

## COURSE OUTLINE

**4<sup>th</sup> 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.**

### I. SEARCH AND SEIZURE PRINCIPLES

Four basic concepts: 1) exclusionary rule; 2) privacy; 3) probable cause, 4) reasonableness.

1. Exclusionary Rule: Evidence excluded if Con. rights violated - judicially imposed - incorporated with states - applies to items, confessions, etc.
  - a. History
  - b. Purpose - deters police misconduct, not applicable to private actions
  - c. Alternatives - cops may be guilty, civil rights violations, damages under Bivens (defense of reasonable good faith)
  - d. Criticism - does not bar prosecution, just evidence, does not deter, let's offenders walk
  - e. Fruit of the poisonous tree - if Con. Rights violated, even indirect

evidence can be suppressed (except Miranda)

- i. Independent source - exception to fruit, says if tainted evidence could have been obtained independently it is admissible - police in no worse position - time and intervening events
  - ii. Attenuation - exception allows admissibility of evidence if evidence sufficiently remote from illegality
  - iii. Inevitable discovery - evidence admissible if it probably would have been discovered by lawful means - investigation must have already started
  - iv. Good faith exception - if officer acts in good faith under warrant and warrant later determined to be deficient, evidence still admissible - Leon but note: Franks case also
- f. Standing - to invoke exclusionary rule, person must have own Con. Rights violated - not dependent on property rights but on person's reasonable expectation of privacy in place searched

2. Privacy:

a. Fourth Amendment

- I. History - earlier emphasis on property rights rather than

privacy - required “trespass” - to prong test for Katz -  
whenever person harbors reasonable expectation, he is  
entitled to be free from government intrusion

3. Probable cause: judged at time of police conduct
  - a. Definition - facts and circumstances within officer’s knowledge sufficient to warrant man of reasonable caution . . . - needed for arrests, searches (with or without warrants)
  - b. Warrantless arrests and searches
  - c. Preference for warrants - courts accept less with warrants - affiant must state in writing under oath to include senses, hearsay, informants, experience
  - d. Collective knowledge of police - p.c. may include various factors, i.e., crime area, prior crimes, admissions, furtive conduct, etc.
4. Reasonableness: touchstone of 4<sup>th</sup> Amendment, two questions: 1) was police conduct initially justified, 2) if so, was search reasonable in time and scope

## II. ARRESTS

1. Introduction - the power of arrest and its limitations - seizure of person
2. Formal arrest - definition - taking person into custody with four elements

- PERU

3. Detentions of persons - not formal arrests
  - a. Minimal contacts - police cannot detain without “reasonable objective grounds” - citizen can walk away
  - b. Stops - limited seizure but still seizure and needs to be “reasonable”
  - c. Seizures tantamount to arrest - even when officer may not intend, seizure may turn into arrest, i.e., Royer drug profile
4. Arrest authority under a warrant - written order to arrest with complaint signed by judge with specific arrestee ID to bring to location
  - a. Arrest warrant and complaint - requires p.c. and crime committed
  - b. Summons - same as warrant but notice to appear
5. Arrest authority without a warrant - requires p.c.
  - a. Misdemeanors - warrantless arrests only when misd. in officer’s presence and must be prompt (some exceptions)
  - b. Felonies - warrantless arrest okay if p.c. established - arrest will be upheld even if later turns out acquittal
6. Effecting a formal arrest - requirements and considerations (notice, time and place - PERU)

7. Citizen's arrest
8. Fresh pursuit
9. Use of force
  - a. Felonies - deadly force only if felon poses immediate serious threat of physical harm
  - b. Misdemeanors - no deadly force but only reasonably necessary non-deadly force
  - c. Self-defense - even deadly force may be used
  - d. Resisting arrest - active opposition required
10. Entry of dwellings
  - a. Suspect's home - arrest warrant needed to enter except with exigency or consent - must have reason to believe suspect inside with arrest warrant
  - b. Third person's home - requires search warrant and arrest warrant unless consent or exigency
  - c. Exigent circumstances - may be found with destruction of evidence, hot pursuit, danger but never for minor offense
  - d. Forced entry - knock-announce rule unless destruction of evidence, safety, officer presence known

11. Disposition of an arrested person
  - a. Booking - admin. procedure - routine questions okay
  - b. Initial appearance - accused given rights, identity, Gerstein hearing
  - c. Safety considerations - officer may monitor arrestee and seize if in plain view
  - d. Protection of persons - officer responsibility
  - e. Station-house search - clothing, containers searchable, as are cars
  - f. Identification and examination of an arrested person - complete search of arrested persons, including fingerprints, blood, line-ups
12. Illegal arrest: defendant may still be tried but evidence admissibility is issue
  - a. Detentions of persons - not formal arrests

### III. SEARCH WARRANTS

1. Seizure equals significant interference with person's possessory interest - search equals infringement of person's reasonable expectation of privacy
2. Definition of search warrant - written order, signed, commanding search of particular items connected to particular criminal activity and to return items

3. Obtaining a search warrant - statutory procedures
  - a. Who may issue - judicial officers
  - b. Grounds
    - I. Probable cause - Franks - kitchen sink - staleness
    - ii. Items subject to seizure - evidence, contraband, property used, persons - documents - specific enough to give cops ability to ascertain with reasonable effort - take away discretion, i.e., obscene
    - iii. Description of place or person to be searched (4)  
Description of things to be seized - limit discretion
  - c. Securing of dwelling while warrant is being sought
  - d. Anticipatory search warrants - event must occur before execution, i.e., mail drop
  - e. Redaction of search warrants - partial suppression
4. Contents of the warrant
5. Execution of the warrant - named officer or class of officers
  - a. Who may execute
  - b. Time considerations - staleness
  - c. Knock-and-announce requirement - sneak and peak warrants,

covert entry

- d. Search and seizure of persons and items not named in warrant -  
police may detain and pat down but not search persons
  - e. Scope of search - damage may occur - plain view - property,  
vehicles and containers - reasonable force okay
  - f. Duties after search is completed - inventory, leave copy
6. Administrative search warrants - less p.c. standard since non-criminal  
purpose - includes government employees, drug testing, railway - ask  
what is purpose of search, criminal or non-criminal, i.e., arson
7. “Special needs” searches - students, governed by reasonableness
8. Title III of the Omnibus Crime Control and Safe Streets Act of 1968
- a. Conflicting demands for privacy and more effective law  
enforcement
  - b. Judicial supervision - certain crimes covered, other methods  
attempted, must identify p.c. for phones, people, crimes  
committed, places
  - c. Procedures for interception orders
    - I. Application for order - minimization - 30 days - deliver to  
judge

- ii. Issuance of order
    - iii. Execution of order
  - d. Protection of individual rights
  - e. Suppression
  - f. Exceptions - trap, pen register, undercover, assumption of risk
9. Effect of illegal search and seizure - exclusion, civil, criminal liability

#### IV. LIMITED DETENTIONS AND PAT-DOWNS

1. Stop - less than arrest so reasonable suspicion crim. activity possibly afoot - considered seizure but standard is reasonableness - main question: would reasonable person believe he is free to leave?
- a. Definition - seizure if reasonable person believes he is not free to leave - Mendenhall - factors include length, show of authority, place, to answer whether police conveyed impression of restriction
  - b. Authority - only with reasonable suspicion is there authority to stop
  - c. Information from informants
  - d. Extent - must be limited in time and scope based on what officers wish to confirm or dispel

2. Frisk - separate issue from authority to stop
  - a. Authority - must have reasonable suspicion suspect is armed and dangerous before justified
  - b. Scope - frisk must be restricted to objects of danger - passenger compartments okay
3. Examples - discussion of specific fact situations from actual or hypothetical cases - elusive behavior - crime area - informants
4. Miscellaneous issues - vehicle stops okay if p.c. to believe violation occurred - pretext - sobriety checkpoints okay if limited, non-discretionary, administrative rules, non-criminal
  - a. Are Miranda warnings required?
  - b. Frisk of persons of the opposite sex
  - c. Containers and other property - airport security matters - bags x-rayed and if suspicious opened but only for dangerous items not criminal items - dog sniffs okay - note Boyd case where frisks of bags without reasonable suspicion invalid

## V. SEARCHES INCIDENT TO ARREST

1. Chimel v. California - allowable purposes of a search incident to arrest
2. Scope of search - within arrestee's immediate control

- a. Seizable property - weapons, evidence, contraband
  - b. Full search of arrestee's body - wallets, pagers - cigarette pack
  - c. Search of area into which the arrestee might reach
    - I. Motor vehicles - glove and passenger compartment but not trunk
    - ii. Other persons - automatic companion rule says okay to frisk
  - d. Search of other areas of the premises - protective sweep but limited for protection
3. Other requirements for a valid search incident to arrest
- a. Lawful custodial arrest - must be custodial and if not good arrest items suppressed - not applicable to routine traffic stops
  - b. Contemporaneousness of arrest with search - search to be done close to arrest
  - c. Who may conduct the search
  - d. Use of force

## VI. CONSENT SEARCHES

- 1. Introduction - benefits of consent searches - frees innocent - saves warrant time but subject to abuse so burden on government

2. Voluntariness requirement - no set rules as to what is “voluntary” but waiver must be “of free will”
  - a. Force or threat of force
  - b. Submission to mistaken or fraudulent claim of authority - invalid if police deceive
  - c. Misrepresentation or deception - okay if undercover operative
  - d. Arrest or detention - consent may still be given even after arrest but unlikely
  - e. Knowledge of right to refuse consent - police not obligated to warn of right to refuse
  - f. Informing suspect that he or she is free to go - no obligation to inform suspect free to leave
  - g. Suspect’s attitude about the likelihood of discovering evidence
  - h. Clearness and explicitness of consent
  - I. Notification of counsel
  - j. Physical, mental, emotional and educational factors - may affect question of whether suspect consented
  - k. Scope - suspect may limit scope of search and items to be searched for

- l. Consent merely to enter - consent may go so far as to what suspect agrees to, i.e., vestibule
  - m. Area of search - suspect may limit area to area permitted to be searched
  - n. Time - suspect may limit time of search
  - o. Object of search - consent may be limited to object, i.e., weapons, not drugs
3. Revocation of consent - suspect may withdraw consent
  4. Who may give consent - only those persons whose Cons. protections are invaded may consent
    - a. Persons having equal rights or interests in property - common authority principles, i.e, roommates
    - b. Landlord-Tenant - landlord may not consent but note abandonment - manager may not consent or guest
    - c. Hotel Manager-Hotel Guest
    - d. Host-Guest - host may consent typically
    - e. Employer - Employee - employer may consent unless exclusive space assigned
    - f. School Official-Student - official may generally consent but not

college

- g. Principal-Agent
- h. Husband-Wife - generally consent may be given by either
- I. Parent-Child - parents may generally consent unless child pays rent, etc.
- j. Bailor-Bailee

5. Voluntary production of evidence

6. Reasonable expectation of privacy - storage unit with common keys

## VII. PLAIN VIEW

1. Introduction - distinction between plain view observation and search - objects falling into officer's plain view when he has right to be there are admissible

2. Requirements of the plain view doctrine

a. The officer, as the result of a prior valid intrusion, must be in a position in which he or she has legal right to be - may be hot pursuit, search incident to arrest, Terry stop, etc., with warrant or without

b. The officer must not unreasonably intrude on any person's reasonable expectation of privacy

- c. The incriminating character of the object to be seized must be immediately apparent to the officer - flashlights, binoculars okay as is shifting positions
  - d. The discovery of the item of evidence by the officer need not be inadvertent
3. “Plain touch” or “plain feel” - as long as police lawfully in position to feel object and its incriminating nature is immediately apparent, may be seized without warrant

#### VIII. THE *CARROLL* DOCTRINE

- 1. Introduction - unique nature of motor vehicles - movable, not reasonable expectation of privacy, highly regulated, licensed, open to view
- 2. Carroll doctrine - auto exception to 4<sup>th</sup> - requires p.c. that auto contains items subject to seizure
  - a. Probable cause - warrantless search okay with p.c. - also if car used in commission of crime, i.e., forfeiture
  - b. Delay in search - warrantless search should be done immediately but okay if at station-house
  - c. Exigent circumstances - not required to search vehicle, only p.c.
  - d. Scope of search - all parts of vehicle and contents but search must

be restricted to object of search - passengers may be searched, too,  
if they are able to conceal object of search

3. Movable containers - why they are treated differently from motor vehicles
4. Impoundment and inventory of vehicles
  - a. Requirements - search designed to protect property and police and prevent claims - administrative procedures need to be followed, best if written, entire car may be searched
  - b. Plain view doctrine
5. Expectation of privacy
  - a. Electronic beepers - beepers on cars may be monitored but not inside home
  - b. Searches by dogs - no violation of 4<sup>th</sup> as no reasonable expectation of privacy if dog sniffs property but need p.c. to sniff people

## IX. OPEN FIELDS AND ABANDONED PROPERTY - NON-SEARCHES UNDER FOURTH AMENDMENT

1. Introduction - discussion of the Hester case
2. Open fields
  - a. Determination of curtilage - determined by whether area harbors

those intimate activities associated with privacies of home - distance, fences, use of property determines curtilage also

- b. Reasonable expectation of privacy - generally no expectation of privacy in open fields
- c. Plain view, open fields, and observations into constitutionally protected areas - open fields are not a zone of privacy so officer can use magnifiers, aerial observation - plain view differs because officer needs valid justification for prior intrusion into zone of privacy

3. Abandoned property

- a. Factors determining abandonment - intent of suspect to abandon, police behavior, events leading to “abandonment” - may involve premises, cars, objects
- b. Reasonable expectation of privacy - no trash search within curtilage

**5<sup>th</sup> Amendment: No person . . . shall be compelled in any criminal case to be a witness against himself . . .**

**6<sup>th</sup> Amendment: In all criminal prosecutions, the accused shall . . . have the assistance of counsel for his defense. . . .**

## X. ADMISSIONS, CONFESSIONS AND *MIRANDA*

1. Historical background - admissibility of admissions and confessions
  - a. Voluntariness - depends on police conduct, circumstances of statement, characteristics of suspect, duration
  - b. Custody - definition and determination - reasonable person's belief re: restraint, circumstances, atmosphere
  - c. Interrogation
    - I. Definition and determination - should police have known their words or conduct were likely to elicit incriminating responses - exceptions include non-responsive, voluntary statement, etc.
    - ii. Multiple attempts
  - d. Warnings
    - I. Content and administration - SULA
    - ii. Does suspect require warning?
  - e. Waiver
    - I. Obtaining - form - written
    - ii. Words and actions indicating
    - iii. Voluntariness - burden on government

- iv. Suspect's requisite level of comprehension - depends on characteristics, circumstances
- f. Miscellaneous issues
  - I. Non-testimonial evidence
  - ii. Fourth Amendment violations
  - iii. Nature or severity of offense
  - iv. Undercover agents
  - v. Effect of Miranda violations in court

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