offense has been committed and the person to be arrested committed it?
			* Search: item (that is a fruit, instrumentality, or evidence of a crime) described with particularity will be found in the place to be searched?
		- Is it based on information from an informant and are the underlying circumstances enough for magistrate to independently judge the validity of the informant’s information?
			* Does the information satisfy both prongs? (*Spinelli*/*Aguilar*)
				+ Basis of Knowledge prong

Circumstances that led the informant to think whatever he/she is reporting—personal observation, independent evidence verifying informer’s story

* + - * + Veracity/Reliability prong

Informant is credible (he is a credible person) OR

Informant is reliable (in this case, information can be relied on)

Corroboration has to be something sufficiently unusual

* + - * New test: totality of the circumstances (*Gates*)
				+ A weakness in one prong of A-S can be compensated by strong information in the other (affidavit must provide the magistrate with a substantial basis for determining the existence of probable cause)
				+ Are there corroboration and details? (*Upton*)
				+ What are the odds of guilt? Is it reasonable to infer that the suspect exercised control over the item? (*Pringle*)
				+ Is there a mistake in the description? (*Brown*)
			* Did a victim make the description, as opposed to an informer?
				+ No need to show reliability
				+ Critical question: is the general description given by the victim or witness sufficient to justify the arrest of any one person?
		- Is there need for an evidentiary hearing?
			* Was there a warrantless arrest🡪yes.
			* Was there a warrant🡪yes, upon showing of a reason not to trust the warrant.
		- Was the intrusion minor? Reasonable suspicion may suffice.
		- Is there another source for probable cause?
			* Did defendants act suspicious while being questioned?
			* Were they near others independently suspected of criminal activity? Without more ≠ PC (*Ybarra*).
	+ Did the police do something unreasonable?
		- Making defendant stand naked while they searched🡪okay (*Rettele*)
* Was there an arrest without a warrant?
	+ Was it a felony arrest?
		- Was it in a public place? Okay (*Watson*)
		- Was it in a home? No (*Payton*)
		- Was there an immediate need? If no, either wait for them to exit or get a warrant (*Olson*)
		- Was it in the doorway of a home after knocking? Okay (*Santana*)
	+ Not unreasonable for postal inspector to arrest without a warrant provided they have probable cause (*Watson*, citing statute)
	+ Was there probable cause to arrest but also time to get a warrant? Reasonable (*Watson* and state law)
	+ Was it a warrantless arrest for a misdemeanor? Reasonable (*Atwater*)
	+ Was there a use of deadly or excessive force?
		- Was there an immediate threat to the police officer or others? Reasonable (*Garner*)
		- Attention to the facts, allowing for the fact that law enforcement has to make split second decisions: were the officer’s actions objectively reasonable? (*Graham v. Connor*)
	+ Was there an extended restraint on liberty following an arrest?
		- Under 48 hours for judicial determination, may be prompt (*Riverside*)
		- Need probable cause (*Gerstein*)
* Was there a search without a warrant?
	+ Was there a seizure of property in plain view?
		- Presumptively reasonable assuming there is PC to associate with criminal activity (*Payton*)
	+ Was there an arrest warrant?
		- Can enter a house to arrest a person without a search warrant (*Payton*)
		- Cannot threaten a person to make them exit their home
		- May not enter a home to arrest a guest without warrant for the owner (and PC) or emergency or consent to search THOSE premises for the person to be arrested (*Steagald*)
	+ Were there exigent circumstances?
		- Imminent need AND
			* Either escape OR
			* Destruction of evidence OR
			* Harm to police or others/risk of danger (*Olson*)
		- No prior opportunity to get a warrant AND
		- No “less intrusive alternative”
			* Example: cordoning off while warrant procured (*Olson*)
			* Ask people to leave or have officer stay there while another one gets a warrant (*Grummel*)
			* Officer stood outside door with owner and watched when he went back in (*MacArthur*)
			* Occupation (*Segura*)
		- An arrest on the street does not provide its own exigent circumstances so as to justify a warrantless search of arrestee’s house (*Vale*)
		- Has the house been emptied/cordoned off?
		- Is the offense very serious? Not enough on itself to create exigent circumstances (*Mincey*)
	+ Was it a search incident to lawful arrest?
		- Is there probable cause for the arrest? If no, fruits.
		- Are you searching only the area within reach of the person at the time of the arrest? If not, then not okay (*Chimel*)
			* Grabbing area - Was it an on the person search, even non-suspicious objects? Then okay. (*Robinson*)
			* Items: for dangerous items or items related to the arrest (can’t look in folder for stolen TV); destructibility.
			* Immediately adjacent area - Can do a sweep for dangerous people without articulable facts but cannot move items without probable cause. (*Hicks*)
			* Beyond adjacent area - Is there reason to believe that there are criminals in the broader area? Must have articulable suspicion and must be short. If yes, then okay (*Buie*)
			* Could police have searched the space immediately on arrest? Cannot search later since the rationale was safety and no longer applies.
				+ Search of a house after arrest outside of house is not okay. (*Vale*)
		- Is the search of something that falls within the plain sight doctrine? If yes, okay. If no, then cannot search (*Hicks*).
		- Was it luggage?
			* Cannot be justified as incident to that arrest either if the search is remote in time or place from the arrest or if no exigency exists (*Chadwick*)
	+ Was it a pretextual arrest?
		- In a public place? Maybe (*Atwater*)
		- Moore
		- Was it the use of a civil traffic violation to look for greater violations? Does not matter if a “reasonable officer” would have been motivated to stop the automobile by a desire to enforce the traffic laws
		- Do police have probable cause to believe that a traffic violation has occurred? Then reasonable, even if pretextual (*Whren*)
	+ Was it an automobile search?
		- Is it the passenger area?
			* Contemporaneous with arrest? Okay (*Belton*)
				+ Based on safety and evidence preservation reasons
				+ Rejects temporal limitation on grabbing area within cars
			* Was there no threat to the officer’s safety? No. You cannot ticket and then search. Much be contemporaneous with an arrest and must be searching for dangerous objects. (*Knowles*)
			* Was arrestee a recent occupant of the vehicle? Can search if incident to arrest (*Thornton*)
			* Could arrestee access the car during the search? If not, not okay (*Gant*)
			* Could police possibly believe evidence of the offense for which defendant being arrested for might be found in the car? If not, not okay (*Gant*)
			* Is it a mobile home? Falls under car exception (*Carney*)
			* Do the items belong to a different passenger within the car? Doesn’t matter, as long as not on that other passenger’s person (*Houghton*)
		- Is it outside the passenger area (trunk, etc.)?
			* Do police only have a warrant for one container within the vehicle (example: a suitcase)? If probable cause, can search other containers in the vehicle (*Acevedeo*)
		- Was it a routine inventory search?
			* Not subject to warrant requirement (*Bertine*)
* Was there consent?
	+ No, but was there a warrant? Then doesn’t matter.
	+ Was the “consent” fruit of an earlier misstep?
	+ Was there waiver? Gov’t must show intentional relinquishment or abandonment of known right or privilege (not due to or coercion, express or implied) (*Schneckloth*)
		- If they think they have to consent or that they will suffer adverse consequences if they don’t consent🡪involuntary.
		- But officers don’t have to tell them they don’t have to consent
	+ If consent to car search, permissible to search containers in car (*Jimeno*)
	+ Was consent given by a third party?
		- Did the consenter have permission to give consent?
			* Was there common authority (joint access or control for most purposes)? If no🡪not valid (*Rodriguez*)
			* Even if consenter did not have control, if the police reasonably believed she did? Can validate (*Rodriguez*)
		- Did one person consent and the other refuse? No consent (*Randolph*)
		- Did one person consent out of spite? No consent (*Gonzalez-Valle*)
		- Did an employee consent for a manager? Okay through derivative authority (unless spite)
		- Can a person consent for an area of the house/yard they don’t use? Yes, if apparent authority (*Duran*)
		- Did a hotel clerk consent to search of a hotel room? No consent (*Stoner*)
		- Was it a shared bag? Frazier Cupp
			* Did a bailee consent for a bailor (i.e., dry cleaner for the suit he was cleaning)? No consent.
	+ Was it an administrative search?
		- Is the primary purpose other than law enforcement? (Special need) If no, impermissible (immanency exception)
			* Is the search for drugs? Not okay. (*Edmond*, *Ferguson*)
		- If there is a special need, is the need greater than the intrusiveness (reasonable)? What is the primary purpose? Balance totality of the circumstances:
			* Is there a serious health and safety concern? (*Sitz* - sobriety)
			* Is the search limited? (*MacWade*)
			* Do the officers searching have limited discretion in who they search? (*MacWade*)
			* Do people have notice and the opportunity to walk away? (*MacWade*)
			* Is it randomized (*MacWade*)
			* Can inspect mail entering the country (*Ramsey*)
			* Is primary purpose to detect ordinary criminal wrongdoing? Impermissible (*Edmunds*)
		- Do you need a warrant?
			* Is it home search? If so you need a warrant but not conventional probable cause--reasonableness. (*Camara*)
			* Is there an exigent circumstance (burning building)? Can enter and remain for a reasonable amount of time thereafter, need an administrative warrant to re-enter later (*Clifford*)
		- Is it a vehicle checkpoint?
			* Is there probable cause?
				+ Even near the border, not permissible (*Almeida-Sanchez*)
				+ Even at a permanent checkpoint away from the border, search for aliens not permissible absent probable cause(*Ortiz*)
			* Was there individualized suspicion?
				+ Not necessary to briefly question vehicle occupants near border for illegal immigrant status(*Martinez-Fuerte*)
				+ Not necessary for a sobriety checkpoint program (*Sitz*)
			* Did LE stop individual vehicles just to check license and registration without reasonable suspicion? Not permissible(*Prouse*)
		- Is it a terrorist checkpoint? Permissible (*Gilmore*)
			* Need ID to enter airport, baggage screening, some passengers subjected to more questions
		- Is it a search of personal property or premises?
			* Is there a public goal? A teacher can search a student purse for pot if there is reasonable suspicion less than probable cause (*TLO*)
			* Can the school require students in extracurricular activities to submit to testing without probable cause? Okay based on balancing (*Veronia, Earls*)
			* Is it for a position where drug use would negatively impact others (carrying a firearm, drug interdiction) Ok (*Von Rabb*)
			* Is there an alternative purpose?
				+ Example: prevention of neonatal problems (*Ferguson*)
			* Cannot test bodily fluids of high office candidates (*Chandler*)
* Was it the fruit of the poisonous tree?
	+ Whose rights were violated?
	+ Did that person have a legitimate expectation of privacy in that space?

**SEIZURES**

* Meaningful interference with a person’s possessory interests in property
* Did a police officer by means of physical force or show of authority restrain the liberty of a citizen? (*Terry*)
	+ Two prong test:
		- Was the officer’s action justified at inception?
		- Was it reasonably related in scope to the circumstances which justified the interference?
		- If yes to both, justified
	+ Would a reasonable person believe that he was free to leave or decline the officer’s requests? If yes, no seizure (*Bostick, Mendenhall*)
		- Even if the officers were patting down? No seizure (*Drayton*)
		- Was there a show of authority by police that suspect refused? No seizure (*Hodari*)
	+ Did police inform that there was a right to refuse? Does not matter (*Drayton*)
	+ Was he a passenger in the car stopped by police? No reasonable person in the passenger’s seat would feel free to leave.
* Was the required basis for a stop met?
	+ Was there an objectively founded suspicion?
	+ Was there founded suspicion?
		- Can be satisfied through a series of innocent acts add up to particularized suspicion (*Cortez*)
	+ Is there particular suspicion of illegality with regard to the suspect?
		- High enough probability of illegality? Proximity to criminals is not enough. Police can only frisk if there is reason to think they might be in danger (*Sibron*)
		- Is the suspicion based only in an unknown informant’s tip? If so, not enough (*J.L*.)
		- Does defendant fit a criminal profile? If so, then probably okay. (*Sokolow*)
		- Is there suspicion based on all the circumstances, considering probabilities?
			* Example: Is it in a high crime area that adds to likelihood of illegality? If so, then okay. (*Wardlow*)
* Was the extent of the stop permissible?
	+ If defendant was being detained illegally, search incident to detention, even with consent, is illegal (*Royer*)
	+ Did police ask suspect to identify himself? State law can impose a requirement that he does with no Constitutional violation (*Hiibel*)
	+ Was there a canine sniff incident to a stop? Only if infringes on constitutionally protected privacy (probably doesn’t) (*Caballes*)
	+ Were subjective intentions of officer unconstitutional? Doesn’t matter as long as objectively reasonable (*Robinette*)
	+ Is the stop short in duration? If yes, then okay. (*Place*)
	+ Is the stop minimally invasive? If not, then it should require more than founded suspicion. (*Place*)
	+ Was the defendant seized without probable cause and held without the option to leave? Fourth Amendment violation (*Dunaway*)
		- Did the defendant make incriminating statements incident to the illegal detention? Inadmissible (*Dunaway*)
* Was the extent of the frisk permissible?
	+ Is the officer able to point to specific facts to support his inference the suspect was dangerous? (*Williams*)
	+ Did the officer use race to stop or detain suspects? If as part of suspect description, permissible if no discriminatory intent (*Brown*)

**SURVEILLANCE**

* Was an informant used?
	+ Admissible: 4th amendment does not protect a misplaced belief that confidante will not reveal wrongdoing (*Hoffa*)
	+ Did the informant record? Still okay (*Hoffa*)
	+ Did the informant use a wire? Still okay. (*White*)
	+ Did the defendants speak in a language they thought the informants didn’t understand? Still okay (*Longoria*)
	+ Is it as part of an investigation into protected First Amendment Activity? Undercover investigation does not violate First Amendment rights (*Mayer*)
	+ Did they enter legitimately but take evidence while the inviter was out of the room? Not okay (*Gouled*)
* Was there a Title III warrant?
	+ Necessary to intercept oral communications
	+ Was it an email? Title III warrant not necessary (not a wire communication)
	+ Was it a tape recorded by one of the parties to the conversation? No interception under Title III if seized (*Turk*)
	+ Was there covert entry in order to place/remove equipment? Implictly authorized by the statute

**COUNTERTERRORISM**

* Was it under FISA?
	+ Is religion playing a role as part of a PC determination? Impermissible (*Mayfield*)
	+ Is a significant purpose foreign intelligence gathering, even if there is a criminal prosecution purpose? Permissible.
* Is there a nexus to an agent of a foreign power?
* Is it a US citizen being surveyed electronically? Fourth Amendment governs (*Keith*)

**FOURTH AMENDMENT REMEDIES**

* Was there a violation of the Fourth Amendment resulting in evidence to be used at trial?
	+ Is the evidence going to be used in federal court? Must exclude (*Weeks*)
	+ Is the trial in state court, but the evidence would be inadmissible in federal court? Does not need to be suppressed: exclusionary rule federal rule of evidence (*Wolf*)
* Should the fruits be suppressed?
* Is it excepted from a Fourth Amendment Remedy?
	+ - Was it your property that was searched or were you on someone else’s property legally? If it isn’t your property, you have no claim. Used to be that if you were on property legally then okay, but now it is not protected (*Payner*, *Rakas*)
			* Did you claim ownership to the searched property? Does not matter if not yours (*Rawlings*)
		- Were you engaged in a business interaction or a social interaction? If it is someone else’s business office then there is less expectation of privacy than in a home. (*Carter*)
		- Were you a long term guest in a home or short term? If you are overnight guest then you have a reasonable expectation of privacy (*Carter*, *Olson*)
	+ Is it the fruit of a poisonous tree? If so, suppressed unless:
		- Was there an independent source or inevitable discovery? If yes, then admissible.
		- Is the relationship between the violation and the evidence attenuated? If yes, than admissible. (*Wong Sun*)
		- Is the evidence being used only to impeach the suspect’s testimony? If yes, then it is okay. Just cannot be use in the prosecutor’s case in chief. (*Walder*)
		- Did the police believe in good faith that they had a valid warrant? If so, then okay (*Leon*)
		- Was the violation the result of a knock and announce entry? If so, okay? (*Hudson*)

**IDENTIFICATION PROCEDURES**

* Has the defendant been indicted?
	+ If yes, then right to counsel at lineup. (*Wade*)
	+ If pre-indictment, then right to counsel at the lineup has not attached (*Kirby*)
	+ Was there a direct confrontation between the defendant and the witness? If not that no right to counsel even post indictment (*Ash*)
* Is the defendant raising a due process issue regarding the manner of a lineup? Totality of the circumstances (*Manson* – photo ID)

**POLICE INTERROGATION**

* Was it voluntary?
	+ Has the will been overborne?
	+ Was there threat of violence (even from other prisoners)? Inadmissible (*Fulimante*)
	+ Was there psychological pressure?
		- May be inadmissible (*Spano*)
	+ Was there promise of leniency or favorable treatment?
		- May be inadmissible (*Bram*)
	+ Was there deception?
	+ Was there no state action?
		- Admissible, even if not volitional (*Connelly,* voice of God)
	+ Is it only being used to impeach? Still no (*Mincey*—broader than 4th violation)
	+ Are there fruits stemming from the involuntary confession?
		- Probably inadmissible (*Chavez dictum*)
	+ Was it used at trial wrongly?
		- Must be REVERSED not remanded (*Fulimante*)
* Was the defendant given Miranda warnings?
	+ Was defendant in custody (deprived of freedom in a significant way—formal arrest, restraint)? Did defendant believe he could decline to answer or leave? If not, then warnings not necessary. (*Miranda*, *Yarborough*)
		- Could a jury disagree if he was in custody? Enough for admissibility (*Yarborough*)
	+ Did *police think that the suspect was in custody? Their subjective opinion does not matter (Stansbury*)
	+ Miranda as a floor: given state warnings above and beyond Miranda? Then okay.
	+ Seized in a Terry-like stop? Not custody. (*Berkemer*)
	+ Is the police action an interrogation? If interrogated, then must have waived for statements to be admissible.
		- Was it in the form of express questioning or its functional equivalent? (*Innis*)
		- Should police have known that it would elicit an incriminating statement? (*Innis*)
		- Is it a police statement that calls for a response? (Innis – Stevens)
		- Was defendant in a police dominated atmosphere? If not, then admissible (*Perkins*)
		- Was it by an informant or undercover officer? Then admissible (*Perkins*)
		- Did the police create a situation where the defendant would be likely to reveal information? Does not matter if they were not involved in the discussion (*Mauro*)
	+ Was Miranda waived?
		- If he did waive, did he have a basic awareness and general understanding of rights? If yes, okay (*McKnight*)
		- Was there an implied waiver? If yes, then could be okay (*Butler*, *Barrett*)
		- If defendant did not waive, did they stop questioning immediately? If not, inadmissible (*Miranda*)
		- Did police give him a break and a different cop asked about a different crime later after reading rights again? Admissible (*Mosley*)
		- Did police ask about other crimes after he terminated? If yes, inadmissible under the fifth (*Roberson*)
		- Did he request counsel? Interrogation must cease about any crime until provided counsel or he initiates (*Edwards*)
	+ Is there a public safety exception?
		- Is there interrogation in a situation posing a threat to public safety? Admissible (*Quarles*)
	+ Ws he not given warnings and made statements leading to physical fruits?
		- Suppression not required (*Patane*)
* Title II Voluntariness is not enough – must have Miranda (*Dickerson*)
* Are you protected under the Sixth Amendment right to counsel?
	+ Was he subjected to custodial interrogation? Attaches under Miranda unless waived
	+ Was the investigation focused on the suspect? No longer the standard (*Escobedo*)
	+ Was there already an indication that the suspect had entered an adversarial process? Were they indicted/adversarial proceedings commenced? If yes, attaches (*Massiah*)
		- Did identifiable police try to get information through indirect methods/questioning after the adversarial process began? If yes, then not admissible (*Brewer*)
		- Did an undercover try to get information through indirect methods? If not, then okay (*Kuhlman*) If yes, then inadmissible (*Henry*)
	+ Did the defendant waive? High standard for determining waiver – did he intend to relinquish? (*Brewer*)
	+ Did police start to question about a different crime? Sixth A does not transfer, so it is admissible, even if crime factually related (*Cobb*)
		- Blockburger test: if each crime requires proof of at least one element the other does not
* Are you protected by due process voluntariness rights?
	+ Was the self incriminating statement made voluntarily? Was it coerced?
		- Was his will overborne? (*Spano* and *Stroble*)
			* Physical pain
			* Forcing to stay awake, etc.
	+ Was the defendant able to balance considerations and make a rational, voluntary decision? If totality suggests free will then it is okay. (*Fenton*)
	+ Was there coercion or just deception in police practice? Did police lie about whether the suspect would be prosecuted? It is okay anyway (*LeBrun*)
		- What if police accidentally force a confession (like by administering a truth serum)? Not voluntary under the totality of the circumstances (*Townsend*)
		- Were police overreaching and behaving badly? If so, then not okay (*Connelly*).
		- Did police question defendant while he was in pain? (*Chavez*)
* Was D never charged with a crime/statements elicited never used but subjected to police brutality? Can bring a 1983 action (*Chavez*)

**POLICY CONSIDERATIONS**

* Criminal Justice System: goals
	+ Control/prevent crime
	+ Ascertain guilt/innocence
	+ Justice balanced with integrity of LE
	+ Factual accuracy
	+ Protecting individual rights
	+ Equality under the law
* Contradictions in the doctrine
	+ Greenwood (garbage), Miller (bank records) and Smith (pen register): how is there no reasonable expectation of privacy when there is no viable alternative?
* Warrant requirement
	+ Freeze the record
	+ Hindsight bias: prevent ex-post manipulation of the fact-finding process
	+ Why have exceptions?
		- Would hamper effective LE if always required
		- Sometimes a lesser intrusion on rights to search them there without warrant than to lock them up for 24 hours
		- Worry over staleness: get a warrant and can’t find them before it expires
		- History: felony arrest historically allowed without a warrant (as long as there is P.C.)
		- Balancing needs of law enforcement and intrusion on the defendant’s privacy
	+ Two lines of reasoning in warrant exceptions
		- Totality of the circumstances
			* Olson
			* Chimel
		- Bright line rules
			* Watson
			* Rabinowitz
	+ Why have a car exception?
		- Mobility
		- Lower expectation of privacy in something to regulated
		- In and out of the public sphere
* Race and profiling
	+ Pro: victim descriptions
	+ Cons: inefficient, moral objections, stereotypes
	+ How to use: avoid generalities and predictions
* Reasons for allowing administrative searches
	+ Less “scary” than if a cop searching? No, could use as pretext
	+ Not going to use fruits in criminal prosecution? No, as long as the search is valid, can use the fruits (*Sitz*)
* Why not allow coerced confessions?
	+ Concern of false confessions
	+ Prevent unfairness
	+ Offensive to justice
	+ Accusatorial system
	+ Human dignity and autonomy
	+ Deter police misconduct if excluded
* Problems with privilege against self-incrimination
	+ Cruel trilemma
		- Self-accusation
		- Perjury
		- Contempt
		- Problem: only protecting the guilty
	+ Moral wrong
		- (see above; why not allow)
		- Counterintuitive: want children to admit when do something bad
	+ Core of accusatorial system
		- In developed CJ system today, not really a concern
	+ Protects the innocent
		- Innocent would rarely hurt themselves
* Warren court was over in 1968🡪 consistently since then the court has been pulling back on criminal procedure rights