

TN.DOE.CJ1 18) Explore the rights of the accused guaranteed by the United States Constitution in Amendments 1, 4, 5, 6, 7, 8, and 14. Review and defend landmark cases and determine effects on law enforcement policy and corrections policy (search and seizure, exclusionary rule, Miranda, and rights of incarcerated individuals). Create a flow chart to depict the processing of an offender through the criminal justice system citing laws, procedures, and policies that protect the offender's rights.

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Standard 18

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The Fourth Amendment reads as follows:

"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."

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This amendment contains two critical legal concepts:

- **a prohibition against unreasonable searches and seizures, and**
- **the requirement of probable cause to issue a warrant**

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Reasonableness

- **When police are conducting a search or seizure, they must be reasonable.**
- **Though courts have spent innumerable hours scrutinizing the word, no specific meaning for "reasonable" exists.**

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The Fourth Amendment

- **The Fourth Amendment provides that individuals be "secure in their persons" against "unreasonable searches and seizures" conducted by government agents.**
- **In practice this means, that law enforcement officers are required to obtain a search warrant prior to any search and seizure.**

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The Fourth Amendment

- Basically, the search warrant is the acknowledgement by a judge that probable cause exists for law enforcement officers to search for or take a person or property.
- Before a search can take place or an individual can be arrested, the requirement of probable cause must be met.

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- Probable cause exists if there is a substantial likelihood that:
 - 1. a crime was committed
 - 2. the individual committed the crime

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The Fourth Amendment

- Probable cause involves a likelihood not just a possibility - that the suspect committed the crime.
- Probable cause must exist before the police can get an arrest warrant or a search warrant from a judge.

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Probable Cause

- Probable cause - Reasonable grounds to believe the existence of facts warranting certain actions, such as the search or arrest of a person.

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Sources of probable cause are:

- Personal Observation
- Information
- Evidence
- Association

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Probable Cause

- Historically the courts have looked to the Fourth Amendment for guidance in regulating the activity of law enforcement officers, as the language of the Constitution does not expressly do so.

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Probable Cause

- **The court's most potent tool in this endeavor is the exclusionary rule, which prohibits the use of illegally seized evidence.**

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Probable Cause

- **Furthermore, any physical evidence or verbal evidence police are able to acquire by using the illegally acquired evidence is known as the fruit of the poisoned tree and is also inadmissible.**

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Probable Cause

- **One of the implications of the exclusionary rule is that it forces police to gather evidence properly.**

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The Exclusionary Rule

- The exclusionary rule is applied to all evidence in federal court as a result of the decision in **Weeks vs. United States (1914)**.

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The Exclusionary Rule

- **For almost fifty years after this 1914 case the courts continued to allow illegally obtained evidence, and federal courts could do so if the evidence had been obtained by state officers. This practice was known as the "silver platter doctrine" because it handed the prosecution a conviction on a silver platter.**

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The Exclusionary Rule

- The only exception to the silver platter doctrine was when the police actions were so extreme that they "shock the conscience" of the court.
- The shocks the conscience doctrine was established in the **1951 Rochin vs. California**. Rochin had his stomach pumped to recover two illegal pills he had taken.

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The Exclusionary Rule

- Rochin did not make the exclusionary rule applicable to all states, but only to serious police misconduct.
- The silver platter doctrine was finally eliminated nine years later in Mapp vs. Ohio 1961.

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Mapp vs. Ohio (1961)

- **Facts of the Case:**
- Dolree Mapp was convicted of possessing obscene materials after an admittedly illegal police search of her home for a fugitive. She appealed her conviction on the basis of freedom of expression

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Mapp vs. Ohio (1961)

- **Question:**
- **Were the confiscated materials protected by the First Amendment? (May evidence obtained through a search in violation of the Fourth Amendment be admitted in a state criminal proceeding?)**

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Mapp vs. Ohio (1961)

- **Conclusion:**
- The Court brushed aside the First Amendment issue and declared that "all evidence obtained by searches and seizures in violation of the Constitution is, by [the Fourth Amendment], inadmissible in a state court." Mapp had been convicted on the basis of illegally obtained evidence.

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Mapp vs. Ohio (1961)

- This was an historic -- and controversial -- decision. It placed the requirement of excluding illegally obtained evidence from court at all levels of the government. The decision launched the Court on a troubled course of determining how and when to apply the exclusionary rule.

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Mapp vs. Ohio (1961)

- The Mapp vs. Ohio case signaled a new willingness to **apply the Fourth Amendment to both state and federal law enforcement officers.**

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Exceptions to the Exclusionary Rule

- The "inevitable discovery" exception - The legal principle that illegally obtained evidence can be admitted in court if the police using lawful means would have "inevitably" discovered it.

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Exceptions to the Exclusionary Rule

- " Good Faith" exception - The legal principle established through court decisions, that evidence obtained with the use of a technically faulty search warrant is admissible during the trial if the police acted in good faith when they sought the warrant from the judge.

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Gideon vs. Wainwright (1963)

- In the landmark case of Gideon vs. Wainwright (1963), the Supreme Court unanimously held that any person who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him, stating "lawyers in criminal court are necessities, not luxuries."

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Stops and Frisks

- When reasonable suspicion exists, police officers are well within their rights to stop and frisk a suspect.

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Stops and Frisks

- In a stop and frisk, law enforcement officers:
 - a) briefly detain a person they reasonably believe to be suspicious
 - b) if they believe the person to be armed, proceed to pat down, or frisk that person's outer clothing.

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Stops and Frisks

- The precedent for the ever elusive definition of a "reasonable suspicion in stop-and-frisk was established in Terry vs. Ohio.

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Terry vs.. Ohio (1968)

- Facts of the Case:
- Terry and two other men were observed by a plain clothes policeman, Detective McFadden, in what the officer believed to be "casing a job, a stick-up." The officer stopped and frisked the three men, and found weapons on two of them. Terry was convicted of carrying a concealed weapon and sentenced to three years in jail.

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Terry vs.. Ohio (1968)

- Question:
- Was the search and seizure of Terry and the other men in violation of the Fourth Amendment?

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Terry vs.. Ohio (1968)

- Conclusion:
- In an 8-to-1 decision, the Court held that the search undertaken by the officer was reasonable under the Fourth Amendment and that the weapons seized could be introduced into evidence against Terry. Attempting to focus narrowly on the facts of this particular case, the Court found that the officer acted on more than a "hunch" and

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Terry vs.. Ohio (1968)

- that "a reasonably prudent man would have been warranted in believing [Terry] was armed and thus presented a threat to the officer's safety while he was investigating his suspicious behavior." The Court found that the searches undertaken were limited in scope and designed to protect the officer's safety incident to the investigation.

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Terry vs.. Ohio (1968)

- The Supreme Court upheld the conviction, ruling Detective McFadden had reasonable cause to believe that the men were armed and dangerous and that swift action was necessary to protect himself and other citizens.

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Stops and Frisks

- In the years since the Terry case was decided the Court has settled on a "totality of the circumstances" test to determine whether a stop is based on reasonable suspicion.
- A stop takes place when a law enforcement officer has reasonable suspicion that a criminal activity is about to take place.

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Stops and Frisks

- Because an investigatory stop is not an arrest, there are limits to the extent police can detain someone who has been stopped.
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Stops and Frisks

- **The Supreme Court has stated that a frisk should be a protective measure. Officers cannot conduct a frisk as a "fishing expedition" simply to try to find items besides weapons, such as illegal narcotics, on a suspect.**

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Arrests

- **An arrest is the taking into custody of a citizen for the purpose of detaining him or her on a criminal charge.**

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Arrests

- Four elements that must be present for an arrest to take place:
 - The intent to arrest
 - The authority to arrest
 - Seizure or detention
 - The understanding of the person the she or he has been arrested

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Arrests

- When law enforcement officers have established probable cause to arrest an individual who is not in police custody, they obtain an arrest warrant for that person.
- There is a perception that an arrest warrant gives law enforcement officers the authority to enter a dwelling without first announcing themselves.

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Arrests

- In *Wilson vs. Arkansas* (1995) the Supreme Court reiterated the common law requirement that police officers must knock and announce their identity and purpose before entering a dwelling.

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Arrests

- Under certain conditions, known as exigent circumstances, law enforcement officers need not announce themselves.
- These circumstances include situations in which the officers have a reasonable belief of any of the following circumstances:

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Arrests

- a) The suspect is armed and poses a strong threat of violence to the officers or others inside the dwelling.
- b) Persons inside the dwelling are in the process of destroying evidence or escaping because of the presence of the police
- A felony is being committed at the time the officers enter.

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Arrests

- A law enforcement officer may make an warrantless arrest if:
 - a) The offense is committed in the officers presence; or
 - b) the officer has knowledge that a crime has been committed and a probable cause to believe the crime was committed by a particular suspect.

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Arrests

- As a general rule, officers can make a warrantless arrest for a crime they did not see if they have probable cause to believe a felony has been committed.
- For misdemeanors, the crime must have been committed in the presence of the officer for a warrantless arrest to be valid.

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Lawful Searches and Seizures

- By definition, a search is a governmental intrusion on a citizen's reasonable expectation of privacy.
- The recognized standard for a "reasonable expectation of privacy" was established in Katz vs. United States (1967).

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Katz vs. United States (1967)

- The standard for "reasonable expectation of privacy" was established in Katz vs. United States. The case dealt with the question of whether the defendant was justified in his expectation of privacy in the calls he made from a public phone booth.

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Katz vs.. United States (1967)

- Facts of the Case:
- Acting on a suspicion that Katz was transmitting gambling information over the phone to clients in other states, Federal agents attached an eavesdropping device to the outside of a public phone booth used by Katz. Based on recordings of his end of the conversations, Katz was convicted under an eight-count indictment for the illegal transmission of wagering information from Los Angeles to Boston and Miami

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Katz vs.. United States (1967)

- On appeal, Katz challenged his conviction arguing that the recordings could not be used as evidence against him. The Court of Appeals rejected this point, noting the absence of a physical intrusion into the phone booth itself. The Court granted certiorari.

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Katz vs.. United States (1967)

- Question:
- Does the Fourth Amendment protection against unreasonable searches and seizures require the police to obtain a search warrant in order to wiretap a public pay phone?

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Katz vs.. United States (1967)

- Conclusion:
- Yes. The Court ruled that Katz was entitled to Fourth Amendment protection for his conversations and that a physical intrusion into the area he occupied was unnecessary to bring the Amendment into play.

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Katz vs.. United States (1967)

- "The Fourth Amendment protects people, not places," wrote Justice Potter Stewart for the Court. A concurring opinion by John Marshall Harlan introduced the idea of a 'reasonable' expectation of Fourth Amendment protection.

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Katz vs.. United States (1967)

- The Supreme Court held the Fourth Amendment protects people not places.

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Katz vs.. United States (1967)

- The two-pronged test for a person's expectation of privacy are:
- 1) The individual must prove that he or she expected privacy, and
- 2) Society must recognize that the expectation as reasonable.

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Search and Seizure Warrants

- To protect against charges that they have unreasonably infringed on privacy rights during a search, law enforcement officers can obtain a search warrant.

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Search and Seizure Warrants

■ A search warrant is a court order that authorizes police to search a certain area. Before a judge or magistrate will issue a search warrant, law enforcement officers must generally provide:

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Search and Seizure Warrants

- a) Information showing probable cause that a crime has been or will be committed
- b) Specific information on the premises to be searched, the suspects to be found and the illegal activities taking place at those premises, and the items to be seized

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Search and Seizure Warrants

- The purpose of the search warrant is to establish, before the search takes place, that a probable cause to search justifies infringing on the suspects reasonable expectation of privacy.
- The Fourth Amendment requires that a warrant describe with "particularity" the place to be searched and the things - either people or objects - to be seized.

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Search and Seizure Warrants

- Before going before a judge to ask for a search warrant, they must prepare an affidavit in which they provide specific, written information on the property that they wish to search and seize.

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Search and Seizure Warrants

- **In general, four categories of items can be seized by the use of a search warrant:**
- a) Items that resulted from the crime, such as stolen goods
- b) Items that are inherently illegal for anybody to possess, such as narcotics and counterfeit money

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Search and Seizure Warrants

- **c) Items that can be called evidence of the crime, such as a blood stained sneaker or a ski mask.**
- **d) Items used in committing the crime, such as an ice pick or a printing press.**

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Search and Seizure Warrants

- **Officers are restricted in terms of where they can look by the items they are searching for**

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Search and Seizure Warrants

- **In fact, most searches, like most arrests, take place in the absence of a judicial order.**
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Search and Seizure Warrants

- **The two most important circumstances in which a warrant is not needed are:**
- **a) searches incidental to arrest**
- **b) consensual searches**

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Search and Seizure Warrants

- **The most frequent exception to the warrant requirement involves searches incident to arrests.**

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Search and Seizure Warrants

■ As long as the original arrest was based on probable cause, these searches are valid for two reasons, established by the Supreme Court in the *United States vs. Robinson* (1973):

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Search and Seizure Warrants

- **a) The need for a police officer to find and confiscate any weapons a suspect may be carrying**
- **b) The need to protect any evidence on the suspect's person from being destroyed.**

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Search and Seizure Warrants

- Primarily, the court ruled that police may search any area within the suspect's immediate control to confiscate any weapons or evidence the suspect could destroy.
- The second most common type of warrantless searches, take place when individuals give law enforcement permission to search their persons, homes, or belongings. The consent must be voluntary.

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Search and Seizure Warrants

- **The plain view doctrine was first enunciated by the Supreme Court in *Coolidge vs. New Hampshire* (1971). The Court ruled that law enforcement officers may make a warrantless seizure of an item if four criteria are met:**

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Search and Seizure Warrants

- a) The item is positioned so as to be detected easily by an officer's sight or some other sense
- b) The officer is legally in a position to notice the item in question.
- c) The discovery of the item is inadvertent; that is the officer had not intended to find the item.
- d) the officer immediately recognizes the illegal nature of the item. No interrogation or further investigation is allowed under the plain view doctrine.

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The Interrogation Process and Miranda

- **After the Pledge of Allegiance, there is perhaps no recitation that comes more readily to the American mind than the Miranda warning:**

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The Interrogation Process and Miranda

- You have the right to remain silent. If you give up that right, anything you say can and will be used against you in a court of law. You have the right to speak with an attorney and to have an attorney present during questioning. If you so desire and cannot afford one, an attorney will be appointed for you without charge before questioning.

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The Interrogation Process and Miranda

- **The Miranda warning is not a mere prop. It strongly affects one of the most important aspects of any criminal investigation - the interrogation, or questioning of a suspect from whom the police want to get information concerning a crime and perhaps a confession.**

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The Interrogation Process and Miranda

- **Interrogation - The direct questioning of a suspect to gather evidence of criminal activity and try to gain a confession.**

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The Legal Basis for Miranda

- **The Fifth amendment guarantees protection against self-incrimination.**
- **Coerce - to force or compel, as by threats, to do something**
- **Coercion - The act or power of coercing 2) government by force**

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The Legal Basis for Miranda

- The Court heard the case of **Escobedo vs. Illinois (1964)**, concerning a convicted murderer who claimed the police had forced incriminating statements from him during interrogation and that this evidence had been portrayed as voluntary during his trial.

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The Legal Basis for Miranda

- In Escobedo, the Court ruled that the defendant had been denied his Sixth Amendment right to counsel during the interrogation. He therefore had been denied his Fifth Amendment right against incrimination.
- Two years later in 1966, the Supreme Court expanded on Escobedo in it's Miranda decision, establishing Miranda rights.

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Miranda vs.. Arizona (1966)

- Ernesto Miranda, a produce worker, was arrested in Phoenix Arizona in 1963 and charged with kidnapping and rape. After being identified by the victim in a lineup, Miranda was questioned for two hours by detectives. At no time was Miranda informed that he had a right to have an attorney present. When police emerged from the session, thy had a signed confession from Miranda.

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Miranda vs.. Arizona (1966)

- Inherent coercion means that even if the police do not lay a hand on a suspect, the general atmosphere of an interrogation is in and of it's self coercive.
- The Court found that routine police interrogations strategies were inherently coercive. Therefore the Court reasoned, every suspect needed protection from coercion.

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Miranda vs.. Arizona (1966)

- Miranda warnings is not necessary under several conditions, such as when no questions are asked of the suspect. Miranda requirements apply only when a suspect is in custody.
- Custody - The forceful detention of a person, or the perception that a person is not free to leave the immediate vicinity.

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Miranda vs.. Arizona (1966)

- **Custodial Interrogation** - The questioning of a suspect after that person has been taken in custody. In this situation the suspect must be read his or her rights before interrogation can begin.
- A Miranda warning is only required before a custodial interrogation takes place.

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Miranda vs.. Arizona (1966)

- A Miranda warning is not required:
 - 1. When police do not ask questions that are testimonial in nature.
 - 2. When the police have not focused on a suspect and are questioning witnesses at a scene.
 - 3. When a person volunteers information before the police have asked a question

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Miranda vs.. Arizona (1966)

- 4. When the suspect has given a statement to a private friend or some other acquaintance. Miranda does not apply to these statements as long as the government did not orchestrate the situation.
- 5. During a stop and frisk, when no arrest has been made.
- 6. During a traffic stop.

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Miranda vs.. Arizona (1966)

- Furthermore, suspects can waive their Fifth Amendment rights and speak to a police officer, but only if the waiver is voluntary.

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Miranda vs.. Arizona (1966)

- To make the waiver perfectly clear, police will ask suspects two questions in addition to giving the Miranda warning:
- a) Do you understand your rights as I have read them to you?
- b) Knowing your rights, are you willing to talk to another law enforcement officer or me?

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Miranda vs.. Arizona (1966)

- Three strategies used to convince suspects to voluntarily waive their Miranda rights are:
- 1) The conditioning strategy is geared toward creating an environment in which the suspect is encouraged to think positively about the interrogator and thus is conditioned to cooperate

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Miranda vs.. Arizona (1966)

- 2) The deemphasizing strategy tries to downplay the importance of Miranda protections, giving the impression that the rights are unimportant and can be easily waived.
- 3) When using the persuasion strategy, an officer will explicitly try to convince the suspect to waive her or his rights.

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