



- Lee Burgess: Welcome back to the Law School Toolbox podcast. Today, we're doing another in our "Listen and Learn" series – this one on the Fourth Amendment – the exclusionary rule and Miranda warnings. Your Law School Toolbox hosts are Alison Monahan and Lee Burgess, that's me. We're here to demystify the law school and early legal career experience, so you'll be the best law student and lawyer you can be. We're the co-creators of the [Law School Toolbox](#), the [Bar Exam Toolbox](#), and the career-related website [CareerDicta](#). Alison also runs [The Girl's Guide to Law School](#). If you enjoy the show, please leave a review or rating on your favorite listening app. And if you have any questions, don't hesitate to reach out to us. You can reach us via the [contact form](#) on LawSchoolToolBox.com, and we'd love to hear from you. And with that, let's get started.
- Lee Burgess: Hello, and welcome back to the "Listen and Learn" series from the Law School Toolbox podcast! Today's topic will be focusing on the exclusionary rule that comes up in Criminal Law and Procedure.
- Lee Burgess: Let's start by going over the Fourth, Fifth, and Sixth Amendments. These are the important amendments that usually show up relating to Criminal Law and Procedure questions and hypos. The Fourth, Fifth, and Sixth Amendments protect the constitutional rights of a person accused of a criminal act.
- Lee Burgess: The Fourth Amendment grants a person protection from unlawful government searches and seizures. Feel free to check out our ["Listen and Learn" series on Fourth Amendment searches](#). We'll link to it in the show notes, for more information on the Fourth Amendment and searches. To determine if the Fourth Amendment was violated, you should ask the following three questions:
1. Did a government agent conduct the search?
 2. Does the individual have standing to challenge the search?
 3. Did the actions of the government agent constitute a search?
- Lee Burgess: The Fifth Amendment protects a person's right to not incriminate oneself and also allows the right to counsel during a custodial interrogation. This one is most famously known as the Miranda rights – which applies during custodial interrogations.
- Lee Burgess: The Sixth Amendment grants an accused person the right to effective assistance of counsel in all criminal proceedings, except misdemeanors that do not carry a risk of jail time.
- Lee Burgess: So what happens if the police come and gather evidence after an unlawful search, or find evidence with a faulty search warrant, or find evidence through a statement made that was not properly mirandized?



Lee Burgess: This is when the exclusionary rule comes in as a measure to balance and ensure that the important constitutional rights of a person accused of a criminal act are protected.

Lee Burgess: Here's our rule: The exclusionary rule deems that evidence obtained in violation of a defendant's Fourth, Fifth, or Sixth Amendment rights is inadmissible at trial. Also, all derivative evidence that comes from any evidence obtained in violation of an accused's Fourth, Fifth, and Sixth Amendment rights is also inadmissible under the Fruit of the Poisonous Tree Doctrine.

Lee Burgess: However, there are some instances when the exclusionary rules does not apply:

1. The police had an independent source for the secondary evidence;
2. Discovery of the evidence was inevitable regardless of the illegality;
3. The Attenuation Doctrine, meaning when defendant's free will is restored through the passage of time or intervening events; or
4. The police relied in good faith on a defective warrant.

Lee Burgess: So let's say the police are patrolling an area and they are looking for this new popular drug called The Incinerator. The police have been tipped off that usually people who sell the drugs indicate they have this drug by using a type of light signal from their home. The police see a house with a broken porch light. They think the broken light is suspicious and think this could be one of those light signals from the tip they received. The police decide they are going to go into this house and barge in with no notice or warrant. When the police barge in, there is no one in the house but they find loads of The Incinerator drug. The police quickly bag all the drugs and take it to their precinct. They then take the homeowner in for questioning and she is charged with a felony for possession of drugs and intent to sell drugs.

Lee Burgess: In this instance, let's first see if there was a violation of the Fourth Amendment against unreasonable searches. The police, who are government agents, entered a private closed dwelling, the accused home, with no warrant, consent, or exigent circumstances. This would constitute an unreasonable search in violation of the Fourth Amendment. The police entered without a warrant or any lawful exception. Thus, the drugs found in the home could be suppressed under the exclusionary rule for a violation of the Fourth Amendment.

Lee Burgess: However, we should go through the exceptions under the exclusionary rule to determine if there is an exception to the exclusionary rule that would allow the evidence of the drugs to still be admissible in court.

Lee Burgess: The police could claim that there was an independent source for the evidence and that the tip they received about the light signals would have led them to search this broken porch light home. However, this exception likely will not apply because a broken porch light is not akin to a light signal and seems too far



off to demonstrate there was an independent source that would have led them to this evidence. Furthermore, the tip did not specifically state that address or location as to create a belief that the police would have come to this home to conduct a search for the drug.

Lee Burgess: It also is unlikely that the police can claim that the discovery of the drugs at this specific home would have been inevitable, and there certainly were not factors to indicate that a search of that specific home would have inevitably taken place. The Attenuation Doctrine is not applicable in this matter. The police did not have any warrant at all in this scenario, so the good faith exception of relying on a defective warrant will also not create an exception to the exclusionary rule in this scenario.

Lee Burgess: Thus, none of the exceptions to the exclusionary rule apply and the drugs the police found in violation of the Fourth Amendment should be suppressed under the exclusionary rule. Keep in mind that the exclusionary rule applies to violations in relation to the Fifth and Sixth Amendments as well. There are specific exceptions to the exclusionary rule if there are Fifth Amendment or Miranda violations.

Lee Burgess: The Miranda warnings attach when someone is in custodial interrogation. "Custodial" means the person reasonably believes they are not free to leave. "Interrogation" means the police know or should have known that they were likely to elicit an incriminating response. You can check out our ["Listen and Learn" episode](#) for more information on the Fifth Amendment if you'd like.

Lee Burgess: However, you must remember, even if there is a failure to properly mirandize a suspect, there are exceptions to what may be excluded in certain scenarios. Let's look at some of those:

Lee Burgess:

1. Courts are not required to suppress physical evidence because of defendant's statements even after a failure of proper Miranda warnings if defendant's statement was made voluntarily.
2. If there are subsequent statements made after Miranda warnings, those subsequent statements are admissible unless a previous statement was obtained through the use of inherently coercive police tactics that violate due process.
3. Statements in violation of Miranda may still be used to impeach the defendant on cross-examination.

Lee Burgess: So let's say the accused is in a police car riding to the station and the police have failed to mirandize the accused person. If the accused person in the car begins to just talk about where she threw away the weapon and the police go to the place and find the weapon, even though the police failed to mirandize the accused, since her statement was voluntary, the weapon the police recovered



would still be admissible under the first exception, as her statement was given voluntarily.

Lee Burgess: Now let's go over a hypothetical adapted from an essay on the [February 2018 California bar exam](#):

Lee Burgess: "Claire, a four-year-old girl, went missing. Ike, who regularly provided reliable information to Officer Ava, told her that he had recently overheard Bob planning to kidnap a child to raise as his own daughter. Officer Fred hurried to the courthouse to apply for a search warrant for Bob's house. Officer Ava quickly went to the address Ike gave them while Officer Fred went to get the warrant.

Lee Burgess: When Officer Ava arrived at the house, they knocked on the door and a woman named Elise opened the door. Officer Ava said they were looking for a child named Claire and Elise quickly opened the door for Officer Ava.

Lee Burgess: Officer Ava searched the home thoroughly. Officer Ava entered a bedroom with a big label 'DONALD' on the door, and went into the bathroom and inside a small medicine cabinet. Officer Ava found an envelope with cocaine in ziplock bags inside that envelope. At that time, Donald came home. Donald rushed in and was shocked that an officer was in the house. At the same time Donald arrived, Officer Fred arrived at the home and brought the warrant authorizing a search of the entire home for Claire.

Lee Burgess: Officer Ava asked Donald where Claire was, and Donald said he had no idea who Claire is and told the officer to get out of his home. Officer Ava and Officer Fred then drew their guns at Donald and four other cop cars came onto the scene and drew their guns at Donald. Officer Ava then said, 'Well, do you want to tell me about these drugs then?' Donald quickly raised his hands and said, 'I was just holding on to the drugs for a friend! They aren't mine!' Officer Ava arrested Donald. Then Officer Ava read Donald his Miranda rights and asked him the same question about the drugs and Donald said, 'I already told you, they aren't mine, they are a friend's.'

Lee Burgess: Not long afterward, Claire turned up elsewhere unharmed. Donald was charged with possession of cocaine. Donald filed a motion, under the Fourth and Fifth Amendment to the United States Constitution, to suppress the cocaine and his statement. How should the court rule on the motion to suppress regarding the cocaine and the two statements?"

Lee Burgess: In order to bring a suppression claim under the Fourth Amendment, let's look at the three questions we quickly reviewed earlier:

1. Did a government agent conduct the search?
2. Does the individual have standing to challenge the search?



3. Did the actions of the government agent constitute a search?

Lee Burgess: Here, a government agent, a police officer, conducted the search, so that element is fulfilled. Now let's see if Donald has standing. Donald has standing to challenge the search because he has a reasonable expectation of privacy in his own home and room. The police officer's actions of going through the entire home, his bedroom and closet constitute a search.

Lee Burgess: As there was a search, the Supreme Court has upheld a warrant requirement under the Fourth Amendment. The warrant must describe in reasonable specificity the places and persons to be searched, and the types of things to be searched for. Therefore, barring certain exceptions to be discussed, an officer must have a warrant to search someone's home.

Lee Burgess: There are six exceptions to the warrant requirement which we will just list but not get too much into in this podcast. The exceptions to the warrant requirement are: one, search incident to arrest; two, consent; three, hot pursuit and exigent circumstances; four, automobiles; five, plain view; six, stop and frisk.

Lee Burgess: Here, the prosecution will argue that Officer Ava had both consent to search Donald's home and was compelled to search his house given the exigency of the situation. The prosecution can argue that Officer Ava had consent to search. An otherwise unlawful search is permitted if the searched party voluntarily consented to the search. The person need not have known that they were free to decline consent; however, officers cannot utilize coercive methods in obtaining such consent, or else it would not be deemed voluntary.

Lee Burgess: Here, Officer Ava asked Elise, who opened the door, for permission to search the house. A question would be if Elise actually had authority to consent, but it is important to remember a third party may consent to a search. However, if two or more people share that authority to consent, although anyone can consent, the police cannot search private areas that only the non-consenting person has authority to give, such as the other person's private bedroom. So although it is likely that consent would allow officers to come and search common areas, Officer's Ava's search of Donald's room likely exceeded the scope of Elise's third party consent.

Lee Burgess: The prosecution may also argue that there were exigent circumstances where the officer may be worried about evidence being destroyed. They could argue they were worried Bob would take the child elsewhere or be moved. However, Donald can argue that this alone does not constitute an exigent circumstance that would prevent the need for a warrant. Donald could argue the officers could have waited for a warrant, and the officers could have staked out in the neighborhood and in front of the residence to prevent Bob from fleeing or



watch for Bob and Claire, or could have even talked to Elise more about Bob or potentially seeing a child in the home.

Lee Burgess: Here is when the exclusionary rule comes into play. Because we established there was a search and no exceptions to the warrant requirement, given that Officer Ava came into the home prior to the execution of the warrant, there were no exigent circumstances and Officer Ava's search of Donald's room exceeded the consent given by Elise. Donald's Fourth Amendment rights were violated. All evidence obtained from an illegal search and seizure of Donald's room should also be inadmissible as fruit of an illegal search and seizure.

Lee Burgess: Therefore, the evidence of the cocaine should be excluded. However, as stated above, there are some exceptions to the exclusionary rule. The relevant exceptions require the prosecution to prove that the police had an independent source for the secondary evidence, or that the discovery of the evidence was inevitable regardless of the illegality or the Attenuation Doctrine, meaning intervening events broke the causal chain between the illegal conduct and the evidence obtained.

Lee Burgess: The prosecution cannot show that the evidence would have been inevitably discovered. Although Officer Ava conducted an illegal search, the prosecution may argue the drugs would have been found, because eventually Officer Fred obtained a warrant to search the home for Claire anyways. However, the warrant only authorized search of the home for Claire, and since Claire could not be found in the medicine cabinet or inside an envelope, Ava and Fred would not have been able to search those areas. Because the medicine cabinet exceeded the scope of the search warrant, the cocaine would not have been inevitably discovered.

Lee Burgess: Additionally, because Donald did not consent to the search, there were no intervening acts that broke the chain of illegality. Furthermore, it is unlikely that the cocaine would have been discovered from an independent source because the drugs were in Donald's room and possession, and no other facts indicate the officers would have known about the drugs from any other source. Therefore, the evidence of the cocaine should be suppressed.

Lee Burgess: In regards to Donald's two statements, we must examine the Fifth Amendment that protects one's right to not incriminate oneself. As we went over above, the Miranda warnings attach when someone is subject to a custodial interrogation. "Custodial" means that the person reasonably believes they are not free to leave, and "interrogation" is when police know or should have known that they were likely to elicit an incriminating response.

Lee Burgess: In this situation, it is clear that Donald was in custody when multiple officers pointed their guns at him. Also, Officer Ava's question about the drugs is very



clearly a question that would elicit an incriminating response. Thus, Donald's Fifth Amendment rights were violated when the officers failed to mirandize him and Officer Ava interrogated him with the question about the drugs. Thus, the first statement should be suppressed under the exclusionary rule.

Lee Burgess: However, in regards to the second statement, the prosecution may state that later Donald was mirandized and made the second statement, so at least the second statement should not be suppressed. However, as we discussed above, although there is an exception to a Miranda violation if someone is subsequently mirandized and gives a statement, this exception would not apply because Donald will argue that the first statement was elicited through the use of inherently coercive police tactics that violated his due process. Donald can argue that being surrounded in his home by multiple officers pointing guns at him ended up with Donald giving a coerced statement, and thus subsequent statements made even after Miranda cannot be admissible, given the coercive nature of how his first statement was elicited. Donald will argue that the officers should not be able to remedy their Fifth Amendment violation of using force to get a statement and then subsequently give Miranda warnings to obtain the same statement the officers already elicited. Thus, the exception to the Miranda rule would likely not apply to the second statement. Therefore, the statement should be suppressed under the exclusionary rule, as it was obtained in violation of the Fifth Amendment.

Lee Burgess: So, that was our overview of the exclusionary rule in regards to unconstitutional searches and seizures and violation of Miranda warnings. Make sure to remember the exceptions to the exclusionary rules when you see any facts that pertain to potential Fourth, Fifth, or Sixth Amendment violations.

Lee Burgess: And with that, we're out of time! If you enjoyed this episode of the Law School Toolbox podcast, please take a second to leave a review and rating on your favorite listening app. We'd really appreciate it. And be sure to subscribe so you don't miss anything. If you have any questions or comments, please don't hesitate to reach out to myself and Alison at lee@lawschooltoolbox.com or alison@lawschooltoolbox.com. Or you can always contact us via our website [contact form](https://www.lawschooltoolbox.com/contact-form) at LawSchoolToolBox.com. Thanks for listening, and we'll talk soon!

RESOURCES:

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[California Bar Examination – Essay Questions and Selected Answers, February 2018](#)
[Podcast Episode 290: Listen and Learn – Privilege Against Self-Incrimination and Miranda Rights](#)
[Bar Exam Toolbox Podcast Episode 141: Listen and Learn – The Fourth Amendment](#)