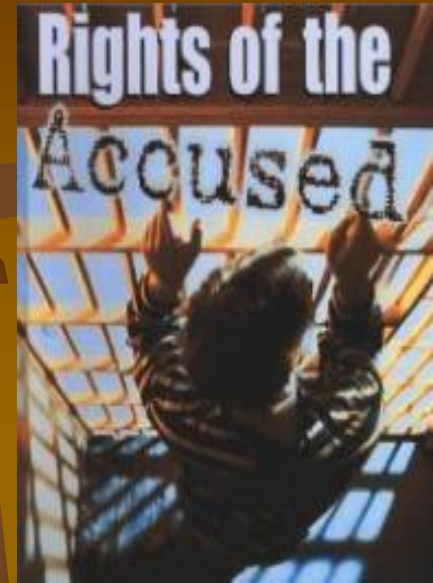


# Rights of the Accused

## A. Justification

1. Fear of unchecked governmental power / innocent until proven guilty
2. Suspects are citizens and thus have rights
3. Better to free a guilty person than to jail an innocent person - controversial

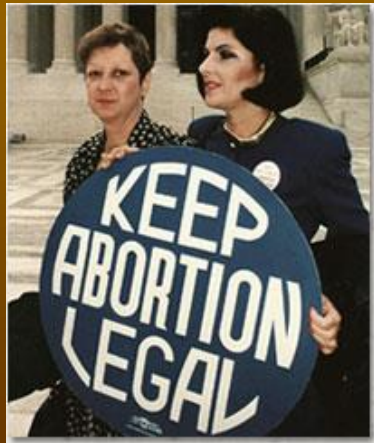


# Due Process/Right to Privacy

A. Due Process: (in 5th and 14th Amendments)



B. Right to Privacy: in 1st, 4th, 5th, 9th, and 14th amendments)



# D. WRIT OF HABEAS CORPUS



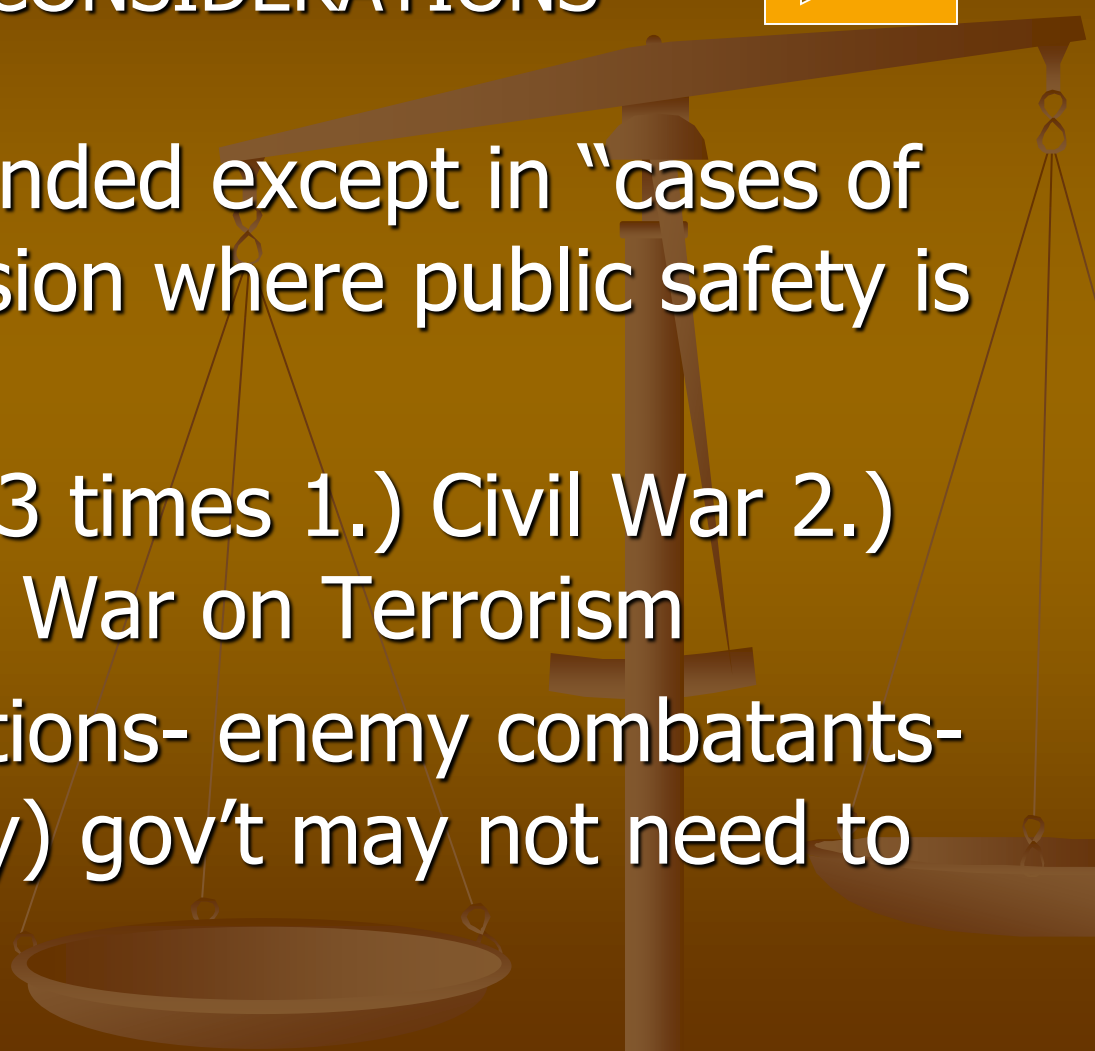
- WHAT? Prisoner must be brought before the court and cause of detainment must be justified
- WHERE? Article 1 sec. 9
- "The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it."

### 3.) WHY? Prevents unjust arrests and imprisonments



#### ■ LIMITATIONS / CONSIDERATIONS

- Cannot be suspended except in “cases of rebellion or invasion where public safety is at stake”
- Only suspended 3 times 1.) Civil War 2.) Hawaii WWII 3.) War on Terrorism
- Indefinite Detentions- enemy combatants- (see Trial by Jury) gov’t may not need to justify detention





# BILLS OF ATTAINDER

WHAT? A law that also inflicts punishment without a court trial

- WHERE? Article 1, sec. 9 & 10
- WHY? Protects individual freedom & part of separation of powers
- LIMITATIONS?
  - None



# EX POST FACTO LAWS

■ WHAT? A law that makes it a crime to do something before that law was even established

- WHERE? Article 1, sec. 9 & 10
- WHY? To safeguard from undue abuses
- LIMITATIONS/CONSIDERATIONS
  - None – however retroactive laws are legal
  - 3 Strikes-and-You're-Out Laws
  - *Adam Walsh Child Protection and Safety Act of 2006.* Mandates that Tier 3 offenders update their whereabouts every three months. Failure to register and update information is made a felony under the law. It also creates a national sex offender registry and instructs each state and territory to apply identical criteria for posting offender data on the Internet. It also gives the U.S. Attorney General the authority to apply the law retroactively

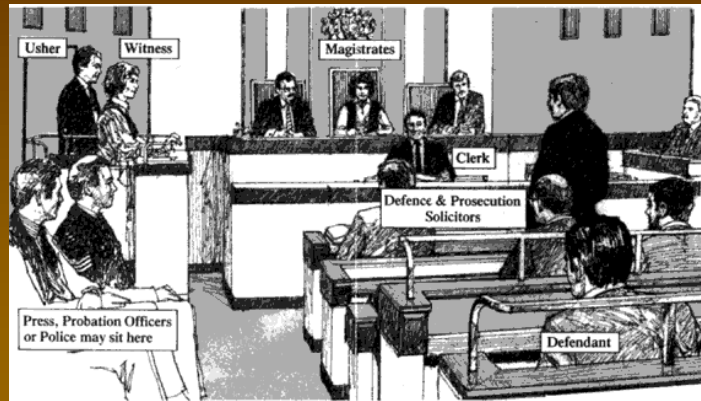


# DOUBLE JEOPARDY



- WHAT? Cannot be tried for the same crime twice
- WHERE? 5th amendment
- WHY? Protects innocent from undue number of trials
- LIMITATIONS/CONSIDERATIONS:
  - appeals are not considered double jeopardy

# SPEEDY & PUBLIC TRIAL



- WHAT? A public trial must be held within 70 days after the indictment
- WHERE? 6th amendment mainly; 14th and speedy Trial Act of 1974
- WHY? Ensure that government will try a person accused of crime in reasonable amount of time
- Limitations/Considerations:
  - ***Zedner v. United States*** (2006)





# TRIAL BY JURY

- WHAT? Accused guaranteed a trial by an impartial jury
  - WHERE? 6th Amendment
  - WHY? Guarantees a fair trial
  - Limitations/Considerations
    - Defendant may waive right of trial by jury if judge approves
      - Bench trial – only judge decides
    - Enemy Combatants- indefinite detentions (no access to lawyer; gov't doesn't have to notify anybody that the person is detained)



# Right To Counsel

What? People have a right to a lawyer

Where? 6<sup>th</sup> Amendment

Why? To help guarantee a fair trial



Limitations? If person can afford one then gov't doesn't  
have to provide

Considerations?

Are public defenders adequate?

*Gideon v. Wainwright*

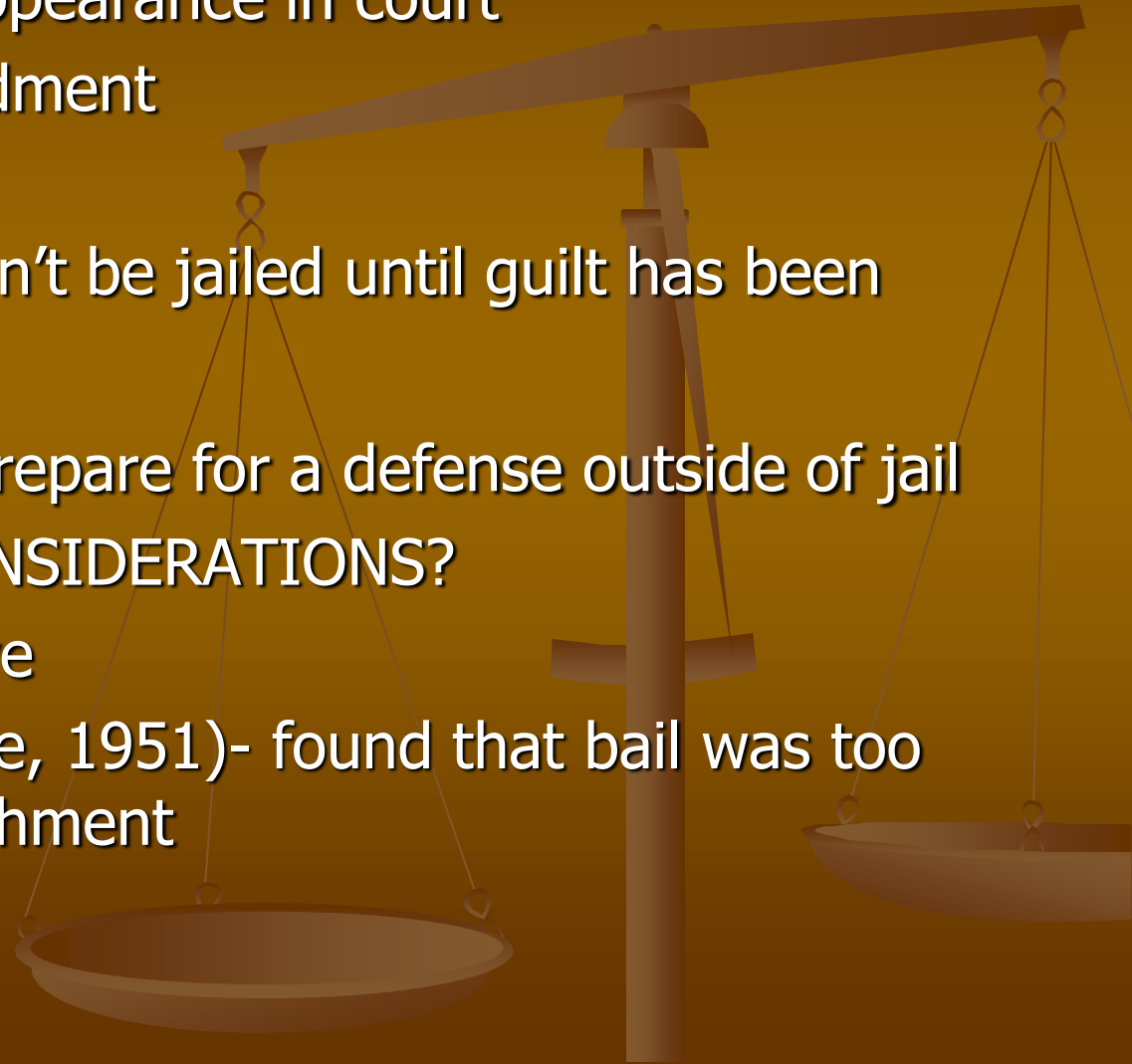
I can't defend myself. I need appointed counsel.

And yet you've gotten your case all the way to the Supreme Court. How ironic.



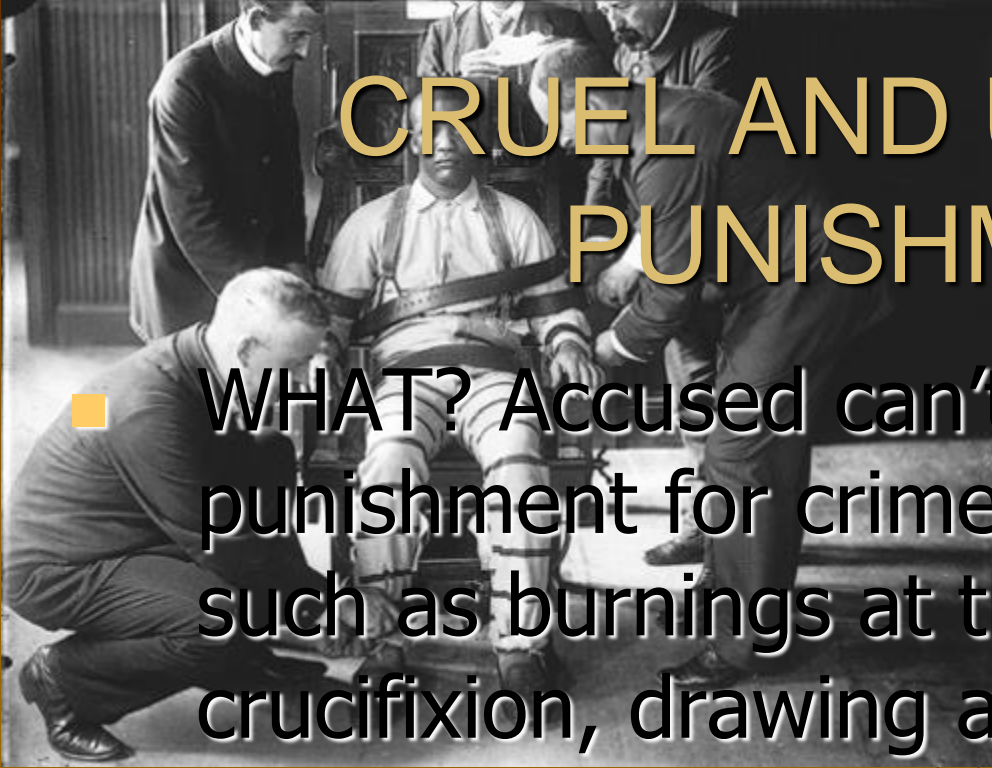
# EXCESSIVE BAIL AND FINES

- WHAT? Accused shouldn't be fined more than what is needed to insure appearance in court
- WHERE? 8th amendment
- WHY?
  - a.) A person shouldn't be jailed until guilt has been established
  - b.) Better able to prepare for a defense outside of jail
- LIMITATIONS / CONSIDERATIONS?
  - Very subjective
  - (Stack v. Boyle, 1951)- found that bail was too high for punishment



# CRUEL AND UNUSUAL PUNISHMENT

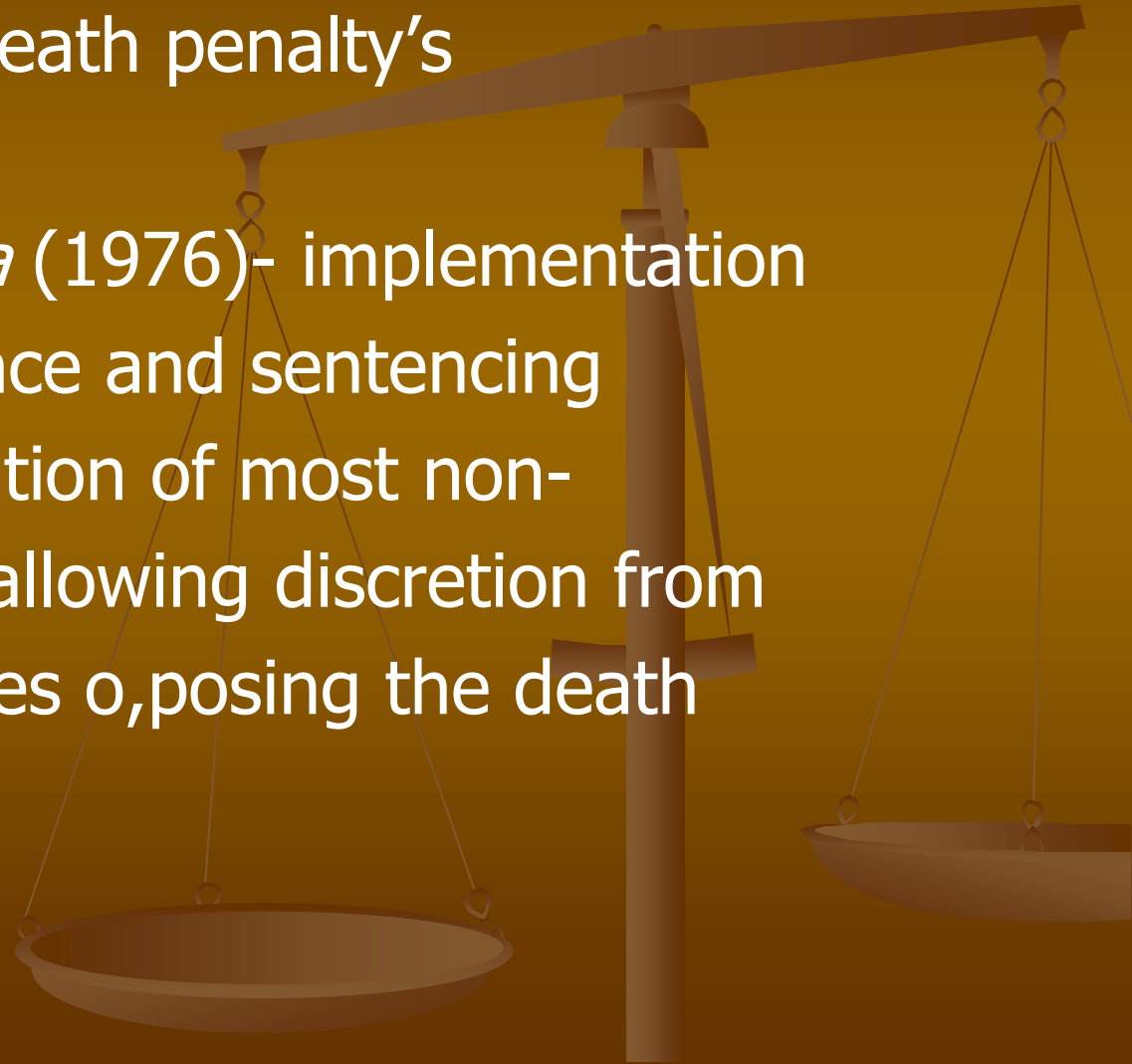
- WHAT? Accused can't receive unusual punishment for crimes (barbaric torture such as burnings at the stake, crucifixion, drawing and quartering, etc.)
  - WHERE? 8th amendment
  - WHY? Prevent unethical methods of gaining a confessions or serving punishment
- LIMITATIONS/ CONSIDERATIONS



## ■ Death Penalty

*\*Furman v. Georgia (1972)*- questioned consistency in death penalty's application

*\*Greg v. Georgia (1976)*- implementation of guilt-innocence and sentencing phases, elimination of most non-murder cases, allowing discretion from juries and judges opposing the death penalty





- No death penalty for mentally retarded (*Atkins v. Virginia* '02)
- No death penalty for those mentally insane or become insane while waiting on death row
- No death penalty for minors (*Roper v. Simmons* '05)
- Lethal injection?



# SELF-INCRIMINATION



- WHAT? Cannot be forced to incriminate oneself or his or her spouse
- WHERE? 5th & 4th Amendment
- WHY? Burden of proof must be with the prosecution; innocent until proven guilty; criminal law enforcement would be more reliable if it were based on independently secured evidence rather than confessions under coercive interrogation conditions without a counsel
- LIMITATIONS
  - A personal right; can be forced to rat on somebody else
  - Doesn't protect vs. fingerprinting, being photographed, or taking blood test

# SELF-INCRIMINATION

## ■ EXTENSIONS

- Miranda Rights – police must inform accused of their rights to a lawyer and 5th amendment rights of self incrimination- (Miranda v. Arizona 1966);
  - Mentally retarded man accused of rape was not notified of his rights before questioning – released

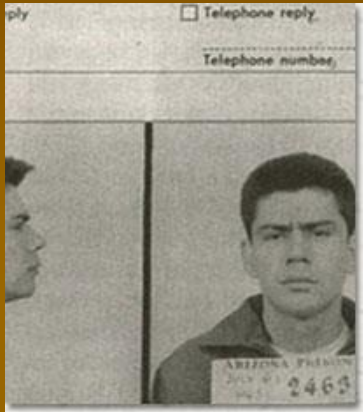
Considerations:

- Officers after 14 days of original Miranda warning, can question suspect if suspect agrees yet didn't agree during the 1<sup>st</sup> warning (*Maryland v. Shatzer* 2010)

- Modified- Suspect has to ask to remain silent for the Miranda protections to work (*Berghuis v. Thompkins* 2010)

“you have the right to talk to a lawyer before answering any of our questions” and that “[y]ou have the right to use any of these rights at any time you want during this interview.”

- Police can “as lib” with Miranda warning and it doesn't have to



## Constitutional limits of suspicion:

Can the police arrest everybody in a car if drugs are found in it?

- speeding car
- driver didn't have seatbelt
- driver reaches into glove compartment to get registration and police see large roll of cash
- Officers search and find drugs stashed behind seat by armrest
- nobody fesses up so all are arrested
- passenger seat person confesses later in the precinct- later sentenced 10 years
  - argues police didn't have the right to arrest him
  - this his arrest had to be thrown out
  - cause his confession must be thrown out
  - therefore his conviction must be thrown out

Maryland court of appeals agreed- police had no business arresting him in the 1<sup>st</sup> place...he was not driving the car and speeding..and he wasn't not sitting next to the drugs

## CHECKPOINTS:

Man arrested for DUI at roadblock

argued that police had too much power stopping cars

-hit and run was the purpose (stop and ask if anybody has seen anything and handed out fliers)

# 4<sup>th</sup> AMENDMENT (PART I)

- 1.) WHAT? Guarantee that police have no general right to search for evidence or obtain either evidence or persons w/ out warrant –must have probable cause: extended to areas where person has reasonable expectation of privacy; person not area is important; PEOPLE HAVE A REASONABLE EXPECTATION OF PRIVACY
- 2.) WHERE? 4<sup>th</sup> amendment
- 3.) WHY? Prevent blanket search warrants with which British customs officials invaded private homes for smuggled goods

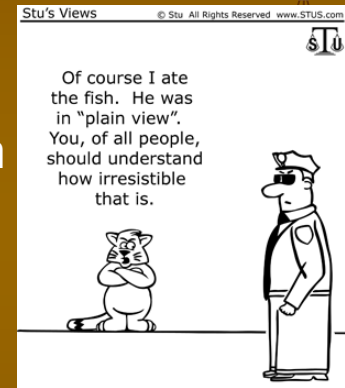




# 4th Amend. Contin..

## 4.) LIMITATIONS / CONSIDERATIONS

- a. Evidence in plain view (*Horton v. California* 1990)
- b. Warrantless search of garbage bags – not considered private
- c. Can arrest a person without a warrant (probable cause vs. reasonable suspicion)
- d. Automobiles – no warrant needed since it's considered a movable crime scene (*Carrol v. US*)
- e. Pre- 1991 police need warrant to search areas of car
- f. If arrested driver, officer cannot search car incident to arrest if the suspect cannot reach compartment or destroy evidence (*Arizona v. Gant* 2009)
- g. police cannot use "heat sensors"





c.) *Veronica v. Acton*: Drug tests- okay without warrant- considered reasonable response to drug problem. Case involved being kicked off football team for failing to sign drug testing permission



d.) Other activities? *Board of Education v Earls* students CAN be given drug tests if they participate in any extra curricular activity including chess club

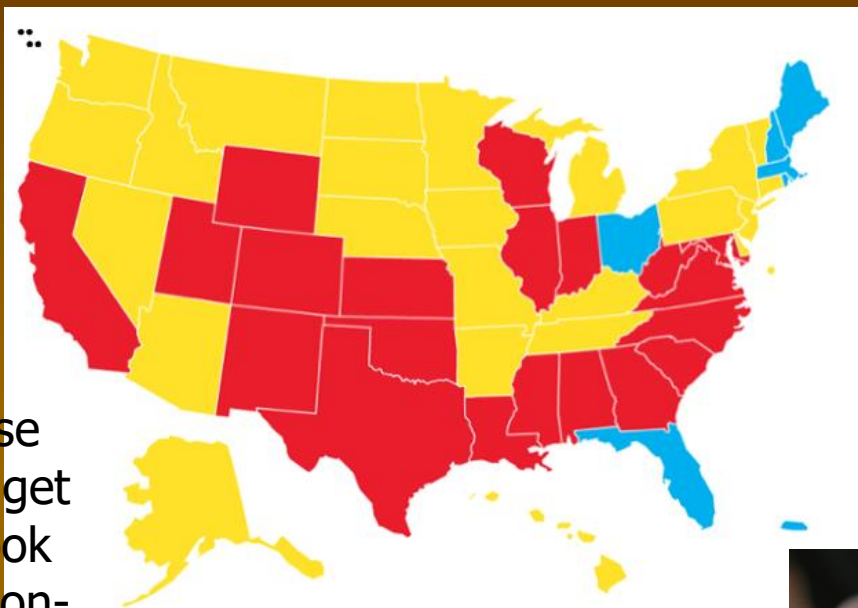
e.) Internet?

f.) NSA

# What About Phones?

**Red states** are those where your phone can be searched when you're arrested

**Blue states** are those where police need to get a warrant to take a look inside those information-rich devices



School Searches:

*J.W. v. Desoto County School District (2010)*- Schools can search phones without a warrant

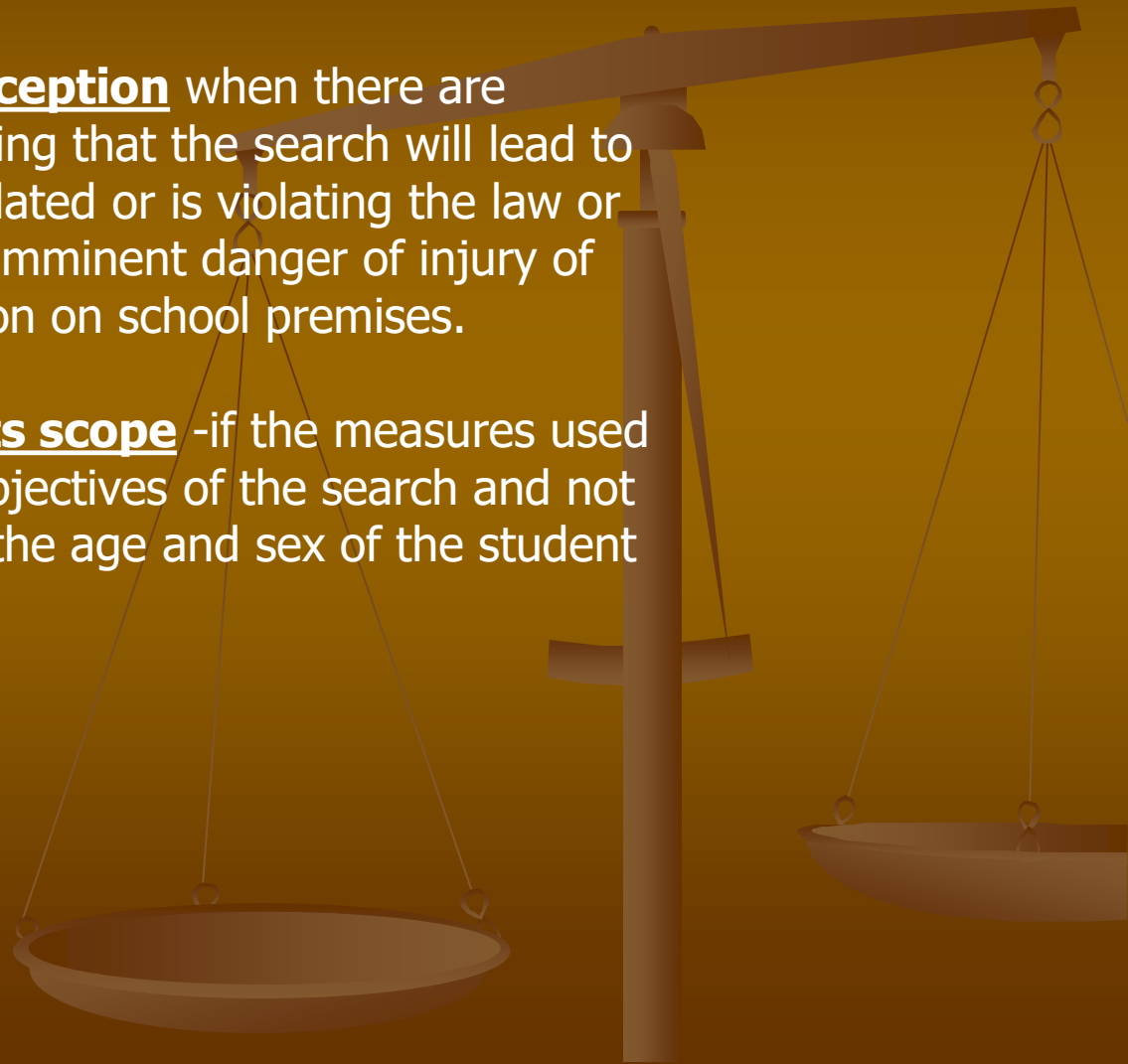
*G.C. v Owensboro School District Cirq. Ct. (March 2013)*- School couldn't search phone

*Klump v. Nazareth Area School District*- teacher couldn't go

*Klump v. Nazareth Area School District (2006)*-  
schools searches of phones can only happen if:

**A search is justified in its inception** when there are reasonable grounds for suspecting that the search will lead to evidence that a student has violated or is violating the law or the rules of the school, or is in imminent danger of injury of him- or herself or another person on school premises.

**A search is permissible in its scope** -if the measures used are 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





c.) *Veronica v. Acton*: Drug tests- okay without warrant- considered reasonable response to drug problem. Case involved being kicked off football team for failing to sign drug testing permission



d.) Other activities? *Board of Education v Earls* students CAN be given drug tests if they participate in any extra curricular activity including chess club

e.) Internet?

f.) NSA



# EXCLUSIONARY RULE (4<sup>th</sup> AMEND. PART II)

1. WHAT? Illegally seized evidence can not be used in court; warrants must be used in searches
2. WHERE? 4<sup>th</sup> Amend. – No unreasonable search and seizures
3. WHY? Forces police to gather evidence properly
4. LIMITATIONS / CONSIDERATIONS
  - a. “Inevitable discovery” evidence obtained without a search warrant can be used if it would have been inevitably or ultimately found by lawful means
  - b. “Good faith exception” “Honest mistakes” – police searched wrong apartment but found drugs anyway (Maryland v. Garison, 1987)
  - c Drug tests- okay without warrant- considered reasonable response to drug problem



# O. National Security and Privacy

## USA PATRIOT ACT-



Roving wiretaps

Sneak and Peek searches

Searches of:

library records

credit card records

computer

Controversy



# PRISM



**What?** A secret NSA mass data mining program

- Collect & hold data that may contain information on U.S. citizens for up to five yrs
- Retain and use information "inadvertently obtained," if it is deemed to contain useable information related to criminal activity
- Access the content of communications gathered from U.S. based machines or phone numbers in order to establish if targets are located in the US, for the purposes of ceasing further surveillance (META DATA)



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Hotmail, Google, skype, paltalk.com, YouTube, AOL, mail, facebook, msn, Yahoo!

**Introduction**  
U.S. as World's Telecommunications Backbone

**PRISM**

- Much of the world's communications flow through the U.S.
- A target's phone call, e-mail or chat will take the **cheapest** path, **not the physically most direct** path – you can't always predict the path.
- Your target's communications could easily be flowing into and through the U.S.

International Internet Regional Bandwidth Capacity in 2011  
Source: TeleGeography Research

Region	Bandwidth Capacity (Gbps)
U.S. & Canada	2,248
Europe	4,972
Africa	342
Asia & Pacific	487
Latin America & Caribbean	2,271
U.S. & Canada to Europe	4,972
U.S. & Canada to Africa	342
U.S. & Canada to Asia & Pacific	487
U.S. & Canada to Latin America & Caribbean	2,271
Europe to Africa	342
Europe to Asia & Pacific	487
Europe to Latin America & Caribbean	2,271
Africa to Asia & Pacific	487
Africa to Latin America & Caribbean	2,271
Asia & Pacific to Latin America & Caribbean	2,271

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Where? NSA conducts  
FISA Court Authorizes (via Foreign Intelligence Authorization Act and  
Protect America Act\*)  
Intelligence can come from any computer

Why?  
to collect information  
on foreigners outside the  
United States as a defense  
against national security  
threats

51%

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Hotmail® Google® skype® paltalk.com YouTube  
Gmail® facebook® msn® YAHOO!® AOL® mail®

 (TS//SI//NF) PRISM Collection Details 

Current Providers

What Will You Receive in Collection  
(Surveillance and Stored Comms)?  
It varies by provider. In general:

- E-mail
- Chat – video, voice
- Videos
- Photos
- Stored data
- VoIP
- File transfers
- Video Conferencing
- Notifications of target activity – logins, etc.
- Online Social Networking details
- **Special Requests**

Complete list and details on PRISM web page:  
Go PRISMFAA

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\*which immunizes private companies from legal action when they cooperate with U.S. government agencies in intelligence collection.

# Boundless Informant



3 billion pieces of intelligence from US computer networks over a 30-day period



Designation	Legal Authority	Key Targets	Type of Information collected	Associated Databases	Associated Software
US-984XN	Section 702 of the FISA Amendments Act (FAA)	<ul style="list-style-type: none"> <li>•Known Targets include<sup>[43]</sup></li> <li>•Venezuela               <ul style="list-style-type: none"> <li>Military procurement</li> <li>Oil</li> </ul> </li> <li>•Mexico               <ul style="list-style-type: none"> <li>Narcotics</li> <li>Energy</li> <li>Internal Security</li> <li>Political Affairs</li> </ul> </li> <li>•Columbia trafficking               <ul style="list-style-type: none"> <li><u>FARC</u></li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>•The exact type of data varies by provider:Email</li> <li>•Chat - video, voice</li> <li>•Videos</li> <li>•Stored data</li> <li>•<u>VoIP</u></li> <li>•Filer transfers</li> <li>•Video Conferencing</li> <li>•Notifications of target activity, logins, etc.</li> <li>•Online Social Networking details</li> <li>•<b>Special Requests</b></li> </ul>	<ul style="list-style-type: none"> <li>•Known:<u>TRAFFICT</u></li> <li><u>HIEF</u></li> <li>•<u>MARINA</u></li> <li>•<u>MAINWAY</u></li> <li>•<u>FALLOUT</u></li> <li>•<u>PINWALE</u></li> <li>•<u>CONVEYANCE</u></li> <li>•<u>NUCLEON</u></li> </ul>	Known: <u>Unified Targeting Tool</u>

# Grand Jury

- What?
- Where?
- Why?
- Considerations:



# Foreign Intelligence Surveillance Court



## What?

Congress in 1978 established the Foreign Intelligence Surveillance Court as a special court and designate seven federal district court judges to review applications for warrants related to national security investigations.

Judges serve for staggered, non-renewable terms of no more than seven years, and until 2001 were drawn from different judicial circuits.

## Why?

The provisions for the court were part of the Foreign Intelligence Surveillance Act which required the government, before it commenced certain kinds of intelligence gathering operations within the United States, to obtain a judicial warrant similar to that required in criminal investigations.

### WHO SERVES ON THE COURT?

Eleven U.S. district court judges from at least seven judicial circuits, all selected by the Supreme Court chief justice, serve staggered terms for up to seven years. No fewer than three judges must live within 20 miles of the District to ensure the court can be called upon on short notice, at any time of the day.



The presiding judge assigns a surveillance request to a judge.

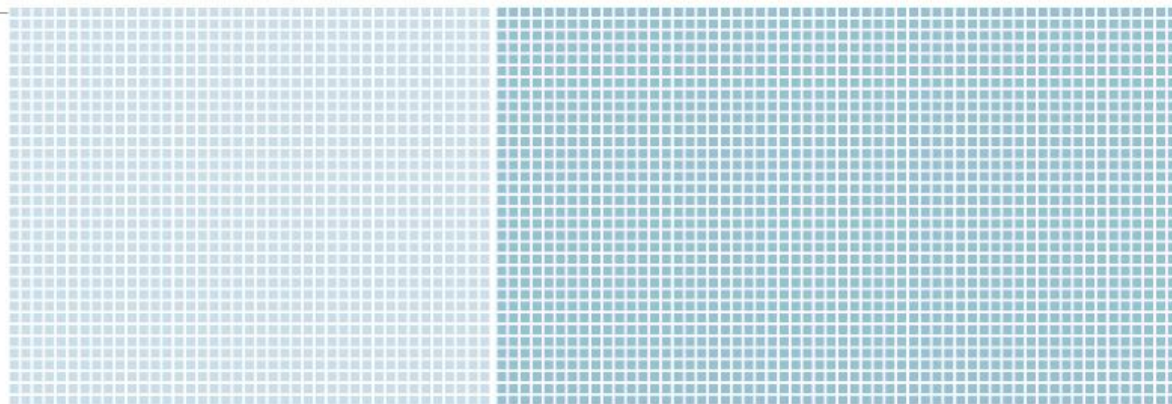


If the request is denied, the government can appeal before a court of review. But more often than not — **99.97 percent of the time** — a surveillance request is granted.

### AUTHORIZING REQUESTS

Since 1979, nearly **34,000 warrant applications** requesting the authority to conduct domestic electronic surveillance, physical searches or a combination of both that target “foreign powers” or “the agent of a foreign power,” such as U.S. citizens who may be involved in the commission of a crime, have been submitted to the court by federal intelligence agencies.

One square equals 10 warrant applications



Only **11 requests** were denied by the court.

Note: One of the 11 rejected requests happened before 2001.

More than 20,000 requests since Sept. 11, 2001

### APPLICATIONS PRESENTED TO COURT

Though the details of the applications are classified, the attorney general is required by law to report to Congress the total number of granted, modified or denied applications. The attorney general briefs select intelligence committees in the House and Senate about electronic surveillance on a semiannual basis.

**Total number of electronic surveillance requests submitted to the court since 1979, by administration and year**

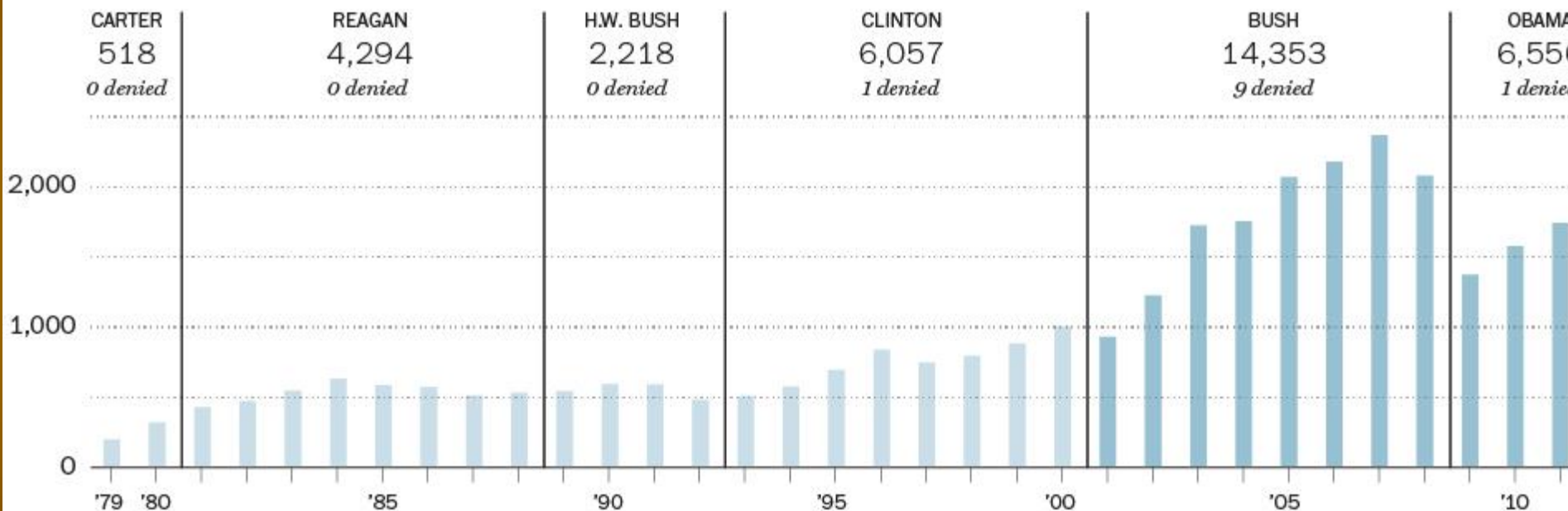
CARTER	REAGAN	H.W. BUSH	CLINTON	BUSH	OBAMA
518	4,294	2,218	6,057	14,353	6,556
0 denied	0 denied	0 denied	1 denied	9 denied	1 denied

More than 20,000 requests since Sept. 11, 2001

### APPLICATIONS PRESENTED TO COURT

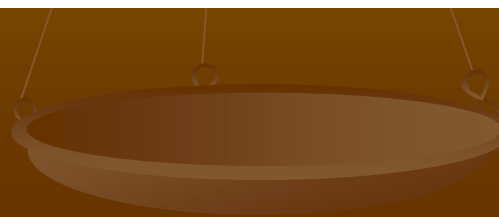
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### Total number of electronic surveillance requests submitted to the court since 1979, by administration and year



During the first 23 years of the Foreign Intelligence Surveillance Act, about 14,000 requests — or more than 600 per year on average — were submitted to the court.

Since Sept. 11, 2001, the average number of requests has nearly tripled to about 1,700 per year.





*Commonwealth of Pennsylvania v. Cass 1998*

