

## CRIM PRO EXAM APPROACH

### I. Was it a search?

A search occurs under the Katz test when police invade space where a person has a subjective and objective reasonable expectation of privacy, or under the Jones test when police physically intrude or trespass without license onto a constitutionally protected area for purposes of obtaining information.

#### **Katz REP test:**

(a) **Subjective EP:** Did the person have an actual, subjective expectation of privacy?

- A person satisfies this prong if they subjectively expect the information to be private, and if they take steps to preserve it as private.
  - **Examples:** trash tied up in opaque bag, locked gate/fences, in covered area, no trespass signs, in home/in curtilage of home

(b) **Objective EP:** Is that expectation one society would deem objectively reasonable?

- A person satisfies this prong if they did not expose information to public, and if they did not relinquish the info to a third party.
  - **Examples:** readily accessible to members of public, in open field vs. in curtilage/proximity to home, info observed from where police legally permitted to be (i.e. legal airspace, sidewalk), whether police used generally available technology, sharing info with a third party, how intimate the information was
  - **Third Party Doctrine:** applies if info is relinquished to a third party, and third party turns it over to police (vs police getting it themselves)

(c) **Cases**

- **Garbage:** *CA v. Greenwood* > NO SEARCH
- Subjective EP: YES bc D took steps to preserve trash as private by putting trash in opaque bag and tying it up
- Objective EP: NO bc D knowingly exposed trash to the public by putting it on a public street where it was “readily accessible” to others, and where it was put out there for the purpose of conveyance to a third party.
- **Pen Registers:** *Smith v. Maryland* > NO SEARCH
- Subjective EP: NO bc D did not take steps to keep data/location info private, and it is known that phone companies use pen registers and data info.
- Objective EP: NO bc D has no expectation of privacy in info he voluntarily turns over to phone companies/third parties, and when no intimate info is exposed.
  - **Note on Mosaic Theory:** Argument that Smith/Third Party Doctrine isn't applicable anymore bc we rely so much on third parties (phones, emails, internet, etc) in our everyday life; so this theory says that the whole is greater than its parts, so when something is collected in detail or over a period of time, it can tell a lot about a person. Intimate information shared is part of analysis.
- **Open Fields:** *Oliver v. US* > NO SEARCH
- Subjective EP: YES bc D had a locked gate and “no trespass” signs
- Objective EP: NO bc D had marijuana plants about a mile onto property, and all police had to do was walk onto property to see the plants, so D's field was exposed and accessible to public in a way that a home is not.

- **Note on Curtilage:** the area so intimately tied to home, it should be placed under the home's protective umbrella. YES search for police to be on curtilage.
- **Curtilage FACTORS:**
  - (1) proximity of the area in question to the home,
  - (2) whether the area is included within the same enclosure as the home,
  - (3) use of the area,
  - (4) steps take to preserve privacy
- **Aerial Surveillance/Curtilage:** *California v. Ciraolo* > NO SEARCH
- Subjective EP: YES bc D put fences around enclosed area where growing weed
- Objective EP: NO bc police didn't go into curtilage, and area was exposed to public since police flew plane 1,000 feet above home and saw weed plants, so any member of public airspace or even person on a double-decker bus could've seen the plants
  - **Note on Qualitative Difference:** qualitative difference is that not many people fly over people's property, should the gov have to prove that people do this activity semi-regularly to justify that "anyone could do it"
- **Aerial Surveillance/Curtilage:** *Florida v. Riley* > NO SEARCH
- Subjective EP: YES bc in curtilage of home
- Objective EP: NO bc helicopter was flying in legal airspace and there's no expect of privacy in legal airspace, and didn't disturb curtilage > BUT outcome different if helicopter interfered with regular use of prop
  - **Note on Physical Intrusion:** so if use of that airspace creates a physical intrusion (Jones test) by kicking up dust, looking into bedroom windows, or making loud noise, then that's probably not where it's legal to fly, and it would be a search.
- **Thermal Imaging:** *Kyllo v. US* > YES SEARCH
- Subjective EP: YES bc thermal imaging reveals intimate things inside home (unlike microphone or binoculars)
- Objective EP: YES bc thermal imaging technology isn't commonly available, so public couldn't access info from street, could only access it by physical intrusion
  - **Note:** technology that merely enhances senses by commonly used device not a search (i.e. use of binoculars)
- **GPS:** *Jones v. US* > YES SEARCH
- **JONES Trespass test:** A search occurs when police physically occupy private property for the purposes of obtaining information.
- **Facts:** Police attached GPS to Jone's car and tracked him for 28 days
- **Concurrences' additional possibilities:**
  - LONG TERM monitoring, even without the trespass/installation of GPS is a search under *Katz* REP test (Sotomayor concurs if creates mosaic; aka if details collected over period of time that reveal intimate info about a person)
  - SHORT TERM monitoring without trespass/installation of GPS NOT a search under *Katz* REP test bc no expect of privacy when traveling on public roads
- **When is it a trespass?**
  - (1) YES TRESPASS to install GPS device w/o consent of owner & monitor owner,

- (2) NOT TRESPASS to pre-install, to install with the consent of the owner, or to install but not monitor,
- (3) NOT TRESPASS to make a licensed intrusion, even to obtain information,
- (4) YES TRESPASS, and therefore a search, to go onto a porch or curtilage with a drug sniffing dog with the intent to obtain information about the house.

- **Dog Sniffs:** *Florida v. Jardines* > YES SEARCH
- **Facts:** using trained narcotics dogs to sniff the front porch/“curtilage” of a home for the purpose of investigating and searching for drugs
- **JONES Trespass test:** Yes search because bc info was obtained by an unlicensed physical intrusion into a constitutionally protected area.
- **Dog Sniffs:** *US v. Place, Illinois v. Caballes* > NO SEARCH
- **REP test:** Dogs are only capable of detecting contraband (unlike thermal imaging) and people don't have a rep in maintaining secrecy of contraband
- **JONES Trespass test:** Sniffing air around luggage is not physically intrusive

## II. Was it a Seizure?

A person is seized if a reasonable person under the circumstances would believe that he or she was not free to leave and submits or is restrained. Property has been seized when there is a meaningful interference with an individual's possessory interest in the property, or if the police alter the property. **Note:** A traffic stop is ALWAYS a seizure.

### SEIZURES

1. **Terry stop** (*brief investigatory stop, approx 20 min*) > **reasonable suspicion**  
**What po can do:** ask questions, ask for consent to search, frisk if RS A+D
2. **Traffic stop** (*Terry-type/investigatory*) > **reasonable suspicion**  
**What po can do:** ask questions, ask for consent to search, frisk if RS A+D
3. **Traffic stop** (*based on traffic violation*) > **probable cause**  
**What po can do:** ask questions, ask for consent to search, arrest or SILA
4. **Arrest** (*in public/on street, no warrant*) > **probable cause**  
**What po can do:** ask questions after giving Miranda rights, ask for consent (different than consent for other seizures), SILA, inventory search

### FACTORS for SEIZURE/reasonable belief that the person was not free to go:

1. **Words used by police** (ie “stop”), tone of voice
2. **Show of authority** (ie number of officers/blocking, guns drawn, subtle showing of guns, physical restraint)
3. **Holding papers** (when po has possession of one's docs/items, maj says *per se* seizure)
4. **Subjective factors of D** (race, class, education, gender)

\*\**US v. Mendenhall* > DEA agents ask woman in airport for id and to come with them to another room and she agrees, then consents to search of her things and person. Court found it was consensual encounter and nothing to suggest she wasn't free to go.

### FACTORS for when it becomes ARREST (*conduct goes from needing RS to PC*):

1. **Time** (usually more than 20 min)
2. **Coerciveness of the stop** (but if drawn guns and hand guns are reasonable under the circumstances, it does not exceed the permissible scope of the stop)
3. **Movement to new place** (consider where and why, how confined)

**Seizure is UNREASONABLE and evid should be SUPPRESSED if:**

**1. Fruit of illegal search**

- no warrant, consent is invalid

**2. Fruit of illegal seizure**

- person seized before incriminating evidence found
- police lacked RS or PC for seizure

**3. Fruit of an illegal arrest**

- person was arrested before evidence found
- police lacked PC to make arrest
- search/seizure exceeds permissible scope of the stop

**III. Warrant Requirement and Probable Cause**

A search and seizure is reasonable when conducted pursuant to a warrant, subject to a few narrow exceptions. Must have PROBABLE CAUSE for warrant, and must be properly executed to be valid. **PROBABLE CAUSE** is a totality of the circumstances test, satisfied when there is a fair probability that evidence will be found in a particular place at the time of the search.

**(a) "Fair probability" PC standard 2-prong test**

• **Informant's BASIS OF KNOWLEDGE**

- (1) stated info in affidavit (and is more than a conclusory statement)
- (2) gave detail about future events that are not easily predicted, not merely descriptive

• **Informant's VERACITY**

- (1) Reputation (i.e. priest)
- (2) Track record (informant has given reliable/true info in the past)
- (3) Consequences (i.e. declarations against own interest)
- (4) Corroboration of at least some facts as true

\*\**Illinois v. Gates* > YES TIP CREATED PC Informant gave detailed description on how defendants' get drugs and their schedule, and detective confirmed this info. Knowledge and veracity are highly relevant, but not only test & must consider totality of circum.

- **GOOD FAITH RULE** > if the police relied on a warrant, the evidence won't be suppressed if they relied on it in good faith
- **OBJECTIVE STD** > police only need objective facts for stopping someone, and it doesn't matter what was in their mind, so pre textual arguments will almost always fail (*Whren v. US*)

**(b) Proper/reasonable execution of warrant**

• **Four rules for police:**

- (1) **Must knock & announce before entering home**  
> UNLESS reasonable suspicion of threat of physical violence,  
> OR reasonable suspicion that evidence will be destroyed or people will flee
- (2) **Must wait reasonable amount of time after knock & announce before enter**  
> this depends on size of dwelling, time you're going in, etc.
- (3) **Exclusionary rule doesn't apply to knock and announce violations**  
> meaning evidence will not be excluded if police violate these rules
- (4) **Can detain occupant while executing search warrant**

- > Police don't need PC to do this, it's automatic
- > Occupant is anyone on premises (home & curtilage) during execution of warrant

#### IV. EXCEPTIONS to the Warrant Requirement

(a) **Exigency** > Police shouldn't have to get a warrant if there's no time, but still need PC.

- **Once exigency ends**, police must get a warrant or use another exception to justify continued search or seizure.
- **Scope of exigency** depends on time, space, and the nature of the offense.
- **Exigency is mainly based on time**, and today there are telephonic and electronic warrants, so does this put more burden on po bc can get warrant quicker?
- **Hot Pursuit**: Police can enter home w/o warrant when in hot pursuit of a fleeing suspect.
  - (1) **Time** > Begins prior to, or at the same time of discovery of the suspect the police are pursuing, and once they find the suspect, the exigency/search ends, UNLESS another exception applies (i.e. SILA, protective sweep, or consent).
  - (2) **Space** > Can only search where a person could be hiding, and can only seize the pursued suspect and maybe a weapon (can only seize anything else under PVD).
  - (3) **Offense** > Not usually justified by minor, non-jailable offense.
- **Destruction of Evidence**: Police can enter home w/o warrant if they have PC to believe evidence will be destroyed if they wait to get a warrant.
  - (1) **Time** > Begins depending on motive and ability to destroy evidence (i.e. if they hear people scuffling around saying "get rid of it," but need more than sound of people running or sound of flushing toilet). Unclear when exigency ends.
  - (2) **Space** > Can only search where po have PC to believe evid is being destroyed.
  - (3) **Offense** > Not usually justified to preserve evid for minor, non-jailable offense, and depends on whether evidence is too large or too valuable to be destroyed.
- **Public Safety**: Police can enter home w/o warrant if they have objectively reasonable belief that safety of the public or an individual is threatened.
  - (1) **Time** > Exigency ends once aid is rendered.
  - (2) **Space** > Can only enter/search space where aid is needed.
  - (3) **Offense** > Not justified by minor offense, but ongoing violence and meth labs are never minor offense and can always enter w/o warrant for those.

\*\**Brigham City, Utah v. Stewart* > Search/Entry VALID
- Police saw party and when walking around saw two juveniles drinking, heard shouting, then saw fight through window so they announced themselves, but no one heard, so they went in. Entry was reasonable.

(b) **Plain View Doctrine (PVD)** > This is the warrant exception for seizures and ONLY applies to seizures (bc if things are in plain view, that's not a search).

- **Two elements of PVD**
  - (1) **Accessibility** > Police must lawfully be in place to see and access the evidence (requires analyzing the validity/lawfulness of the search warrant, or the exception)
  - (2) **Immediately incriminating** > Upon seeing the evidence, police must have PC to believe it is contraband w/o any additional search or seizure.

**(c) Automobile Exception (AE) > Prof loves AE**

- **When AE applies**

> **Say this on EXAM:** “This exception applies when (1) the vehicle is readily mobile, even if not actually moving, and (2) there is reduced expectation of privacy stemming from it being a licensed motor vehicle, subject to a range of regulations inapplicable to a fixed dwelling.”

- AE applies regardless of presence/absence/arrest of car owner
- AE applies to car at police tow lot
- AE applies to car w mechanical problems, so long as it could be made mobile
- AE probably applies to car parked in driveway (BUT part of home’s curtilage so would need warrant or exception to make search of curtilage valid to get to car)

- **Two elements of AE**

> **Say this on EXAM:** “This exception has two elements, PC and exigency, but exigency is essentially assumed in the mobility of the car bc cars are inherently mobile even if they are not readily mobile.” (*Carol v. US*)

(1) **PC > to believe evidence or contraband is in car** (smell, tip, observation)

> If PC attaches to container in car, can search car for container and the container

> If PC attaches to car itself, and police find container, can search the container

(2) **Exigency > presumed bc of inherent mobility of car**

\*\**CA v. Carney* > Search VALID

- Just bc car/mobile home is capable of functioning as a stationary home, this does not make AE inapplicable. Cannot consider use of car.

- **Scope of search under AE**

> The police can look anywhere intrinsic to the car, open parts of the car, or open containers in the car (even if locked) that could hold the evidence or contraband.

\*\**CA v. Acevedo* > Search VALID

- Police got tip that D had package of mj, and saw D put a brown paper bag in his trunk and drive away. Police followed, searched trunk, found mj.

**(d) Search Incident to Lawful Arrest (SILA) > Incident to a lawful, custodial arrest, there is an automatic right to search the person and their arm span.**

- **Two prerequisites**

(1) **Lawful arrest** > PC to believe crime committed and this person did crime, and warrant to arrest or valid exception if in person’s home.

(2) **Custodial arrest** > Person is being taken into custody and booked (not just ticketed and released).

- **Scope of search under SILA**

(1) **Person** > clothing, pockets, items associated w person like purse (not cavities)

(2) **Person’s arm span** > area within person’s reach or immediate control, incident to the arrest (arm span distance is not technically measured, and handcuffs are generally ignored when determine arm span).

- **Home:** *Chimel v. CA* > Search INVALID

- Police had warrant and arrested Chimel at his home, then conducted 45-60 min search of entire 3 bed home, seizing jewelry and tokens
- SILA is a limited search and only permits search of room person was arrested in, not search of entire home
- **Cigarette pack:** *US v. Robinson* > Search VALID
- Police pulled Robinson over for driving w expired license, searched him, found cigarette pack in pocket, opened and found heroin
- Search under SILA is automatic right regardless of why person arrested
- **Cell phone:** *US v. Riley* > Search INVALID
- Police pulled Riley over for traffic violation and lawfully arrested him, searched him, found cell phone in pocket, opened and found pics/vids related to gang activity and used to prosecute him for prior shooting
- Need warrant for cell phone bc unlike cigarette pack/physical items, there is an unlimited amount of info in the digital world

**(e) SILA and Car Searches** > Incident to lawful, custodial arrest of the recent occupant of a car, AND

(1) the occupant is unsecured and the passenger compartment is accessible, police can search *passenger compartment* of car (regardless of what they're looking for/whether it's related to arrest),

OR

(2) the occupant is secured but there is reason to believe evidence related to the arrest will be found in the car at the time of the search, police can search car, but it is unclear as to where they can search in the car. The state will argue that the po can search the trunk/ anywhere in the car because that's where evidence could be, and the reason to believe prong is not based on access. On the other hand, the defendant will argue that the po cannot search beyond the passenger compartment because, as Alito argued in his *Gant* dissent, this has been a workable rule for over 30 years and there is no reason to change this precedent, and the majority did not correct his argument or say otherwise.

- **Is arrestee a recent occupant?:** *Thornton* > Person who is in car, or who is temporarily and spatially proximate to the car at the time of the arrest and search.
- Police followed car into parking lot then approached Thornton after he got out of the car, he consented to search of his person and they found drugs, then searched his car and found drugs. SILA applied bc Thornton was recent occupant.
- **Is arrestee unsecured?:** *Belton* > 4 occupants, near car, not handcuffed, 1 police > what about 1 occupant, not handcuffed, 4 police > what about 1 occupant, handcuffed, in police car, 2 police (*Gant*)
- **Does arrestee have actual access?:** *Belton* > Cannot search locked compartment bc not easy access so not in person's arm span/immediate control  
UNLESS
- **If secured/no access, is there reason to believe evid related to arrest in car?:** *Gant* > Can search when occupant does not have actual access to any evidence (occupant was handcuffed and in police car) and there's reason to believe evid related to arrest is in car, but unclear SCOPE of where po can search in car.
- Need to know what person was arrested for
- Need to know whether evidence of that arrest could fit in the car

- Not based on access so technically not limited and can search all car
- Reasonable belief = RS or PC?

**(f) Protective Sweep Doctrine (PSD)** > Incident to a lawful arrest, police may conduct a protective sweep of premises if they have **REASONABLE SUSPICION** that person might be there who poses a threat to them. The sweep can only be a cursory inspection of those places a person may be found.

- **Two types of PSD searches**
  - (1) **Automatic right to search incident to arrest** > Police can conduct sweep of area adjacent to where arrest was made from which an attack could be launched.
  - (2) **Reasonable suspicion based on search** > Police can conduct sweep potentially anywhere in the home if based on specific and articulable facts, taken together with rational inferences from those facts, reasonably warrants the officer in believing the area to be searched harbors an individual who poses a danger to the officers.
- **Maryland v. Buie** > Search/Seizure VALID
- Police had arrest W for suspect who committed robbery wearing red running suit w accomplice, arrested suspect at his home and went into basement to make sure no one else there, saw red running suit in plain view. PSD got them in basement, PVD allowed them to seize the running suit.

**(g) Inventory Searches** > Police can search person or property after they have assumed control of that person or property to take inventory, but not to gather new evidence.

- Search must be consistent with standard procedure for po inventory searches
- Search cannot be pre textual, i.e. police must record their procedure/what they find

**(h) Consent** > Police can search w/o warrant and even w/o PC if there was consent, and the state has the burden to show the consent was valid.

- **Voluntariness of consent:** Considering the totality of the circumstances, the consent was voluntary and not the result of duress or coercion.
  - (1) Consider suspect's words/actions & po words/actions
  - (2) Location/time (secluded/populated, day/night)
  - (3) Length of custody
  - (4) Threats (but probably ok to threaten to get a W)
- **Authority to consent:** Given by someone with actual or apparent authority.
  - (1) **Actual authority** = person who has an ownership or lessee interest, or person has control or dominion through their position as the driver.
  - (2) **Apparent authority** = person who it was reasonable for police officer to believe had actual authority (very fact based)
  - (3) **Joint/dueling authority** = two people have actual authority, either can consent > **Po cannot search** if there's joint auth and physically present person says "no" > **Po can search** if the "no" person leaves and the other person consents, OR if police remove "no" person, so long as there was reasonable basis for removal (if no reasonable basis, "no" is valid and po can't search).



\*\**Georgia v. Randolph* >

\*\**Fernandez v. CA* >

- **Scope of consent:** Considering the totality of the circumstances, it was objectively reasonable for police to believe the scope of the suspect's consent permitted them to search where they did.

**FACTORS to determine scope:**

- (1) Words used by police officer to describe search (look around? quick look?)
- (2) Words used by consenter — set limits (make it quick, not in trunk)
- (3) Knowing the object of the search
- (4) Failure to object to a particular item/area
- (5) Destruction - consent never includes destruction of items bc person has interest in maintaining integrity and functionality of items
- (6) Consenter's expectation of privacy in item

\*\**Florida v. Jimeno* >

**(i) Terry Stops and Frisks** > Police have right to seize people short of full scale arrest if they have **REASONABLE SUSPICION** to believe criminal activity is afoot. Police can frisk someone if they have RS to believe person is armed and dangerous. (*Terry v. Ohio*)

- **Was there a stop?:** Usually not at issue, person didn't feel free to leave.
- **Was there RS/justification for the stop?:** **Reasonable suspicion** is a totality of the circumstances test requiring specific, articulable facts to justify suspicion. Po may rely on their own experience, expertise, and training to give meaning to facts.

**FACTORS to determine RS that criminal activity is afoot:**

- (1) Fitting physical description of suspect
  - (2) Nervousness (gov must show facts like sweating, shaking, stammering, etc.)
  - (3) Running from the police (evading) (gov must show that person saw police officer, and knew they were a police officer)
  - (4) High crime neighborhood
  - (5) Specific suspicious behavior observed by police
- **Scope of frisk:** If po have RS that person is armed, can frisk to search for weapon.

**FACTORS to determine RS that person is armed + dangerous:**

- (1) The nature of crime (i.e. belief someone just committed armed robbery)
- (2) The infamous bulge
- (3) The furtive gesture
- (4) High crime neighborhood
- (5) A tip (need to look at basis of knowledge and veracity of tip for RS)
- (6) Police officer knowledge/observation

\*\**Alabama v. White* > YES TIP CREATED RS, but barely > Caller said that person would be leaving apartment at specific time, in car with broken tail light, driving to particular hotel, with drugs in briefcase. Yes detail but not much corroboration.

\*\**Navarette v. CA* > YES TIP CREATED RS > Caller said driver ran her off road and gave description of car, police officer went to location from where call was made and saw car matching description driving nearby. Believed tip bc of location and description. Po at least had RS for drunk driving.

\*\**Florida v. JL* > NO TIP DID NOT CREATE RS > Caller said black man in plaid

shirt at bus stop had gun.

**RULES for scope during frisk:**

(1) **PO thinks yes weapon** bc feels like weapon, **can remove** item that feels like a weapon (if weapon, admissible; if not weapon, not admissible).

(2) **PO knows not weapon, cannot remove/manipulate** to determine what it is

(3) **PO not sure** what it is and it could be a weapon, **can keep touching** to determine if weapon (if weapon, can remove it; if not weapon, can't remove it).

(4) **PLAIN TOUCH DOCTRINE:** PO touching something to determine if it is a weapon, and po realize it's not a weapon but have **PC to believe it's drugs or evidence, can remove it.**

- **Scope of traffic stop/car frisk:** If po have RS that weapons are in the car and are accessible, can do a cursory inspection/frisk of places in car where accessible weapons could be. (*Mich v. Long*)

\*\**Rodriguez v. US* > Traffic stop/seizure cannot last longer than reasonable time to resolve traffic violation.

**VI. Police Interrogation** > There are three approaches to determining constitutionality of this.

**(a) Voluntariness - Due Process** > Confessions are not admissible if not voluntary because of coercive state behavior that overbears the suspect's will.

- **Coercive state behavior, beyond normal attributes of interrogation**
  - (1) Physical brutality
  - (2) Lengthy interrogation
  - (3) Deprivation of food, drink, sleep
  - (4) Threats/promises
  - (5) Lies (can lie about evidence but not about person's rights)
- **Overbears suspect's will**
  - (1) Timing between coercive behavior and incriminating statement
  - (2) Suspect's response to the behavior (fear, laughter)
  - (3) Intervening facts of mitigation (apology, promise not to repeat behavior)
  - (4) Other motives to confess

**(b) Miranda warnings - 5th and 14th Amend** > regulatory approach

- **Police required to give Miranda warning during CUSTODIAL INTERROG**
  - (1) Have custody of person/arrested person
  - (2) AND are interrogating person
- **Police NOT required to give Miranda warning**
  - (1) Use of undercover agents
  - (2) Statement elicited by question out of concern for public safety
  - (3) Booking questions
- **Asserting rights to Remain Silent & to Attorney** > Miranda says you can assert them any manner, but current law says you must unambiguously assert them, and that all ambiguous invocations will be treated as irrelevant.

\*\**Berghuis v. Thomas* > CURRENT RULE:

After po reads suspect Miranda rights, po may interrogate a suspect who has neither invoked nor waived their rights,

AND a suspect who understands their Miranda rights and has not invoked them WAIVES those rights by making a voluntary statement.

- **Waiver of rights** > express, implied via conduct consistent w desire to waive rights
- **Assertion/Invocation and Subsequent Waiver** > post invocation of waiver is valid if the PO scrupulously honored the suspect's right to remain silent.

*Mosley's scrupulously honored right to remain silent test (1-4 must be met)*

- (1) Initial interrogation immediately stopped after invocation
- (2) Some passage of time
- (3) Po gave new Miranda warnings
- (4) Suspect waived rights
- (5) New questions about different crime
- (6) New questions by different officers
- (7) Different location

*Edward's valid post-invocation of waiver of right to counsel test* > if suspect unambiguously invokes right to counsel, police interrogation cannot continue unless:

- (1) Counsel is made available and is present **OR**
- (2) Suspect initiates convo by making statement that shows desire for discussion about investigation, and waives rights

**(c) Right to counsel - 6th and 14th Amendment** > Once adversary proceedings have begun (IJL), the suspect has a right to counsel and the gov cannot deliberately elicit information from the suspect outside the presence of the suspect's counsel.

- **Violation of the 6th Amend right to counsel occurs when there is**
  - (1) Initiation of Judicial Proceedings (IJP), and
  - (2) Deliberate elicitation by the gov (only comes up w jail informants)