

Criminal Procedure: Comprehensive Guide

Main Sections:

Overview To Whom the Fourth Amendment Applies Fourth Amendment: Search & Seizure
Fourth Amendment Standing Warrant Requirements Warrant Exceptions Special Needs & Administrative Searches
Third-Party Doctrine Terry Stops Exclusionary Rule Interrogations & Confessions Right to Counsel

Note: This guide provides a systematic approach to evaluating key doctrines in Criminal Procedure, with a focus on Professor Sood's course. Each section includes detailed flowcharts with specific criteria for applying the constitutional standards along with key cases.

Criminal Procedure Overview

Introduction Constitutional Framework Key Amendments Course Structure

Introduction to Criminal Procedure

Criminal procedure governs the process by which the government investigates, prosecutes, and adjudicates alleged violations of criminal law. Unlike substantive criminal law, which defines crimes and penalties, criminal procedure focuses on the constitutional and statutory rules that govern how the government must conduct itself when enforcing criminal laws.

The Stakes in Criminal Procedure

Criminal procedure involves balancing competing interests:

- **Individual Liberty:** Freedom from unreasonable government intrusion
- **Law Enforcement:** Government's need to effectively investigate and prosecute crime
- **Privacy:** Protection of personal information and spaces
- **Due Process:** Fairness and reliability in the adjudicative process
- **Public Safety:** Protection of the community from criminal activity

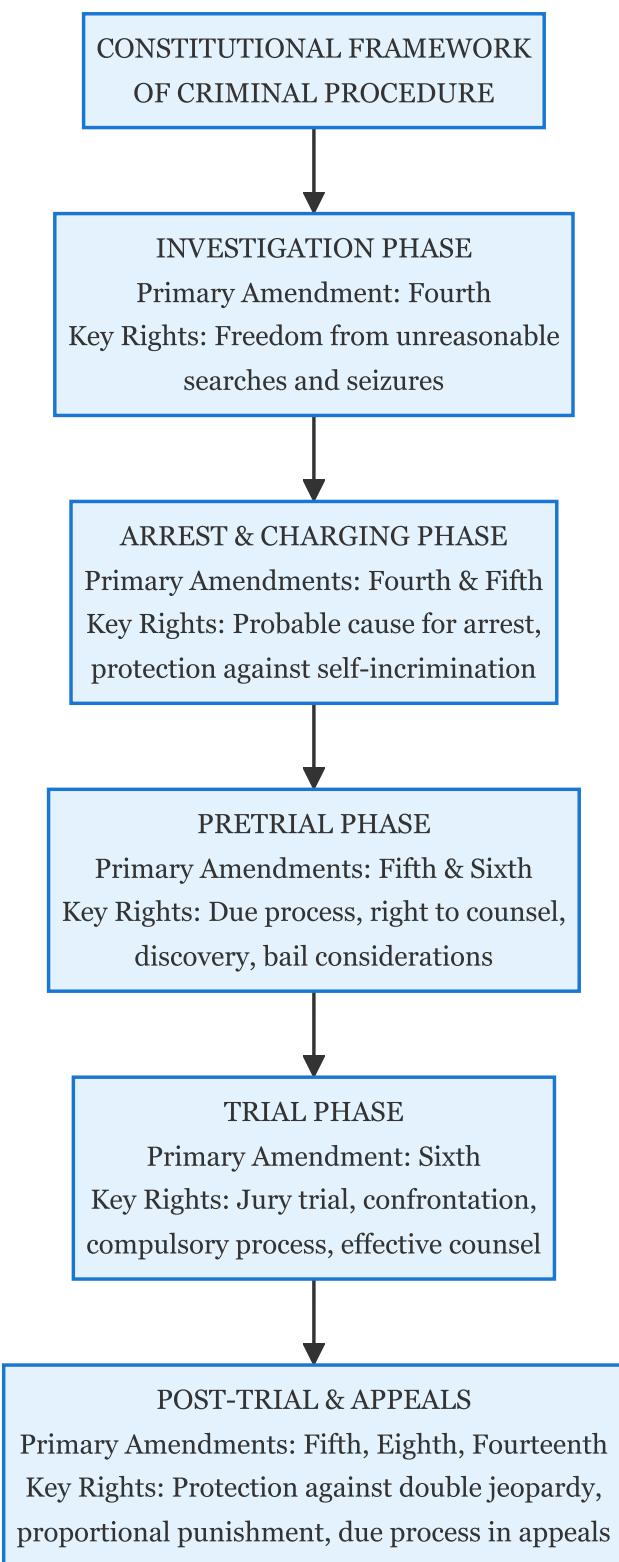
The rules of criminal procedure determine when and how the government may search, seize, arrest, interrogate, try, and punish individuals. These rules fundamentally shape the relationship between the government and its citizens in the criminal justice context.

Constitutional Framework

The U.S. Constitution provides the fundamental framework for criminal procedure. Key constitutional provisions include:

- **Fourth Amendment:** Prohibits unreasonable searches and seizures, requires probable cause for warrants
- **Fifth Amendment:** Protects against double jeopardy and self-incrimination, guarantees due process
- **Sixth Amendment:** Guarantees right to counsel, trial by jury, confrontation of witnesses, and other trial rights
- **Eighth Amendment:** Prohibits excessive bail, excessive fines, and cruel and unusual punishment
- **Fourteenth Amendment:** Applies (incorporates) most Bill of Rights protections to the states via Due Process Clause

The Supreme Court has interpreted these constitutional provisions over time, developing a complex body of case law that defines the scope and application of these rights in various contexts.



Key Constitutional Amendments in Criminal Procedure

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."

- Protects against unreasonable government searches and seizures
- Requires warrants to be based on probable cause and to specifically describe what's being searched or seized
- Contains numerous exceptions and complex interpretations regarding what constitutes a "search" or "seizure"

Fifth Amendment

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

- Protects against self-incrimination ("right to remain silent")
- Prohibits double jeopardy (being tried twice for the same offense)
- Requires due process of law before deprivation of life, liberty, or property
- Requires grand jury indictment for federal felony prosecutions

Sixth Amendment

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."

- Guarantees right to jury trial in criminal cases
- Ensures right to confront witnesses (Confrontation Clause)
- Provides right to counsel at critical stages of prosecution
- Requires speedy and public trial
- Guarantees notice of charges

Structure of Criminal Procedure Course

This guide follows Professor Sood's Criminal Procedure course, which covers these key areas:

1. Fourth Amendment: Search & Seizure

- What constitutes a "search" or "seizure"
- The warrant requirement and probable cause
- Exceptions to the warrant requirement
- Stop and frisk doctrine

2. Remedies for Fourth Amendment Violations

- The exclusionary rule

- Fruit of the poisonous tree doctrine
- Exceptions to the exclusionary rule
- Standing requirements

3. Fifth Amendment: Interrogations & Confessions

- Miranda warnings
- Custody and interrogation analysis
- Voluntariness doctrine
- Exceptions to Miranda

4. Sixth Amendment: Right to Counsel

- When the right attaches
- Massiah doctrine
- Effective assistance of counsel
- Right to appointed counsel

This guide is organized to follow the analytic frameworks used in criminal procedure, with flowcharts depicting the step-by-step analysis courts use when evaluating constitutional claims. Each section includes key cases that established the doctrine, along with their facts and reasoning, to help connect abstract principles to concrete applications.

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To Whom the Fourth Amendment Applies

Protected Persons Territorial Scope State Action Requirement Private Searches

Persons Protected by the Fourth Amendment

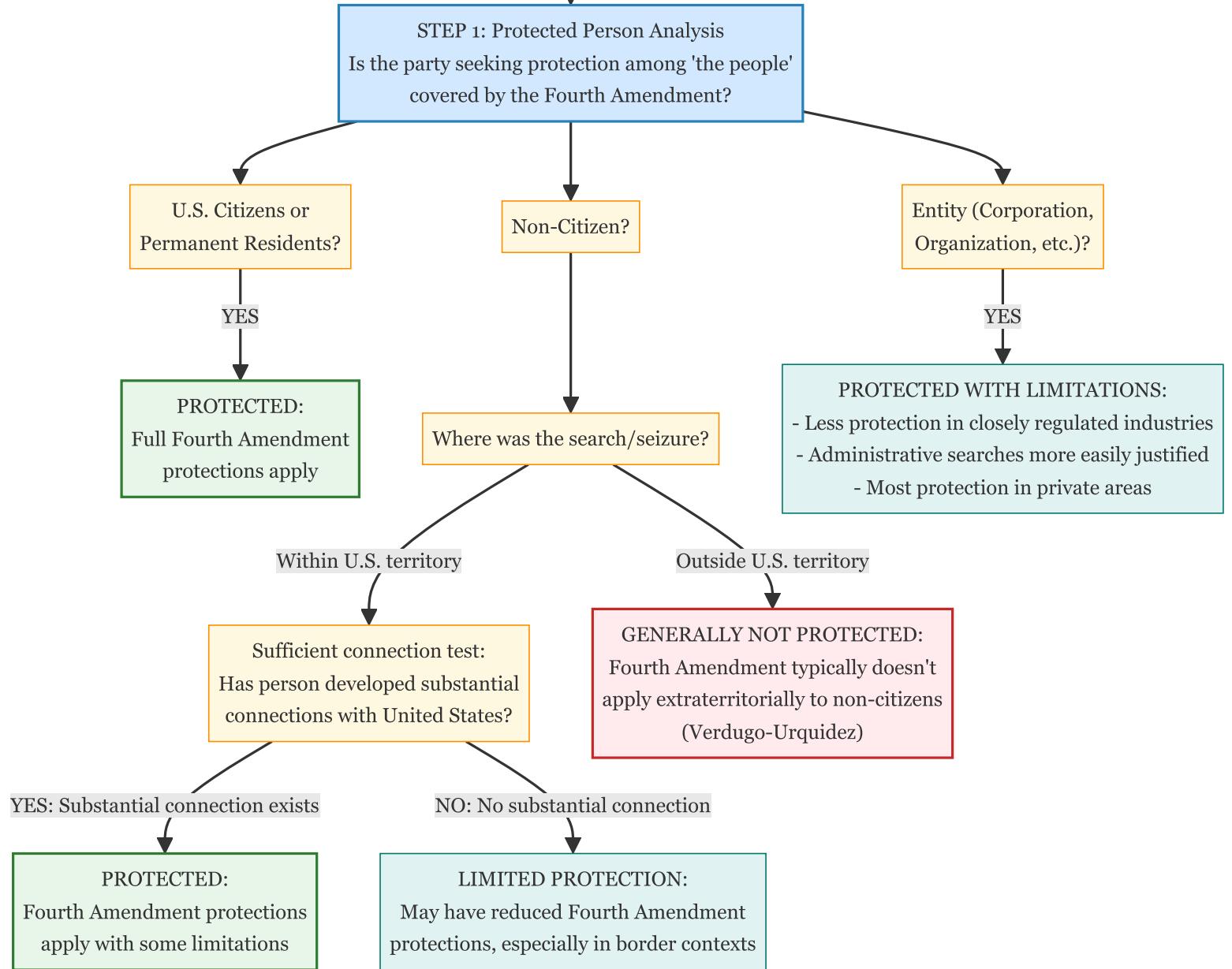
The Fourth Amendment begins with the phrase "The right of the people to be secure..." The scope of who constitutes "the people" protected by this amendment has evolved through Supreme Court jurisprudence.

Who Is Protected?

- **U.S. Citizens:** Fully protected regardless of location within U.S. territory
- **Legal Permanent Residents:** Generally protected the same as citizens within U.S. territory
- **Non-citizens legally in the U.S.:** Generally protected while within U.S. territory
- **Undocumented immigrants:** Protected while present in the U.S., with some limitations in border contexts
- **Non-citizens outside U.S. territory:** Generally not protected (*United States v. Verdugo-Urquidez*)
- **Corporations and businesses:** Receive Fourth Amendment protections, though sometimes lesser than individuals

The Court has interpreted "the people" to refer to "a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community."

FOURTH AMENDMENT APPLICABILITY ANALYSIS



United States v. Verdugo-Urquidez 494 U.S. 259 (1990)

The Fourth Amendment does not apply to the search and seizure by United States agents of property owned by a nonresident alien and located in a foreign country. The term "the people" in the Fourth Amendment refers to a class of persons who are part of a national community or who have otherwise developed sufficient connection with the United States to be considered part of that community.

Verdugo-Urquidez, a Mexican citizen and resident, was arrested in Mexico by Mexican authorities and transported to the United States for drug-related offenses. Following his arrest, DEA agents, working with Mexican authorities, searched his residences in Mexico without a U.S. warrant and seized documents. Verdugo-Urquidez moved to suppress the evidence, claiming the searches violated the Fourth Amendment.

Chief Justice Rehnquist, writing for the majority, held that the Fourth Amendment did not apply to the search of a non-resident alien's property located outside the United States. The Court focused on the text of the amendment, which protects "the right of the people,"

interpreting this phrase to refer to "a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country." The Court emphasized that *Verdugo-Urquidez* was a citizen and resident of Mexico with no voluntary attachment to the United States, and was in the U.S. only because he had been brought here forcibly. The Court distinguished this case from ones involving the Fifth and Sixth Amendments, which apply to "persons" rather than "the people," noting that the Fourth Amendment's protections were intended primarily for the domestic population. The Court also cited practical considerations about the difficulty of applying Fourth Amendment standards to overseas operations conducted jointly with foreign officials.

Territorial Scope of the Fourth Amendment

The Fourth Amendment's application varies based on the location of the search or seizure and the status of the person seeking its protection.

Within the United States

- **Full territory:** Applies throughout all U.S. states and incorporated territories
- **Borders:** Reduced protections at international borders and their functional equivalents (border search exception)
- **Special areas:** Some modifications in schools, prisons, and military contexts

Outside the United States

The Supreme Court has generally limited the extraterritorial application of the Fourth Amendment:

- **U.S. citizens abroad:** Some Fourth Amendment protections apply, though possibly with different standards
- **Non-citizens abroad:** Generally not protected unless they have developed substantial connections to the U.S.
- **U.S.-controlled territories:** Variable protections based on the territory's status and the person's connection to the U.S.

The "Sufficient Connection" Test

In *Verdugo-Urquidez*, the Court established that a non-citizen must have "developed sufficient connection with this country to be considered part of [the national] community" to receive Fourth Amendment protections. Factors that may establish this connection include:

- Legal status in the United States
- Duration of stay in the country
- Voluntary presence in the United States
- Property or business interests within the country
- Family ties or other substantial connections

The State Action Requirement

The Fourth Amendment only restricts government action; it does not apply to searches or seizures conducted by private parties acting on their own initiative and without government involvement. This is known as the "state action" requirement.

Who Is Bound by the Fourth Amendment?

- **Law enforcement officers:** Federal, state, and local police
- **Other government officials:** Any agent of the government at any level
- **Public school officials:** When conducting searches of students (*New Jersey v. T.L.O.*)
- **Government employers:** When searching employee workspaces
- **Private parties acting as government agents:** When sufficiently directed or encouraged by the government

Government Agent Analysis

Courts consider multiple factors to determine if a private party has become a government agent for Fourth Amendment purposes:

1. **Government knowledge/acquiescence:** Did the government know of and acquiesce in the search?
2. **Government encouragement:** Did the government encourage, initiate, or instigate the search?
3. **Private party's intent:** Did the private party intend to assist law enforcement or had their own independent motivation?
4. **Government control:** Did the government direct, participate in, or exercise control over the search?

No single factor is determinative, and courts consider the totality of circumstances in each case.

Private Searches Doctrine

When a private party conducts a search without government involvement, the Fourth Amendment does not apply, and evidence discovered may generally be used in court. This principle has several important corollaries:

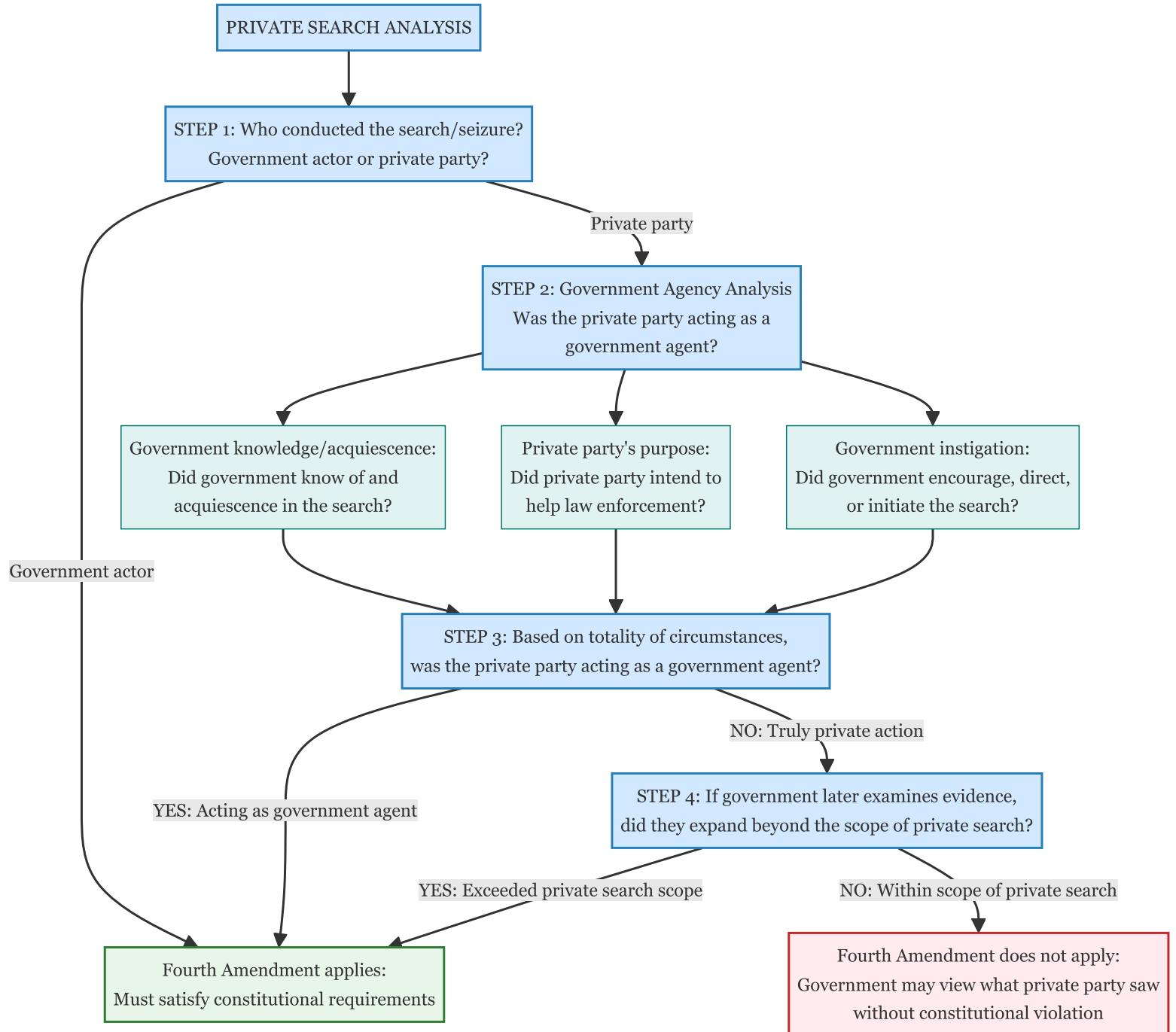
Key Principles of Private Searches

- **Initial private search:** Not subject to Fourth Amendment constraints
- **Government replication:** Police may generally recreate or examine the same areas already searched by the private party without triggering the Fourth Amendment
- **Government expansion:** If police exceed the scope of the private search, the additional intrusion must satisfy the Fourth Amendment
- **Prior private search does not "unseal" container:** The government cannot exceed the scope of the private search without complying with the Fourth Amendment
- **Related concept:** For information voluntarily disclosed to third parties, see the [Third-Party Doctrine section](#)

Common Private Search Scenarios

Scenario	Fourth Amendment Applies?
Hotel staff searching a room and calling police	No (to private search); Yes (to any additional government searching)
Airline employee opening suspicious package	No (to private search); Yes (to any expansion by government)

Computer repair technician finding contraband	No (to private discovery); Yes (to government searches beyond what technician viewed)
Security guard employed by government agency	Yes (considered government agent)
Off-duty police officer working as private security	Generally Yes (usually considered government agent)



When a private party conducts a search, the Fourth Amendment does not apply. If government officials then examine or test the evidence discovered in the private search, they do not violate the Fourth Amendment as long as they do not exceed the scope of the private search.

Federal Express employees opened a damaged package and discovered a suspicious white powder in plastic bags within a tube. They contacted the DEA, whose agents arrived, reopened the package, removed the plastic bags, and conducted a field test that confirmed the substance was cocaine.

Justice Stevens, writing for the majority, held that the initial opening by FedEx employees was a private search not subject to Fourth Amendment constraints. The Court then analyzed the DEA agents' actions in two parts. First, reopening the package and examining its contents did not violate the Fourth Amendment because this did not exceed the scope of the private search that had already occurred. The Court explained that "the additional invasions of respondents' privacy by the government agent must be tested by the degree to which they exceeded the scope of the private search." Since the agents merely observed what had already been observed privately, this did not infringe any legitimate expectation of privacy. Second, the Court held that the field test of the powder did constitute a search but was reasonable under the Fourth Amendment because it could only reveal whether the substance was cocaine and no other private information, making it minimally intrusive. This case established the "private search doctrine," holding that government actions that do not exceed the scope of a previous private search do not implicate the Fourth Amendment.

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Fourth Amendment: Search and Seizure Fundamentals

[Fourth Amendment Text](#) [What Is a "Search"?](#) [Reasonable Expectation of Privacy](#) [Physical Trespass Theory](#)
[What Is a "Seizure"?](#)

The Fourth Amendment Text

"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."

The Fourth Amendment contains two distinct clauses:

- 1. The Reasonableness Clause:** Prohibits "unreasonable searches and seizures"
- 2. The Warrant Clause:** Establishes the requirements for a valid warrant (probable cause, particularity, and oath/affirmation)

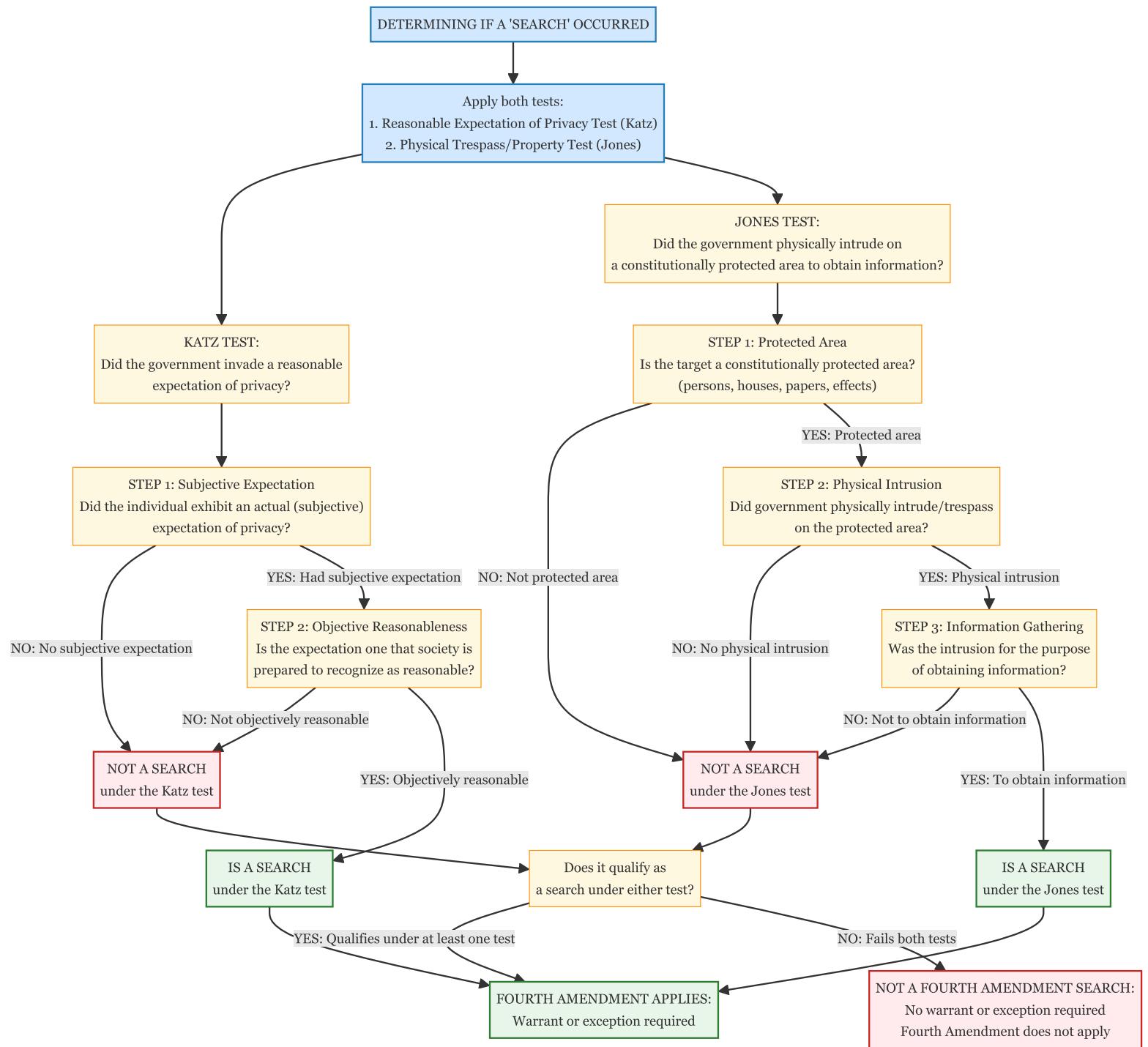
The relationship between these clauses has been a source of ongoing debate. The Supreme Court's current approach generally requires law enforcement to obtain a warrant before conducting a search or seizure, unless a recognized exception to the warrant requirement applies. However, the ultimate touchstone of the Fourth Amendment is "reasonableness."

What Constitutes a "Search"?

Not all government actions or investigations constitute a "search" under the Fourth Amendment. The Supreme Court has established two primary theories to determine whether government conduct qualifies as a search:

1. **The Reasonable Expectation of Privacy Test:** Established in *Katz v. United States* (1967)
2. **The Physical Trespass/Property Test:** Revitalized in *United States v. Jones* (2012)

If government conduct does not qualify as a "search" under either test, then the Fourth Amendment does not apply, and no warrant or exception is required.



A "search" under the Fourth Amendment occurs when the government violates a person's "reasonable expectation of privacy." This analysis requires: (1) the person exhibited an actual (subjective) expectation of privacy, and (2) the expectation is one that society is prepared to recognize as reasonable.

FBI agents attached an electronic listening device to the outside of a public telephone booth that Katz regularly used to place illegal gambling wagers. Agents recorded only Katz's end of the conversations. Katz was convicted based partly on these recordings. The lower courts rejected Katz's Fourth Amendment argument because there was no physical intrusion into the phone booth.

The Supreme Court rejected the government's argument that no Fourth Amendment violation occurred because there was no physical intrusion into the phone booth. The Court shifted the focus from physical spaces to people, stating famously that "the Fourth Amendment protects people, not places." Justice Harlan's influential concurrence articulated the two-part test that became the standard: a person must have (1) exhibited an actual (subjective) expectation of privacy and (2) that expectation must be one that society recognizes as reasonable. The Court found that Katz exhibited an expectation of privacy by entering the phone booth and closing the door behind him, and society recognizes as reasonable a person's expectation that their phone conversation will not be broadcast to the world, even from a glass phone booth. Therefore, the FBI's actions constituted a search requiring a warrant.

Reasonable Expectation of Privacy Test

The *Katz* test asks whether the government has invaded a "reasonable expectation of privacy." This requires a two-part analysis:

1. **Subjective Expectation:** Did the individual exhibit an actual (subjective) expectation of privacy?
2. **Objective Reasonableness:** Is the expectation one that society is prepared to recognize as reasonable?

Factors Affecting Reasonable Expectations of Privacy

- **Location:** Greater protection in homes than in public spaces
- **Property Interests:** Ownership or possessory rights can strengthen privacy claims
- **Steps to Ensure Privacy:** Measures taken to shield activities from public view
- **Third-Party Exposure:** Information voluntarily shared with others may lose protection (see [Third-Party Doctrine section](#))
- **Technology Used:** Use of sophisticated technology not in general public use may constitute a search
- **Historical Understanding:** Traditional protections at the time of the Fourth Amendment's adoption

Areas With Heightened Privacy Protection

- **Homes:** The highest level of Fourth Amendment protection (*Payton v. New York*)
- **Curtilage:** The area immediately surrounding the home also enjoys robust protection (*United States v. Dunn*)
- **Hotel Rooms:** Temporary lodging receives protection similar to homes (*Stoner v. California*)
- **Businesses:** Commercial premises have some protection, though less than homes (*See v. City of Seattle*)

Areas With Diminished or No Privacy Protection

- **Open Fields:** Areas outside the curtilage of the home, even if privately owned, are not protected (*Oliver v. United States*)
- **Abandoned Property:** Items discarded or left in public areas (*California v. Greenwood* - trash left at curb)
- **Shared Spaces:** Common areas of apartment buildings, shared driveways
- **Public Transportation:** Public areas of buses, trains, airports

United States v. Jones 565 U.S. 400 (2012)

The government conducts a Fourth Amendment search when it physically intrudes on a constitutionally protected area (persons, houses, papers, effects) for the purpose of obtaining information.

Law enforcement installed a GPS tracking device on the undercarriage of Jones's wife's vehicle (which Jones regularly used) without a valid warrant and tracked the vehicle's movements for 28 days. The tracking data connected Jones to a drug trafficking conspiracy, leading to his conviction.

The Court revitalized the property-based approach to the Fourth Amendment, holding that the government's physical intrusion on Jones's vehicle (an "effect" under the Fourth Amendment) for the purpose of obtaining information constituted a search. Justice Scalia, writing for the majority, emphasized that the *Katz* reasonable expectation of privacy test supplemented, rather than replaced, the traditional property-based understanding of the Fourth Amendment. The Court clarified that when the government physically intrudes on constitutionally protected areas to obtain information, a search occurs regardless of whether there is a reasonable expectation of privacy. The Court emphasized the continuing importance of the physical trespass theory, particularly in light of advancing surveillance technologies.

Physical Trespass Theory

In *United States v. Jones* (2012), the Supreme Court revitalized the property-based approach to the Fourth Amendment. Under this approach, a search occurs when:

1. The government physically intrudes or trespasses on a constitutionally protected area (persons, houses, papers, or effects)
2. The intrusion is for the purpose of obtaining information

This test applies *in addition to* the *Katz* reasonable expectation of privacy test. A government action may constitute a search under either or both tests.

Important Aspects of the Trespass Theory

- Focuses on physical intrusion rather than privacy expectations
- Limited to the specifically enumerated areas in the Fourth Amendment: "persons, houses, papers, and effects"
- Requires minimal physical contact ("trespass") with the protected area
- The intrusion must be for the purpose of gathering information

- Provides protection even in situations where there might not be a reasonable expectation of privacy

The *Jones* decision has been particularly significant for cases involving new technologies. In *Florida v. Jardines* (2013), the Court held that using a drug-sniffing dog on a homeowner's porch to investigate the contents of the home was a search because officers physically entered the curtilage of the home to gather evidence.

What Constitutes a "Seizure"?

The Fourth Amendment protects against unreasonable "seizures" as well as "searches." The seizure analysis differs depending on whether it involves a person or property:

Seizure of a Person

A seizure of a person occurs when, in view of all the circumstances, a reasonable person would not feel free to terminate the encounter and leave. The Supreme Court has articulated this standard in various ways:

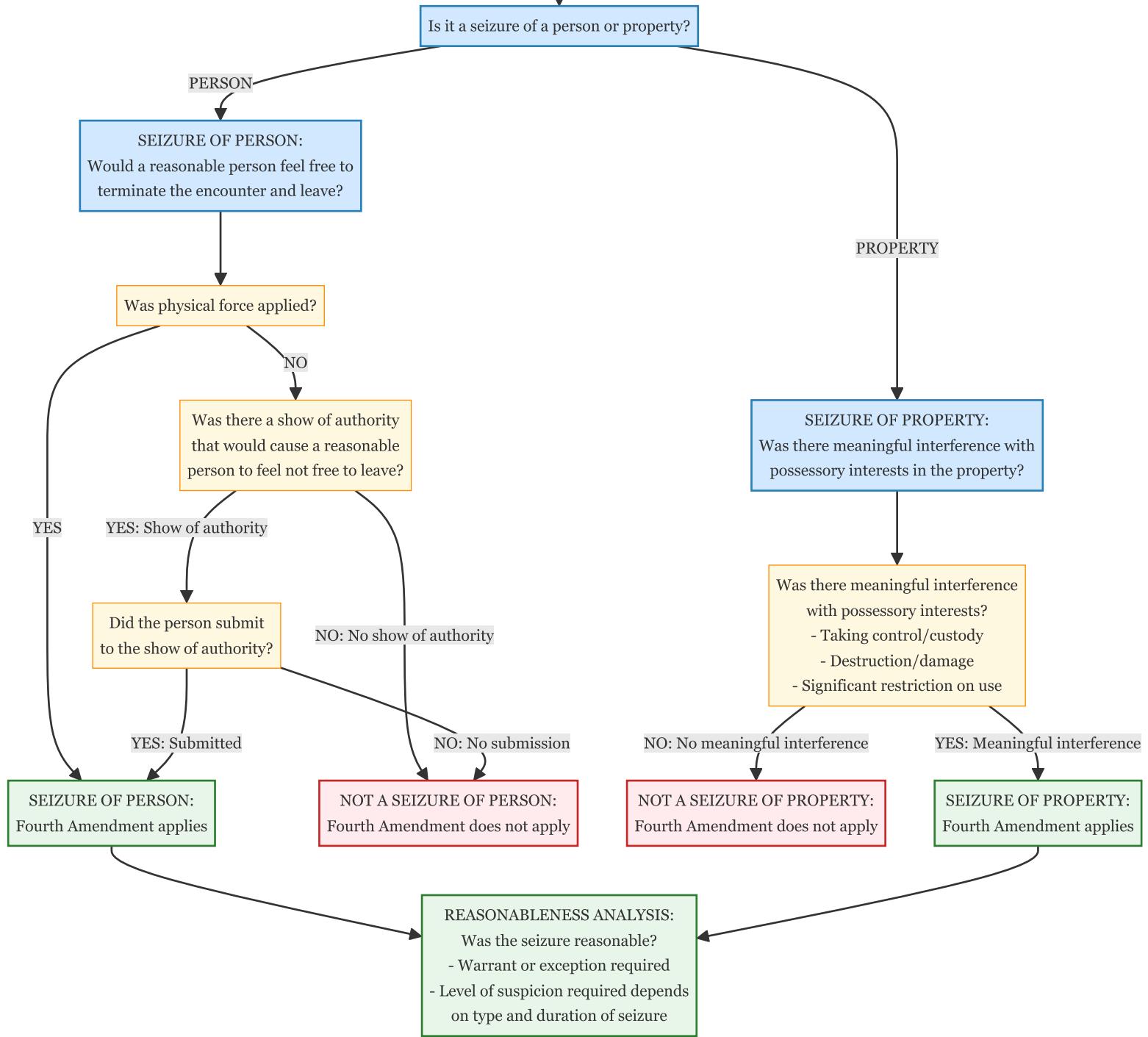
- *United States v. Mendenhall (1980)*: A seizure occurs when "a reasonable person would have believed that he was not free to leave"
- *Florida v. Bostick (1991)*: In settings where freedom of movement is restricted (like a bus), the test is whether a reasonable person would feel free to decline the officer's requests or otherwise terminate the encounter
- *California v. Hodari D. (1991)*: A seizure requires either physical force or submission to a show of authority

Seizure of Property

A seizure of property occurs when there is "some meaningful interference with an individual's possessory interests in that property" (*United States v. Jacobsen*, 1984).

- Temporary detentions of property may constitute seizures
- Destruction or damage to property may constitute a seizure
- Taking custody or control of property is clearly a seizure

DETERMINING IF A 'SEIZURE' OCCURRED



Florida v. Jardines 569 U.S. 1 (2013)

The government conducts a Fourth Amendment search when it physically intrudes on the curtilage of the home to gather evidence.

Police took a drug-sniffing dog to Jardines' front porch where the dog signaled the presence of drugs inside the home. Based on this alert, officers obtained a warrant to search the home, which revealed marijuana plants. Jardines moved to suppress the evidence, arguing that using the drug dog on his porch was a warrantless search.

The Supreme Court held that the use of the drug-sniffing dog on Jardines' front porch was a search under the Fourth Amendment. Using the physical trespass theory from *Jones*, the Court determined that when police physically enter the curtilage of a home (the area immediately surrounding the house) to gather evidence, a search occurs. The Court emphasized that while visitors might have an implied license to approach the front door, that license does not extend to bringing a trained police dog to explore the area for evidence. The Court specifically noted that it was resolving the case using the property-based approach from *Jones* rather than the *Katz* reasonable expectation of privacy test, demonstrating how the two tests operate independently.

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Fourth Amendment Standing

Standing Overview Reasonable Expectation Test Property Interests Target Standing Contextual Applications

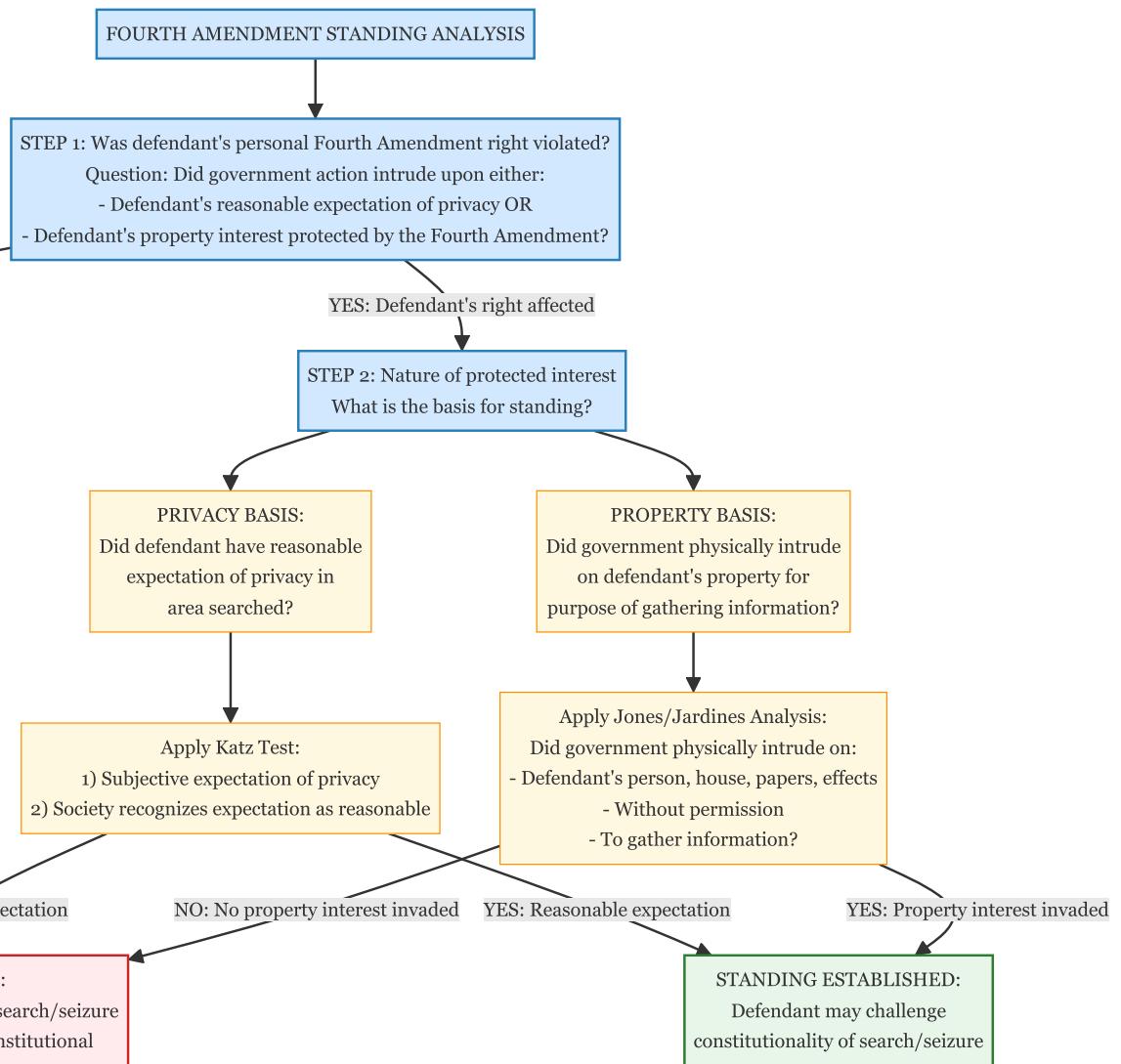
Overview of Fourth Amendment Standing

Fourth Amendment standing refers to whether a particular defendant has the right to challenge the legality of a search or seizure. The Supreme Court has established that Fourth Amendment rights are personal rights which may not be vicariously asserted. A defendant can only challenge a search or seizure if their own reasonable expectation of privacy was violated or their own property was trespassed upon.

Key Principles of Fourth Amendment Standing

- **Personal Rights:** The Fourth Amendment protects people, not places, but standing remains a personal right
- **Two-Part Analysis:** Based on either a reasonable expectation of privacy or a property-based approach
- **Procedural Point:** Standing is a threshold inquiry—without it, a court will not address the merits of a Fourth Amendment claim
- **No "Target Standing":** A person cannot challenge a search merely because they were the target of the investigation
- **Automatic Standing Doctrine:** Abandoned by the Supreme Court in *United States v. Salvucci* (1980)

Standing is a critical gatekeeper that limits who can seek the exclusionary remedy. Without standing, even if a search or seizure was clearly unconstitutional, a defendant cannot benefit from the exclusionary rule.



Reasonable Expectation of Privacy Analysis

The primary basis for Fourth Amendment standing is whether the defendant had a reasonable expectation of privacy in the place searched or the item seized. This test, derived from *Katz v. United States* (1967), involves a two-part inquiry:

1. **Subjective expectation:** Did the person actually expect privacy?
2. **Objective reasonableness:** Is society prepared to recognize this expectation as reasonable?

In *Rakas v. Illinois* (1978), the Supreme Court effectively merged the standing inquiry with the substantive Fourth Amendment question, holding that a defendant can claim Fourth Amendment protection only if they have a "legitimate expectation of privacy in the invaded place."

Factors Courts Consider

- **Ownership or possession** of the property (though not determinative)
- **Right to exclude others** from the place or item
- **Lawful presence** in the area at the time of the search
- **Efforts to maintain privacy** (locks, fences, passwords, etc.)
- **Nature of the place** (home vs. open field vs. commercial property)
- **Historical understanding** of the type of place or information

The Court has generally recognized heightened expectations of privacy in one's own home, person, luggage, and personal effects, but reduced expectations in automobiles, open fields, and shared or public areas.

Rakas v. Illinois 439 U.S. 128 (1978)

A defendant can claim Fourth Amendment protection only if they demonstrate a legitimate expectation of privacy in the place searched. Passengers in a vehicle generally lack standing to challenge a search of the vehicle unless they have a possessory interest in the vehicle or the items seized.

Police stopped a suspected getaway car and searched it, finding a rifle under the front passenger seat and ammunition in the glove compartment. Rakas and other passengers, who did not own the car, sought to suppress this evidence, claiming the search violated their Fourth Amendment rights.

The Supreme Court rejected the defendants' claim, holding they lacked standing to challenge the search because they had no legitimate expectation of privacy in the areas searched. Justice Rehnquist, writing for the majority, rejected the traditional "legitimately on premises" standard from *Jones v. United States*, replacing it with the "legitimate expectation of privacy" test. The Court emphasized that Fourth Amendment rights are personal and cannot be vicariously asserted. Mere passengers without ownership or possessory interest in a vehicle or the items seized lack a sufficient expectation of privacy to challenge the search. The Court also effectively merged the standing inquiry with the substantive Fourth Amendment analysis, holding that the question is not whether the defendant has "standing," but whether their own Fourth Amendment rights were violated.

Property-Based Standing

In recent years, the Supreme Court has revitalized a property-based approach to the Fourth Amendment. Beginning with *United States v. Jones* (2012) and continuing with *Florida v. Jardines* (2013), the Court has held that a physical intrusion into a constitutionally protected area (persons, houses, papers, and effects) for the purpose of obtaining information constitutes a "search" under the Fourth Amendment.

Under this approach, standing exists when:

1. The defendant had a property interest (ownership or possessory) in the place or item searched
2. The government physically intruded upon that property without permission
3. The purpose of the intrusion was to gather information

The Two Approaches Coexist

The Court has made clear that the Katz reasonable-expectation-of-privacy test did not replace the traditional property-based understanding of the Fourth Amendment but rather supplemented it. A defendant can establish standing under either approach.

Justice Scalia in *Jones*: "The Katz reasonable-expectation-of-privacy test has been added to, not substituted for, the common-law trespassory test."

Applications of Property-Based Standing

- **GPS tracking devices:** In *Jones*, attachment of GPS tracker to a vehicle was a search requiring a warrant
- **Drug-sniffing dogs:** In *Jardines*, bringing a drug-sniffing dog onto the front porch was a search
- **Cell phones:** Physical inspection of a cell phone's contents is a search of the owner's "papers" and "effects"

United States v. Jones 565 U.S. 400 (2012)

The government's installation of a GPS tracking device on a vehicle, and its use of that device to monitor the vehicle's movements, constitutes a search under the Fourth Amendment. A physical intrusion (trespass) into a constitutionally protected area for the purpose of obtaining information qualifies as a "search" independent of the Katz reasonable-expectation-of-privacy test.

Police placed a GPS tracking device on Jones's wife's vehicle (which Jones used exclusively) without a valid warrant and tracked its movements for 28 days. Jones was eventually convicted of drug trafficking based in part on evidence obtained through the GPS tracking.

The Supreme Court held that the government's physical intrusion on Jones's "effect" (the vehicle) for the purpose of obtaining information constituted a Fourth Amendment search. Justice Scalia, writing for the majority, revived the property-based approach to the Fourth Amendment, explaining that the Katz reasonable-expectation-of-privacy test added to, rather than replaced, the common-law trespassory test. The Court emphasized that, at minimum, the Fourth Amendment protects against physical intrusions into constitutionally protected areas (persons, houses, papers, and effects) for the purpose of gathering information. Because the government physically occupied private property (the vehicle) for this purpose, a search occurred regardless of whether Jones had a reasonable expectation of privacy in the vehicle's locations on public roads. The Court noted that Jones had standing because he was the exclusive driver of the vehicle, even though his wife was the registered owner.

Target Standing (Rejected Doctrine)

The Supreme Court has consistently rejected the concept of "target standing," which would allow a defendant to challenge the constitutionality of a search simply because they were the target of the investigation or because evidence gathered was used against them.

Alderman v. United States (1969)

The Court explicitly held that Fourth Amendment rights cannot be vicariously asserted, stating: "The established principle is that suppression of the product of a Fourth Amendment violation can be successfully urged only by those whose rights were violated by the search itself, not by those who are aggrieved solely by the introduction of damaging evidence."

This principle was reaffirmed in numerous cases, including *Rakas*, *Rawlings v. Kentucky* (1980), and *Minnesota v. Carter* (1998). The Court has consistently held that:

- A defendant cannot challenge a search of a third party's property merely because evidence discovered was used against them
- The fact that a defendant was the "target" or "ultimate victim" of the search is irrelevant to standing
- Standing depends solely on whether the defendant's own Fourth Amendment rights were violated

Automatic Standing (Abandoned Doctrine)

The Court once recognized a doctrine of "automatic standing" for defendants charged with possessory crimes in *Jones v. United States* (1960). This allowed defendants to challenge searches without having to admit possession of contraband, which would incriminate them.

However, in *United States v. Salvucci* (1980), the Court overruled this doctrine, holding that defendants charged with possessory crimes must establish that they had a legitimate expectation of privacy in the area searched, just like any other defendant.

Standing in Specific Contexts

Homes and Residences

- **Homeowners/tenants:** Generally have standing to challenge searches of their homes
- **Overnight guests:** Have standing (*Minnesota v. Olson*, 1990)
- **Short-term visitors:** Generally lack standing unless they have a previous connection to the home (*Minnesota v. Carter*, 1998)
- **Hotel rooms:** Paying guests have standing, but not after checkout time

Vehicles

- **Owners/drivers:** Generally have standing
- **Passengers:** Generally lack standing to challenge vehicle searches (*Rakas*)
- **Passengers - personal items:** Have standing to challenge searches of their own belongings in the vehicle
- **Rental cars:** Authorized drivers have standing; unauthorized drivers generally don't (*Byrd v. United States*, 2018)
- **Seized vehicles:** All occupants have standing to challenge the stop/seizure of the vehicle itself (*Brendlin v. California*, 2007)

Shared Spaces and Items

- **Common areas:** Generally no standing in apartment building common areas or shared spaces
- **Shared computer/electronic data:** Standing requires a reasonable expectation of privacy in the specific areas accessed
- **Business employees:** May have standing in their personal workspaces but not generally in common areas
- **Abandoned property:** No standing (e.g., discarded trash left for collection, *California v. Greenwood*, 1988)

Common Standing Scenarios

Scenario	Standing?	Key Case
Owner of house	Yes	
Overnight guest	Yes	<i>Minnesota v. Olson</i> (1990)
Short-term visitor for business	Generally No	<i>Minnesota v. Carter</i> (1998)
Passenger in car (vehicle search)	No	<i>Rakas v. Illinois</i> (1978)
Passenger in car (stop of car)	Yes	<i>Brendlin v. California</i> (2007)

Person with no ownership interest in searched property	No	<i>Rawlings v. Kentucky</i> (1980)
Unauthorized driver of rental car	Possibly Yes	<i>Byrd v. United States</i> (2018)

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Note: This guide provides a systematic approach to evaluating key doctrines in Criminal Procedure, with a focus on Professor Sood's course. Each section includes detailed flowcharts with specific criteria for applying the constitutional standards along with key cases.

Technology and the Fourth Amendment

Technology Overview The Kyllo Test GPS Tracking Aerial Surveillance Binary Searches

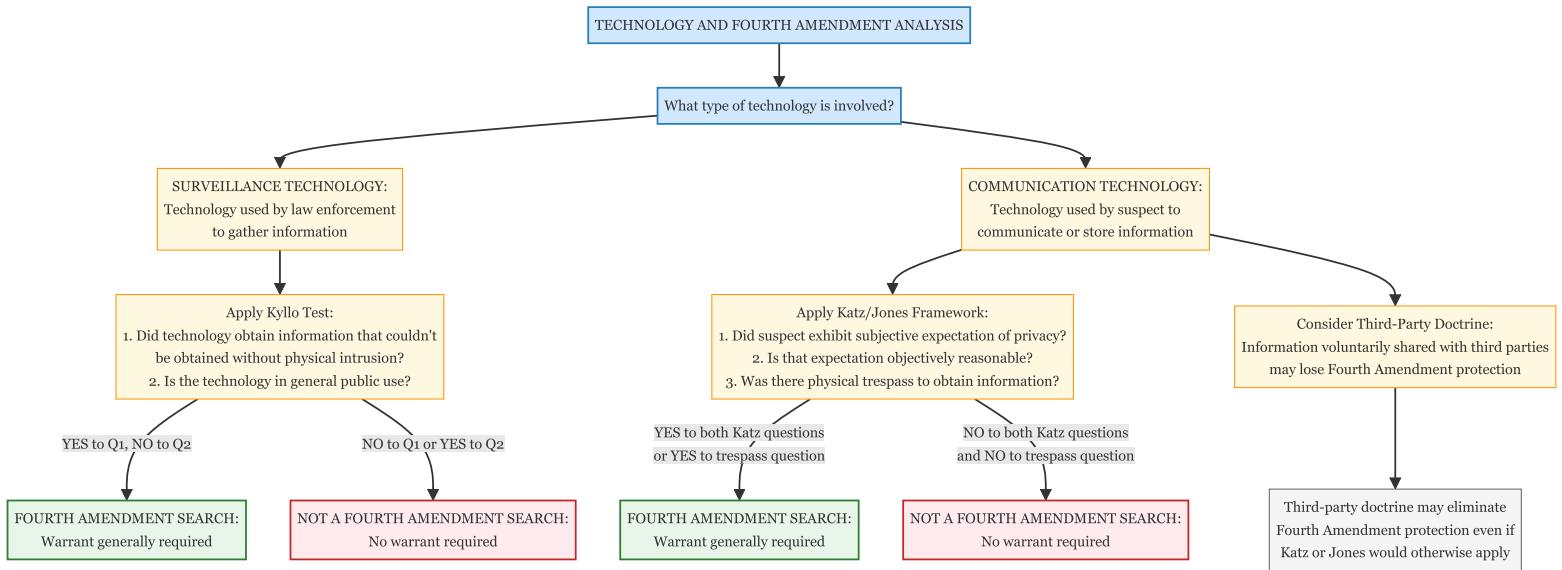
Technology and Fourth Amendment Analysis

The rise of new technologies has presented significant challenges for Fourth Amendment jurisprudence. As surveillance capabilities advance, courts must determine when the use of technology to gather information constitutes a "search" requiring warrant protection.

Two Key Questions for Technology-Based Surveillance

1. **Law Enforcement Use of Technology:** When officers use new technology to gather information, courts apply the *Kyllo* test
2. **Suspect Use of Technology:** When suspects use new technology to send/receive information, courts apply traditional *Katz* and *Jones* frameworks, along with the third-party doctrine

The Supreme Court has increasingly recognized that technology can fundamentally alter the balance of power between citizens and government, requiring new approaches to Fourth Amendment protection. As Justice Sotomayor noted in *Jones*, modern surveillance technologies can "alter the relationship between citizen and government in a way that is inimical to democratic society."



The Kyllo Test for New Technology

In *Kyllo v. United States* (2001), the Supreme Court established a framework for analyzing when the use of technology to obtain information constitutes a Fourth Amendment search.

The Kyllo Two-Part Test

- 1. Information That Requires Physical Intrusion:** Using technology to obtain information "that could not otherwise have been obtained without physical intrusion into a constitutionally protected area" will likely be deemed a search
- 2. Technology Not in General Public Use:** The analysis also considers whether the technology in question "is not in general public use"

This test focuses primarily on two factors:

- Type of Information Obtained:** The critical question is what information was learned, especially if it reveals details of the home that would traditionally be protected
- Method of Collection:** The commonality of the technology matters, as more widespread technologies receive less Fourth Amendment scrutiny

Applying the Kyllo Test

When applying *Kyllo*, courts consider:

- Whether the technology reveals intimate details that would traditionally require physical entry
- The level of technical sophistication of the surveillance method
- The commonality of the technology among the general public
- Whether the surveillance targeted a constitutionally protected area (especially the home)

Kyllo v. United States 533 U.S. 27 (2001)

When the government uses a device that is not in general public use to explore details of the home that would previously have been unknowable without physical intrusion, the surveillance is a "search" and is presumptively unreasonable without a warrant.

Federal agents suspected Kyllo was growing marijuana in his home. Without obtaining a warrant, they used a thermal imaging device to detect higher than normal heat emanating from his roof and one wall. Based on the thermal imaging and other information, agents obtained a warrant to search Kyllo's home, where they found marijuana growing. Kyllo moved to suppress the evidence, arguing that the use of thermal imaging constituted an unreasonable search.

Justice Scalia, writing for the majority, held that the use of the thermal imaging device constituted a search under the Fourth Amendment. The Court emphasized that the thermal imager revealed information about the interior of the home that would not have been obtainable without physical intrusion. The Court rejected the government's argument that thermal imaging only detected "waste heat" emanating from the exterior of the home, noting that such an approach would leave homeowners "at the mercy of advancing technology." Instead, the Court established a bright-line rule that when the government uses a device not in general public use to explore details of the home that would have been unknowable without physical intrusion, a search occurs requiring a warrant. The Court noted the importance of drawing a firm line at the entrance to the house, which represents the very core of Fourth Amendment protection.

GPS Tracking and the Trespass Theory

In *United States v. Jones* (2012), the Supreme Court revitalized the trespass-based approach to the Fourth Amendment in the context of GPS tracking. This marked a significant shift in how courts analyze the use of technology for surveillance.

The Jones Trespass Approach to Technology

Key elements of the trespass approach include:

- **Physical Intrusion:** Even minor physical intrusions (like attaching a GPS device) can constitute a search
- **Constitutionally Protected Area:** The intrusion must be on a constitutionally protected area (persons, houses, papers, effects)
- **Purpose of Obtaining Information:** The intrusion must be for the purpose of gathering information

Sotomayor's Concerns About Technology and Privacy

Justice Sotomayor's concurrence in *Jones* raised important considerations about how technology threatens reasonable expectations of privacy:

- GPS monitoring creates "a precise, comprehensive record of a person's public movements that reflects a wealth of detail about familial, political, professional, religious, and sexual associations"
- Because GPS monitoring is cheap, surreptitious, and evades ordinary checks on police power, it may fundamentally alter the citizen-government relationship
- Government monitoring may "chill associational and expressive freedoms"

- The third-party doctrine may need reconsideration in the digital age, as information shared for limited purposes should not necessarily lose all Fourth Amendment protection

The Mosaic Theory

Alito's concurrence in *Jones* suggested that long-term monitoring of movements might violate the Fourth Amendment even without a physical trespass. This "mosaic theory" suggests that prolonged surveillance can reveal an intimate picture of a person's life that should be protected, even if individual data points are publicly exposed.

United States v. Jones 565 U.S. 400 (2012)

The government conducts a Fourth Amendment search when it physically intrudes on a constitutionally protected area (persons, houses, papers, effects) for the purpose of obtaining information, regardless of whether the individual has a reasonable expectation of privacy in the area.

Without a valid warrant, law enforcement installed a GPS tracking device on Jones's vehicle and monitored its movements for 28 days, tracking the vehicle across multiple jurisdictions, including when parked in a garage adjoining Jones's residence. The government used this data to link Jones to a drug trafficking conspiracy.

Justice Scalia, writing for the majority, held that the installation of the GPS device on Jones's vehicle constituted a search under the Fourth Amendment because the government physically occupied private property (the vehicle, an "effect" under the Fourth Amendment) for the purpose of obtaining information. The Court emphasized that the Katz reasonable expectation of privacy test did not replace the traditional property-based understanding of the Fourth Amendment but rather supplemented it. The Court clarified that when the government physically intrudes on constitutionally protected areas to obtain information, a search occurs regardless of whether there is a reasonable expectation of privacy. This case marked a significant return to trespass concepts in Fourth Amendment jurisprudence, particularly in the context of new surveillance technologies.

Aerial Surveillance and Technology

The Supreme Court has addressed whether aerial surveillance constitutes a Fourth Amendment search, establishing that observations from publicly navigable airspace generally do not implicate the Fourth Amendment, even when viewing curtilage.

Key Principles for Aerial Surveillance

- **Type of Information Revealed:** Courts consider whether the surveillance reveals intimate details or merely outlines/general information
- **Public Navigable Airspace:** Observations from legally navigable airspace are generally permitted
- **Technology Enhancement:** The level of technological enhancement affects the analysis
- **Routine Nature:** Whether the flight path is one routinely used by the public matters

In *Dow Chemical Co. v. United States* (1986), the Court held that aerial photographs of an industrial facility were not "so revealing of intimate details as to raise constitutional concerns." Key factors included:

- The photographs revealed only outlines of the facility's buildings and equipment
- The industrial facility was more akin to an "open field" than curtilage
- The same technology used to photograph private residences might yield a different result

The aerial surveillance cases demonstrate the Court's approach to balancing Fourth Amendment protections against the legitimate needs of law enforcement in an era of advancing technology. They suggest a willingness to permit observation from public vantage points, while remaining cautious about surveillance that reveals intimate details typically protected from public view.

Binary Searches and Technology

Binary searches are investigative techniques that reveal only whether something illegal is present, with no other information disclosed. Courts have taken different approaches to binary searches depending on the context and technology involved.

Drug-Sniffing Dogs: A Traditional Binary Search

The Supreme Court has addressed whether using drug-detection dogs constitutes a Fourth Amendment search:

- **Public Places:** Dog sniffs in public areas generally do not constitute searches (*Illinois v. Caballes*)
- **Curtilage:** Using a drug-sniffing dog on the curtilage of a home is a search (*Florida v. Jardines*)
- **Traffic Stops:** Dog sniffs during legitimate traffic stops are permitted if they do not prolong the stop (*Rodriguez v. United States*)

Technological Binary Searches

As technology advances, courts have had to consider more sophisticated forms of binary searches:

- **Field Tests:** Chemical tests that reveal only whether a substance is contraband are generally not searches
- **Specialized Detectors:** Devices designed to detect only contraband items may be treated differently than those capturing broader information
- **Digital Binary Searches:** Software designed to identify only illegal content may raise distinct Fourth Amendment questions

The binary search doctrine highlights a core principle: investigative techniques that reveal only contraband, and nothing about lawful activity, may receive different Fourth Amendment treatment than techniques that reveal legally protected information along with contraband.

Florida v. Jardines 569 U.S. 1 (2013)

The use of a drug-sniffing dog on the curtilage of a home constitutes a search under the Fourth Amendment when officers physically intrude on the curtilage for the purpose of gathering evidence.

Police officers brought a drug-detection dog to Jardines' front porch, where the dog alerted to the presence of drugs. Based on this alert, the officers obtained a warrant to search the home, which revealed marijuana plants. Jardines moved to suppress the evidence, arguing

that using the drug dog on his porch was a warrantless search.

Justice Scalia, writing for the majority, held that the use of a drug-sniffing dog on Jardines' front porch was a search under the Fourth Amendment. The Court applied the physical trespass theory from *Jones*, finding that when police physically enter the curtilage of a home to gather evidence, a search occurs. The Court emphasized that while visitors might have an implied license to approach the front door (the "knock and talk" exception), that license does not extend to bringing a trained police dog to explore the area for evidence. The Court specifically noted that it was resolving the case using the property-based approach rather than the *Katz* reasonable expectation of privacy test, demonstrating how the two tests operate independently and can yield similar results through different analyses.

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Third-Party Doctrine

Doctrine Overview Historical Development Carpenter's Impact Digital Applications

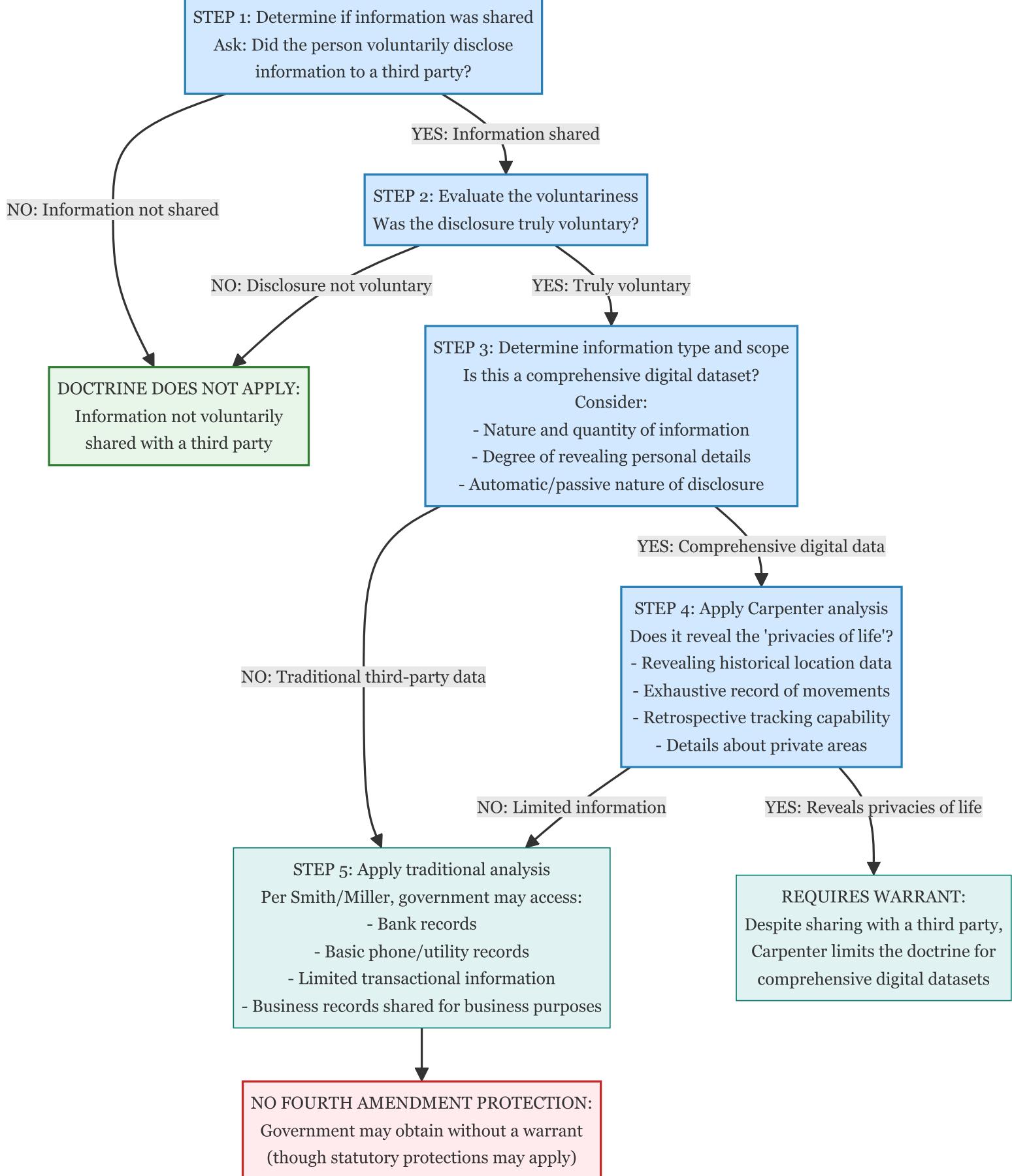
The Third-Party Doctrine Explained

The third-party doctrine holds that information voluntarily disclosed to third parties generally receives no Fourth Amendment protection. Under this principle, when a person shares information with a third party, they assume the risk that the third party may provide that information to the government.

Core Principles of the Third-Party Doctrine

- **Voluntary Disclosure:** When someone voluntarily shares information with a third party, they assume the risk of further disclosure
- **No Reasonable Expectation of Privacy:** A person typically has no reasonable expectation of privacy in information shared with others
- **No Fourth Amendment Protection:** Without a reasonable expectation of privacy, obtaining the information is not a "search" requiring a warrant
- **Information vs. Content:** Traditionally distinguishes between transactional records (less protected) and communications content (more protected)
- **Evolving Doctrine:** Recent cases have limited the doctrine's scope in the digital age

THIRD-PARTY DOCTRINE ANALYSIS



United States v. Miller 425 U.S. 435 (1976)

A bank depositor has no legitimate expectation of privacy in financial information voluntarily conveyed to banks and exposed to their employees in the ordinary course of business. The Fourth Amendment does not prohibit the government from obtaining this information through a subpoena rather than a warrant.

Government agents investigating tax violations issued subpoenas to two banks for Miller's account records, including financial statements and deposit slips. Miller sought to suppress these documents, arguing that they were illegally seized without a warrant in violation of the Fourth Amendment.

Justice Powell, writing for the majority, held that Miller possessed no Fourth Amendment interest in his bank records. The Court emphasized that the documents were not private papers but rather business records of the banks. The Court reasoned that the Fourth Amendment does not prohibit obtaining information a person has voluntarily conveyed to a third party, even if it was revealed for a limited purpose with the expectation that the third party would not betray the confidence. When Miller used the banks, he took the risk that the information would be conveyed to the government. The Court rejected the argument that the Bank Secrecy Act's requirements created a legitimate expectation of privacy, noting that the Act's purpose was to facilitate law enforcement access to these records. This case established the core principle of the "third-party doctrine" that information voluntarily disclosed to third parties receives no Fourth Amendment protection.

Historical Development of the Doctrine

The third-party doctrine developed through key Supreme Court cases in the 1970s, establishing the principle that information shared with others loses Fourth Amendment protection.

Foundational Cases

- ***United States v. Miller (1976)***: Bank records are not protected because they are business records of the banks, not the customer's private papers
- ***Smith v. Maryland (1979)***: Phone numbers dialed are not protected because the caller voluntarily conveys that information to the phone company
- ***California v. Greenwood (1988)***: Trash left for collection in public is not protected because it's voluntarily given to garbage collectors

The Reasonable Expectation Standard

These cases applied the *Katz* "reasonable expectation of privacy" test, finding that people cannot reasonably expect privacy in information they share with others. The Court reasoned that by sharing information with a third party, a person assumes the risk that the third party might share that information with the government.

Statutory Protections

In response to concerns about privacy implications of the third-party doctrine, Congress enacted several statutory protections:

- **Right to Financial Privacy Act:** Requires government entities to notify customers before accessing their bank records
- **Electronic Communications Privacy Act:** Provides some protections for stored electronic communications
- **Stored Communications Act:** Restricts when electronic communication services can disclose user information

These statutes provide protections where the Fourth Amendment does not, but they generally set lower standards than the warrant requirement.

Smith v. Maryland 442 U.S. 735 (1979)

The installation and use of a pen register to record the telephone numbers dialed from a person's phone does not constitute a "search" within the meaning of the Fourth Amendment, as a person has no legitimate expectation of privacy in information voluntarily turned over to a third party.

After a robbery, the victim received threatening calls from someone claiming to be the robber. Police identified Smith as a suspect and, without a warrant, had the telephone company install a pen register to record the numbers dialed from Smith's home phone. The register revealed that Smith called the victim, leading to his arrest and conviction.

Justice Blackmun, writing for the majority, applied the two-part test from *Katz v. United States*: (1) whether the individual exhibited an actual expectation of privacy, and (2) whether society recognizes that expectation as reasonable. The Court doubted that people generally expect privacy in the numbers they dial, noting that telephone users realize they convey phone numbers to the company for billing and other business purposes. Even if Smith did expect privacy, the Court held that this expectation was not reasonable because he voluntarily conveyed the dialed numbers to the phone company. Following *Miller*, the Court emphasized that a person has no legitimate expectation of privacy in information voluntarily turned over to third parties. This case expanded the third-party doctrine beyond financial records and established that the use of pen registers does not constitute a Fourth Amendment search.

Carpenter v. United States and Its Impact

In *Carpenter v. United States* (2018), the Supreme Court significantly limited the third-party doctrine's application to certain types of digital information, specifically cell phone location records that track a person's movements over time.

Key Holdings from Carpenter

- Obtaining seven days or more of cell-site location information (CSLI) is a Fourth Amendment search requiring a warrant
- The third-party doctrine does not extend to comprehensive, historical cell phone location records
- The deeply revealing nature of CSLI, its depth, breadth, and comprehensive reach, and the automatic way it is collected distinguish it from traditional third-party records

Factors That Limited the Third-Party Doctrine

The Court identified several factors that distinguish CSLI from traditional third-party records:

1. **Comprehensiveness:** CSLI provides an all-encompassing record of the phone owner's whereabouts
2. **Revealing nature:** Location information reveals the "privacies of life"
3. **Retroactivity:** Records allow government to travel back in time to track a person

4. **Pervasiveness:** Cell phones are "almost a feature of human anatomy" that most people carry at all times

5. **Involuntariness:** Location information is not truly "voluntarily" shared since cell phones log location data automatically

Narrow Ruling

Chief Justice Roberts emphasized the narrow scope of the decision:

- It does not disturb conventional application of Smith and Miller
- It does not address real-time CSLI or "tower dumps" (all information from a particular cell tower)
- It does not address other business records that might incidentally reveal location
- Traditional investigative techniques such as security cameras remain unaffected

The decision signaled a significant shift in the Court's approach to the third-party doctrine in the digital age, recognizing that some information, though technically shared with third parties, still deserves Fourth Amendment protection due to its revealing and comprehensive nature.

Carpenter v. United States 138 S. Ct. 2206 (2018)

The government's acquisition of cell-site location information (CSLI) from wireless carriers constitutes a Fourth Amendment search, requiring a warrant supported by probable cause. The third-party doctrine does not extend to this type of comprehensive digital data that provides a detailed chronicle of a person's physical movements.

After identifying several robbery suspects, the FBI obtained court orders under the Stored Communications Act (requiring only "reasonable grounds" rather than probable cause) to collect 127 days of cell-site location records for Timothy Carpenter's phone. These records placed Carpenter's phone near four robbery locations. Carpenter moved to suppress the evidence, arguing that accessing these records without a warrant violated the Fourth Amendment.

Chief Justice Roberts, writing for the majority, held that individuals have a reasonable expectation of privacy in their physical movements as captured through CSLI, despite the fact that this information is gathered and held by third-party wireless carriers. The Court distinguished this case from Miller and Smith, emphasizing the "unique nature of cell phone location records" which provide a comprehensive chronicle of a person's movements, revealing not just locations but potentially "familial, political, professional, religious, and sexual associations." The Court noted that CSLI is not truly "shared" voluntarily since carrying a cell phone is indispensable to modern life, and the tracking occurs automatically without affirmative acts by the user. The Court also emphasized the retrospective nature of these records, allowing police to "travel back in time" to track movements. While declining to extend Smith and Miller to this new technology, the Court emphasized the narrowness of its decision, which does not disturb the application of the third-party doctrine to conventional cases or address other types of surveillance techniques.

Modern Digital Applications

After *Carpenter*, courts have grappled with applying the third-party doctrine to various forms of digital data. While *Carpenter* was intentionally narrow, its reasoning suggests potential limitations on the doctrine in other contexts.

Different Types of Digital Information

Information Type	Likely Status Post-Carpenter	Key Considerations
Email content	Likely protected	Content of communications generally requires a warrant since <i>United States v. Warshak</i>
IP address records	Likely unprotected	More like traditional phone numbers in <i>Smith</i>
Subscriber information	Likely unprotected	Basic information voluntarily provided to service providers
Web browsing history	Unclear	May reveal the "privacies of life" like CSLI, but voluntarily conveyed
Smart home data	Likely protected	Reveals detailed information about home activities
Financial app data	Unclear	More detailed than traditional bank records in <i>Miller</i>
Social media posts (public)	Unprotected	Voluntarily shared with public audience
Social media posts (private)	Unclear	Shared with limited audience, may retain some privacy protection

Unresolved Questions

The Court in *Carpenter* left many questions unresolved about the third-party doctrine's application to digital data:

- How long must location tracking last to trigger Fourth Amendment protection? *Carpenter* involved seven days, but the Court did not set a minimum threshold.
- Does the doctrine apply differently to content vs. metadata?
- How do automatic disclosures (without active user choice) affect the analysis?
- How comprehensive must information be to fall under *Carpenter* rather than *Smith/Miller*?
- How does the analysis apply to information shared with private individuals rather than businesses?

Statutory Protections in the Digital Age

Where Fourth Amendment protection remains uncertain, statutory protections become important:

- **Stored Communications Act:** Protects stored electronic communications and records
- **California Consumer Privacy Act (CCPA):** Gives consumers right to know about data collection and opt out of data sales
- **State Constitution protections:** Some state constitutions provide greater privacy protection than the federal Constitution

The Future of the Third-Party Doctrine

The third-party doctrine continues to evolve as courts grapple with applying it to new technologies. Several trends are emerging:

1. **Narrowing Application:** Courts are increasingly reluctant to apply the doctrine broadly to all digital information

2. **Multi-Factor Analysis:** Courts consider the comprehensiveness, revealing nature, and automatic collection of information
3. **Content vs. Non-Content:** Content of communications generally receives greater protection than metadata
4. **Voluntariness Assessment:** Courts scrutinize whether sharing was truly voluntary in the digital context
5. **Privacy Expectations Evolving:** Societal expectations of privacy in digital information may be changing

Justice Sotomayor's concurrence in *United States v. Jones* (2012) suggested the Court may need to reconsider the third-party doctrine entirely, noting it is "ill-suited to the digital age, in which people reveal a great deal of information about themselves to third parties in the course of carrying out mundane tasks."

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Fourth Amendment: Warrant Requirements

Warrant Preference Rule Probable Cause Particularity Requirement Neutral and Detached Magistrate
Warrant Execution

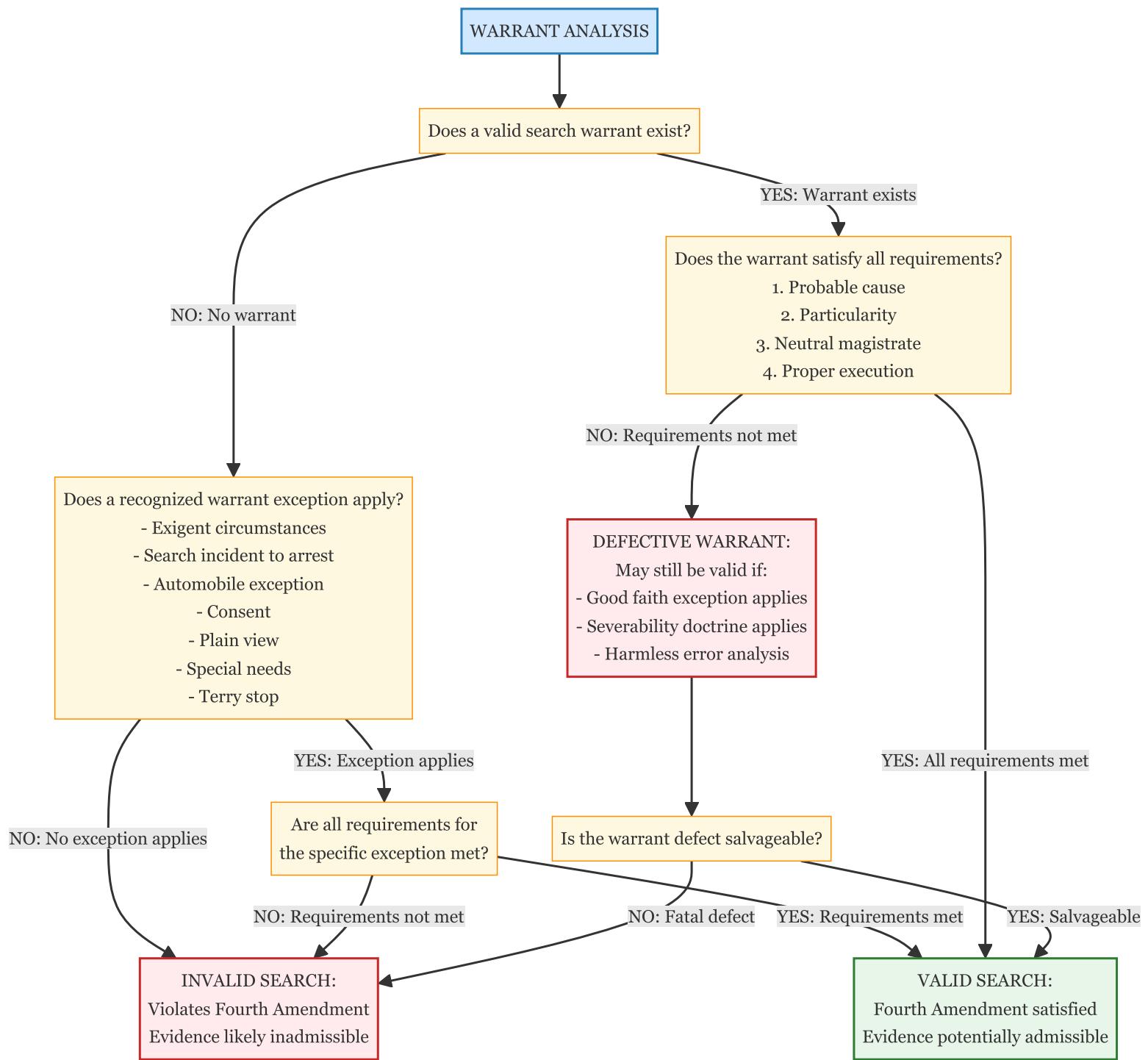
The Warrant Preference Rule

The Supreme Court has repeatedly emphasized that "searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions" (*Katz v. United States*, 389 U.S. 347, 357 (1967)).

This principle, known as the "warrant preference rule," creates a presumption that warrantless searches are unconstitutional unless they fall within an established exception. However, the Court's application of this principle has not been entirely consistent, and some Justices have questioned whether the Fourth Amendment actually demonstrates a preference for warrants.

Benefits of Requiring Warrants

- **Prior Review:** Allows a neutral judicial officer to evaluate the evidence before a search occurs
- **Prevents Hindsight Bias:** Assessment of probable cause isn't tainted by what the search actually found
- **Documentation:** Creates a record of what officers were authorized to search for and where
- **Specificity:** Forces officers to articulate their justifications and limits the scope of intrusion



Probable Cause Requirement

The Fourth Amendment explicitly requires that warrants be supported by probable cause. While the Supreme Court has rejected rigid formulations of probable cause, it has described it as a "practical, nontechnical conception" that deals with "probabilities" rather than certainties (*Illinois v. Gates*, 462 U.S. 213 (1983)).

The Probable Cause Standard

- **Definition:** The facts and circumstances known to the officer would lead a reasonable person to believe that a crime was committed or evidence of a crime would be found in a particular place

- **Quantum of Evidence:** More than reasonable suspicion but less than proof beyond a reasonable doubt or even preponderance of the evidence
- **Totality of Circumstances:** All relevant factors are considered together, not in isolation
- **Specific Items and Location:** Probable cause must exist for the specific items sought and the specific location to be searched

Illinois v. Gates 462 U.S. 213 (1983)

Probable cause should be determined based on the "totality of the circumstances" rather than rigid tests. Reviewing courts should give "great deference" to a magistrate's determination of probable cause.

Police received an anonymous letter claiming that the Gates were drug dealers who regularly traveled to Florida to purchase drugs, with Sue Gates driving the car to Florida, leaving it to be loaded with drugs, and Lance Gates flying down later to drive the car back. The letter predicted an upcoming trip by the couple. Police corroborated some details of the trip but not any criminal activity. Based on this information, they obtained a search warrant for the Gates' home and car.

The Supreme Court abandoned the rigid "two-pronged test" from *Aguilar v. Texas* and *Spinelli v. United States*, which had required showing both an informant's "basis of knowledge" and "veracity." Instead, the Court adopted a more flexible "totality of the circumstances" approach where these factors remain relevant but are not strictly required in every case. The Court emphasized that probable cause is a "practical, common-sense decision" based on all the circumstances, including the veracity, reliability, and basis of knowledge of informants. The Court also stressed the importance of according "great deference" to a magistrate's determination of probable cause. Under this approach, the Court found sufficient probable cause existed given the anonymous letter's detailed predictions that were substantially corroborated by police.

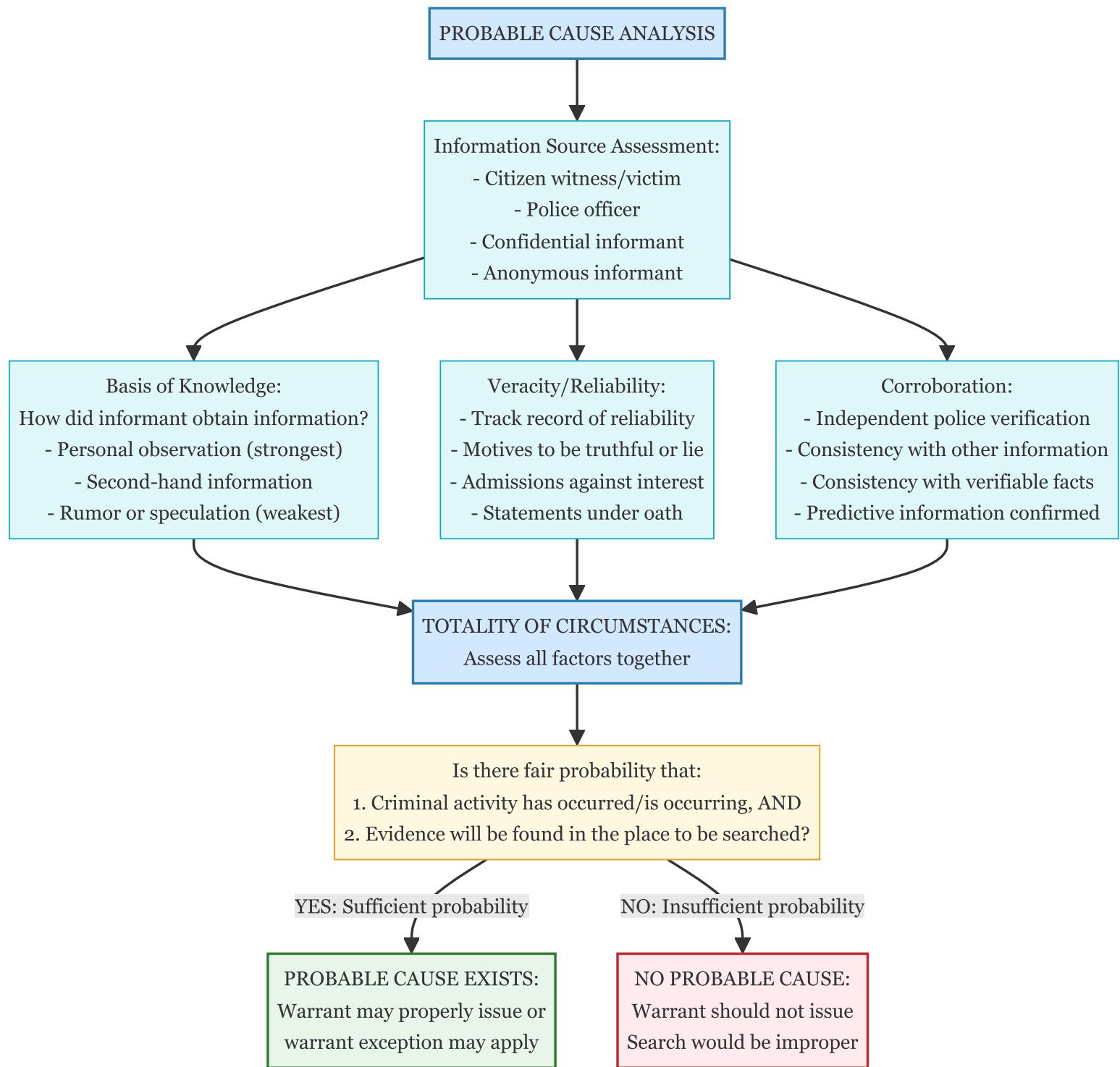
Informants and Probable Cause

Information from informants often forms the basis for probable cause. Under the *Gates* "totality of the circumstances" test, courts consider several factors when evaluating whether an informant's tip establishes probable cause:

Factors in Evaluating Informant Tips

- **Basis of Knowledge:** How did the informant obtain the information? First-hand observation is stronger than hearsay.
- **Veracity/Reliability:** Does the informant have a track record of providing reliable information? Has the informant given false information before?
- **Corroboration:** Have police independently verified any aspects of the tip? Even corroborating innocent details can add credibility.
- **Specificity:** Detailed information suggesting inside knowledge is more credible than vague allegations.
- **Recency:** How recent is the information? Dated information may no longer support probable cause.
- **Type of Informant:**
 - *Citizen informants* (witnesses, victims) generally presumed more reliable
 - *Police officers* generally presumed reliable absent reason to doubt
 - *Confidential informants* scrutinized based on track record and motives

- Anonymous tips require substantial corroboration



Particularity Requirement

The Fourth Amendment requires warrants to "particularly describe the place to be searched, and the persons or things to be seized." This particularity requirement serves several important functions:

Purposes of the Particularity Requirement

- **Limits Discretion:** Prevents officers from conducting general exploratory rummaging through a person's belongings
- **Informs the Subject:** Provides notice to the subject of the search of its authorized scope
- **Defines Scope:** Establishes clear boundaries for what officers may search for and where
- **Enables Review:** Allows courts to determine whether the search stayed within authorized limits

Particularity as to Place

A warrant must describe the place to be searched with sufficient particularity that an officer with reasonable effort can identify and locate the intended place with no reasonable probability of searching the wrong location. Factors considered include:

- Detailed physical description (e.g., address, color, distinguishing features)
- Use of diagrams or photographs when helpful
- For multi-unit buildings, specific identification of the target unit
- Geographical directions if no street address is available

Particularity as to Items

A warrant must describe the items to be seized with sufficient particularity that an officer will reasonably know what items are authorized for seizure. The degree of specificity required depends on the nature of the items:

- Unique items (e.g., specific stolen property) must be described with precision
- Generic contraband (e.g., "illegal drugs") may be described more generally
- Categories of documents must be limited by content and relevance to the crime
- "Catch-all" provisions may be permissible if they relate to specific criminal activity

Groh v. Ramirez 540 U.S. 551 (2004)

A warrant that completely fails to particularize the items to be seized is invalid on its face, even if the supporting documents contain the required particularity.

Agent Groh prepared a warrant application with an attached, detailed description of the firearms believed to be at Ramirez's ranch. However, in the portion of the warrant form that called for a description of the "person or property" to be seized, Groh mistakenly described Ramirez's house rather than the firearms. The magistrate signed the warrant, and Groh executed it, but found no illegal weapons.

The Supreme Court held that the warrant was plainly invalid because it completely failed to describe the items to be seized as required by the Fourth Amendment. The Court rejected the argument that the detailed description in the warrant application satisfied the particularity requirement, explaining that the particularity must appear on the face of the warrant itself. The Court emphasized that the purpose of the particularity requirement is to assure the subject of the search of the lawful authority of the executing officer and the limits of the officer's power to search. Since the warrant did not describe any items to be seized, it was "so obviously deficient that we must regard the search as 'warrantless.'"

Neutral and Detached Magistrate

The Fourth Amendment requires that warrants be issued by a neutral and detached magistrate who independently evaluates the evidence of probable cause. As the Supreme Court stated in *Johnson v. United States*, "The point of the Fourth Amendment... is not that it denies law enforcement the support of the usual inferences which reasonable men draw from evidence. Its protection consists in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime."

Requirements for the Issuing Magistrate

- **Neutrality:** Free from bias or conflict of interest
- **Detachment:** Independent from the law enforcement function
- **Capability:** Competent to determine probable cause
- **Actual Review:** Must actually review and evaluate the evidence rather than rubber-stamping requests

The Supreme Court has invalidated warrants issued by magistrates who:

- Had a financial interest in issuing the warrant (*Connally v. Georgia*)
- Actively participated in the investigation (*Lo-Ji Sales v. New York*)
- Were executive branch officials directly involved in law enforcement (*Coolidge v. New Hampshire*)

However, the Court has also clarified that the magistrate need not be a lawyer or judge, as long as they are capable of determining probable cause and are genuinely independent of law enforcement.

Warrant Execution

Even if a warrant properly issues, the Fourth Amendment also governs how the warrant must be executed. Several key rules apply to warrant execution:

Timing of Execution

- Warrants typically must be executed within a specified time period (often 10-14 days under state or federal rules)
- Warrants generally may be executed during daytime hours, with special permission needed for nighttime searches
- Officers must execute the warrant with reasonable promptness once at the location

Knock and Announce Rule

Under the common law "knock and announce" rule, officers generally must:

- Announce their presence and authority
- State their purpose
- Wait a reasonable time for occupants to respond before forcing entry

The Supreme Court has held that this rule is part of the Fourth Amendment reasonableness inquiry (*Wilson v. Arkansas*), but has recognized several exceptions:

- When officers reasonably believe that announcing would lead to destruction of evidence
- When announcement would increase the risk of danger to officers or others

- When officers have reason to believe announcing would be futile
- In certain exigent circumstances

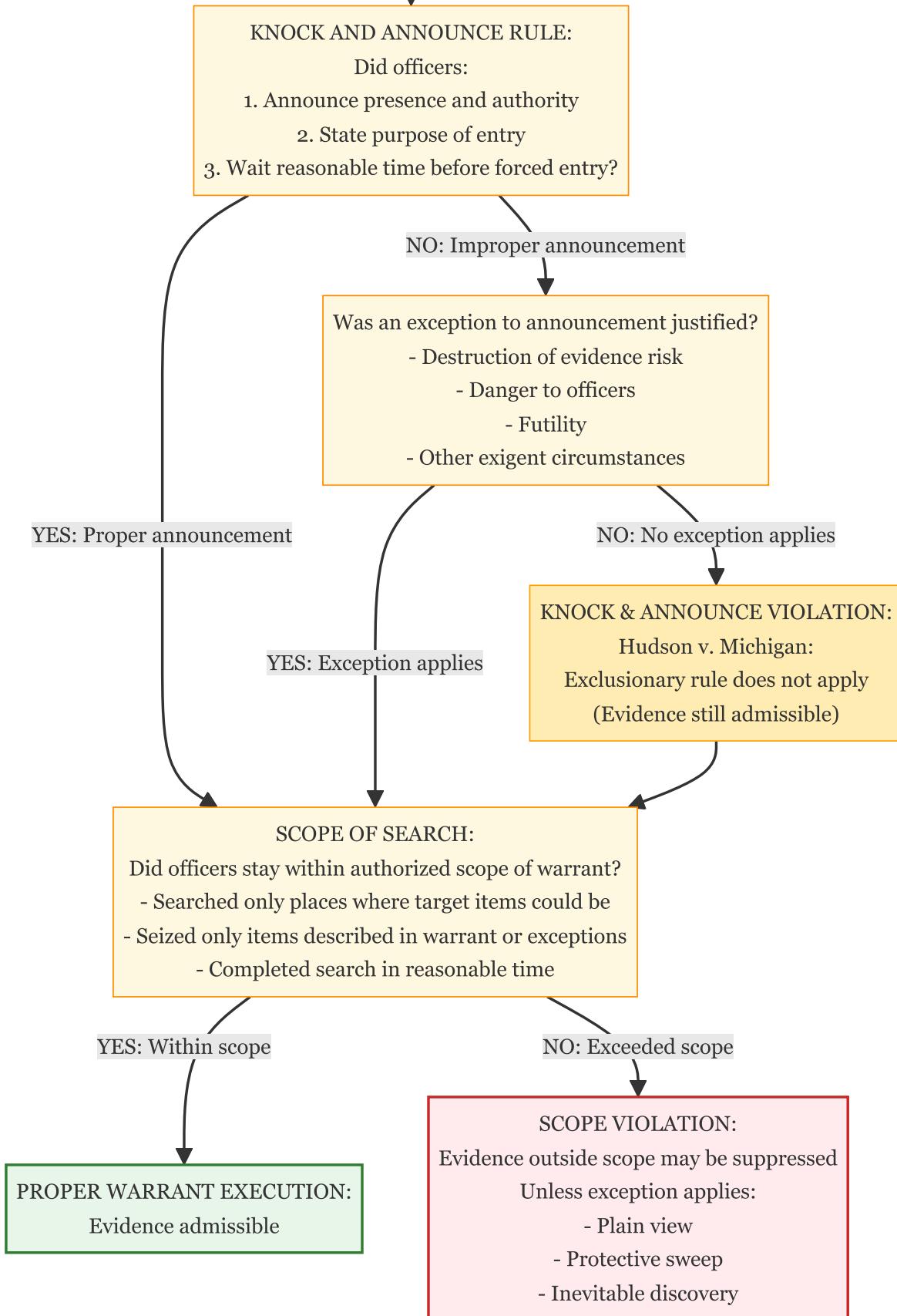
Additionally, in *Hudson v. Michigan* (2006), the Court held that the exclusionary rule does not apply to knock-and-announce violations, meaning that evidence found after such a violation remains admissible.

Scope of the Search

The warrant defines the permissible scope of the search in terms of:

- **Places:** Officers may search only in areas where the items described could reasonably be found
- **Items:** Officers may seize only items described in the warrant, with certain exceptions:
 - Items in "plain view" if their incriminating nature is immediately apparent
 - Protective sweeps for safety purposes
 - Items discovered while searching for items named in the warrant
- **Duration:** The search must be completed in a reasonable time without unnecessary delay

WARRANT EXECUTION ANALYSIS



The common law "knock and announce" principle forms part of the Fourth Amendment's reasonableness inquiry, but may be flexible in cases where law enforcement has a reasonable suspicion that knocking and announcing would inhibit effective investigation of the crime.

Police officers with a warrant to search Wilson's home for drugs entered her home without first announcing their presence. The officers found drugs and drug paraphernalia, and Wilson was charged with various drug offenses. Wilson argued that the evidence should be suppressed because the officers failed to knock and announce.

The Supreme Court unanimously held that the common law knock-and-announce principle forms part of the Fourth Amendment reasonableness inquiry. Justice Thomas, writing for the Court, traced the knock-and-announce principle back to English common law, noting its consistent presence in early American legal traditions. However, the Court also emphasized that the principle was never treated as an absolute requirement. The Court recognized that the "flexible requirement of reasonableness should not be read to mandate a rigid rule of announcement that ignores countervailing law enforcement interests." The Court identified several situations where knock-and-announce might not be required: when there is a threat of physical violence, when officers believe evidence would be destroyed, or when knocking would be futile. The Court remanded the case for further consideration of whether such circumstances existed.

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Fourth Amendment Standing Warrant Requirements Warrant Exceptions Special Needs & Administrative Searches
Third-Party Doctrine Terry Stops Exclusionary Rule Interrogations & Confessions Right to Counsel

Note: This guide provides a systematic approach to evaluating key doctrines in Criminal Procedure, with a focus on Professor Sood's course. Each section includes detailed flowcharts with specific criteria for applying the constitutional standards along with key cases.

Fourth Amendment: Warrant Exceptions

Exceptions Overview Consent Searches Automobile Exception Exigent Circumstances Plain View Doctrine
Special Needs Searches

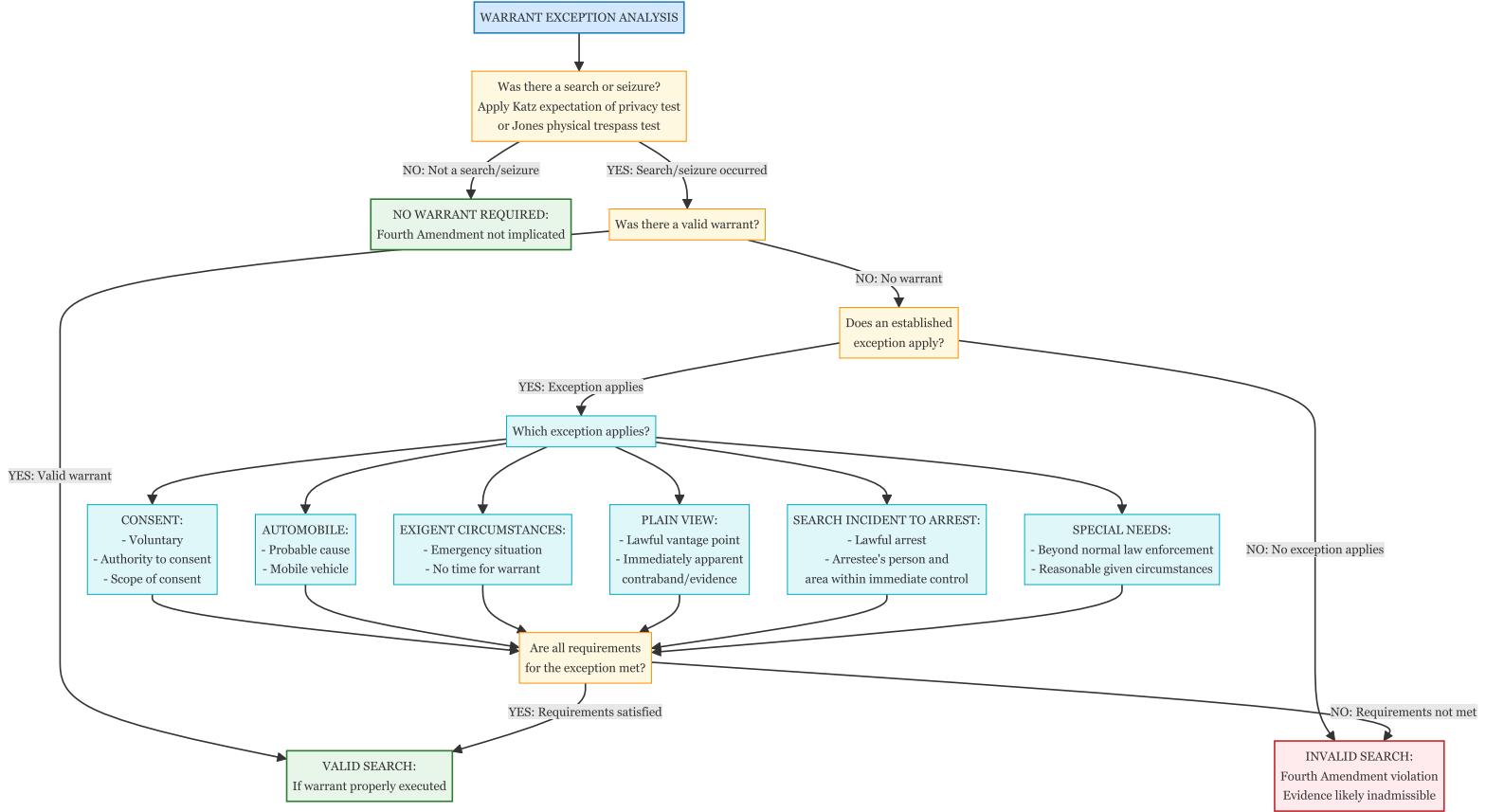
Overview of Warrant Exceptions

Although the Fourth Amendment generally requires a warrant for searches and seizures, the Supreme Court has recognized numerous exceptions to this requirement. These exceptions are based on situations where the Court has determined that the government's interests outweigh the individual's privacy interests, or where practical considerations make obtaining a warrant unreasonable.

Established Warrant Exceptions

- **Consent:** Voluntary permission from a person with authority
- **Automobile Exception:** Based on mobility and reduced expectation of privacy
- **Exigent Circumstances:** Emergency situations requiring immediate action
- **Plain View:** Evidence in plain view from a lawful vantage point
- **Search Incident to Arrest:** Searches of arrestee and area within immediate control
- **Special Needs/Administrative Searches:** Non-law enforcement purposes
- **Terry Stops:** Limited stops and frisks based on reasonable suspicion (covered in detail in the [Terry Stops section](#))
- **Border Searches:** Searches at international borders or functional equivalents

- **Inventory Searches:** Administrative searches of lawfully impounded vehicles



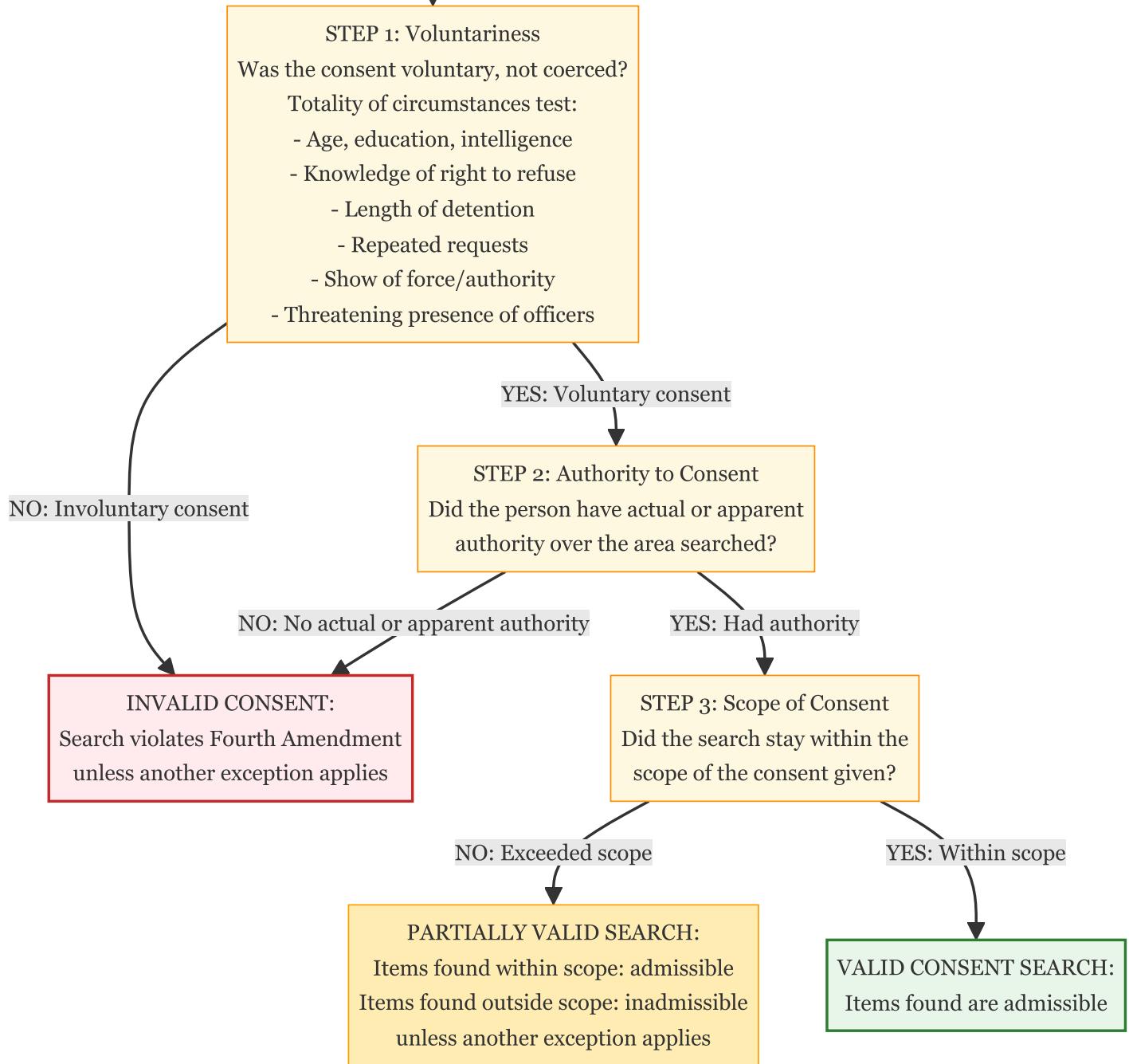
Consent Searches

Consent is perhaps the most common exception to the warrant requirement. A consent search is valid when a person voluntarily gives permission to law enforcement to conduct a search, eliminating the need for a warrant or probable cause.

Requirements for Valid Consent

- Voluntariness:** The consent must be freely and voluntarily given, not coerced or the result of duress
- Authority:** The person giving consent must have actual or apparent authority over the area to be searched
- Scope:** The search must stay within the scope of the consent given

CONSENT SEARCH ANALYSIS



Schneckloth v. Bustamonte 412 U.S. 218 (1973)

The voluntariness of consent to search must be determined from the totality of the circumstances. The government need not prove that the consenting person knew of the right to refuse consent, though this is one factor in the analysis.

Police stopped a car with six men inside for having a broken headlight and license plate light. When the officers asked if they could search the car, one of the passengers, Bustamonte, replied, "Sure, go ahead." During the search, officers found stolen checks, which were used to convict Bustamonte. He later challenged the search, claiming his consent was not voluntary because he had not been informed of his right to refuse consent.

The Supreme Court rejected the argument that consent is involuntary unless the police specifically inform the subject of their right to refuse. The Court adopted a "totality of the circumstances" test for determining whether consent was voluntary. The Court identified several factors to consider, including the characteristics of the consenting individual (age, education, intelligence), whether they knew of their right to refuse (though this was not required), the length of detention, repeated questioning, physical punishment, and the presence of a threatening or coercive environment. The Court was concerned that requiring police to inform subjects of their right to refuse would be impractical and undermine the usefulness of consent searches. The majority explicitly distinguished this from the custodial interrogation context, where Miranda warnings are required.

Third-Party Consent and Authority

In many cases, consent is given by someone other than the target of the investigation. The Supreme Court has established principles governing when third parties can provide valid consent:

Types of Authority to Consent

- **Actual Authority:** Person has joint access or control for most purposes (*United States v. Matlock*)
- **Apparent Authority:** Police reasonably, though mistakenly, believe the person has authority (*Illinois v. Rodriguez*)
- **Common Authority:** Mutual use of property by persons with joint access or control

Disputed Consent Among Co-Occupants

Special rules apply when co-occupants disagree about consent:

- **Georgia v. Randolph (2006):** If physically present co-occupant objects to search, police cannot search based on other occupant's consent
- **Fernandez v. California (2014):** If objecting co-occupant is removed from premises for legitimate law enforcement purpose (e.g., lawful arrest), police may later obtain consent from remaining co-occupant

Scope of Consent

The scope of a consent search is determined by what a reasonable person would understand the consent to include (*Florida v. Jimeno*):

- Consent to search a car may include containers within the car that could hold the object of the search
- Consent may be limited explicitly (e.g., "You can look in the living room only")
- Consent may be withdrawn at any time, and officers must respect the withdrawal

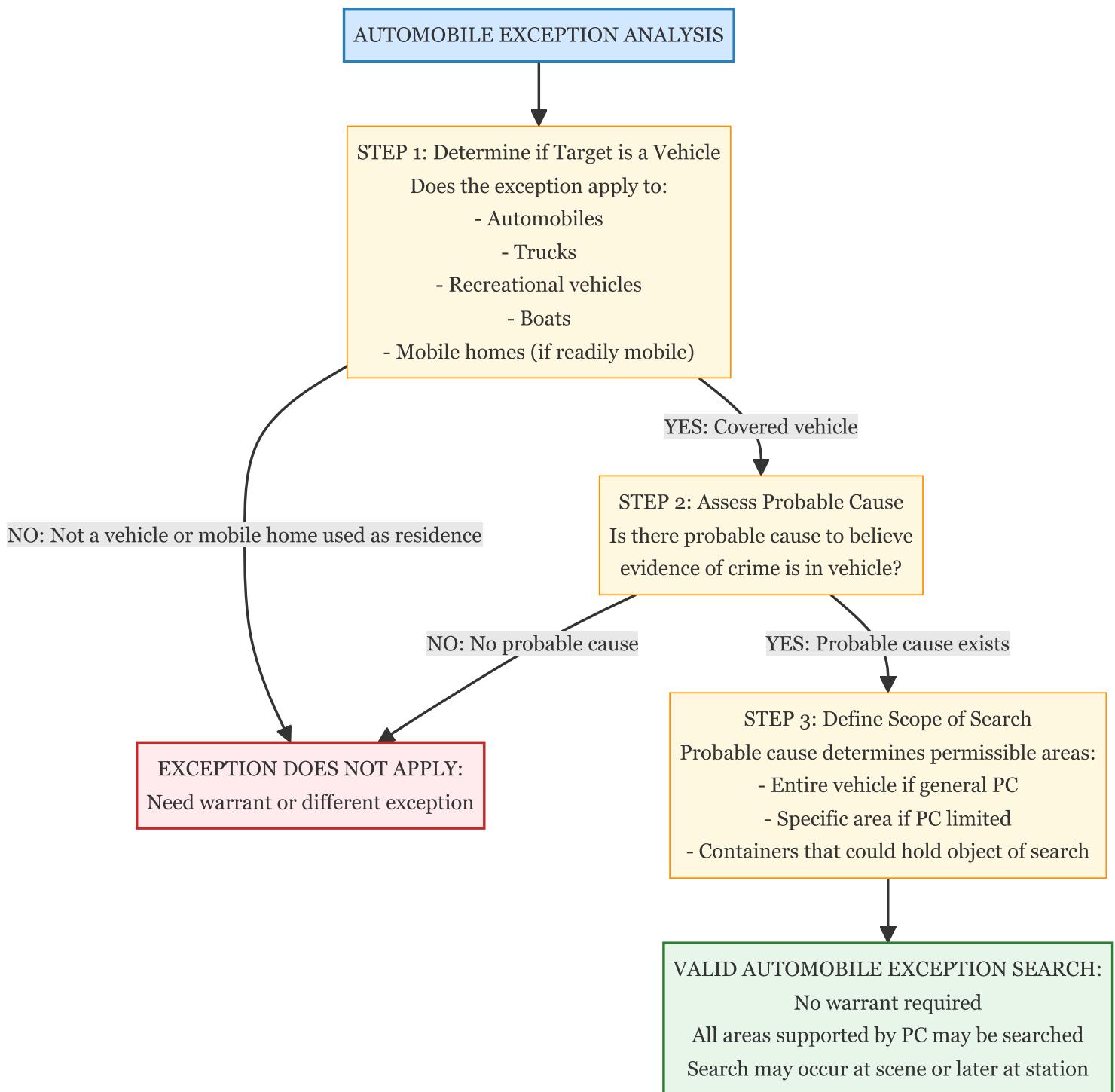
Automobile Exception

The automobile exception permits police to search a vehicle without a warrant if they have probable cause to believe it contains evidence of a crime. This exception was established in *Carroll v. United States* (1925) and is based on:

1. The inherent mobility of vehicles, which creates an exigency
2. The reduced expectation of privacy in automobiles

Key Principles of the Automobile Exception

- **Scope of Search:** Officers may search any part of the vehicle and containers within it where the object of the search might be found
- **No Exigency Required:** The mobility of the vehicle itself creates the exigency; no additional showing of exigent circumstances is necessary
- **Timing:** Search may occur immediately at the scene or later at the police station
- **Probable Cause Required:** Still requires probable cause to believe evidence of crime is in the vehicle
- **Applies to All Vehicles:** Cars, trucks, boats, motor homes, etc.



California v. Acevedo 500 U.S. 565 (1991)

Police may search a container within an automobile without a warrant if they have probable cause to believe the container holds evidence of a crime, even if they lack probable cause to search the entire vehicle.

Police observed Acevedo leave an apartment, carrying a paper bag that they believed contained marijuana. Acevedo placed the bag in the trunk of his car and began to drive away. Officers stopped Acevedo, opened the trunk, and searched the bag, finding marijuana. Prior to this case, the Court had drawn a distinction between searches of entire vehicles (allowed under the automobile exception) and searches of specific containers placed in vehicles (which required warrants).

The Supreme Court eliminated the distinction between searches of containers found within vehicles and searches of the vehicles themselves. The Court held that if police have probable cause to believe a container placed in a vehicle contains evidence of a crime, they may search the container without a warrant under the automobile exception. The Court emphasized the need for a clear rule and the historical recognition of the automobile exception. Justice Scalia, concurring, noted that the Fourth Amendment does not specifically protect containers, so the focus should be on whether the search of the car itself was reasonable. This ruling simplified the automobile exception by allowing police to search containers in vehicles based on probable cause regardless of whether the probable cause extends to the entire vehicle or just the container.

Exigent Circumstances

The exigent circumstances exception allows police to conduct a warrantless search when an emergency situation requires immediate action. This exception is based on the recognition that in some situations, the delay involved in obtaining a warrant would result in the destruction of evidence, escape of a suspect, or injury to officers or others.

Categories of Exigent Circumstances

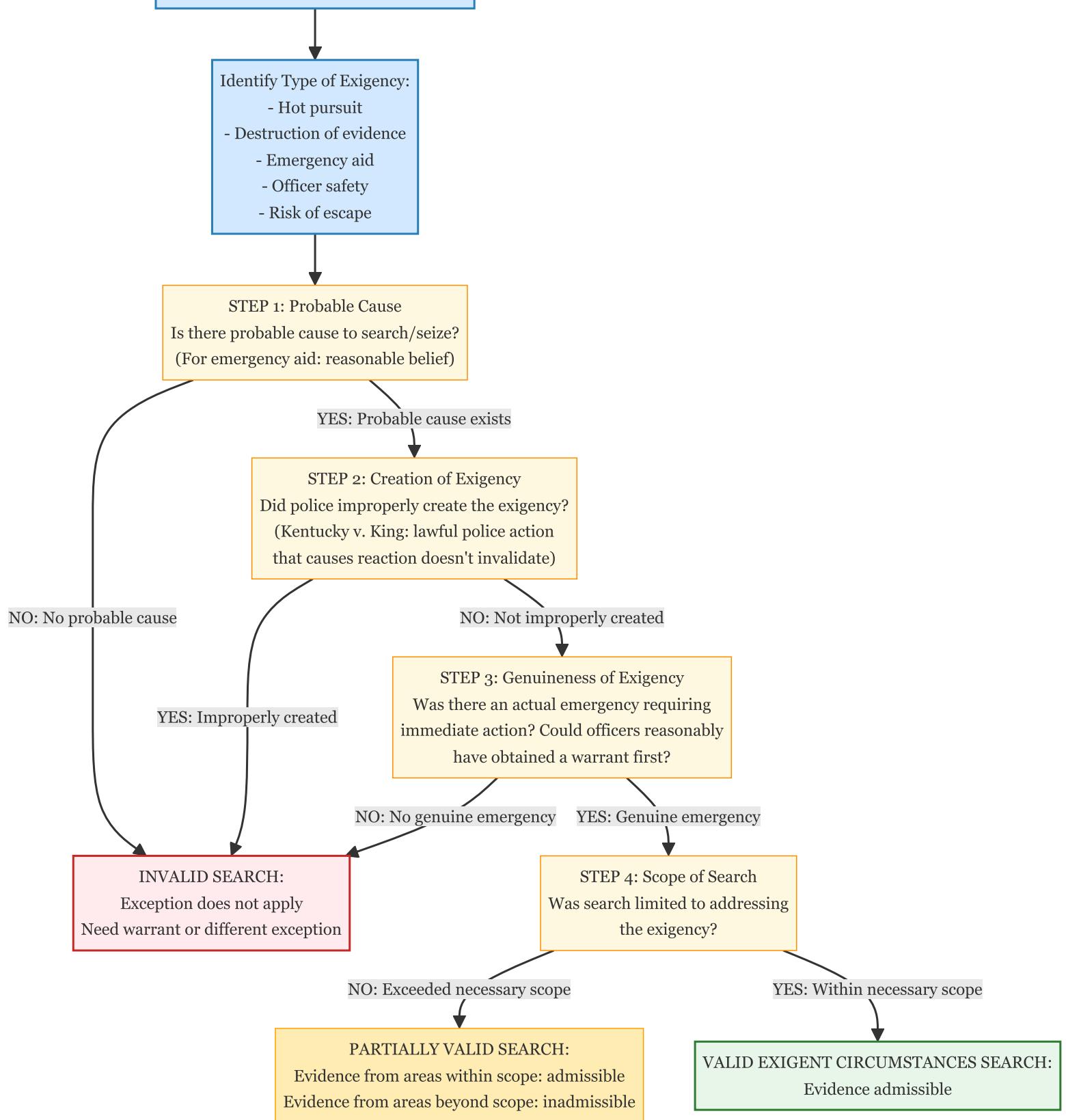
- **Hot Pursuit:** Police are in hot pursuit of a fleeing suspect
- **Destruction of Evidence:** Evidence will likely be destroyed or removed before a warrant can be obtained
- **Emergency Aid:** Immediate action is needed to protect someone from harm
- **Officer Safety:** Immediate search is necessary to protect officers or others from harm
- **Risk of Escape:** Suspect may escape while warrant is being obtained

Limitations on Exigent Circumstances

Key limitations on this exception include:

- Police cannot create the exigency through their own improper conduct (*Kentucky v. King*)
- The scope of the search must be limited to addressing the exigency
- Probable cause is still required (except for emergency aid, which requires reasonable belief)
- Once the exigency ends, so does the authority to search without a warrant

EXIGENT CIRCUMSTANCES ANALYSIS



Kentucky v. King 563 U.S. 452 (2011)

The exigent circumstances exception applies even when police actions created the exigency, as long as the police did not engage in or threaten to engage in conduct that violates the Fourth Amendment.

Police officers followed a suspected drug dealer to an apartment complex. After losing sight of him, they smelled marijuana coming from one of the apartments. They knocked on the door, announced their presence, and then heard movements inside that they believed indicated evidence was being destroyed. The officers forced entry without a warrant, finding King and marijuana. The suspect they had originally followed was in a different apartment.

The Supreme Court rejected the lower court's finding that the police had "created" the exigency by knocking and announcing their presence. The Court held that the exigent circumstances exception applies when police do not create the exigency through actual or threatened Fourth Amendment violations. The Court emphasized that occupants who choose to destroy evidence have only themselves to blame for the warrantless entry that follows. A legal "knock and talk" by police does not constitute coercive or threatening conduct that would invalidate the exigent circumstances exception. The Court noted that a contrary rule would unreasonably restrict legitimate law enforcement strategies and would be difficult to apply consistently. The test is an objective one: whether the police conduct was reasonable under the circumstances.

Plain View Doctrine

The plain view doctrine allows police to seize evidence without a warrant when they observe it from a lawful vantage point. This exception acknowledges that once police are legitimately in a position to observe an item, there is no additional privacy interest in preventing its seizure if it is obviously incriminating.

Requirements for Plain View Seizure

1. **Lawful Vantage Point:** Officers must be lawfully in the position from which they view the evidence
2. **Immediately Apparent:** The incriminating nature of the item must be immediately apparent (probable cause that it is evidence, contraband, or fruits of crime)
3. **Lawful Access:** Officers must have lawful physical access to the object

Related Doctrines

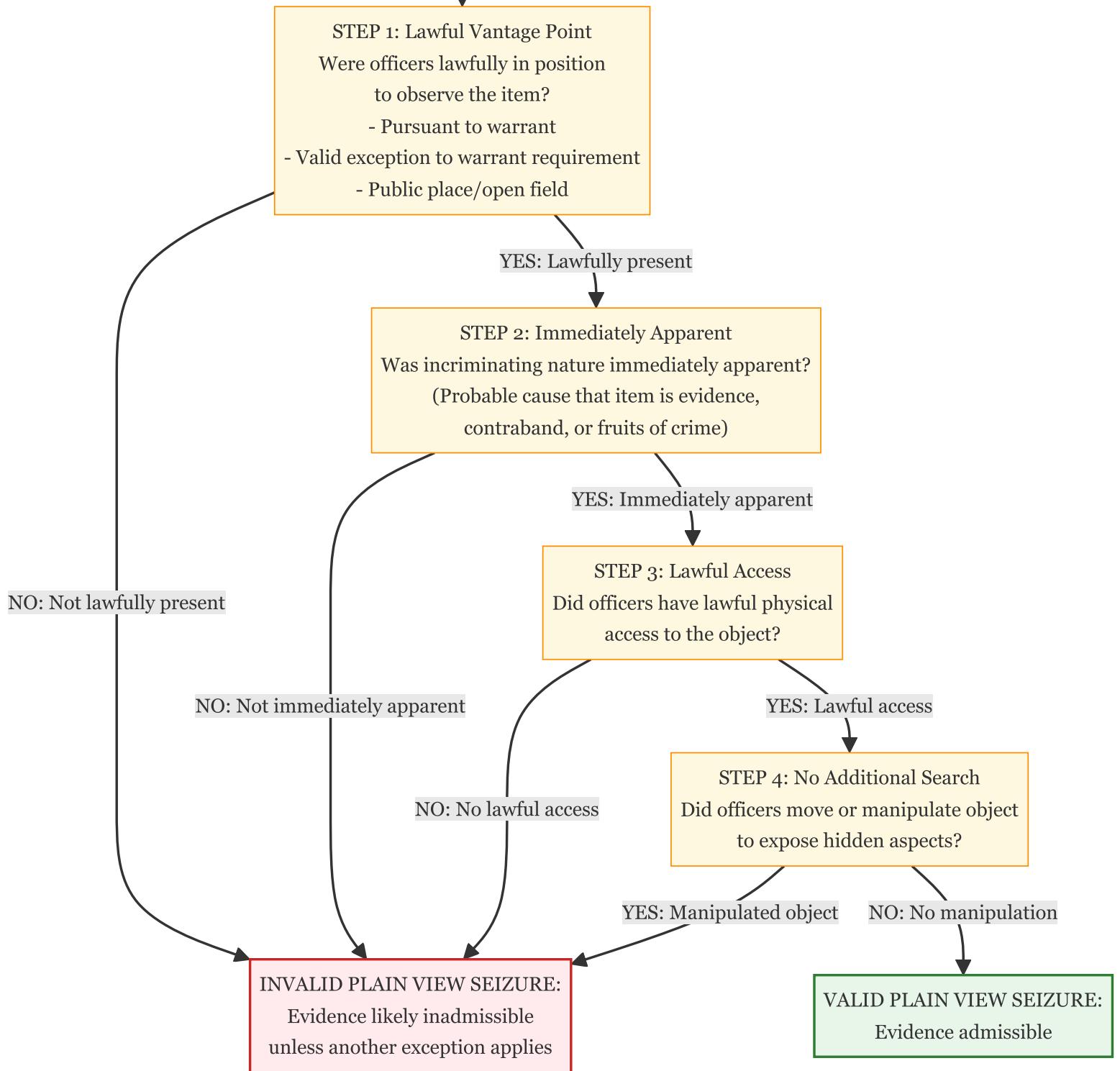
The plain view doctrine has been extended to other senses:

- **Plain Feel/Touch:** Items whose incriminating nature is immediately apparent through touch during a lawful pat-down (*Minnesota v. Dickerson*)
- **Plain Smell:** Detection of distinctive odors (like marijuana) from a lawful vantage point
- **Plain Hearing:** Incriminating statements or sounds heard from a lawful location

Important Limitations

- No additional search beyond what is already authorized is permitted
- Moving or manipulating an object to expose hidden aspects may constitute a search requiring a warrant
- The doctrine allows seizure of the item, but not further searches unless another exception applies

PLAIN VIEW DOCTRINE ANALYSIS



Horton v. California 496 U.S. 128 (1990)

For the plain view doctrine to apply, the discovery of the evidence need not be inadvertent; the other requirements of plain view (lawful position and immediately apparent incriminating nature) are sufficient.

A police officer investigating an armed robbery obtained a warrant to search Horton's home for the stolen property but not specifically for weapons used in the robbery. During the search, the officer found and seized weapons that matched the description of those used in

the robbery, though he did not find the stolen property. The officer admitted he was looking for the weapons, even though they were not listed in the warrant.

The Supreme Court eliminated the "inadvertent discovery" requirement that some courts had imposed as part of the plain view doctrine. The Court held that the Fourth Amendment does not prohibit the seizure of evidence in plain view even if the discovery was not inadvertent, as long as the officer was lawfully in the position to observe the evidence and its incriminating nature was immediately apparent. Justice Stevens, writing for the majority, reasoned that the seizure of an object in plain view does not involve an invasion of privacy beyond that already authorized by the officer's lawful presence, and that the object's incriminating character is immediately apparent. The Court emphasized that the Fourth Amendment's concern with "particularity" relates to the scope of the places to be searched, not the seizure of items not particularized in a warrant.

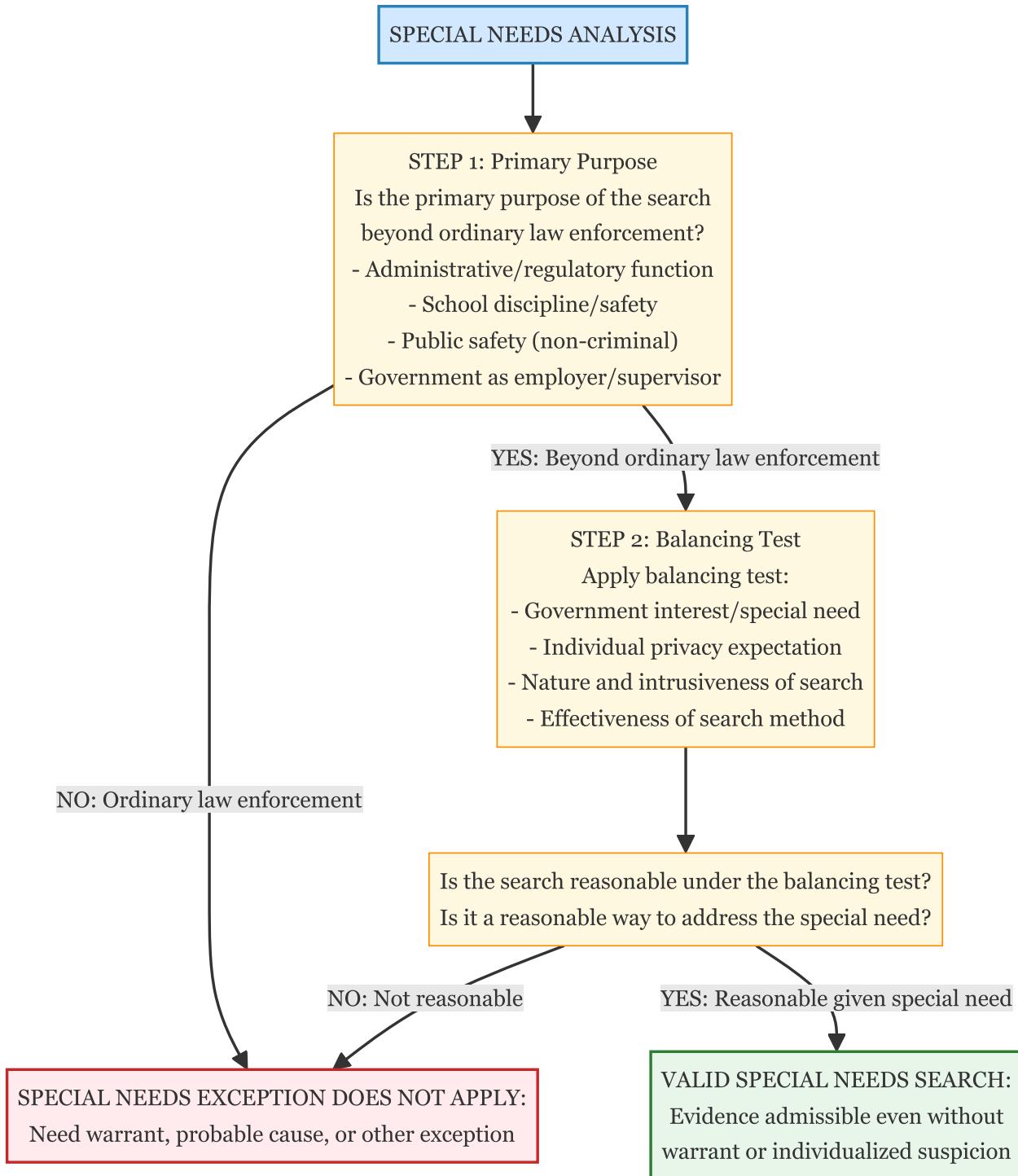
Special Needs Searches

Note: Special Needs searches are covered in depth in the [dedicated Special Needs & Administrative Searches section](#), which provides comprehensive coverage of administrative inspections, checkpoints, drug testing, and school searches.

The "special needs" doctrine permits certain warrantless searches when they serve needs beyond ordinary law enforcement purposes. These searches often involve administrative, regulatory, or other non-criminal investigative functions where the warrant and probable cause requirements would be impracticable.

Categories of Special Needs Searches

- **Administrative Inspections:** Regulatory inspections of businesses in highly regulated industries
- **Suspicionless Drug Testing:** Drug testing in certain contexts (e.g., railway employees, student athletes)
- **Border Searches:** Searches at international borders or functional equivalents
- **Inventory Searches:** Administrative cataloging of property in police custody
- **School Searches:** Searches in educational settings based on reasonable suspicion
- **Probation/Parole Searches:** Searches of probationers or parolees with reduced privacy expectations
- **Checkpoint Searches:** Brief stops at checkpoints for specific purposes (e.g., sobriety, border security)



The special needs analysis typically involves a two-step inquiry:

1. Determine if the primary purpose is distinct from ordinary criminal law enforcement
2. Balance the government's interest against the individual's privacy expectation and the intrusiveness of the search

Key factors in the balancing test include:

- The importance of the government interest or special need
- The individual's reasonable expectation of privacy in the context
- The degree of intrusion caused by the search or seizure
- The effectiveness of the search method in addressing the special need
- The availability of less intrusive alternatives

New Jersey v. T.L.O. 469 U.S. 325 (1985)

School officials may search students without a warrant or probable cause when the search is reasonable under all the circumstances. This reasonableness standard requires (1) that the search was justified at its inception and (2) that the scope was reasonably related to the circumstances that justified the search.

A high school teacher found two students smoking in a lavatory and took them to the principal's office. When T.L.O. denied smoking, the assistant vice principal searched her purse, finding cigarettes and rolling papers. This prompted a more thorough search, which revealed marijuana, a pipe, plastic bags, money, and notes suggesting drug dealing. T.L.O. moved to suppress this evidence in the subsequent juvenile proceedings.

The Supreme Court held that the Fourth Amendment applies to searches by school officials, but the standard is reasonableness, not probable cause. The Court recognized that schools have a substantial interest in maintaining discipline and providing a safe

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Special Needs & Administrative Searches

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The Special Needs Doctrine

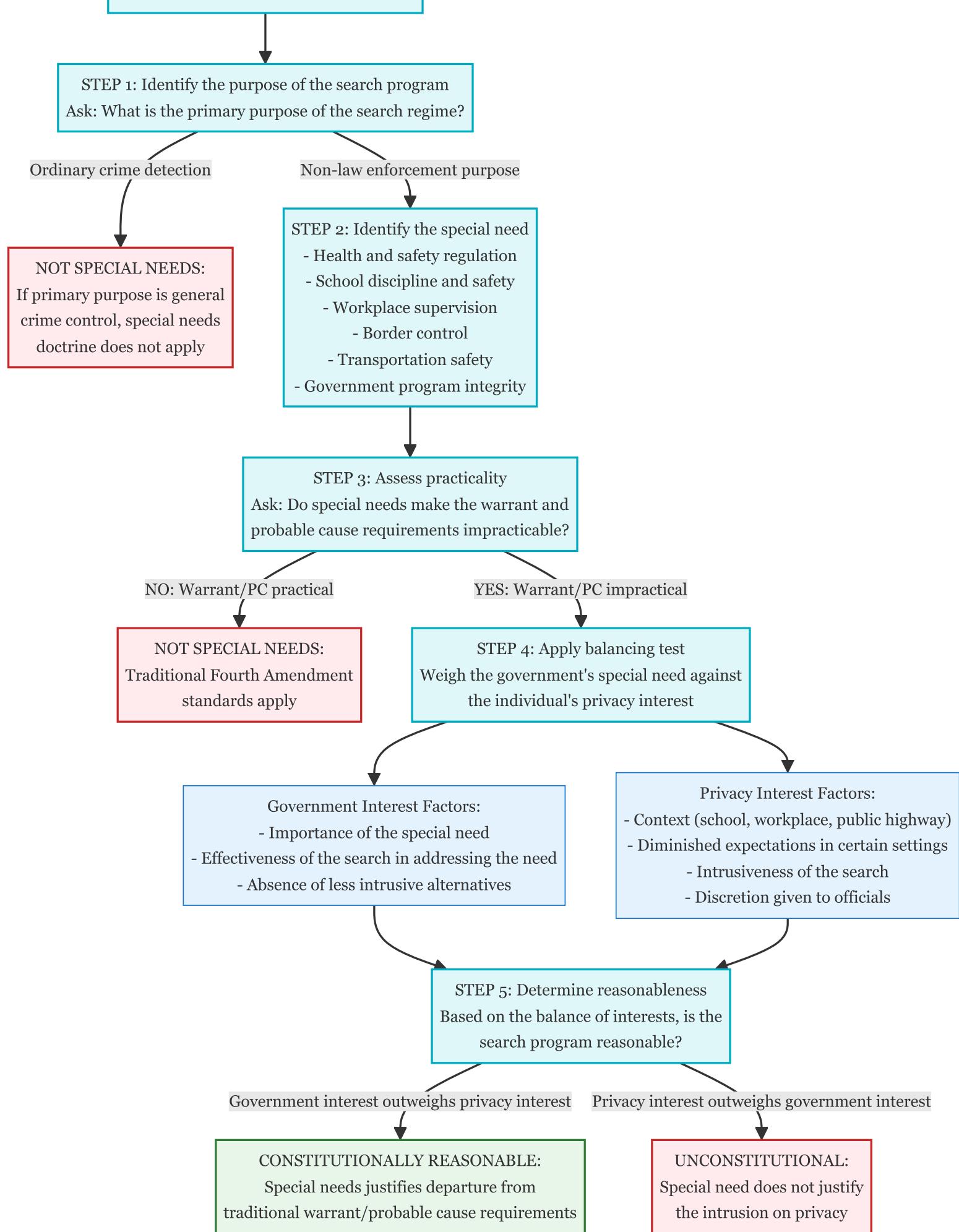
The special needs doctrine permits certain warrantless searches when "special needs, beyond the normal need for law enforcement, make the warrant and probable cause requirement impracticable." In these contexts, courts use a balancing test that weighs the government's special need against the individual's privacy interest.

Key Principles of Special Needs Doctrine

- **Non-Law Enforcement Purpose:** The primary purpose must be something other than ordinary crime control
- **Balancing Test:** Courts weigh the government interest against the individual's privacy expectations
- **Reduced Requirements:** Typically neither a warrant nor probable cause is required
- **Individualized Suspicion:** May be dispensed with in certain circumstances
- **Programmatic Purpose:** Focus on the program's primary purpose, not the subjective intent of individual officers

Special needs searches can be found in various contexts: administrative inspections, border searches, inventory searches, sobriety checkpoints, drug testing programs, school searches, searches of government employees, and probation/parole supervision.

SPECIAL NEEDS DOCTRINE ANALYSIS



New Jersey v. T.L.O. 469 U.S. 325 (1985)

School officials may search students based on reasonable suspicion rather than probable cause when the search is justified at its inception and reasonable in scope. This exception is based on the special needs of the school environment, where maintaining order requires flexibility.

A high school teacher found a 14-year-old student (T.L.O.) smoking in a restroom, violating school rules. When taken to the principal's office, T.L.O. denied smoking. The assistant vice principal searched her purse, finding cigarettes and rolling papers, which prompted a more thorough search that revealed marijuana and evidence of drug dealing.

Justice White, writing for the majority, held that the Fourth Amendment applies to searches conducted by school officials, but the school setting requires modification of the usual warrant and probable cause standards. The Court established a two-part test for school searches: (1) the search must be justified at its inception (reasonable grounds to suspect the search will turn up evidence of rule violation), and (2) the search must be reasonably related in scope to the circumstances that justified the initial interference. The Court balanced the student's legitimate expectation of privacy against the school's need to maintain discipline and order. The initial search for cigarettes was reasonable based on the report of smoking, and the discovery of rolling papers created reasonable suspicion justifying the further search that revealed marijuana. This case established the "special needs" doctrine for situations where the traditional warrant and probable cause requirements would unduly interfere with the needs of the particular context—here, the school environment.

Administrative Inspections

Administrative inspections allow government officials to conduct searches of certain businesses and properties to enforce health, safety, or regulatory standards without traditional warrants or probable cause.

Key Principles for Administrative Inspections

- **Reduced Expectation of Privacy:** In closely regulated industries, privacy expectations are diminished
- **Administrative Warrant:** Often needed but with reduced standards (not based on probable cause)
- **Neutral Criteria:** Inspections must be conducted according to neutral, established criteria
- **Limited Discretion:** Officials must have limited discretion in deciding which establishments to inspect

Closely Regulated Industries

Businesses in "closely regulated industries" have reduced Fourth Amendment protections. Warrantless inspections may be reasonable if:

1. A substantial government interest justifies the regulatory scheme
2. Warrantless inspections are necessary to further the regulatory scheme
3. The inspection program provides a constitutionally adequate substitute for a warrant by:
 - Giving notice that inspections will occur
 - Limiting inspector discretion in time, place, and scope

Examples of closely regulated industries include: firearms dealers, liquor sales, mining operations, automobile junkyards, and pharmacies.

Camara v. Municipal Court 387 U.S. 523 (1967)

Administrative inspections of private residences for compliance with municipal codes require a warrant, but the probable cause standard is modified to focus on reasonable administrative standards rather than specific evidence of violations.

San Francisco housing inspectors routinely conducted inspections to enforce the city's housing code. When an inspector attempted to enter Camara's residence without a warrant, Camara refused entry. He was charged with refusing to permit an inspection authorized by the housing code.

Justice White, writing for the majority, overruled *Frank v. Maryland* and held that administrative searches of private residences are "significant intrusions upon the interests protected by the Fourth Amendment" and thus require a warrant. However, the Court created a modified "probable cause" standard for administrative warrants that doesn't require specific evidence of violations in particular buildings. Instead, probable cause for an administrative warrant can be based on "reasonable legislative or administrative standards for conducting an area inspection," such as the passage of time, nature of the building, or condition of the area. The Court balanced the government's need for inspections to prevent dangerous conditions against the limited invasion of privacy, concluding that warrants should be easily obtainable but still necessary to protect against arbitrary invasions. This case established the framework for administrative search warrants and began the development of the "special needs" doctrine.

Checkpoints and Roadblocks

Checkpoints involve temporarily stopping all (or randomly selected) vehicles or pedestrians for brief questioning or inspection without individualized suspicion. Their constitutionality depends on their primary purpose and reasonableness.

Types of Checkpoints

Type	Constitutional?	Key Case
Sobriety Checkpoints	Yes	<i>Michigan Dept. of State Police v. Sitz</i> (1990)
Border Patrol Checkpoints	Yes	<i>United States v. Martinez-Fuerte</i> (1976)
License/Registration Checkpoints	Yes	<i>Delaware v. Prouse</i> (1979) (dictum)
General Crime Control Checkpoints	No	<i>City of Indianapolis v. Edmond</i> (2000)
Information-Gathering Checkpoints	Yes	<i>Illinois v. Lidster</i> (2004)

Requirements for Valid Checkpoints

- Non-law enforcement primary purpose
- Minimized discretion through standardized procedures
- Brief and limited intrusion on motorists
- Advance notice when possible
- Safety measures (visible police presence, warning signs)
- Reasonable location and time

Criminal Investigation Checkpoints

In *City of Indianapolis v. Edmond*, the Supreme Court held that checkpoints established primarily for general crime control purposes (i.e., to detect ordinary criminal wrongdoing) violate the Fourth Amendment. The importance of this ruling is that it prevents law enforcement from using the checkpoint mechanism as a pretext for warrantless, suspicionless searches focused on criminal investigation.

Michigan Dept. of State Police v. Sitz 496 U.S. 444 (1990)

Sobriety checkpoints at which police briefly stop all vehicles to check for signs of intoxication are constitutional under the Fourth Amendment when conducted according to guidelines that minimize officer discretion.

Michigan established a highway sobriety checkpoint program where all vehicles passing through designated checkpoints would be stopped briefly and the drivers examined for signs of intoxication. If intoxication was suspected, the driver would be directed to a location for further sobriety tests. During the only operation of the checkpoint, 126 vehicles were stopped for an average of 25 seconds each, and two drivers were arrested for DUI.

Chief Justice Rehnquist, writing for the majority, held that sobriety checkpoints are constitutional under the Fourth Amendment when conducted according to neutral guidelines. The Court applied a balancing test weighing the state's interest in preventing drunk driving, the effectiveness of the checkpoint program, and the level of intrusion on motorists' privacy. The Court found the state's interest in preventing drunk driving to be substantial, the objective intrusion (the stop itself) to be minimal, and the subjective intrusion (generating concern or fright in law-abiding motorists) to be limited by the visible presence of officers and marked vehicles. While acknowledging that the arrest rate was low (approximately 1.5%), the Court deferred to the judgment of law enforcement on effectiveness measures. This case established that brief, suspicionless stops at sobriety checkpoints are reasonable seizures under the Fourth Amendment's special needs doctrine when conducted with appropriate limitations.

Drug Testing Programs

Government-mandated drug testing programs involve collecting and analyzing bodily fluids (usually urine) to detect the presence of illegal drugs. Because these are searches under the Fourth Amendment, their constitutionality is evaluated under the special needs doctrine.

Key Considerations for Drug Testing Programs

- **Government Interest:** Safety-sensitive positions, school athletics, deterring drug use
- **Privacy Expectations:** Reduced in certain contexts (schools, regulated employment)
- **Intrusiveness of Collection:** Method, observation, discretion in selection
- **Information Disclosed:** Limited to presence of drugs vs. broader health information
- **Consequences:** Administrative/employment vs. criminal prosecution

Drug Testing Categories and Outcomes

Program Type	Constitutional?	Key Case
Railroad employees involved in accidents	Yes	<i>Skinner v. Railway Labor Executives' Assn.</i> (1989)
Customs employees seeking promotion to drug interdiction positions	Yes	<i>National Treasury Employees Union v. Von Raab</i> (1989)
Student athletes	Yes	<i>Vernonia School District v. Acton</i> (1995)
Students in extracurricular activities	Yes	<i>Board of Education v. Earls</i> (2002)
Political candidates	No	<i>Chandler v. Miller</i> (1997)
Drug testing welfare recipients	Generally No	Various lower court decisions

Vernonia School District v. Acton 515 U.S. 646 (1995)

Random drug testing of student athletes is constitutional under the Fourth Amendment, as the government's interest in preventing drug use among students outweighs their diminished expectation of privacy in the school's custodial environment, particularly given the reduced requirements for participation in athletics.

The Vernonia School District implemented a policy requiring random urinalysis drug testing for all students participating in school athletic programs after experiencing a significant increase in drug use led by student athletes. James Acton, a seventh-grader, was denied participation in football when he and his parents refused to consent to the testing.

Justice Scalia, writing for the majority, applied the special needs doctrine and a balancing test to uphold the drug testing program. The Court identified three factors in its analysis: (1) the nature of the privacy interest, finding that students generally have reduced expectations of privacy and student athletes have even less due to communal changing and showering, physical examinations, and voluntary participation in regulated activities; (2) the character of the intrusion, concluding that the urinalysis procedures were relatively unobtrusive with conditions similar to public restrooms and results kept confidential and used only for school discipline, not law enforcement; and (3) the government interest, determining that preventing drug use among schoolchildren was compelling, especially given evidence of increased drug use led by athletes who risked particular physical harm while impaired. The Court emphasized the school's custodial role, the targeted nature of testing only athletes rather than all students, and the absence of less invasive alternatives. This case established that schools have significant latitude to implement drug testing in contexts where privacy expectations are reduced and important safety concerns are present.

School Searches

School officials may search students and their belongings with less than probable cause because of the special needs of the educational environment. The standard established in *New Jersey v. T.L.O.* is "reasonable suspicion" rather than probable cause.

The T.L.O. Two-Part Test for School Searches

- Justified at Inception:** Reasonable grounds to suspect the search will turn up evidence that the student has violated either the law or school rules
- Reasonable in Scope:** Measures adopted reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction

School Search Categories

Type of Search	Constitutional Standard
Individual student search	Reasonable suspicion (<i>T.L.O.</i>)
Random drug testing (athletes, extracurricular)	Special needs balancing (<i>Vernonia, Earls</i>)
Locker searches	Typically reasonable suspicion, but may depend on school policy
Strip searches	Requires greater justification (<i>Safford v. Redding</i>)
School-wide security measures	Generally upheld under administrative search doctrine
Searches by police officers at school	Probable cause may be required (depends on officer's role)

Factors Affecting Reasonableness in School Searches

- Age and sex of student
- History and record of student
- Seriousness of the problem/suspected violation
- Need for immediate action
- Reliability of information prompting search
- Intrusiveness of the search
- Location (classroom, bathroom, locker, etc.)

Safford Unified School District v. Redding 557 U.S. 364 (2009)

While the reasonableness standard applies to school searches, a strip search of a student requires stronger justification than a standard search. The more intrusive the search, the more pressing must be the suspicion of danger or of resort to underwear for hiding evidence of wrongdoing.

School officials strip-searched 13-year-old Savana Redding based on a report from another student that she possessed prescription-strength ibuprofen and over-the-counter naproxen. After searching her backpack and outer clothing yielded nothing, they required her to pull out her bra and underwear, exposing her breasts and pelvic area. No pills were found.

Justice Souter, writing for the majority, applied the T.L.O. framework but emphasized that the intrusiveness of the search must be matched by the government's justification. The Court found that while school officials had reasonable suspicion to search Redding's backpack and outer clothing, extending the search to her underwear was excessively intrusive given the limited danger of the non-prescription drugs and the lack of any indication that Redding was hiding pills in her underwear. The Court noted that strip searches are

"categorically distinct" from other school searches due to their significantly heightened level of intrusion on privacy and dignity interests. While acknowledging that the school had legitimate concerns about drug distribution, the Court ruled that the "content of the suspicion" did not match "the degree of intrusion." This case clarified that the sliding-scale approach to reasonableness in school searches requires substantially stronger evidence and more pressing concerns to justify highly intrusive searches of students' bodies.

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Note: This guide provides a systematic approach to evaluating key doctrines in Criminal Procedure, with a focus on Professor Sood's course. Each section includes detailed flowcharts with specific criteria for applying the constitutional standards along with key cases.

Terry Stops and Investigative Detentions

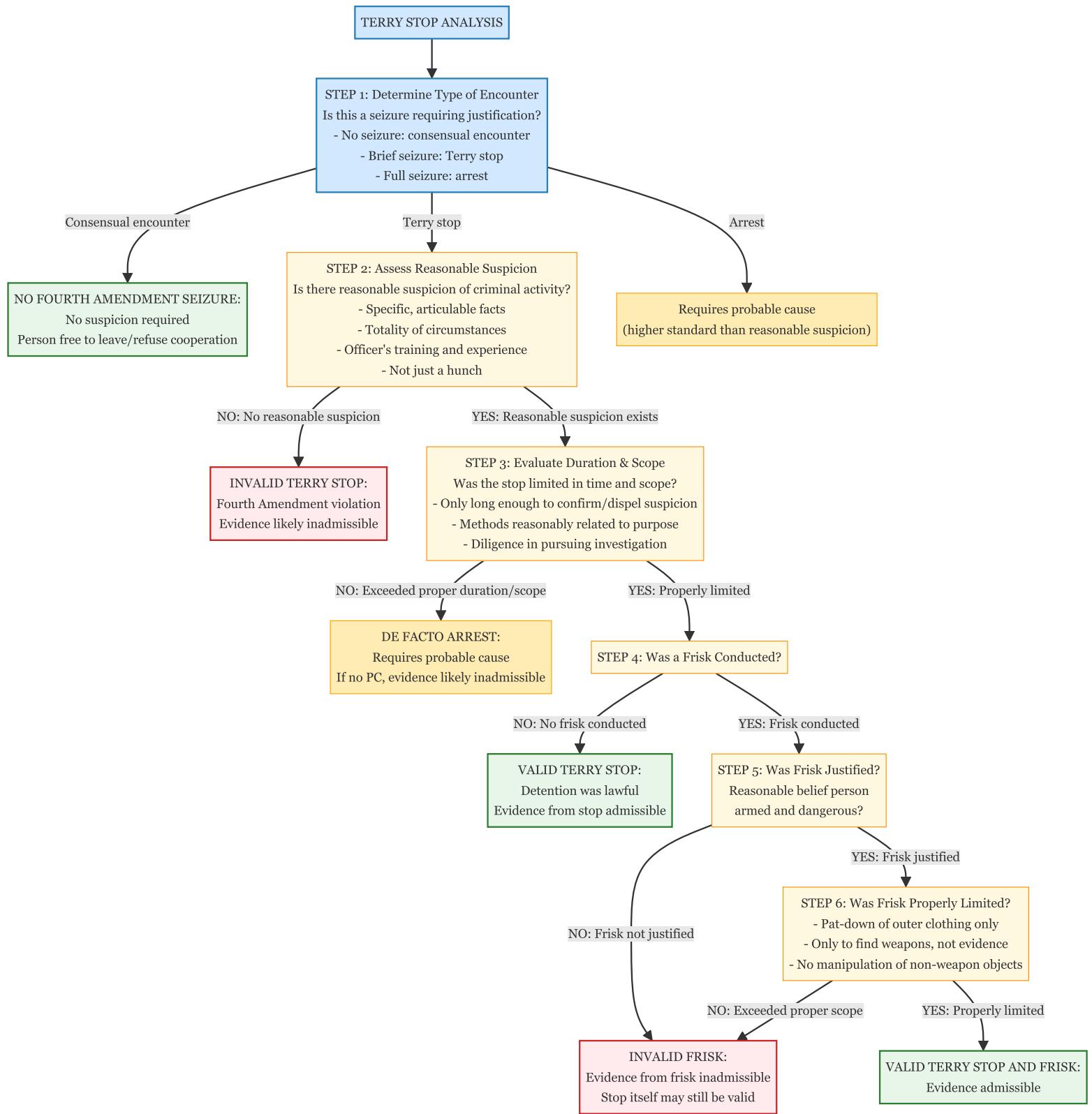
Terry Doctrine Overview Reasonable Suspicion Scope and Limits Frisk Requirements Traffic Stops

The Terry Doctrine

In *Terry v. Ohio* (1968), the Supreme Court recognized that police officers may briefly detain a person for investigative purposes if the officer has a reasonable suspicion that criminal activity is afoot. Additionally, if the officer reasonably believes the person may be armed and dangerous, the officer may conduct a limited pat-down search (frisk) for weapons. This exception to the warrant requirement carved out a middle ground between consensual encounters (which require no suspicion) and full arrests (which require probable cause).

Key Elements of Terry Stops

- **Investigative Detention:** Brief seizure based on reasonable suspicion of criminal activity
- **Limited Duration:** Only long enough to confirm or dispel the suspicion
- **Limited Scope:** Actions must be reasonably related to the justification for the stop
- **Protective Frisk:** Permitted only if reasonable belief that person is armed and dangerous
- **Limited Frisk Scope:** Pat-down of outer clothing solely to find weapons, not evidence



Terry v. Ohio 392 U.S. 1 (1968)

Police officers may briefly detain a person for investigative purposes if they have reasonable suspicion of criminal activity, and may conduct a limited pat-down search for weapons if they reasonably believe the person is armed and dangerous.

Detective McFadden observed Terry and two other men repeatedly walking past a store and peering in the window, behavior that the officer's experience indicated was consistent with casing the store for a robbery. McFadden approached the men, identified himself as a police officer, and patted down Terry's outer clothing, discovering a concealed weapon. Terry was convicted of carrying a concealed weapon.

The Supreme Court recognized a middle ground between consensual encounters and full arrests. The Court held that a brief investigative detention is a "seizure" under the Fourth Amendment, but does not require the traditional justification of probable cause. Instead, the Court applied a reasonableness standard, assessing the government's need for the stop against the invasion of personal security. The Court held that when an officer observes unusual conduct leading to a reasonable suspicion of criminal activity and potential armed danger, the officer may conduct a brief stop and a limited frisk for weapons. The Court emphasized that the frisk must be limited to a pat-down of outer clothing solely to discover weapons, not to find evidence. This balancing approach established the "reasonable suspicion" standard that requires "specific and articulable facts" rather than mere hunches.

Reasonable Suspicion Standard

Reasonable suspicion is the level of suspicion required to justify a Terry stop. It is a lower standard than probable cause but requires more than a mere hunch or general suspicion.

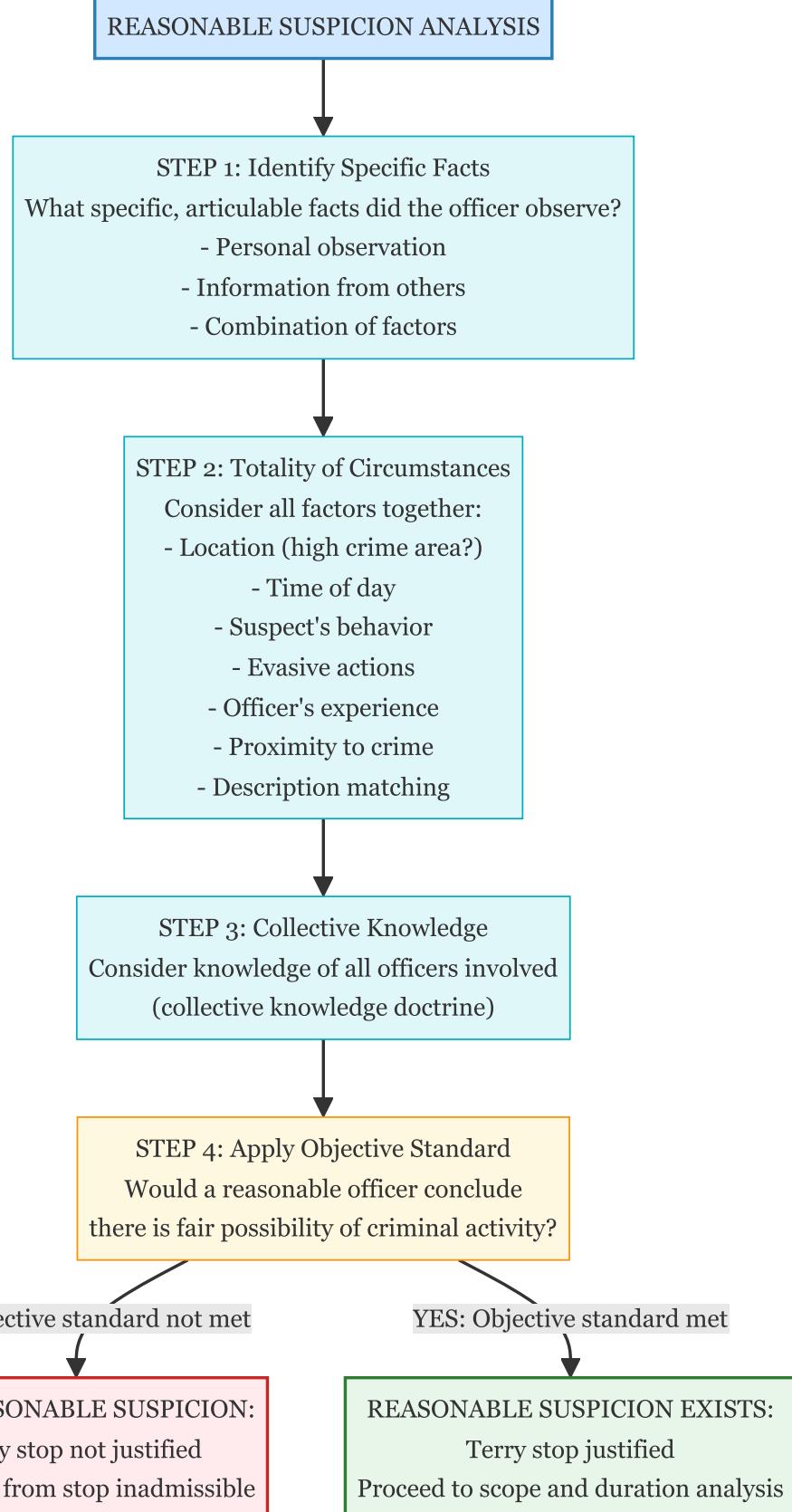
Reasonable Suspicion Requirements

- **Specific and Articulable Facts:** Officer must be able to point to specific facts, not just intuition
- **Totality of Circumstances:** All factors are considered together, not in isolation
- **Objective Standard:** Based on what a reasonable officer would conclude, not subjective beliefs
- **Less than Probable Cause:** Requires less evidence than needed for an arrest
- **Criminal Activity:** Must relate to actual or imminent criminal activity, not just unusual behavior

Factors Considered in Reasonable Suspicion Analysis

Courts consider various factors when determining whether reasonable suspicion exists:

- **Location:** High crime area (though this alone is insufficient)
- **Time of Day:** Late hours in certain contexts
- **Behavior:** Evasive actions, flight from police, furtive movements
- **Appearance:** Matching description of suspect
- **Officer Experience:** Training and experience in identifying criminal activity
- **Information from Others:** Tips from informants (reliability varies)
- **Proximity to Crime:** Temporal and geographic closeness to reported crime



Illinois v. Wardlow 528 U.S. 119 (2000)

Unprovoked flight from police in a high-crime area can establish reasonable suspicion justifying a Terry stop.

Police officers were patrolling a Chicago neighborhood known for heavy narcotics trafficking. When Wardlow saw the officers, he fled. The officers caught up with him, conducted a protective pat-down search, and discovered a handgun. Wardlow was charged with

unlawful use of a weapon by a felon.

The Supreme Court held that unprovoked flight from police in a high-crime area can create reasonable suspicion justifying a Terry stop. Chief Justice Rehnquist, writing for the majority, noted that an individual's presence in a high-crime area, standing alone, is not enough to support reasonable suspicion, and neither is unprovoked flight, standing alone. However, when considering both factors together under the totality of the circumstances approach, the officers had reasonable suspicion that Wardlow was involved in criminal activity. The Court emphasized that "headlong flight" is the "consummate act of evasion" and is certainly suggestive of wrongdoing, though a Terry stop is still subject to the condition that the officer must have been justified in being in proximity to the individual in the first place. This case exemplifies the totality of circumstances approach to reasonable suspicion.

Scope and Duration Limitations

Terry stops must be limited in scope and duration to what is necessary to effectuate the purpose of the stop. A stop that exceeds these limitations may convert into a de facto arrest requiring probable cause.

Duration Limitations

A Terry stop must be temporary and last no longer than necessary to effectuate the purpose of the stop:

- Officers must diligently pursue their investigation
- The stop should last only long enough to confirm or dispel suspicion
- There is no rigid time limit, but excessive delay suggests a de facto arrest
- Detention of 20-30 minutes may be reasonable if justified by circumstances
- Additional time may be justified to conduct reasonable investigative steps

Scope Limitations

The investigative methods must be reasonably related to the justification for the stop:

- Questions must be related to the suspected criminal activity
- Officers may request identification and run warrant checks
- Suspects may be moved short distances if reasonably necessary
- Use of handcuffs or drawn weapons may convert stop to arrest unless justified by safety concerns
- Limited detention of property related to the suspected offense

De Facto Arrest

A Terry stop can transform into a de facto arrest requiring probable cause when:

- The duration becomes excessive
- The investigative techniques become too intrusive
- The suspect is transported to a police station without consent
- Restraints are used without specific safety justifications
- Multiple officers create a show of force beyond what is necessary

United States v. Sharpe 470 U.S. 675 (1985)

There is no rigid time limitation on Terry stops; courts must examine whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly.

DEA Agent Cooke observed Sharpe and Savage traveling in tandem in a pickup truck and a Pontiac. Suspecting drug trafficking, Cooke followed the vehicles and requested backup. When the officer tried to stop the vehicles, they took evasive actions. The pickup, driven by Savage, was stopped quickly, but Sharpe, in the Pontiac, was stopped about a half-mile away. Savage was detained for about 20 minutes while Cooke returned to question Sharpe. The officer noticed the strong odor of marijuana coming from Savage's truck and subsequently discovered marijuana during a search.

The Supreme Court held that the 20-minute detention was reasonable under the circumstances and did not convert the stop into a de facto arrest. Chief Justice Burger, writing for the majority, emphasized that courts should not indulge in "unrealistic second-guessing" of police actions during Terry stops. The Court rejected a rigid time limitation, instead focusing on whether police diligently pursued their investigation. The Court noted several factors supporting the reasonableness of the detention: (1) the original traffic stop was supported by reasonable suspicion; (2) the police acted diligently in pursuing their investigation; (3) the delay was attributable to the evasive actions of the suspects in attempting to elude police; and (4) the 20-minute detention was not unnecessarily prolonged. This case established that the proper inquiry is whether the officers acted reasonably, not whether they pursued the least intrusive means possible.

Requirements for Protective Frisks

Under *Terry*, a frisk (pat-down) for weapons is permitted only when the officer reasonably believes the person is "armed and presently dangerous to the officer or to others." This requires a separate justification beyond the reasonable suspicion needed for the stop itself.

Two-Step Analysis for Frisks

1. **Justification:** Reasonable belief that the person is armed and dangerous
2. **Scope:** Limited to a pat-down of outer clothing, only to find weapons

Factors Supporting Armed and Dangerous Determination

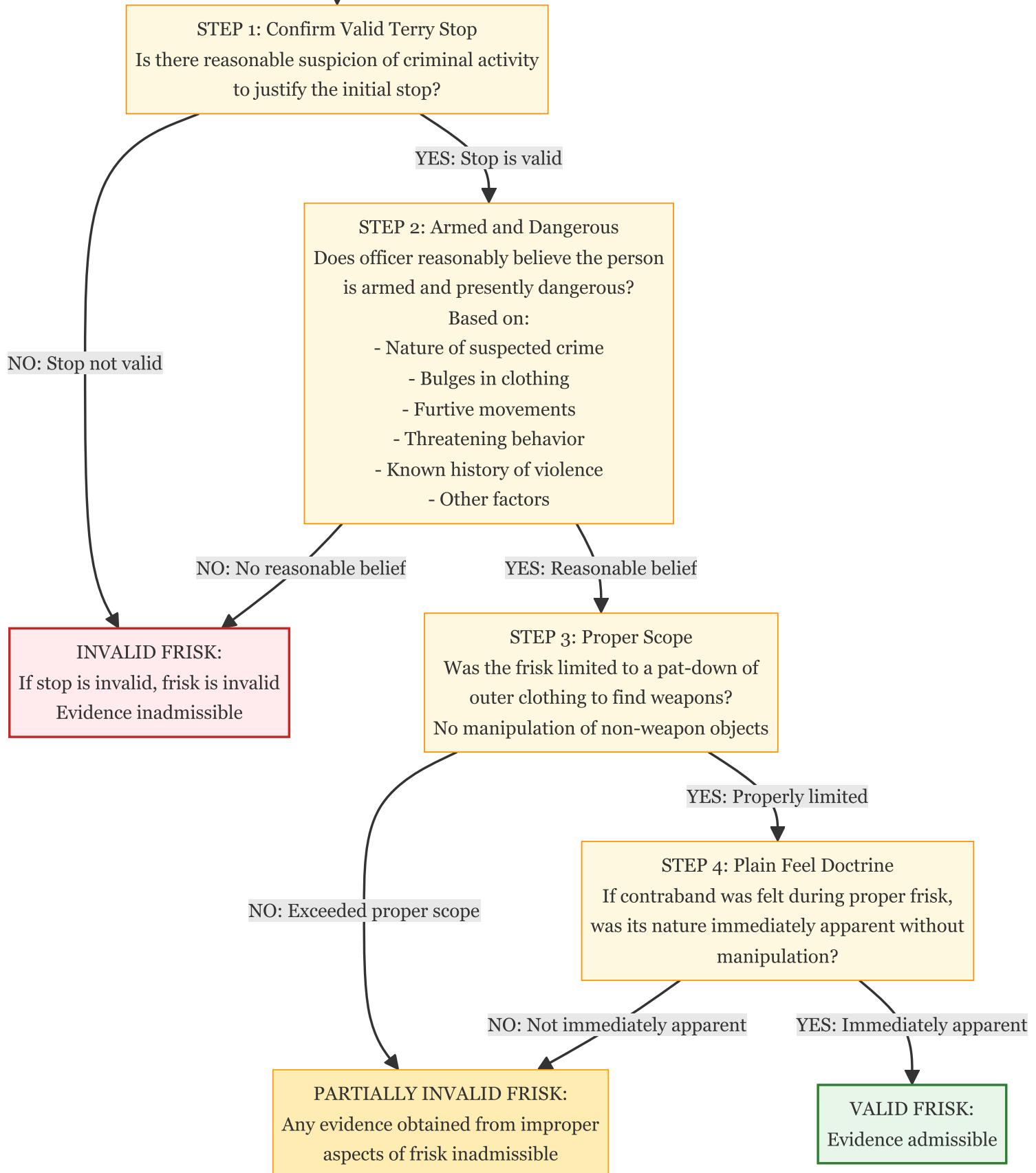
- Nature of the suspected crime (e.g., violent crimes or drug trafficking)
- Bulge in clothing suggesting a weapon
- Furtive movements or reaching for areas where weapons might be concealed
- Threatening behavior or statements
- Previous knowledge of the suspect's violent tendencies
- Time of day and location (isolated or high-crime area)
- Lack of cooperation or evasive answers

Scope Limitations on Frisks

- Limited to a pat-down of outer clothing

- Purpose must be solely to find weapons, not evidence
- No opening or removal of clothing unless a weapon is detected
- No manipulation of objects that clearly cannot be weapons
- Further searches require additional justification (e.g., plain feel doctrine)

PROTECTIVE FRISK ANALYSIS



Under the "plain feel" doctrine, police may seize contraband detected through the sense of touch during a legitimate Terry frisk, but only if the contraband's identity is immediately apparent without further manipulation.

Police observed Dickerson leaving a known crack house and behaving evasively upon noticing police. Officers stopped him and conducted a pat-down search, finding no weapons. However, the officer felt a small lump in Dickerson's jacket pocket, manipulated it with his fingers, and then reached into the pocket to retrieve what turned out to be a small bag of cocaine.

The Supreme Court recognized the "plain feel" doctrine as an extension of the plain view doctrine, allowing officers to seize contraband detected during a lawful Terry frisk when its identity is immediately apparent. However, the Court held that the seizure in this case was unconstitutional because the officer determined the lump was contraband only after squeezing, sliding, and manipulating it, which exceeded the limited scope permitted for a Terry frisk. Justice White emphasized that Terry only authorizes a search for weapons, not contraband, and that any further search beyond what is necessary to determine if the suspect is armed constitutes an additional, unjustified intrusion. The key distinction is between immediately recognizing contraband during a lawful pat-down (permissible) versus manipulating an object to determine its incriminating nature (impermissible).

Traffic Stops

Traffic stops are considered a form of Terry stop and are governed by similar principles. However, traffic stops have some unique characteristics and limitations. (Note: For vehicle searches after stops, also see the [Automobile Exception](#) in the Warrant Exceptions section.)

Basis for Traffic Stops

- **Traffic Violations:** Any observed traffic violation, no matter how minor, provides objective justification
- **Reasonable Suspicion:** Stop may be based on reasonable suspicion of criminal activity (not just traffic violations)
- **Pretextual Stops:** Subjective motivations of officer do not invalidate stop if objective basis exists (*Whren v. United States*)
- **Mistakes of Law:** Reasonable mistakes about traffic laws can justify a stop (*Heien v. North Carolina*)

Permissible Actions During Traffic Stops

During a routine traffic stop, officers may:

- Request driver's license, registration, and proof of insurance
- Run computer checks on these documents
- Question driver and passengers about travel plans and identity
- Check for outstanding warrants
- Conduct dog sniff if it doesn't extend the stop (*Illinois v. Caballes*)
- Order driver and passengers out of the vehicle (*Pennsylvania v. Mimms*, *Maryland v. Wilson*)
- Conduct a frisk of driver or passengers if reasonable suspicion they are armed/dangerous

Duration Limitations

Traffic stops cannot be prolonged beyond the time needed to complete the "mission" of the stop (*Rodriguez v. United States*):

- The mission includes addressing the traffic violation and related safety concerns

- Unrelated investigations are permitted only if they do not extend the stop
- Once the purpose of the stop has been completed, the driver must be free to leave
- Further detention requires additional reasonable suspicion or consent

Rodriguez v. United States 575 U.S. 348 (2015)

A police officer may not extend a completed traffic stop, even by a brief amount of time, to conduct a dog sniff without reasonable suspicion or consent.

Officer Struble pulled Rodriguez over for driving on the shoulder of the highway. After completing all the tasks related to the traffic violation, including checking license, registration, and insurance, and issuing a warning, Struble asked Rodriguez for permission to walk his drug-sniffing dog around the vehicle. When Rodriguez refused, Struble detained him until a second officer arrived, then conducted the dog sniff, which revealed methamphetamine.

The Supreme Court held that a police stop exceeding the time needed to handle the matter for which the stop was made violates the Fourth Amendment. Justice Ginsburg, writing for the majority, emphasized that a traffic stop becomes unlawful if prolonged beyond the time reasonably required to complete its mission. The "mission" includes addressing the traffic violation and related safety concerns, such as checking driver's license, vehicle registration, and insurance, and looking for outstanding warrants. Absent reasonable suspicion of criminal activity, police may not extend a traffic stop to conduct unrelated investigations, including dog sniffs. The Court rejected the government's argument that an officer may prolong a stop for a "de minimis" amount of time, clarifying that the critical question is not whether the dog sniff occurs before or after the officer issues a ticket, but whether the sniff adds time to the stop. This decision clarified the temporal limitations on traffic stops and emphasized that any extension, even brief, constitutes a separate seizure requiring independent justification.

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The Exclusionary Rule

[Exclusionary Rule Overview](#) [Scope and Application](#) [Exceptions to the Rule](#) [Fruit of the Poisonous Tree](#)
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Overview of the Exclusionary Rule

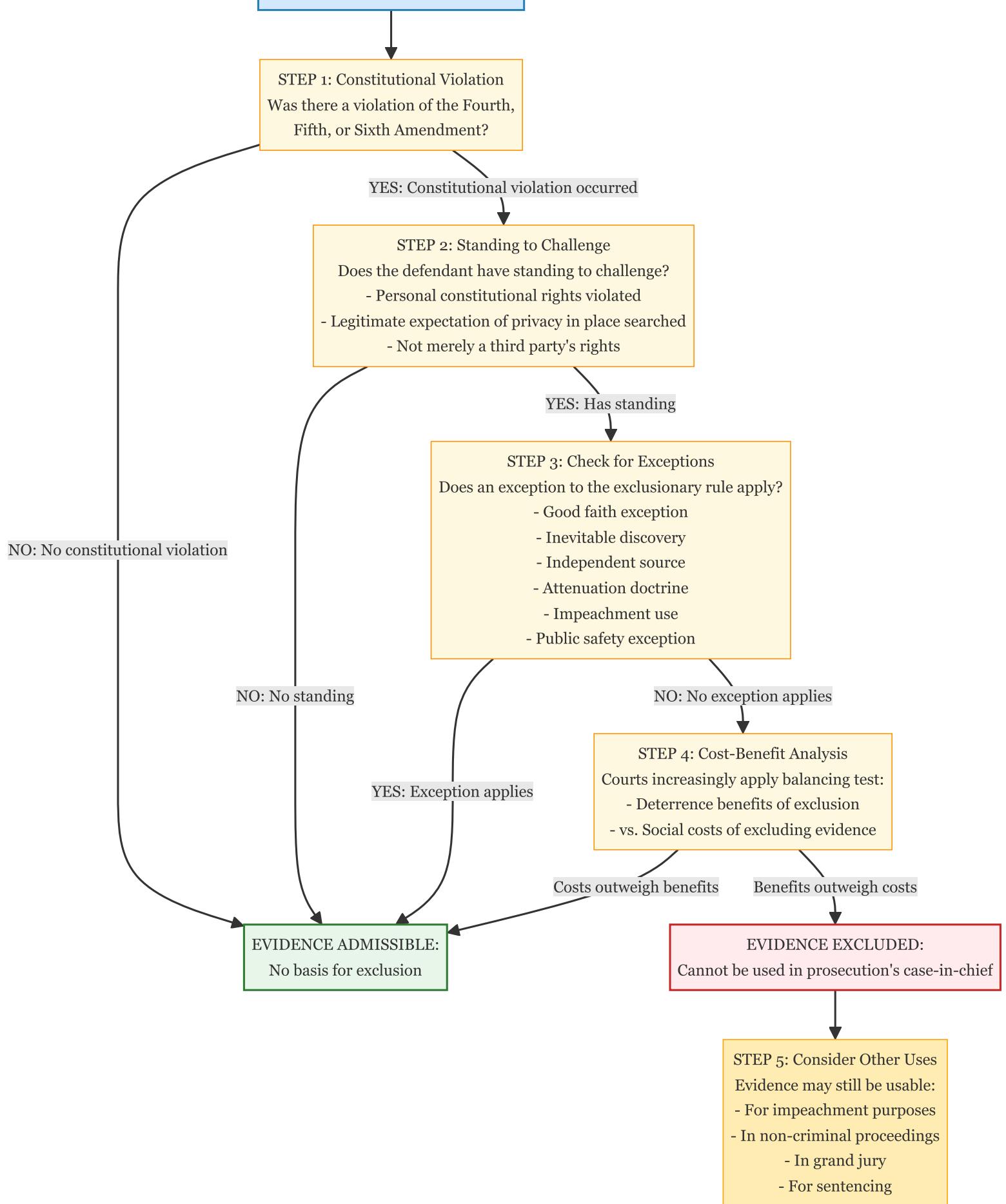
The exclusionary rule is a judicial remedy that prevents evidence obtained in violation of the Constitution from being used in criminal trials. It primarily serves as a remedy for Fourth Amendment violations, though it also applies to certain Fifth and Sixth Amendment violations. Unlike the constitutional protections themselves, the exclusionary rule is a judicially created remedy designed to deter police misconduct rather than a personal constitutional right of the defendant.

Purposes and Justifications

- **Deterrence:** Discourage law enforcement from violating constitutional rights
- **Judicial Integrity:** Prevent courts from becoming accomplices in constitutional violations (though this rationale has been de-emphasized in recent decades)
- **Remedial Function:** Provide a remedy for constitutional violations when civil remedies may be ineffective
- **Systemic Function:** Encourage proper training and institutional compliance with constitutional requirements

The Supreme Court has increasingly emphasized that the exclusionary rule is not a constitutional right itself, but rather a prudential judicial doctrine. This characterization has allowed the Court to create numerous exceptions to the rule, focusing on whether exclusion would meaningfully deter future constitutional violations by law enforcement.

EXCLUSIONARY RULE ANALYSIS



Mapp v. Ohio 367 U.S. 643 (1961)

The exclusionary rule applies to state court proceedings through the Fourteenth Amendment, requiring state courts to exclude evidence obtained in violation of the Fourth Amendment.

Police officers forcibly entered Mapp's home without a proper search warrant. After a thorough search, they found allegedly obscene materials and arrested Mapp for possession of these materials. At trial, the prosecution did not produce a search warrant, and Mapp was convicted based on the evidence seized during the search.

The Supreme Court overruled *Wolf v. Colorado* (1949), which had held that while the Fourth Amendment applied to the states through the Fourteenth Amendment, the exclusionary rule did not. The Court reasoned that without the exclusionary rule, the Fourth Amendment would be reduced to "a form of words" and would be meaningless to those subjected to illegal searches. The Court emphasized that the exclusion of evidence was necessary to deter police misconduct and maintain judicial integrity by preventing courts from becoming accomplices in constitutional violations. This landmark decision nationalized the exclusionary rule, creating a uniform standard for both federal and state courts and significantly expanding the impact of Fourth Amendment protections.

Scope and Application of the Exclusionary Rule

The exclusionary rule applies to evidence obtained directly through constitutional violations, as well as evidence derived from those violations (the "fruit of the poisonous tree"). However, the Supreme Court has limited its application in several important ways.

Proceedings Where the Rule Applies

- **Criminal Trials:** The exclusionary rule applies in the prosecution's case-in-chief in criminal trials
- **Limited Application Outside Criminal Trials:** Generally does not apply in:
 - Grand jury proceedings (*United States v. Calandra*)
 - Civil proceedings
 - Deportation hearings (*INS v. Lopez-Mendoza*)
 - Parole revocation hearings (*Pennsylvania Board of Probation v. Scott*)
 - Habeas corpus proceedings
- **Limited Use in Criminal Trials:** Evidence inadmissible in the case-in-chief may still be used:
 - To impeach a defendant's testimony (*United States v. Havens*)
 - At sentencing (*United States v. Tejada*)

Types of Constitutional Violations Covered

- **Fourth Amendment Violations:** The primary application of the rule
- **Fifth Amendment (Self-Incrimination):** Applies to coerced confessions and Miranda violations (with limitations)
- **Sixth Amendment (Right to Counsel):** Applies to evidence obtained after right to counsel has attached in violation of that right

Cost-Benefit Analysis

In recent decades, the Supreme Court has increasingly applied a cost-benefit approach to the exclusionary rule, weighing the deterrent benefits against the social costs of excluding reliable evidence. This approach has led to the creation of numerous exceptions where the Court

has found that the costs of exclusion outweigh the deterrence benefits.

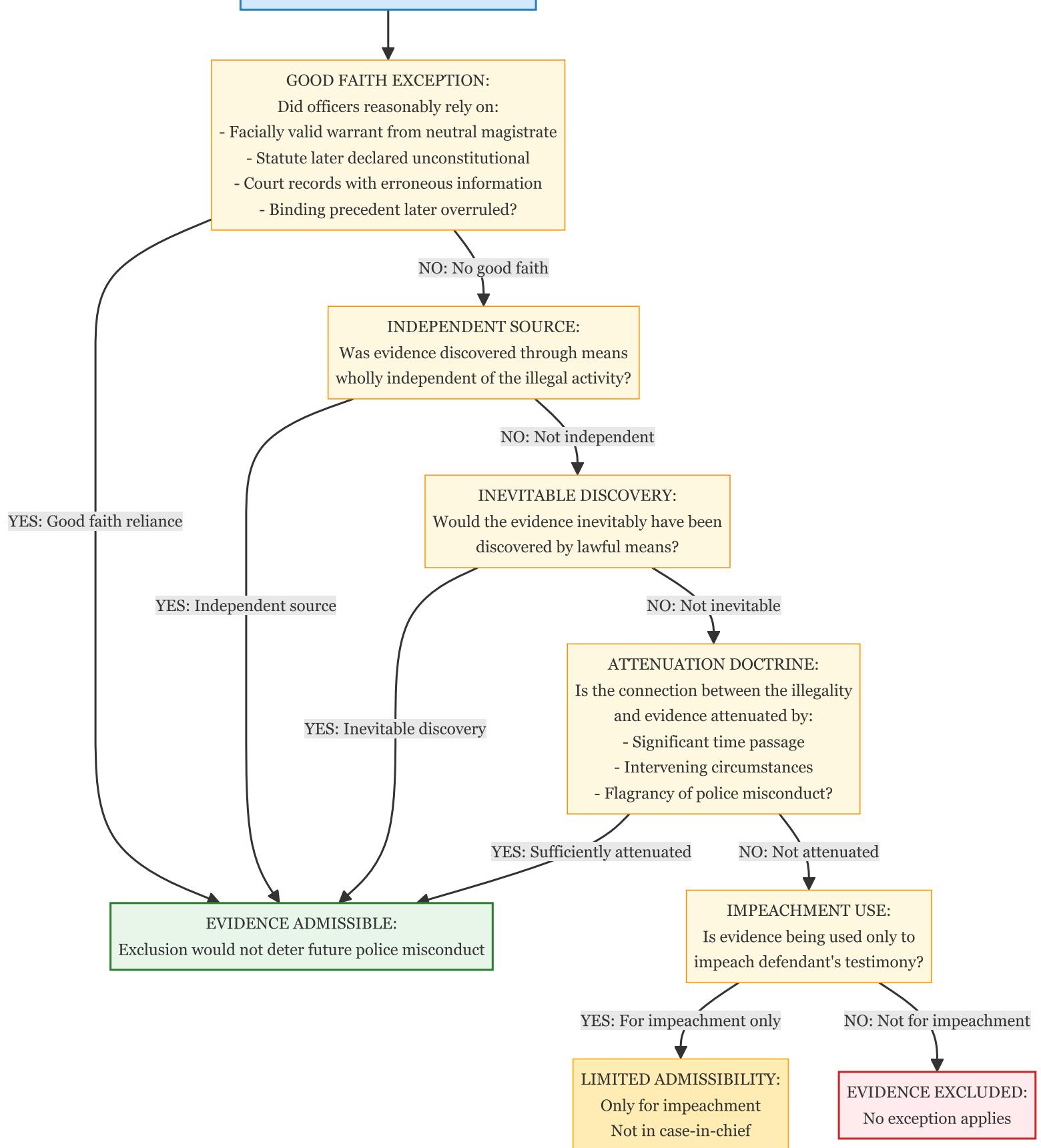
Exceptions to the Exclusionary Rule

The Supreme Court has recognized several significant exceptions to the exclusionary rule, reflecting its view that the rule should apply only where its deterrence benefits outweigh its substantial social costs.

Major Exceptions to the Exclusionary Rule

- **Good Faith Exception:** Evidence obtained by officers reasonably relying on:
 - A defective warrant issued by a neutral magistrate (*United States v. Leon*)
 - A statute later declared unconstitutional (*Illinois v. Krull*)
 - A court database with erroneous information (*Arizona v. Evans, Herring v. United States*)
 - Binding appellate precedent later overruled (*Davis v. United States*)
- **Independent Source Doctrine:** Evidence discovered through means independent of the constitutional violation (*Murray v. United States*)
- **Inevitable Discovery Doctrine:** Evidence that would have inevitably been discovered through lawful means (*Nix v. Williams*)
- **Attenuation Doctrine:** Connection between the constitutional violation and the evidence is sufficiently attenuated (*Wong Sun v. United States*)
- **Impeachment Exception:** Illegally obtained evidence may be used to impeach a defendant's testimony (*United States v. Havens*)

EXCLUSIONARY RULE EXCEPTIONS



United States v. Leon 468 U.S. 897 (1984)

Evidence obtained by police officers acting in reasonable reliance on a search warrant issued by a neutral magistrate, but ultimately found to be invalid, is admissible in the prosecution's case-in-chief (the "good faith exception").

Police officers conducted a search of several residences based on a facially valid warrant issued by a magistrate. The warrant was later found to lack probable cause. The trial court suppressed the evidence, and the Court of Appeals affirmed.

The Supreme Court created the "good faith exception" to the exclusionary rule, holding that evidence obtained by officers reasonably relying on a warrant issued by a neutral magistrate should not be excluded, even if the warrant is later determined to be invalid. Justice White, writing for the majority, emphasized that the exclusionary rule is designed to deter police misconduct, not to punish errors of judges or magistrates. The Court reasoned that excluding evidence when officers acted in objective good faith would not serve the rule's deterrent purpose, as the officers did nothing wrong that deterrence could prevent. The Court did identify four situations where the good faith exception would not apply: (1) when the magistrate was misled by information the officer knew or should have known was false; (2) when the magistrate wholly abandoned their judicial role; (3) when the warrant was so facially deficient that no officer could reasonably presume it valid; and (4) when the affidavit was so lacking in probable cause that no reasonable officer would rely on it.

Fruit of the Poisonous Tree Doctrine

The "fruit of the poisonous tree" doctrine, first articulated in *Silverthorne Lumber Co. v. United States* (1920) and named in *Nardone v. United States* (1939), holds that evidence derived from information obtained in an illegal search or seizure is also inadmissible. The doctrine extends the exclusionary rule beyond direct products of constitutional violations to their indirect fruits.

Types of "Fruit" Subject to Exclusion

- **Physical Evidence:** Items discovered as a result of illegally obtained information
- **Confessions:** Statements made after an illegal arrest or search
- **Witness Testimony:** Testimony from witnesses discovered through illegal searches
- **Derivative Evidence:** Any other evidence that would not have been discovered but for the initial illegality

Limitations and Exceptions

The fruit of the poisonous tree doctrine is subject to the same exceptions as the exclusionary rule generally:

- **Independent Source:** If the evidence was or would have been discovered through independent legal means
- **Inevitable Discovery:** If the evidence would have inevitably been discovered through legal means
- **Attenuation:** If the connection between the illegality and the evidence is sufficiently attenuated

Attenuation Factors

In determining whether the taint of an illegal search or seizure has been sufficiently attenuated, courts consider:

- **Temporal Proximity:** The time elapsed between the illegality and the acquisition of evidence
- **Intervening Circumstances:** Events breaking the causal chain between the illegality and the evidence
- **Flagrancy of Police Misconduct:** The purpose and flagrancy of the official misconduct
- **Free Will/Voluntary Acts:** Whether intervening acts of free will purge the taint of illegality

Wong Sun v. United States 371 U.S. 471 (1963)

Not all evidence derived from an illegal search or seizure is barred as "fruit of the poisonous tree." The proper test is whether the evidence was obtained by exploitation of the initial illegality or by means sufficiently distinguishable to purge the taint.

Federal narcotics agents illegally entered Toy's laundry, pursued him into his living quarters, and arrested him. Toy then made statements that led agents to Yee, who surrendered heroin. Yee implicated Wong Sun, who was arrested and released. Several days later, Wong Sun voluntarily returned to the police station and made an incriminating statement.

The Supreme Court held that Toy's statements and the heroin seized from Yee were inadmissible as "fruit of the poisonous tree" because they were directly obtained by exploiting the illegal entry and arrest. However, Wong Sun's confession was admissible because the connection between his illegal arrest and his later voluntary statement had "become so attenuated as to dissipate the taint." The Court established that the critical question is whether the evidence was come at by exploitation of the illegality or by means sufficiently distinguishable to purge the taint. This case established the attenuation doctrine as a limitation on the fruit of the poisonous tree doctrine, recognizing that at some point, the causal chain between the illegal police conduct and the challenged evidence becomes so attenuated that the deterrent effect of exclusion is no longer justified.

Standing to Invoke the Exclusionary Rule

To invoke the exclusionary rule, a defendant must have "standing" - a personal Fourth Amendment interest in the place searched or item seized. The Supreme Court has rejected a "target theory" of standing, holding that a defendant cannot seek exclusion of evidence obtained in violation of someone else's Fourth Amendment rights, even if that evidence is used against the defendant (*Rakas v. Illinois*, *United States v. Payner*).

Requirements for Standing

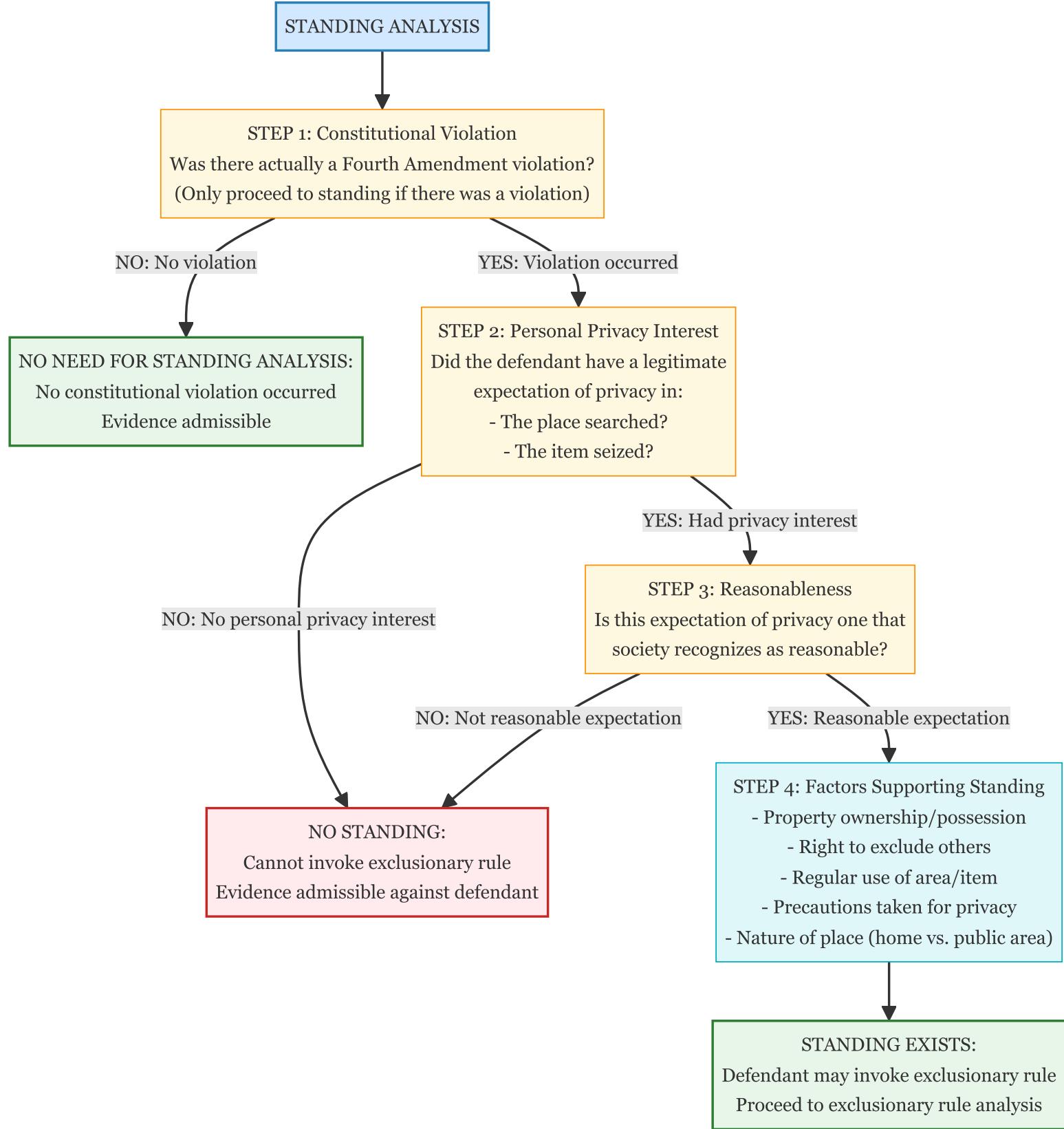
- **Personal Expectation of Privacy:** Defendant must have had a legitimate expectation of privacy in the place searched or item seized
- **Reasonable Expectation:** The expectation must be one that society is prepared to recognize as reasonable
- **Not Vicarious:** Cannot assert violations of third parties' rights, even if evidence is used against defendant

Factors Affecting Standing

- **Property Interests:** Ownership or possessory interests in the place searched or item seized
- **Right to Exclude Others:** Authority to control access to the area searched
- **Regular Use:** Frequency and nature of use of the premises or property
- **Precautions Taken:** Steps taken to ensure privacy in the area
- **Legitimate Presence:** Being legitimately on the premises, though this alone is not sufficient (*Rakas*)

Automatic Standing Doctrine

The Court previously recognized "automatic standing" for defendants charged with possessory crimes, but this doctrine was later abandoned (*United States v. Salvucci*). Now, even defendants charged with possessory offenses must demonstrate a legitimate expectation of privacy in the area searched.



A defendant can challenge the legality of a search only if they had a legitimate expectation of privacy in the area searched.

Passengers in a car who assert neither ownership nor possessory interest in the car or items seized lack standing to challenge the search.

Police stopped a suspected getaway car and searched it, finding a rifle and shells. Rakas and others were passengers in the car but did not own it and claimed no possessory interest in the items seized. They moved to suppress the evidence, arguing that the search violated their Fourth Amendment rights.

The Supreme Court rejected the petitioners' claim, holding that Fourth Amendment rights are personal rights that cannot be vicariously asserted. The Court reframed the standing inquiry as part of substantive Fourth Amendment law, asking whether the individual had a legitimate expectation of privacy in the area searched. The Court held that passengers who assert neither ownership nor possessory interest in a car or the items seized lack the legitimate expectation of privacy necessary to challenge the search. The Court explicitly rejected the idea that "legitimately on the premises" was sufficient for standing, noting that this would permit a visitor to challenge a search of a building they briefly visited. This case refocused the standing inquiry on the legitimate expectation of privacy test from *Katz* and clarified that Fourth Amendment rights are personal rights that cannot be asserted by those whose own privacy interests were not violated.

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Interrogations and Confessions

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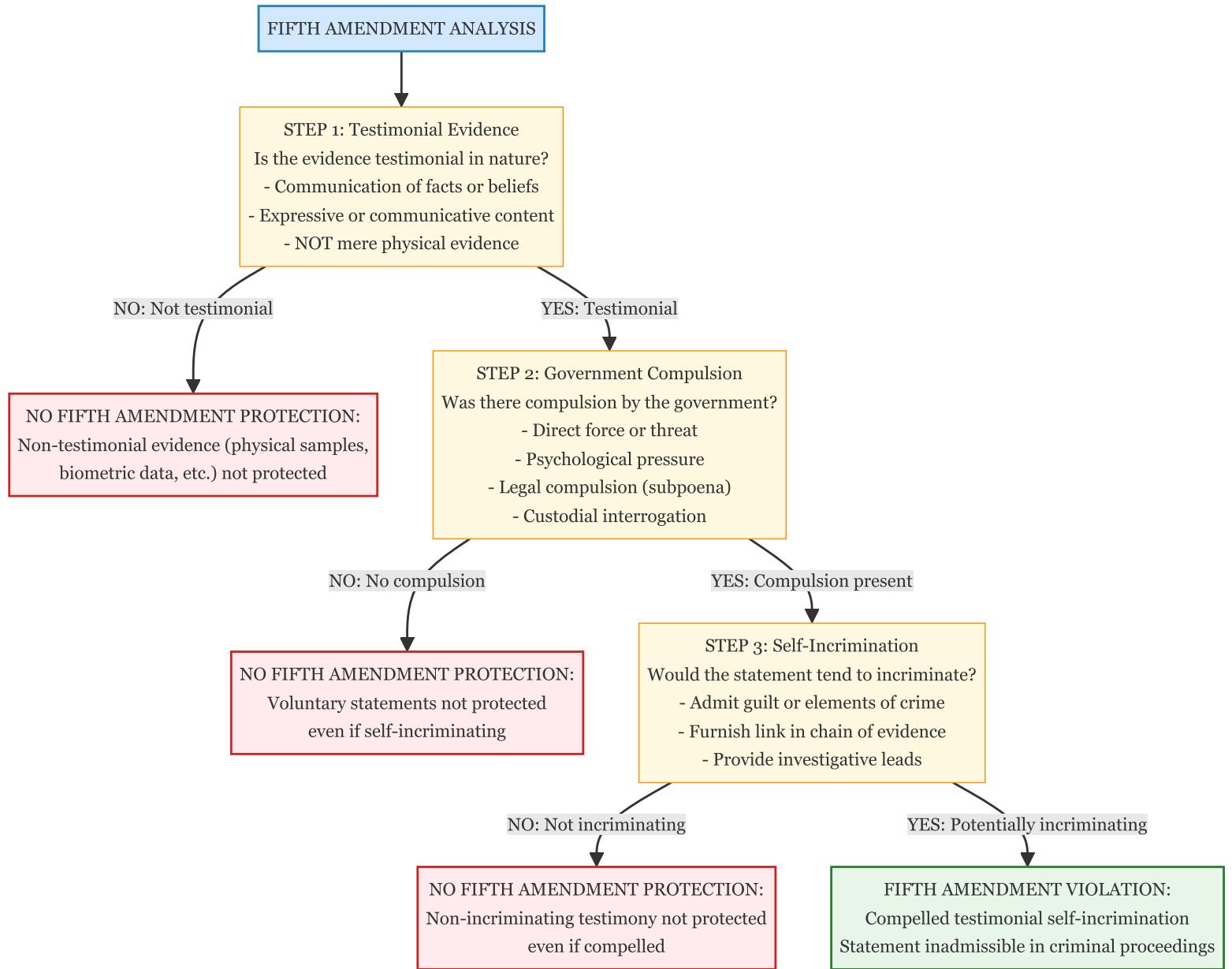
Fifth Amendment Protection Against Self-Incrimination

The Fifth Amendment provides that no person "shall be compelled in any criminal case to be a witness against himself." This constitutional protection is the foundation of rules governing police interrogations and forms the basis for the Miranda doctrine. The privilege applies in any setting where the government seeks to compel potentially incriminating testimony.

Key Aspects of the Fifth Amendment Privilege

- **Compulsion Requirement:** The privilege protects against compelled testimonial self-incrimination
- **Testimonial Evidence:** Only applies to communicative or testimonial evidence, not physical evidence
- **Self-Incrimination:** Statement must tend to incriminate the individual
- **Criminal Case:** Protects against use in criminal proceedings, though may be invoked in civil or administrative proceedings if criminal liability is possible
- **Personal Right:** Can only be invoked for oneself, not on behalf of others

The Supreme Court has recognized that custodial interrogations can be inherently coercive environments. In *Miranda v. Arizona* (1966), the Court established procedural safeguards to protect the Fifth Amendment privilege in the context of custodial interrogations.



Due Process Voluntariness Test

Before *Miranda*, the Supreme Court evaluated the admissibility of confessions under a Due Process "voluntariness" test. This test, which continues to apply alongside *Miranda*, focuses on whether a confession was the product of the suspect's free and rational choice or was involuntarily extracted through coercion.

Factors in Voluntariness Analysis

- **Police Conduct:** Nature and degree of coercion, including physical force, threats, deception, and psychological pressure
- **Suspect Characteristics:** Age, education, intelligence, mental state, and prior experience with law enforcement
- **Environmental Factors:** Length of detention, deprivation of basic needs, access to outside contact

- **Totality of Circumstances:** All factors considered together rather than in isolation

A confession deemed involuntary under the Due Process test is inadmissible for any purpose, including impeachment. This is a broader prohibition than for Miranda violations, which may be used for certain limited purposes.

Police Conduct Rendering Confessions Involuntary

- Physical abuse or threats of violence (*Brown v. Mississippi*)
- Extended periods of interrogation without rest
- Deprivation of food, water, or sleep
- Threats against family members
- Extreme psychological coercion
- False promises that induce confessions
- Exploitation of mental illness or intellectual disability

Colorado v. Connelly 479 U.S. 157 (1986)

Coercive police activity is a necessary predicate to finding that a confession is involuntary under the Due Process Clause. Mental illness alone, without police coercion, does not render a confession involuntary.

Connelly approached a police officer on the street and confessed to a murder. At the time, he appeared normal, was advised of his Miranda rights, and waived them. Later, it was discovered that Connelly suffered from chronic schizophrenia and was experiencing command hallucinations telling him to confess or commit suicide. A psychiatrist testified that Connelly's psychosis motivated his confession.

The Supreme Court held that Connelly's confession was voluntary for Due Process purposes, despite his mental illness. Chief Justice Rehnquist, writing for the majority, emphasized that police coercion is a necessary element of an involuntary confession claim. The Court reasoned that the purpose of excluding involuntary confessions is to deter police misconduct, not to ensure the reliability of confessions. While acknowledging that mental illness might affect the reliability of a confession, the Court held that this concern should be addressed through state evidence law regarding reliability, not through constitutional Due Process analysis. The Court explicitly rejected the notion that the "fundamental fairness" guaranteed by the Due Process Clause is concerned with internal psychological factors in the absence of police coercion.

Miranda Rights and Requirements

In *Miranda v. Arizona* (1966), the Supreme Court established procedural safeguards to protect the Fifth Amendment privilege against self-incrimination during custodial interrogations. These safeguards require police to inform suspects of specific rights before custodial interrogation.

The Miranda Warnings

Before custodial interrogation, suspects must be warned that:

1. They have the right to remain silent
2. Anything they say can and will be used against them in court
3. They have the right to consult with an attorney and to have the attorney present during questioning
4. If they cannot afford an attorney, one will be appointed for them

Triggering Miranda: Custody + Interrogation

Miranda warnings are required only when a suspect is both (1) in custody and (2) subject to interrogation:

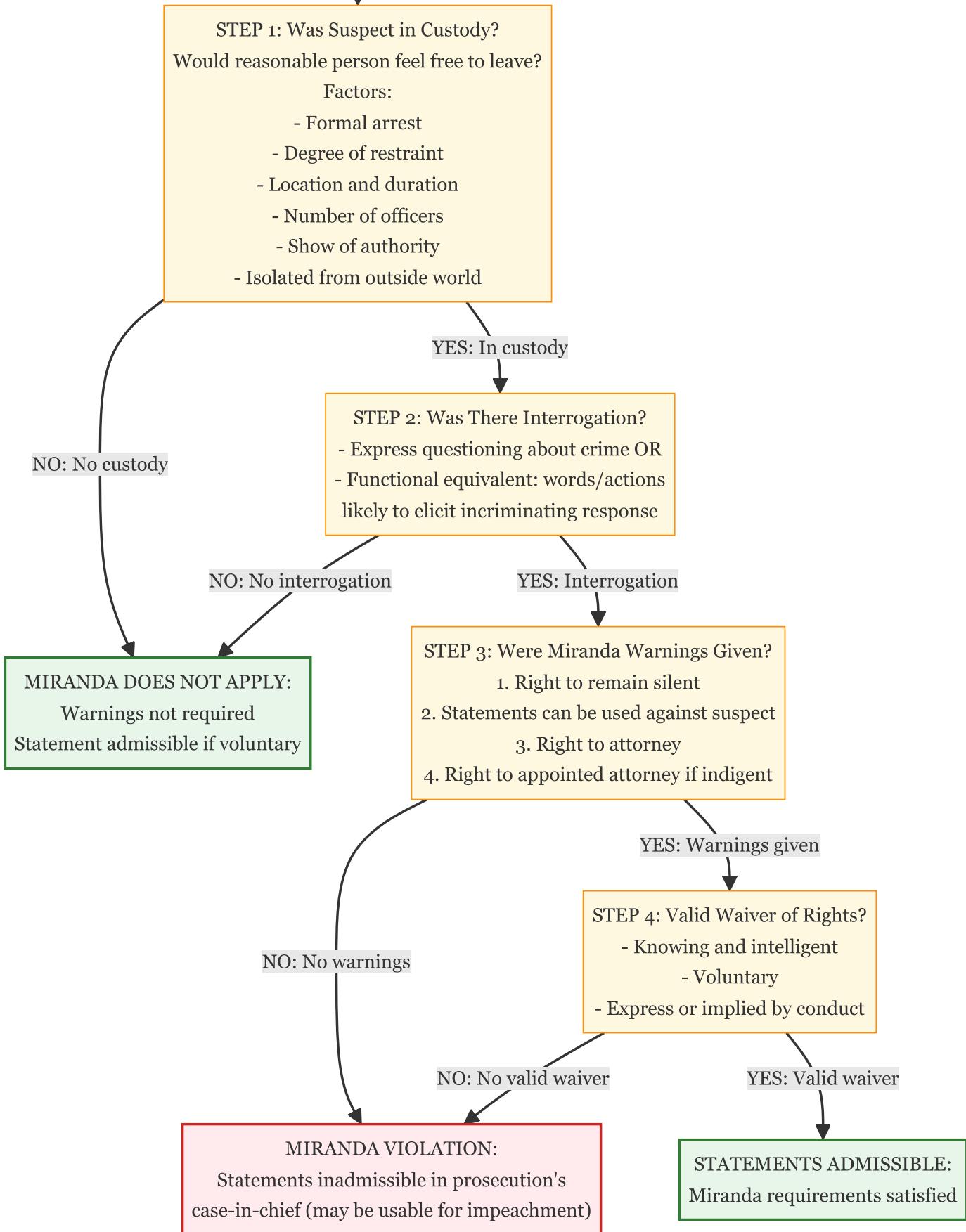
Custody Analysis

- Objective test: Whether a reasonable person would feel free to terminate the encounter and leave
- Not limited to formal arrest; includes "restraint on freedom of movement of the degree associated with formal arrest" (*California v. Beheler*)
- Relevant factors: Location, duration, restraints, presence of multiple officers, display of weapons, physical contact, language used, whether suspect was told they were free to leave
- Special rules for certain contexts:
 - Traffic stops generally not custody (*Berkemer v. McCarty*)
 - Terry stops generally not custody
 - Detention in one's home may be custody (*Orozco v. Texas*)
 - Prison inmates not automatically in Miranda custody (*Howes v. Fields*)

Interrogation Analysis

- Express questioning about crime
- Functional equivalent: Words or actions police should know are reasonably likely to elicit an incriminating response (*Rhode Island v. Innis*)
- Booking questions exception: Routine booking questions not designed to elicit incriminating responses
- Spontaneous statements not made in response to interrogation do not require Miranda warnings

MIRANDA RIGHTS ANALYSIS



Miranda v. Arizona 384 U.S. 436 (1966)

Prior to any custodial interrogation, a person must be warned that they have the right to remain silent, that anything they say can be used against them in court, that they have the right to the presence of an attorney, and that if they cannot afford an attorney one will be appointed for them.

Ernesto Miranda was arrested for kidnapping and rape. He was interrogated for two hours without being advised of his rights, ultimately signing a confession. The confession included a typed paragraph stating the confession was voluntary and made with full knowledge of legal rights, but Miranda was not specifically informed of his right to counsel.

The Supreme Court held that the Fifth Amendment privilege against self-incrimination applies to custodial police interrogations, which contain "inherently compelling pressures which work to undermine the individual's will to resist and to compel him to speak." To counteract these pressures, the Court mandated procedural safeguards, now known as the Miranda warnings. Chief Justice Warren, writing for the majority, emphasized that these warnings are necessary to ensure suspects can exercise their constitutional rights, as the right to remain silent would be meaningless if suspects were unaware of it. The Court noted that statements obtained without these warnings are presumptively the product of compulsion and therefore inadmissible. The Court emphasized that after the warnings, a suspect may knowingly and intelligently waive these rights, but the prosecution bears the heavy burden of proving waiver. This landmark case fundamentally transformed police interrogation practices nationwide.

Waiver of Miranda Rights

After Miranda warnings are given, a suspect may waive their rights and agree to speak with law enforcement. For such a waiver to be valid, it must be voluntary, knowing, and intelligent. The prosecution bears the burden of proving a valid waiver.

Requirements for Valid Waiver

- **Voluntary:** Free from coercion, intimidation, or deception
- **Knowing and Intelligent:** With full awareness of the nature of the right being abandoned and the consequences of the decision to abandon it
- **Form of Waiver:** May be express (verbal or written) or implied through conduct

Express vs. Implied Waivers

- **Express Waiver:** Defendant explicitly states (orally or in writing) that they waive their rights
- **Implied Waiver:** Defendant demonstrates understanding of rights but chooses to speak anyway (*Berghuis v. Thompkins*)

Factors Courts Consider

- Defendant's age, education, intelligence, and mental state
- Prior experience with criminal justice system
- Length and conditions of detention
- Nature of interrogation

- Whether rights were explained in a language the defendant understands
- Whether defendant was under the influence of drugs or alcohol

Invoking Miranda Rights

Suspects may invoke their Miranda rights during questioning, which requires police to cease interrogation:

- **Right to Silence:** Must be invoked unambiguously (*Berghuis v. Thompkins*)
- **Right to Counsel:** Must also be unambiguous (*Davis v. United States*), e.g., "I want a lawyer"
- **Effect of Invocation:**
 - Right to silence: Questioning must cease, but may resume after a break with fresh Miranda warnings
 - Right to counsel: All questioning must cease until attorney is present or defendant initiates further communication (*Edwards v. Arizona*)

Berghuis v. Thompkins 560 U.S. 370 (2010)

A suspect must unambiguously invoke their right to remain silent, and a waiver of Miranda rights may be implied by a suspect who understands their rights but engages in a course of conduct indicating waiver, such as making an uncoerced statement to police.

After being arrested for murder, Thompkins was given Miranda warnings and acknowledged understanding them but did not explicitly agree to talk. He remained largely silent during a three-hour interrogation, giving only occasional one-word responses. Eventually, he answered "yes" when asked if he prayed to God for forgiveness for shooting the victim. Thompkins moved to suppress this statement, arguing he had invoked his right to remain silent by remaining silent.

The Supreme Court held that Thompkins did not invoke his right to remain silent by remaining silent, ruling that invocation of this right must be unambiguous and unequivocal. Justice Kennedy, writing for the majority, noted that if police are unsure whether a suspect has invoked their rights, they are not required to end questioning. Additionally, the Court held that Thompkins had impliedly waived his Miranda rights by answering the detective's question after receiving and understanding the warnings. The Court established that a waiver can be implied from "the defendant's silence, coupled with an understanding of his rights and a course of conduct indicating waiver." This decision placed the burden on suspects to clearly invoke their right to remain silent, rather than requiring police to obtain an explicit waiver before questioning.

Exceptions to Miranda Requirements

The Supreme Court has recognized several exceptions to the Miranda rule, allowing statements obtained without proper warnings or after Miranda violations to be used in certain circumstances.

Major Exceptions to Miranda

- **Public Safety Exception:** Immediate questions necessary to secure public safety (*New York v. Quarles*)
- **Routine Booking Questions:** Basic biographical data and administrative information
- **Impeachment Use:** Statements obtained in violation of Miranda usable to impeach defendant's testimony (*Harris v. New York*)

- **Fruit of Poisonous Tree Limitations:** Physical evidence discovered as a result of un-Mirandized but voluntary statements may be admissible (*United States v. Patane*)
- **Undercover Agents:** Questioning by someone the suspect doesn't know is a government agent (*Illinois v. Perkins*)
- **Independent Source/Inevitable Discovery:** Evidence that would have been found through independent legal means

Public Safety Exception

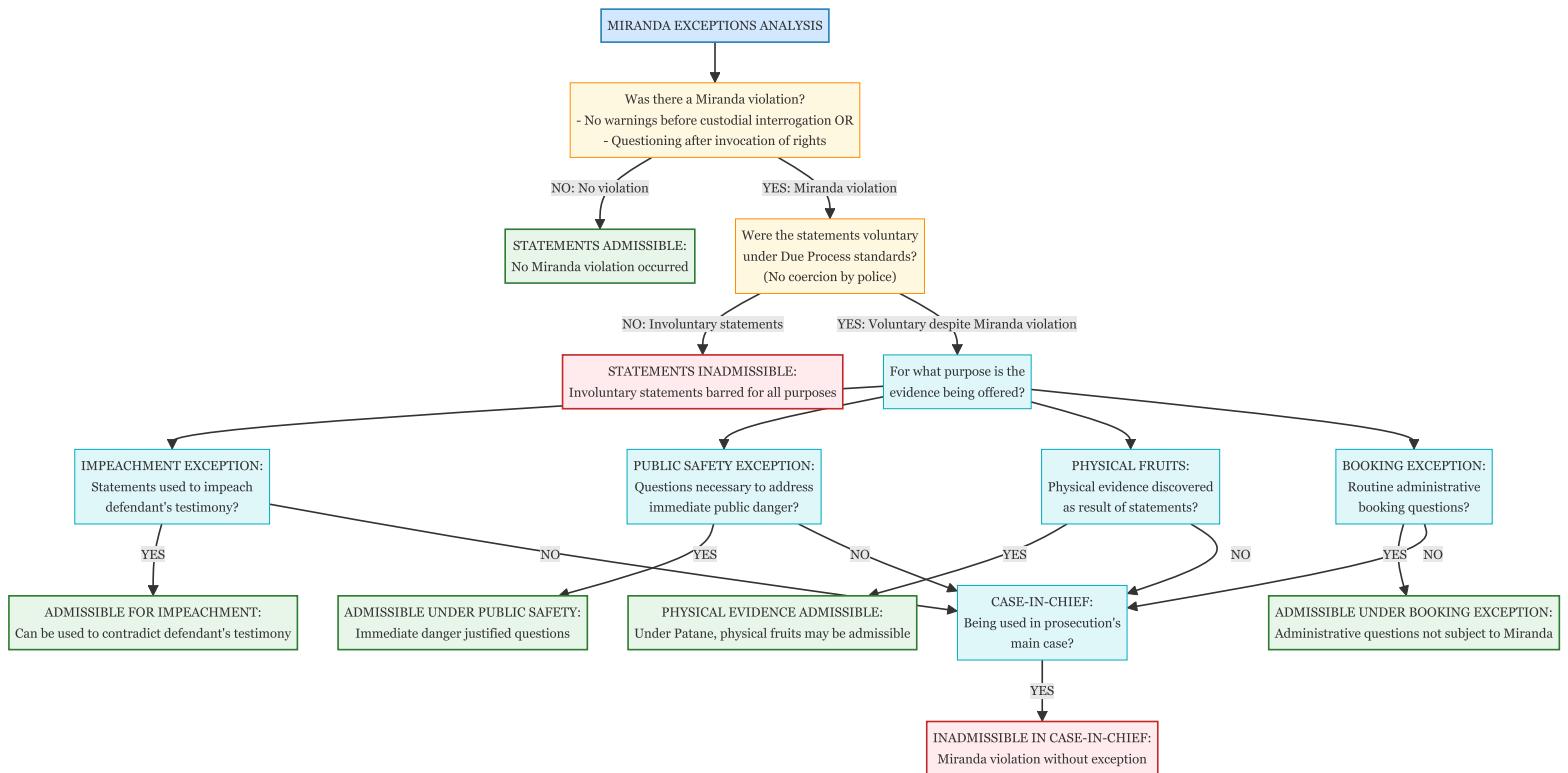
The public safety exception, established in *New York v. Quarles*, allows police to temporarily forego Miranda warnings when necessary to address an immediate threat to public safety. Key elements include:

- Immediate necessity to secure safety (e.g., location of discarded weapon in public place)
- Questions must be reasonably prompted by safety concerns, not investigative purposes
- Exception applies only until the immediate danger is addressed

Derivative Evidence and Miranda

The Supreme Court has limited the application of the "fruit of the poisonous tree" doctrine in the Miranda context:

- Subsequent statements obtained after proper warnings may be admissible despite earlier Miranda violations (*Oregon v. Elstad*)
- Physical evidence obtained as a result of un-Mirandized but voluntary statements may be admissible (*United States v. Patane*)
- Witness testimony discovered through un-Mirandized statements generally admissible (*Michigan v. Tucker*)



New York v. Quarles 467 U.S. 649 (1984)

Police officers may question a suspect without first giving Miranda warnings when necessary to address an immediate threat to public safety.

Police apprehended Quarles, a rape suspect, in a supermarket after a brief chase. Upon frisking him, an officer discovered an empty shoulder holster and, without giving Miranda warnings, asked where the gun was. Quarles nodded toward some empty cartons and said, "the gun is over there." The officer retrieved the gun and then read Quarles his Miranda rights.

The Supreme Court created a "public safety" exception to the Miranda requirement, holding that the need for immediate answers to protect public safety can outweigh the need for Miranda warnings. Justice Rehnquist, writing for the majority, emphasized that police officers should not be placed in the untenable position of having to choose between protecting the public and preserving evidence. The Court reasoned that in situations presenting a danger to the public or officers, the primary social cost of the Miranda rule—the possibility that a guilty person might go free—was outweighed by the need for immediate information to neutralize the danger. The Court noted that this exception applies only in situations presenting an immediate threat to public safety and does not depend on the subjective motivation of the officer. This pragmatic exception recognizes that real-world policing sometimes requires immediate action to protect the public.

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Criminal Procedure: Comprehensive Guide

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Note: This guide provides a systematic approach to evaluating key doctrines in Criminal Procedure, with a focus on Professor Sood's course. Each section includes detailed flowcharts with specific criteria for applying the constitutional standards along with key cases.

Sixth Amendment Right to Counsel

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Overview of the Sixth Amendment Right to Counsel

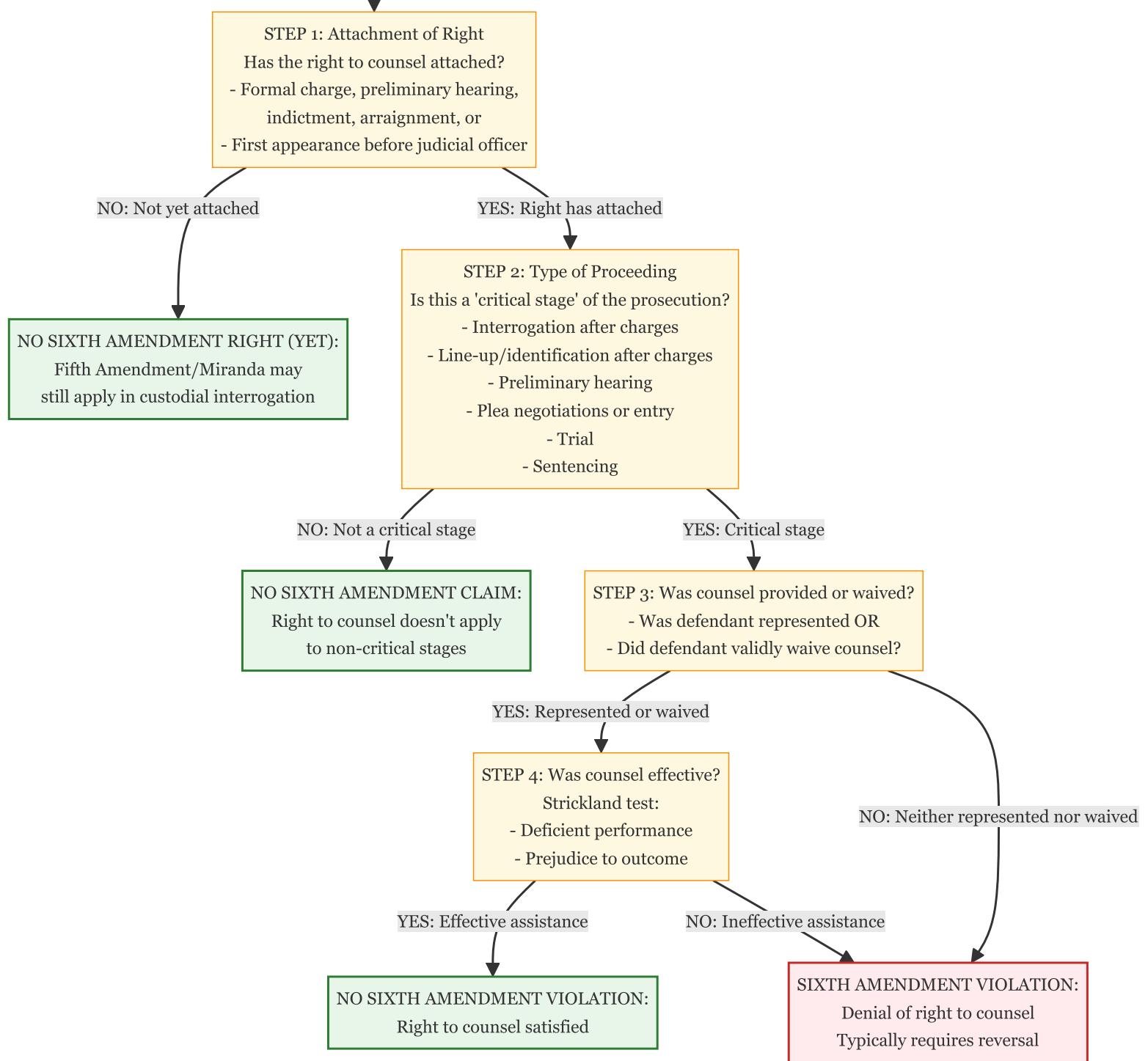
The Sixth Amendment provides that "In all criminal prosecutions, the accused shall enjoy the right... to have the Assistance of Counsel for his defence." This right is fundamental to our adversarial system of justice, ensuring that the accused can meaningfully contest the government's case. The Supreme Court has interpreted this provision to include several distinct but related rights:

Components of Right to Counsel

- **Right to Retained Counsel:** Right to hire and be represented by a lawyer of one's choosing
- **Right to Appointed Counsel:** Right to have counsel appointed if indigent (*Gideon v. Wainwright*)
- **Right to Self-Representation:** Right to proceed pro se if competent to do so (*Faretta v. California*)
- **Right to Conflict-Free Counsel:** Right to representation free from conflicts of interest
- **Right to Effective Assistance:** Right to counsel who provides reasonably effective assistance (*Strickland v. Washington*)

The Sixth Amendment right to counsel serves multiple purposes: it enables the defendant to navigate complex legal procedures, protects against government overreach, ensures the reliability of the adversarial testing process, and promotes the legitimacy of the criminal justice system.

SIXTH AMENDMENT RIGHT TO COUNSEL ANALYSIS



Attachment of the Right to Counsel

The Sixth Amendment right to counsel "attaches" only at or after the initiation of adversarial judicial criminal proceedings. This is a critical threshold that determines when the government's conduct is regulated by the Sixth Amendment rather than other constitutional provisions.

When the Right Attaches

The Supreme Court has held that the right attaches at or after:

- Formal charge
- Preliminary hearing
- Indictment
- Information
- Arraignment
- Initial appearance before judicial officer

The key consideration is whether "the government has committed itself to prosecute" and the defendant "finds himself faced with the prosecutorial forces of organized society." (*Kirby v. Illinois*)

Important Limitations

- **Investigation vs. Prosecution:** Pre-charge investigative activities are not governed by the Sixth Amendment, even if the suspect is the focus of an investigation
- **Offense-Specific:** The right attaches only to the specific charged offense, not to other uncharged offenses (*Texas v. Cobb*)
- **Pre-attachment Interrogation:** Statements obtained before attachment of the right are not subject to Sixth Amendment scrutiny, though they may implicate Fifth Amendment/Miranda protection
- **Critical Stages:** Even after attachment, the right applies only at "critical stages" of the prosecution

Critical Stages of Prosecution

After the right attaches, counsel is guaranteed only at "critical stages" of the prosecution, defined as proceedings where the defendant faces potential substantial prejudice and where counsel's assistance can help avoid that prejudice. These include:

- Post-indictment interrogations (*Massiah v. United States*)
- Post-indictment lineups and show-ups (*United States v. Wade*)
- Preliminary hearings where rights may be lost
- Arraignments where defenses must be asserted
- Plea negotiations and entry of plea
- Trial
- Sentencing
- First appeal as of right (*Douglas v. California*)

Rothgery v. Gillespie County 554 U.S. 191 (2008)

The Sixth Amendment right to counsel attaches at a defendant's initial appearance before a judicial officer, where the defendant is informed of the charge against him and restrictions are imposed on his liberty, regardless of whether a prosecutor is involved in the proceeding.

Rothgery was arrested based on an erroneous criminal record showing he was a felon. He was brought before a magistrate for an initial appearance (called a "magistration" under Texas law), where he was informed of the charge, his bail was set, and he was jailed. Despite multiple requests, he was not appointed counsel until six months after this initial appearance. After counsel was appointed, the attorney obtained evidence proving Rothgery had no prior felony conviction, and the charges were dismissed.

The Supreme Court held that the Sixth Amendment right to counsel attaches at the initial appearance before a judicial officer, regardless of whether a prosecutor is aware of or involved in that proceeding. Justice Souter, writing for the majority, emphasized that attachment

occurs when the defendant is brought before a judicial officer, informed of a formal accusation, and restrictions are imposed on his liberty. The Court rejected the county's argument that attachment requires prosecutorial awareness or involvement, noting that by the time of the initial appearance, the government has committed itself to prosecution. The Court clarified that while attachment triggers the right to counsel, counsel need only be appointed "within a reasonable time after attachment to allow for adequate representation at any critical stage before trial, as well as at trial itself." This decision resolved a circuit split regarding when the right to counsel attaches and emphasized the importance of the initial appearance as a significant step in a criminal prosecution.

The Massiah Doctrine

The Massiah doctrine, named after *Massiah v. United States* (1964), prohibits the government from deliberately eliciting incriminating statements from a defendant after the right to counsel has attached and without counsel present or a valid waiver. This doctrine extends the Sixth Amendment's protection beyond formal interrogations to any situation where the government deliberately attempts to obtain incriminating information.

Key Elements of Massiah Violation

1. **Attachment of Right:** Formal criminal proceedings must have begun against the defendant
2. **Deliberate Elicitation:** Government must deliberately attempt to elicit incriminating information
3. **Government Agent:** The elicitation must be by a government agent (including informants, undercover officers, etc.)
4. **Absence of Counsel:** Counsel must be absent and the defendant must not have validly waived counsel

Deliberate Elicitation vs. Miranda Interrogation

The Massiah standard of "deliberate elicitation" differs from Miranda's "custodial interrogation" standard:

- No custody requirement under Massiah
- Includes more subtle forms of questioning or conversation designed to elicit incriminating responses
- Applies even when the defendant doesn't know they're speaking to a government agent (*United States v. Henry*)
- Mere listening or passive reception of information is not a violation (*Kuhlmann v. Wilson*)

Government Agents

A "government agent" for Massiah purposes includes:

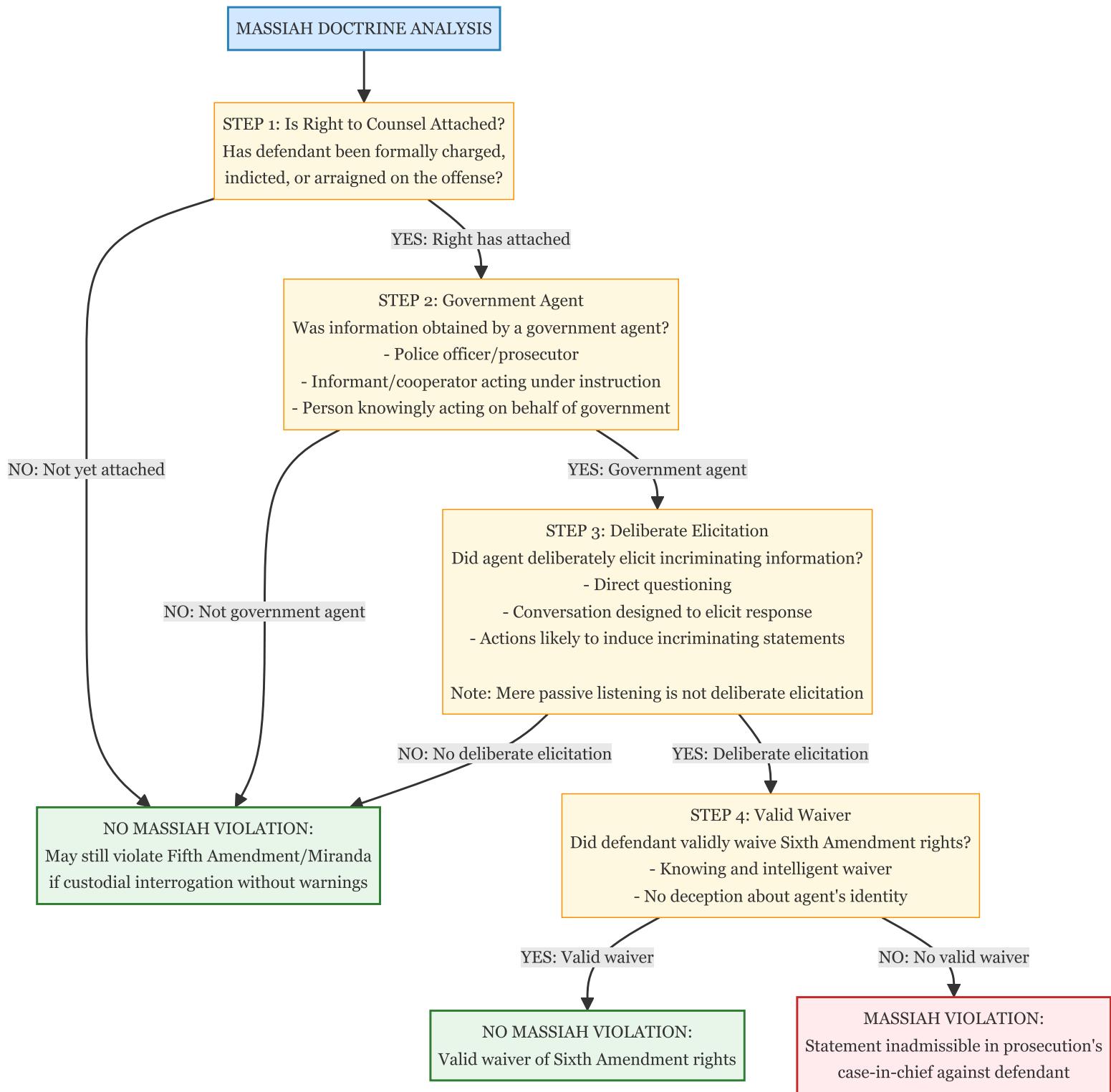
- Police officers and prosecutors
- Informants instructed to elicit information
- Co-defendants or cellmates working with the government
- Government-directed civilians

Waiver of Massiah Rights

A defendant may waive Massiah rights, but the government bears a heavy burden of showing a valid waiver:

- Must be knowing, intelligent, and voluntary

- Miranda warnings generally sufficient for explicit waiver (*Patterson v. Illinois*)
- No waiver if government actively conceals agent's identity



Massiah v. United States 377 U.S. 201 (1964)

The government violates a defendant's Sixth Amendment right to counsel when it deliberately elicits incriminating statements from the defendant after the right to counsel has attached, without counsel present and without a valid waiver.

Massiah was indicted for federal narcotics violations, retained a lawyer, pleaded not guilty, and was released on bail. A co-defendant, Colson, agreed to cooperate with the government. He arranged a meeting with Massiah in Colson's car, where government agents had

installed a radio transmitter. During their conversation, which was monitored by an agent, Massiah made incriminating statements that were later used against him at trial.

The Supreme Court held that the government violated Massiah's Sixth Amendment right to counsel by deliberately eliciting incriminating statements after he had been indicted and in the absence of his counsel. Justice Stewart, writing for the majority, emphasized that the right to counsel would be meaningless if the government could circumvent it by surreptitiously extracting incriminating statements. The Court noted that Massiah was denied the "basic protections" of the Sixth Amendment when government agents deliberately elicited incriminating statements from him after indictment and outside his lawyer's presence. This landmark decision established that the Sixth Amendment prohibits not just direct interrogation after formal charges, but any deliberate government effort to obtain incriminating statements from an accused without counsel present or a valid waiver.

Effective Assistance of Counsel

The Sixth Amendment right to counsel includes the right to effective assistance of counsel. In *Strickland v. Washington* (1984), the Supreme Court established a two-prong test for determining whether a defendant's right to effective assistance of counsel has been violated.

The Strickland Test

To establish ineffective assistance of counsel, a defendant must show:

1. **Deficient Performance:** Counsel's performance fell below an objective standard of reasonableness under prevailing professional norms
2. **Prejudice:** There is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different

Analyzing Deficient Performance

- **Strong Presumption of Competence:** Courts must be highly deferential to counsel's judgments
- **Strategic Decisions:** Tactical choices made after thorough investigation are virtually unchallengeable
- **Prevailing Professional Norms:** Performance evaluated against objective standards of reasonableness
- **Contemporaneous Assessment:** Judged based on circumstances at the time, not with hindsight

Establishing Prejudice

- **Reasonable Probability:** Less than a preponderance of evidence but sufficient to undermine confidence in the outcome
- **Effect on Outcome:** Must show that the error actually had an adverse effect on the defense
- **Fundamental Fairness:** Focus on whether the trial produced a just result, not whether counsel's errors affected the outcome

Per Se Prejudice Situations

In certain circumstances, prejudice is presumed without requiring specific proof:

- **Actual or Constructive Denial of Counsel:** Complete absence of counsel at critical stage
- **State Interference:** Government interference with counsel's ability to represent defendant

- **Actual Conflict of Interest:** Counsel labors under actual conflict that adversely affects performance (*Cuyler v. Sullivan*)

Strickland v. Washington 466 U.S. 668 (1984)

To establish ineffective assistance of counsel, a defendant must show that (1) counsel's performance was deficient, falling below an objective standard of reasonableness, and (2) the deficient performance prejudiced the defense, creating a reasonable probability that, but for counsel's errors, the result would have been different.

Washington pleaded guilty to multiple murder charges against the advice of his appointed counsel. At the sentencing hearing, counsel did minimal preparation, not seeking character witnesses or requesting a psychiatric examination. Counsel's strategy was to rely on Washington's acceptance of responsibility and remorse, but the judge sentenced him to death.

The Supreme Court established a two-part test for evaluating claims of ineffective assistance of counsel. Justice O'Connor, writing for the majority, emphasized the need for objective standards while maintaining deference to counsel's strategic decisions. For the performance prong, the Court held that a defendant must show counsel's representation fell below an "objective standard of reasonableness" under "prevailing professional norms." For the prejudice prong, the defendant must show a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." The Court stressed that judicial scrutiny of counsel's performance must be "highly deferential" and courts must apply a "strong presumption" of competence. Applying this test, the Court found that Washington's counsel's conduct fell within the wide range of reasonable professional assistance, and even if it hadn't, Washington failed to show prejudice. This case established the standard that continues to govern ineffective assistance claims.

Right to Counsel for Indigent Defendants

The Supreme Court has established that the Sixth Amendment requires the government to provide counsel to indigent defendants who cannot afford to hire their own attorneys in certain criminal proceedings. This right has evolved significantly over time.

Development of Right to Appointed Counsel

- *Gideon v. Wainwright* (1963): Established right to appointed counsel for indigent defendants in all felony cases
- *Argersinger v. Hamlin* (1972): Extended right to any case resulting in actual imprisonment
- *Scott v. Illinois* (1979): Limited right to cases where imprisonment is actually imposed, not merely authorized
- *Alabama v. Shelton* (2002): Extended right to suspended sentences that may result in imprisonment

Scope of the Right to Appointed Counsel

The right to appointed counsel applies in:

- **Felony Prosecutions:** All felony cases regardless of potential sentence
- **Misdemeanor Prosecutions:** Only if actual imprisonment is imposed
- **Juvenile Delinquency Proceedings:** Where liberty may be curtailed (*In re Gault*)
- **First Appeal as of Right:** But not discretionary appeals (*Douglas v. California*)
- **Probation/Parole Revocation:** Only in complex cases or where fairness requires (*Gagnon v. Scarpelli*)

Standard for Indigency

- No uniform federal standard; determined by courts based on financial circumstances
- Inability to afford counsel, not complete destitution
- Considers income, assets, debts, and family obligations
- May require partial payment if defendant can contribute something

Quality of Appointed Counsel

- Right to effective assistance applies equally to appointed and retained counsel
- No constitutional right to counsel of choice for appointed attorneys
- No constitutional right to a "meaningful relationship" with appointed counsel (*Morris v. Slappy*)
- Systematic deficiencies in public defender systems may raise constitutional concerns

Gideon v. Wainwright 372 U.S. 335 (1963)

The Sixth Amendment right to counsel is fundamental and essential to a fair trial, and this right requires that counsel be appointed for indigent defendants in state criminal prosecutions.

Clarence Earl Gideon was charged with breaking and entering a poolroom with intent to commit a misdemeanor, a felony under Florida law. When he appeared in court without funds and asked the court to appoint counsel for him, the judge refused, stating that Florida law only required appointment of counsel in capital cases. Gideon conducted his own defense and was convicted. From prison, he filed a handwritten petition to the Supreme Court.

The Supreme Court unanimously overruled *Betts v. Brady* (1942), which had held that the Sixth Amendment right to counsel was not a fundamental right essential to a fair trial and thus not applicable to the states. Justice Black, writing for the Court, emphasized that lawyers in criminal courts are "necessities, not luxuries" and that the "noble ideal" of ensuring fair trials cannot be realized if the poor person charged with a crime must face his accusers without a lawyer. The Court noted that governments spend vast sums to establish prosecutorial systems and to try defendants, recognizing the immense importance of counsel in criminal cases. This landmark decision established that states must provide counsel to criminal defendants who cannot afford their own attorneys, significantly expanding access to legal representation and fundamentally changing the criminal justice system.

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