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DOCTRINES OF CONCERN

4th Amendment 5th Amendment 6th Amendment Due Process Analysis

I. Fourth Amendment: Arrest, Search and Seizure

A. Introduction

1. two views of the 4th amendment:
   a) warrant preference view: search is presumptively unreasonable if conducted without a warrant because warrant clause is connected to the search and seizure clause.
   b) separate clauses view: warrant is not necessary if the search is otherwise reasonable because the warrant clause is not connected to the search and seizure clause.
2. Four requirements of a valid search warrant:
   a) issued by a neutral and detached magistrate
   b) based on probable cause
   c) supported by oath or affidavit
   d) describes with particularity the places to be searched and the items to be seized.

B. Exclusionary Rule-*Mapp* overruled Wolf which said no exclusionary rule

1. Definition - evidence obtained in violation of the 4th amendment must be excluded at trial. Exclusionary Rule
2. The exclusionary rule applies to the states through the 14th amendment - Mapp v. Ohio-pg. 124
   a) overruled Wolf v. Colorado which held that the exclusionary rule did not apply because of federalism concerns.
   b) put an end to the "silver platter" doctrine where state agents could hand over illegally seized evidence to federal agents for state prosecution because the federal agents had not obtained it illegally.(***no more Silver Plate Doctrine***)
   c) reasoning: without the exclusionary rule, the 4th amendment has no bite.

Silver Platter Doctrine does not exist.

3. Exception to the exclusionary rule: Evidence obtained in **good faith**, but upon a defective warrant is admissible - Leon
   a) the reliance must be **objectively reasonable** - whether a reasonably well trained officer would have known that the search was illegal, considering all of the circumstances. Pg. 132-First, the Exclusionary Rule is designed to deter police misconduct rather than to punish the errors of judges and magistrates. Second, there exists no evidence suggesting that judges and magistrates are inclined to ignore or subvert the Fourth Amend. Or that lawlessness among these actors requires application of the extreme sanction of exclusion. Third, and most important, for believing that exclusion of evidence seized pursuant to a warrant will have a significant deterrent effect on the issuing judge or magistrate.
   b) police can not be deterred by exclusion if they acted in good faith, so there is no reason to exclude the otherwise trustworthy evidence because of a technical defect.
   c) **Four Exceptions** to Leon-says obtained in "good faith".
      (1) affidavit contained information that the police knew to be false or had a reckless disregard for its truth
      (2) magistrate has wholly abandoned his judicial role by failing to be neutral
      (3) affidavit so lacking in probable cause that belief in it is unreasonable
      (4) warrant is so facially deficient that the officers could not reasonably presume it to be valid.

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C. What Constitutes A Search?

1. 4th amendment only triggered by government action.
    - a) private actors are considered government agents if:
        - (1) act at the direction or request of the government
        - (2) act pursuant to government policy or regulation
        - (3) act with the knowledge, acquiescence, or encouragement of the government
        - (4) act with a purpose or motivation to be a government actor
2. Katz - two pronged test for whether there has been a search (Harlan concurrence)
    - a) person has manifested **actual (subjective) expectation of privacy**
    - b) expectation is one that society is prepared to recognize as **reasonable**
    - c) Example of activity that is not a search under the 4th amendment because there is no reasonable expectation of privacy:
        - (1) California v. Greenwood - police rummaging through your garbage is not a search because society does not recognize a reasonable it is accessible to the public.
        - (2) police obtaining your phone records is not a search because the numbers dialed from your phone are gathered by the phone company for billing.
        - (3) Florida v. Riley - police inspecting your backyard from a helicopter is not a search because members of the general public may legally do so from the same vantage point.
        - (4) U.S. v. Knotts - police placing a beeper on your car is not a search because you put your car in plain view when you drive on the highway, and there is no constitutional interest in not having a beeper on your property.
        - (5) U.S. v. Place - drug dog sniffing your luggage is not a search because you have no privacy interest in odors emanating from luggage.
        - (6) U.S. v. White - police may "wire" a friend of yours to eavesdrop on and even record your conversation and it is not a search because you assume the risk that your friend is an informant.
    - d) Examples of activity that does constitute a search:
        - (1) Karo - police may not monitor a beeper once it has entered a constitutionally protected area like a home because it reveals information that could not be obtained by surveillance from a public place.

Dow Chemical v. Us from supp. p.15

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3. Curtailage/Open Fields Doctrine
    - a) Dunn identified 4 factors for determining whether an area is within the curtailage of the home, and therefore protected from unreasonable search:
        - (1) the **proximity** of the area to the home
        - (2) whether there is an **enclosure** that surrounds both the home and the area
        - (3) the **nature of the uses** to which the area is put
        - (4) the **steps taken** to protect the area from observation
    - b) a warrant may be required to search curtailage, but no warrant is ever required to look through an open field - it is not even a 4th amendment "search" because there is no expectation of privacy.

Weeden likes this.

D. Probable Cause

1. Definition of Probable Cause to search is different than probable cause to a
    - a) probable cause to search means that there is a "fair probability evidence of a crime is presently in the place to be searched."
    - b) probable cause to arrest means that there is a fair probability that:

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(1) a crime has been committed; and
(2) the person to be arrested committed the crime.

2. OLD WAY of determining probable cause from an informant's tip (Aguilar/Spinelli two-pronged test overruled by Gates):
   a) veracity prong - must be evidence that the informant himself was reliable
   b) basis of knowledge prong - must be facts showing the particular means by which the informant obtained the information
   c) this test was too rigid and impractical for laymen police officers
3. Illinois v. Gates - **totality of the circumstances** determines whether an informant's tip is sufficient basis for probable cause
   a) the veracity of the informant and the basis of his knowledge are merely considerations, along with corroboration.
   b) strong showing in one area (for example, informant's history of reliability) can make up for weak showing in another area (for example no description of how the informant got the information).

E. Warrants 2/15/01

Shadwick v. City of Tampa Coolidge

1. Warrant procedures
   a) person issuing the warrant need not be a judge or even a lawyer (could be a court clerk for misdemeanor cases) - but can't be part of the police department (must be neutral).
   b) police must present a satisfactory affidavit which sets forth facts and circumstances which would lead a reasonable person to believe that evidence of a crime will be found in the place to be searched.
   c) area or person to be searched must be described with particularity.

Probable Cause

2. validity of search or arrest pursuant to a warrant depends on:
   a) reasonableness at the time of issuance;
      (1) In Maryland v. Garrison, the warrant only specified one third floor apartment when there were in fact two. The warrant was held valid because the officers reasonably believed that there was only one apartment when obtaining the warrant.
   b) as well as reasonableness of the execution of the warrant.
      (1) also, in Hill the warrant was for the arrest of Hill, but the arrest of Miller was held to be reasonable when they instead found Miller (rather than Hill) in Hill's apartment.
      (2) it is reasonable for officers to arrest and search a person under an outstanding arrest warrant for another person having the same name and birthdate.
      (3) in Richards v. Wisconsin, the court held that officers must knock and announce before entry unless there was a high probability of physical violence to the officers or destruction of evidence, otherwise the execution is not reasonable.

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F. Arrests and other seizures of persons –Horton Case pg. 217

Brightline rule- saying that this the rule this is the law, bottomline.

1. Arrest warrants are not generally required, even if the police have sufficient advance notice that procurement of the warrant would not jeopardize the arrest. U.S. v. Watson 2/15/01 ***WARRANT EXCEPTION*** – warrant is not necessary under exigent circumstances.
   a) historically, arrests have been allowed without a warrant in felonies, and in misdemeanors committed in the officer's presence.
   b) arrest warrant requirement would tend to hamper police efforts because circumstances and evidence will change while the officers are obtaining the warrant.
   c) however **probable cause to arrest** is still required - particular and articulable facts that would lead the officer to believe that a crime was committed and the defendant did it.

2. Exception for **home arrests** - Arrest warrant may be required where the police wish to arrest a person in his home in the absence of exigent circumstances - Payton v. New York.
    a) rationale: home intrusion is serious constitutional issue, and since a warrant is required to search a home, it should be required to enter a home to arrest a person.
    b) ex: if police have a warrant to arrest A, and know that A is at B's house, police must get a search warrant to enter B's house.
3. use of deadly force is a "seizure" for 4th amendment purposes - Tennessee v. Garner
    a) officer must have probable cause to believe that the suspect poses an immediate threat of serious bodily harm;
    b) the use of deadly force must be necessary to prevent escape;
    c) if feasible, a warning shot is required.

G. Exceptions to the Warrant Requirement
1. Exigent Circumstances - no bright line rule for determining when exigent circumstances exist, but Dressler gives three guidelines:
    a) impracticability or unreasonableness of obtaining the warrant;
    b) appropriate scope - scope of the search has to be limited to the exigency
    c) probable cause must still be present
    d) examples:
        (1) police reasonably believe that the suspect will destroy evidence if they wait
        (2) police in hot pursuit of a fleeing felony suspect may follow him into a house without a warrant
2. Search Incident to Arrest - police may search area within the suspect's **immediate control** (**wingspan**) from which he may draw a weapon or destroy evidence - Chimel v. California 2/12/01
    a) must have a **valid arrest** - meaning that there must be a warrant or some exception must apply

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    b) the search must occur **contemporaneously**
    c) examples:
        (1) in U.S. v. Robinson, the court held that a police officer may perform a full body search (reaching into all pockets) pursuant to a full custodial arrest 2/5/01
        (2) in Vale v. Louisiana the court held that police could not thoroughly search the back room of a house (without a search warrant) pursuant to the arrest of the suspect at his front door because the back room was not under his control.-Custodial arrest
        (3) Cupp v. Murphy – there was a compelling state interest to not have the evidence destroyed.
        (4) however, in Maryland v. Buie, (pg. 258) the court held that police could make a **protective sweep** of a house incident to arrest if they have a reasonable belief based on specific and articulable facts that another person present in the house might ambush them.

Specific and articulable

        (5) in New York v. Belton, the court held that police could search the entire passenger compartment, including **closed containers** pursuant to a custodial arrest of the occupant of a car.
3. Automobile Exception - if police have probable cause to stop an auto, they may search the entire car, including any closed containers in which they have probable cause to believe that evidence of a crime exists.
    a) rationales:

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(1) ready mobility - the car can be moved out of the jurisdiction before a warrant can issue

(2) lessened expectation of privacy in an auto - subject to extensive government regulation, open to public view, etc.

b) ex: in California v. Carney, (pg. 219; diminished expectation of privacy) the court held that a search of a parked motor home without a search warrant was valid based on probable cause that marijuana was inside.

c) ex: in California v. Acevedo, the court held that **closed containers** in the trunk of a car may be searched based on probable cause that they contain particular evidence of a crime. (Note that this overrides the otherwise applicable "container doctrine" which requires a warrant to search closed containers that are not in an auto).

d) Whren case needs to be here and analyzed-important to Weeden

4. Terry Stop and Frisk - police may stop a person and perform a reasonable pat-down search based on mere **reasonable suspicion** that the person is (or was) engaged in criminal activity (including past activity) and is armed.

Reasonable articulable suspicion

a) the stopping of the person is a "seizure" for 4th amendment purposes, and the pat down is also a "search," but probable cause is not required due to the interest in law enforcement and police safety.

b) police may pat down the outer clothing, but may not reach into a pocket unless they feel something they reasonably suspect to be a weapon.

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c) NOTE - this is a more restricted search than a search incident to custodial arrest which is also for the purpose of preventing destruction of evidence.

d) the stop must be reasonable in duration and scope, otherwise probable cause requirement is triggered

(1) in Florida v. Royer, the court refused to admit drugs taken from defendant's luggage because he was detained in a small room longer than was necessary to dispel the officer's suspicions, and the search was more intrusive than other means reasonably available (i.e. drug sniffing dogs).

UNDERLYING THEORY-it is not unreasonable under the 4th Amendment for a police officer, as a matter of routine to monitor the movements of an arrested person, as his judgment dictates, following the arest.

e) a reasonable person in the suspect's position must feel **free to decline the officer's requests** for information - Florida v. Bostick

(1) a person on a bus may not feel free to disregard the questions of armed police officers who are standing above him and blocking his exit.

(2) refusal to answer police questions alone is not enough to justify a stop and frisk.

f) police may also briefly seize **personal property** (i.e. luggage) based on a mere reasonable suspicion that the property contains evidence of a crime - U.S. v. Place. 2/26/01

g) Davis v. Mississippi-the fingerprints may be made consistent with the 4th Amendment under "narrowly circumscribed procedure"' when there is less than probable cause. **Probable cause is the legal point here**.

(1) however, the scope and duration of the seizure still must be reasonable and the less intrusive means available.

(2) this is an extension of the Terry rationale which was originally just a protective search for weapons.

5. Plain Feel and Plain View Exceptions

a) If a police officer, while conducting a Terry-style stop and frisk, feels what he has **probable cause** to believe is contraband or evidence of a crime, the officer may seize the object. Minnesota v. Dickerson

(1) Note that this is not a further extension of Terry because it still requires probable cause after feeling the object.

(2) the officer may not manipulate the object in order to determine it's nature, because this would be going beyond the limited Terry exception which only justifies a pat-down.

b) If a police officer, while lawfully in the suspect's home, sees what he has **probable cause** to believe is contraband or evidence of a crime, the officer may seize the object. Arizona v. Hicks

(1) the officer may not manipulate or move the object - the incriminating nature of the object must be **immediately apparent** - moving the object requires probable cause

6. Consensual searches - police may make a warrantless search if they receive the consent of the individual whose property or person is subject to the search.

a) the suspect does not need to be informed that he has a right to refuse consent if the search is non-custodial - Schneckloth v. Bustamonte, but it is merely one factor in the **totality of the circumstances** in determining whether the consent was voluntary.

b) **Illinois v. Rodriguez third party consent** - police may reasonably rely on the consent of a third party who has **apparent common authority** to consent to the search of another's property, even if it turns out that the third party does not have such authority.

(1) ex: if a girlfriend says that she lives at the suspect's house, and has a key, and lets the officers in, the officers may reasonably rely on her apparent authority to consent to search of the suspect's house, even though the girlfriend is actually only an infrequent visitor.

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7. Administrative/Regulatory Searches - a search may be conducted without any individualized suspicion of a crime when **special needs** beyond the normal needs for law enforcement exist that outweigh the probable cause requirement.

a) ex: in Veronia v. Acton, the court held constitutional a school requirement that all student athletes submit to a drug test in order to participate - the "special needs" were the safety of the children.

(1) however, the results may not be used for law enforcement purposes.

b) ex: in Colorado v. Bertine, the court allowed a warrantless search of an entire vehicle, including **closed containers** pursuant to an inventory search after impound of the vehicle -the "special needs" were the safety of the officers in the impound and the need to dispel accusations of theft against the officers.

(1) but the police must follow standardized procedures, leaving no discretion to the officer as to the scope of the search; and

(2) the search must not be conducted in bad faith or for the sole purpose of investigation of criminal activity.

8. Traffic Stops - police may stop a vehicle if they have **probable cause** to believe that it has committed a traffic violation, regardless of whether the stop is merely a **pretext** for investigation of an unrelated crime. - Whren v. U.S.

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II. Police Encouragement and the Defense of Entrapment

A. In general there are two different approaches to entrapment:

1. Subjective Approach - focus on "predisposition" of the actor

a) test is whether the defendant was predisposed to commit the crime

b) this is the MAJORITY approach

c) ex: in U.S. v. Russel, the court held that the prior drug-making activities of the defendant could come in to prove that the defendant was predisposed to make drugs, even though it was the police who furnished him with key ingredients and assisted in the lab.

d) ex: in Jacobsen v. U.S., the court held that the government had not proven that the defendant was predisposed to solicit kiddie porn in view of the government's repeated and elaborate efforts over 2-3 years to induce him to purchase this illegal material through the mail.

2. Objective Approach - focus on the action of the government agents

a) test is whether the police conduct would have induced a reasonable law abiding citizen to break the law

B. Mere encouragement is allowable, but entrapment is not.

III. The Right to Counsel, Transcripts, and Other Aids

A. The right to appointed counsel

1. In Betts v. Brady 1942, the Supreme Court refused to require the appointment of counsel in state courts, holding that the absence of counsel does not necessarily mean that the trial is unfair. This case was about fundamental fairness. (6th Amendment –Fed. Crime rt. to counsel only).

2. However, Gideon v. Wainwright overruled Betts and announced a per se rule that **a person charged with a felony who is too poor to hire a lawyer can not have a fair trial unless counsel is provided for him.**

a) Gideon applies at least to felony cases.

If no represent. by counsel then no imprison. can be imposed.

3. In Argersinger v. Hamlin, the court extended the right to counsel to all indigent **misdemeanor** defendants if their trial could result in a **jail sentence**.

a) however, in Scott v. Illinois, the court clarified that this right only attaches if the defendant is **actually sentenced** to imprisonment (rather than only being fined), not merely charged with an offense which may be **punishable by imprisonment**.

B. The Griffin-Douglas equality principle

1. In Griffin, the Supreme Court held that a state must provide a free transcript of the trial proceedings when submission of a trial transcript is required in order to appeal.

a) the holding was based on the 14th amendment equal protection clause - unequal protection of the laws as between rich and poor.

2. In Douglas, the court held that an indigent defendant is also entitled to appointed counsel for the first appeal, which is granted as a matter of right.

a) again, the holding was based on the equal protection clause of the 14th amendment.

b) however, in Ross v. Moffit, the court held that an indigent defendant is not entitled to appointed counsel for subsequent discretionary appeals because these are usually granted on the importance of the legal issues involved, and not whether the determination of guilt was wrong.

Disagreed with Griffin

3. Ake v. Oklahoma

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IV. Police Interrogation and Confessions

A. OLD view - The due process voluntariness test

1. totality of the circumstances approach - a confession was not voluntary if, in the totality of the circumstances, it was elicited in a manner that violates due process of law.

a) ex: in Ashcraft v. Tennessee, the court held that a statement made after 36 hours of relay questioning without sleep was so coercive as to be a violation of due process.

Coercive

b) ex: in Watts v. Indiana, the court held that a statement made after a week of solitary confinement and repeated interrogation was so coercive as to be a violation of due process.

Coercive

2. Problems with the due process voluntariness view:

a) it did not really address the problems of police conduct because it required a finding of police coercion before the statement would be excluded.

b) it did not offer police any guidance because it was a case-by-case determination

c) it gave the trial courts too much unreviewable discretion.

B. **DUE PROCESS CLAUSE** Violation Test is the "Shock the conscience test". Very little shocks the court conscience.

C. another OLD view - Right to Counsel (Massiah) Approach

1. Development of the right to counsel approach
   a) In Crooker, there was no due process violation and the defendant was a **law student** who actually knew of his right to remain silent. But the dissent stated that there was still a violation because he did not have counsel present.
   b) In Spano, the concurrence stated that once a person is indicted, the right to counsel obtains, and any confession thereafter must be with counsel present.
2. **"Deliberate elicitation"** of incriminating remarks by government agents is unconstitutional in the absence of counsel once formal adversarial proceedings have begun. - Massiah

Exculpatory comments

   a) in Escobedo, the court extended the time for the right to counsel to attach to the time when the investigation has focused on the defendant. - but this has been undermined by subsequent cases (See Moran v. Burbine below)

-Miranda statements that are inadmissible are admitted for impeachment purposes.

-right to counsel violations are never admitted

   b) Note that the deliberate elicitation test applies only after formal adversarial proceedings have begun - it does not apply to statements made to officers before the person is suspected.
   c) note that "deliberate elicitation" requires inquiry into the police officer's subjective intent - contrast with reasonably likely test for interrogation of Miranda (below).

2 prong def. Of interrogation

   d) statements made in violation of the right to counsel are inadmissible for ANY purpose - contrast with statements made without Miranda warnings which are admissible for impeachment purposes.
   e) ex: in U.S. v. Henry, the court held that statements made to an informant in defendant's cell about the crime he was charged with were inadmissible because the informant was paid on a contingency basis making it likely that he "deliberately elicited" statements from the defendant.

JAIL HOUSE Case

   f) however, mere **passive receipt** of statements obtained about the crime charged by merely listening are admissible - Kuhlmann v. Wilson
   g) ex: in Brewer v. Williams, the statement that "the parents of this little girl should be entitled to a Christian burial" was held to be a deliberate elicitation.
   h) 5th-Miranda self-incrimination. 4th rts. To counsel. 6th-timing when does rt. to counsel come in this is about post arraignment.
3. Waiver of Right to Counsel
   a) prosecution must show that waiver was **intentional relinquishment or abandonment** of the right to counsel - Brewer v. Williams. It was not a knowing and intelligent waiver.

D. The 5th Amendment Privilege vs. Self Incrimination Approach (Miranda).

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1. ALL statements made during a **custodial interrogation** are inadmissible unless the suspect is given these (or substantially similar) four warnings:
   a) that he has the **right to remain silent**
   b) anything he says can be used against him
   c) he has the **right to have an attorney present** during questioning
   d) if he can not afford an attorney, one will be appointed for him
2. Reasoning:
   a) custodial interrogation is inherently coercive, and so all incriminating statement made during custodial interrogation are presumed to be involuntary unless these warnings are given.

b) even if the person actually already knows his rights, speculation that a person might not know or remember may be avoided by the quickness with which these warning can be given.

3. Dickerson v. United States , Scalia, dissenting is important to Weeden the question is what is the facts that give rise to Miranda warnings. The facts are when the does not get the warning not physical coercion. Miranda Rule now constitutional mandate.

4. Post Miranda is the Dickerson 2000 case. Miranda went from prophylactic rule to a constitutional mandate.

5. Waiver – 3 elements: intelligently, voluntarily, and knowingly.
   a) two kinds of waiver:
      (1) express waiver - person expressly waives rights and then makes a statement
      (2) implied waiver - besides the Miranda warnings, the prosecution must prove that there was a **knowing and intelligent** waiver (and voluntary statement) in order to have statements made during custodial interrogation admitted.
         (a) silence itself is not sufficient to show waiver
         (b) prosecution must show that waiver was intentional – Brewer. Williams did not do this knowingly.

Rt/ to Counsel

   b) Suspect may retract his waiver of attorney at any time and interrogation must then immediately cease until counsel is present. - Edwards v. Arizona WEEDEN
      - The main point or issue is that custodial interrogation must be present to signal Miranda rt. requirement. Assert the rt. to remain silent and or

Oregon v. Bradshaw

      - I want a counsel.
        Waiver is indicated when the defendant starts talking once the Miranda has been read. Police must reinitiate Miranda under rt. to remain silent. If defendant talk it is waived.
      (1) consultation with an attorney is not enough to satisfy the Miranda requirements, the **attorney must be present during the interrogation** - Minnick v. Mississippi
      (2) -the problem is that the police initiated the conversation, suspect must unambiguously request counsel - Davis v. U.S.

Rt. to remain silent v. rt. to counsel

   c) **multiple interrogations** - after a suspect has asserted his right to remain silent in a first interrogation, police may conduct a later interrogation about a second crime as long as they give Miranda warnings before the second session - Michigan v. Mosley

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      (1) note that this only applies to the right to remain silent, not the right to have counsel present - police may not initiate a subsequent interrogation once the suspect has clearly requested counsel.

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   d) a waiver is not invalid even though it is made without consulting a lawyer, and even where the police do not inform the suspect that a lawyer is trying to reach him, and even when the police prevent the lawyer from accessing the client - Moran v. Burbine
      (1) events that occur **outside of the suspect's knowledge** can have no bearing on his waiver.
      (2) it does not matter that the suspect may have changed his mind had the attorney been present.
      (3) **the right to counsel does not attach until formal charges are initiated**.

(4) **MI v. Tucker** defendant gave info w/o being given the full Miranda warnings. Defendant was told that he was a right to the presence of counsel, but had not been informed that if he could not afford a lawyer but desired one, a lawyer would be appointed for him prior to any questioning.

6. Definition of "custodial" - whether a **reasonable person in the suspect's position would believe that he was free to leave.**
   a) ex: in Berkemer v. McCarty, statements made on the side of the road after a traffic stop were ruled admissible because the suspect's freedom had not yet been curtailed to the extent that it was the **functional equivalent** of custodial arrest.
      (1) the uncommunicated subjective intent of the officer whether or not he planned to arrest the suspect is irrelevant.
      (2) the traffic stop is presumed to be temporary and brief, and occurs in public with only one or two officers - so it is not "custodial."
   b) ex: in Illinois v. Perkins, statements made to an undercover agent while in jail on an unrelated charge were admissible because there can be no coercion if the suspect doesn't know that he is talking to police.
      (1) also there was no right to counsel (Massiah) violation because no formal adversarial proceedings had been started (he was in jail on a different unrelated charge).

7. Definition of "interrogation" - words or actions on the part of the police that a reasonable police officer should know are **reasonably likely to elicit an incriminating response** from the suspect. - Rhode Island v. Innis
   a) ex: in Innis, one officer's rhetorical statement that "god forbid that a retarded child find the gun and hurt himself" was not an interrogation, even though it prompted the defendant to show the police the location of the gun used for the murder because there was no reason for the police to know that the defendant was susceptible to an appeal to his conscience.
      (1) again, the subjective intent of the police is irrelevant, even if they were trying to elicit a response - contrast with the deliberate elicitation test of Massiah where subjective intent is relevant.

8. Michigan v. Tucker, defendant info without being given the full Miranda warning. Defendant was told that he had a right to the presence of counsel, but had not been informed that if he could not afford a lawyer but desired once, lawyer but desired one, a lawyer would be appointed for him prior to any questioning.

9. Public Safety Exception to Miranda - Miranda warnings are not necessary prior to questioning that is "reasonably prompted by a concern for the public safety." - New York v. Quarles
   a) rationale: the court applied a cost-benefit balancing analysis finding that public safety outweighed the prevention of compulsion in this situation.
   b) the subjective motivation of the police officer is irrelevant - the test is whether **a reasonable officer would believe that there was a threat to the public safety**.
   c) ex: in New York v. Quarles, a statement was admissible even though the police did not give Miranda warnings before asking "where's the gun" because there was a danger to the public that someone would find the gun.
      (1) in O'Connor's dissent, she argued that the gun should still be admissible, even though the statement was not.

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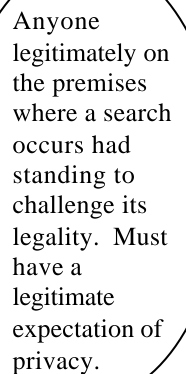
V. Fruit of the Poisonous Tree Doctrine - if the police conduct is a constitutional violation, then any evidence **derived** from that violation must be excluded unless the "taint" of the original constitutional violation is "purged" from the evidence.

- a) however, in Oregon v. Elstad, the court held that a second (Mirandized) admission, made after a first (non-Mirandized) admission was admissible as long as it was knowingly and voluntarily made.
  - (1) it does not matter that the defendant may have felt that the "cat was out of the bag" already.
  - (2) there is no need for passage of time or break in the chain of events - here the taint of the first confession was purged by a knowing and voluntary second admission after being Mirandized properly.
- b) Exception - does not apply to evidence that the police would have found anyway, without the constitutional violation.
  - (1) for example, if police obtain the "fruit" from an independent source.

A. The rule
1. Evidence obtained by violating suspect's rights is inadmissible.
2. Judge-made rule to deter police misconduct.

B. Standing to assert the Rule
1. Only applies to a personal violation of constitutional rights
2. Suspects cannot assert the rule vs. the illegal confession
3. Search and seizure cases.
   - a) Personal expectation of privacy must be intruded upon
   - b) Mere possessory interest in the items seized is not standing
   - c) Fact that suspect is legitimately on the premises
   - d) Co-conspirators do not automatically have standing.



C. Derivative Evidence
1. ER applies to direct evidence and derivative evidence that poisonous tree.
   - a) Police misconduct leads in a short, unbroken chain.
2. Exceptions to poisonous fruit doctrine:
   - a) Independent source exception:
     - (1) For warrantless searches and seizures:
       - (a) Illegally on premises
       - (b) PC for search warrant
       - (c) Would have gotten warrant anyway.
     - (2) For inevitable discovery where shown by pre-the evidence.
   - b) Purged taint by intervening factors.
     - (1) Illegality leads to police focus on others;
     - (2) Leads to different crime;
     - (3) Leads to witnesses;
   - c) Confession as tainted fruit (from period of custody arrest) absent intervening factors.
     - (1) MW's given;
     - (2) Time delay;
     - (3) Illegality intentional or without PC;
     - (4) Intervening factors
   - d) Second confession after tainted confession
     - (1) Cat-out-of-the-bad theory is irrelevant
   - e) Probably no poisonous tree, at least where illegality
   - f) Inevitable Discovery Doctrine

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