

## Searches & Seizures Approach Outline

Spring 2011

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- I. Search? (Manifested subjective expectation of privacy + Society prepared to recognize as reasonable?)
  - A. If Yes → Was there a search warrant?
    - i. If Yes → Was there probable cause?
      - Anonymous tip (underlying circumstances + reliability)
      - Not stale
      - a) If Yes, then particularity
        - Particularity in warrant itself
        - Anticipatory w/ triggering condition
        - Neutral & detached magistrate
        - If Yes → Executed properly (K&A, item seized listed on warrant)?
          - If Yes → OK
          - If No → Exception to K&A (threat of physical violence, apprehending escaped prisoner, destruction of evidence)
            - If Yes → OK
            - If No → Violation (no suppression, however)
        - If No → Plain View Doctrine (incriminating character immediately apparent + lawfully located in place + NO additional search)
          - If Yes → OK
          - If No → Violation/Suppress
    - ii. If No → Exception to warrant?
      - a) Hot pursuit?
        - If Yes → OK
        - If No → Other exception?
      - b) Search incident to arrest?
        - Of immediate area (wingspan)?
        - Of person (whole person + containers)?
        - Of vehicle (only if unsecured + present)?
      - c) Vehicle doctrine (mobility + lessened expectation of privacy)?
        - PC to search car → OK for whole car + containers
        - PC for container in car → OK for container *only*
      - d) Inventory search (caretaking function)?
        - Pursuant to standard police procedure → OK
        - Pretextual/no procedure → Violation
      - e) Consent?
        - From suspect?
          - Voluntarily given (knowledge of rights not needed)?
            - If Yes → OK
            - If No → Violation

- From 3<sup>rd</sup> party?
    - Common authority?
      - If Yes → Another resident physically present + protesting?
        - └ If No → OK
        - └ If Yes → Violation
      - If No → Objectively reasonable mistake?
        - └ If Yes → OK
        - └ If No → Violation
  - f) Border search (OK w/o reasonable suspicion)?
    - If Yes → OK
  - g) School?
    - School rule/the law
    - RS to believe rule broken
    - Balance intrusiveness of search w/ seriousness of offense
  - h) Drug testing?
    - Valid:
      - Railway employees
      - Students in extracurricular activities
      - Border patrol agents
    - Not valid:
      - Candidates for public office
      - Pregnant mothers on public assistance
  - iii. Higher degree of reasonableness needed?
    - a) Deadly force (PC to believe poses threat of serious physical harm)?
    - b) Forced operation:
      - Blood after DUI → OK
      - Compelled surgery → Probably not OK
- II. Seizure? (Reasonable person feel free to terminate the encounter? Application of force or submission to show of authority?)
- A. If Yes → Probable cause?
    - i. If Yes → Was there an arrest warrant?
      - a) If Yes → K&A at residence?
        - If Yes → OK
        - If No → Violation (no suppression, however)
      - b) If No → Location?
        - Public place → OK
        - Residence → Violation
  - B. If No → Reasonable suspicion?
    - Specific & articulable facts
    - Flight + high-crime area
    - Anonymous tip + official corroboration
    - Tip *alone* insufficient

- i. If Yes → Done properly?
  - Don't go to police station
  - Diligently pursued means of investigation
  - a) If Yes → OK. Patdown?
    - Separate reasonable suspicion?
      - If Yes → OK
        - Of outer clothes. Find contraband?
          - └ OK if incriminating character immediately apparent
          - └ Not OK if additional search
        - Protective sweep
        - Of car (passenger compartment only)
      - If No → Violation
    - b) If No → Violation
- ii. If No → OK w/o individualized suspicion?
  - a) Checkpoint?
    - If Yes → Valid?
      - Public safety vs. general crime control
      - Impact on public (fear, inconvenience)
      - Degree of intrusion (no discretion, marked, brief)
    - If Yes → Valid
    - If No → Violation
  - b) Border → OK (some exceptions)