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SAFE TO DRIVE? POLICE POWERS OF SEARCH AND SEIZURE IN THE
VEHICULAR CONTEXT

by

Mark A. Rucci

A Thesis Submitted in Partial Fulfillment
of the Requirements for a Degree with Honors
(Political Science)

The Honors College

University of Maine

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Thesis Abstract

Since their creation, automobiles have become a central facet of the American culture and psyche. As status symbols and modes of transportation their importance cannot be overstated. Americans love their cars, and the average citizen believes that he or she has legitimate privacy interests in his or her vehicle. But is this the case? For decades, The Court has struggled to balance 4th Amendment privacy rights with effective police procedure, and has thus handed down dozens of rulings on the topic, many of which often seem disparate and contradictory. In the face of such confusion, the Court's answer has almost always been to allow an increasing amount of discretion to police officers.

This study seeks to find out how well college students on the University of Maine campus know both police powers of search and seizure as well as what their rights are in vehicular search and seizure situations. A questionnaire was distributed throughout Greek life on the University of Maine campus, the results of which were compiled and analyzed in an endeavor to gain insight into how well students understand their rights. Through this we can gain insight as to how much young people know about the rights and responsibilities that come with obtaining their license. This question is of more than passing importance in light of current Supreme Court rulings trending toward expansion of police power. Finally, I will assess the question of significance: How and to what extent should public education inform individuals of their rights?

In loving memory of Mary Rucci

Acknowledgements

I am much indebted to the work of many scholars of political science who came before me. The work of Delli Carpini and Keeter was invaluable to my understanding of what Americans know about politics. In addition, *Criminal Procedure: The Constitution and the Police* by Bloom and Brodin was perhaps the most important text I read in writing my literature review. “Better off Walking” by Meadows was instrumental in helping to clarify often confusing Court doctrine.

I am also indebted to all of those who helped me directly on my thesis. Dr. Timothy Cole spent hours reading over numerous partial drafts of my thesis and meeting with me when my stress hit critical levels. Jennifer Tyne willfully took on the daunting task of helping a mathematically challenged student complete a thesis based largely on statistical analysis. Finally, Dr. Mark Brewer, Professor Sol Goldman, and Dr. Jeffrey St. John all read drafts of my thesis and provided me with valuable insight.

Finally, I am forever grateful for the love and support of my family, who have dealt with my near constant complaints and mental breakdowns both throughout the entirety of my short life and especially throughout the duration of my thesis work. That I lived long enough to write this thesis is a testament to their stalwart support and compassion. This thesis is at least as much their accomplishment as it is mine.

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CHAPTER 1

Introduction

I chose to write in the area of vehicular search and seizure because it matters to anyone who has a car. As my thesis advisor Professor Cole would say throughout the duration of my project, Americans love their cars. We drive everywhere, pay huge sums of money for the newest and best model, and even have an entire subculture dedicated to admiring, studying, restoring, viewing, and worshipping both antique and new cars. With all of this time spent in and around vehicles, one would think that citizens would have a somewhat advanced knowledge of their “vehicular” rights. This would be a reasonable assumption, but I suspect that it may be wrong. Study after study has shown that Americans know very little about any aspect of politics in general, and I fear that search and seizure rules for vehicles may not be an exception.¹ Considering the time Americans spend in and around their cars, this would be very problematic.

The goal of this study is to determine exactly what college students know about vehicular search and seizure, and additionally, what they think police rights of search and seizure *should* be in the vehicular context. The Supreme Court’s rulings in this area, aside from the recently decided *Arizona v. Gant*, 556 U.S. 332 (2009) (which I will discuss later), have consistently broadened police powers. I was very interested to know what respondents’ thoughts were about the nature and direction of the Supreme Court’s decisions. The ultimate goal of this study is to both inform people about police search and seizure authority in the vehicular context, thus allowing them to better understand

¹ William A. Galston, “Political Knowledge, Political Engagement, and Civic Education,” *Annual Review of Political Science* 4 (June 2001) 221: <http://bill.ballpaul.net/archives/publicleaders/documents/galston.pdf> (Accessed October 15, 2012)

police conduct, and to find out how they believe the police should be allowed to act in certain situations. Studies have been conducted examining whether and when people would or would not feel free to end encounters with police, but to my knowledge no study has asked respondents if they felt a given intrusion should be permissible in the first place.² The Court bases its interpretation of a seizure on the “reasonable person,” and I think that to use this standard it is imperative to know what the “reasonable” or “average” person believes with regard to police stops. In summary, in a culture where the vehicle is elevated to cultural icon and status symbol, it is imperative that citizens understand the rights and responsibilities associated with them.

To do this I submitted my proposal to the Institutional Board of Review for work on human subjects and was granted approval to begin work on my thesis. I then sent a questionnaire to students involved in Greek Life on the University of Maine campus. I chose Greek life because the difficulties in obtaining a sample truly representative of the population would be too great in the amount of time I had to complete my thesis, but I nonetheless wanted to be able to say something about the group I was surveying. The questionnaire was in three parts designed both to find out what students know with regard to vehicular search and seizure law and to ask their opinions about whether certain police actions should be constitutional. I separated responses into demographic areas of gender and income and ran a series of tests on each to find out exactly what students knew about search and seizure law, and whether this knowledge was related to family income or gender.

² David K. Kessler, “Free to Leave? And Empirical Look at the Fourth Amendments Seizure Standard,” *The Journal of Criminal Law and Criminology*, 99, no. 1 (2009): 78-79. http://www.law.northwestern.edu/jclc/backissues/v99/n1/9901_51.kessler.pdf (Accessed October 12)

I obtained some very interesting results from my survey, and the remainder of this thesis will be dedicated to shedding some light on what respondents know and believe about vehicular search and seizure law. It is my hope that the results will illuminate what we as a nation can teach our young people about the responsibility associated with attaining one's license, so that they may enter the driving world with a much greater appreciation for the risk and responsibility associated with obtaining a license. To end this chapter I will give a brief summary of what is to follow in the remainder of this paper.

Chapter two is a literature review of the areas I studied before conducting any original research. Before I began it was imperative to have an understanding of the scholarly literature, so that I would know if my results ran contrary to the work of other researchers, or whether the results were supported by the other research in the field. It was also important to understand the confusing and sometimes contradictory constitutional landscape on which I was basing my research, so that I had an understanding of the reach of police authority. To do this, I read many Supreme Court decisions and summaries, including perusing scholarly interpretations of many decisions. This knowledge was imperative if I was to make a questionnaire that could attain any meaningful results.

In addition to researching the constitutional landscape, I looked briefly at the point of view of the criminal justice system. I wanted to understand why police sometimes break the rules, and why the courts sometimes allow these infractions to occur. Most of the scholarly literature that I read on the topic was wholly condemning of both police violations of search and seizure law and Court holdings that consistently

allow police greater discretion in searching a vehicle. Scholars believe these decisions to be at odds with Fourth Amendment protections and decried them as stripping citizens of their constitutional protections under the law. Before deciding which side of the argument I fell on, I wanted to understand both points of view, and thus it was important to understand the intentions of police in sometimes bending the rules, which were designed to decrease the efficiency of the criminal justice system and therefore protect against authoritarianism.

Finally, I looked at studies on respondents' knowledge of politics overall. Originally I had intended to look at research showing what citizens knew about vehicular search and seizure, but there are practically no data in this field. I had to settle for an alternative, and I decided that knowing something about what citizens know about politics in a more general sense could give me some idea of their knowledge of vehicular search and seizure law.

Chapter three includes data collection and methods of analysis. This chapter includes the instrument I used for collecting survey results (SurveyMonkey), how I designed my survey, how I got respondents to take the survey, and how I analyzed the results I obtained, first through basic calculation of percentages and later through the utilization of different statistical tests. I also describe in some detail the tests I used in my thesis work, and how I used these tests to look at how people answered the questions.

Chapter four presents my results and their interpretation. For several questions where obvious discrepancies arose between the actual result and what someone might think the results would be I gave suppositions as to why the recorded result might occur. I present tables for each question and go over the information found in the each table in

detail, explaining what I found from the survey and what these findings mean, both for each question and for the questionnaire as a whole.

Chapter five presents the conclusions of my thesis. After summarizing my findings I apply them to the broad questions I posited at the beginning of my thesis: What do people know about vehicular search and seizure and politics overall? What does this mean for the average citizen? Is the government overreaching its authority and does the US Supreme Court approve of that overreach? Are we doing an adequate job teaching our drivers about the rights and responsibilities associated with obtaining one's license? I provide a few suggestions as to how we might do a better job teaching people about this every changing and often confusing facet of law that plays such an important role in our lives. With the outline complete, let us turn to the substantive portion of my thesis.

CHAPTER TWO

Literature Review

The available literature about knowledge of vehicular search and seizure generally falls into one of two categories: substantive overviews of Fourth Amendment Supreme Court jurisprudence and analysis regarding specific cases. In addition, I wanted to have an understanding of the general political knowledge of the public regarding vehicular search and seizure. However, there is an utter lack of literature regarding public knowledge about police search and seizure authority in the vehicular context. Hence, this study explores an area that has yet to be adequately studied.

Most of the literature in the following review is geared toward helping me construct the questionnaire prepared for this study and thus falls under the category of substantive overview of Supreme Court jurisprudence. Later in this literature review I will discuss the relevant information gleaned from these sources. After that, I will discuss the public's level of factual knowledge regarding politics, what this level of knowledge means for the United States, and what ramifications this has for my study.

First, however, it is important to include in my literature review a few paragraphs regarding the perspective of police in the area of search and seizure. Due to the nature of my thesis, it would be easy to only examine one side of the coin; that of citizens' rights. Indeed, many of the sources I consulted for my review do not address the notion that the entire justice system, police and the courts included, stand to benefit from the Court's balancing of citizens' rights with the demands of effective law enforcement. They lament the dilution of the Fourth Amendment and vilify the Court. To disagree with the Court's line of reasoning as I do is fine, but I consider it a disservice to ignore what the

Court is attempting to do when it affords police more power in Fourth Amendment cases. Wanting to take all of this into consideration, I must clarify that the decisions of the Supreme Court do in fact help law enforcement in their endeavor to track and capture criminals. While I ultimately disagree with the stripping of constitutional protections to aid law enforcement in most instances, to forget that the actions of the Court are demonstrably beneficial to the legitimate interests of the government is to leave my thesis open to criticism on the grounds that I have not considered all possible modes of counter argument. To avoid this I will speak briefly on the subject of law enforcement.

In “Lawful Policing,” an article by Skogan and Meares, the authors note that searches and seizures are, “the basic tools of law enforcement,” and that the essential way that the courts enforce punishments against police intrusion and unreasonable conduct is via exclusion. Exclusion is the suppression of evidence attained illegally.³ However, cases such as *United States v. Leon*, 468 U.S. 897 (1984), which created the “good faith” exception whereby evidence obtained by police in good faith is admissible in court, have cut down on the power of exclusion as a deterrent by creating exceptions to the exclusionary rule and thereby giving officers ways to break the rules and still have the evidence obtained in illegal ways be admissible at trial. Studies by researchers using questionnaires distributed to police and in-person interviews have shown that police usually skirt the rules not out of the desire to do wrong, but because they want to “incarcerat[e] the truly guilty.” They also admit to most frequently violating the rules when they know they have other evidence to fall back on.⁴ Despite the “good intentions” police have in wishing to catch those they “know” to be guilty, this is evidence of

³ Wesley Skogan and Tracey L. Meares, “Lawful Policing,” (May 2004): 71. http://skogan.org/files/Lawful_Policing.pdf (Accessed October 15, 2012)

⁴ Ibid, 71

precisely the type of self-serving police misconduct that the exclusionary rule seeks to prevent, and this is the type of conduct that the Court has increasingly accepted with its rulings.

Police conduct such as this is consistent with Packer's Crime Control Model of the Criminal Process as outlined in his article "Two Models of the Criminal Process." In the article, Packer says that in the Crime Control Model police make a distinction between the "probably guilty" and "probably innocent." Once those labeled "probably guilty" have been distinguished, the chief characteristic of the model is a "presumption of guilt," whereby the process is marked by administrative efficiency in moving the suspect through the criminal process and securing incarceration. Packer further points out that this is not the opposite of the "presumption of innocence" principle that our justice system purports to function on. Rather, it is a completely different idea, characterized by a situation where a suspect is factually guilty as opposed to legally guilty. That is to say that the Crime Control Model functions on the assumption that those passing the standard of "probable guilt," and therefore moving on in the criminal process, did probably commit the crime that they are accused of.⁵ Thus, they are factually guilty. It is, as Packer says, "a prediction of outcome." The presumption of innocence, on the other hand, deals with what Packer describes as "legal guilt" and fits in with the Due Process Model of crime control, whereby individuals cannot be held accountable for a crime based simply on the showing that they probably did commit the crime. Rather, the

⁵ Packer, Herbert L. "Two Models of the Criminal Process," *The Limits of the Criminal Sanction*. Stanford University Press: 1968. 11-12

defendant can only be held guilty if these factual determinations can be made in an atmosphere where authorities have “played by the rules.”⁶

In a recent study done by Gould and Mastrofski entitled “Suspect Searches: Assessing Police Behavior Under the U.S. Constitution,” which encompassed two cities and 2800 hours of observing 12,000 policemen, researchers found that only 115 instances fitting the legal definition of “search without a warrant” were conducted. A search was defined as, “an intrusion by a police officer into a citizen’s person or real or personal property when the officer was seeking evidence,” and data was collected by field researchers who observed police behavior on their patrol, later asking the officer in about the encounter in a personal interview.⁷ After that a three-person team including an attorney and law professor coded the searches for “constitutionality” on a ten-point scale with a one being “absolutely constitutional” and a ten representing “absolutely unconstitutional.” This was based on observations such as whether the officer pressured the suspect to agree to a search or whether an officer used physical force unnecessarily or arbitrarily.⁸ They found that although searches were fairly uncommon, 30% of the 115 searches coded turned out to be unconstitutional, with three instances (all body cavity searches) considered so egregiously unconstitutional that they would “shock the conscience.”⁹ This seems to be a relatively large number, and points either to the fact that police do not know the law regarding search and seizure or that they are adhering to an

⁶ Ibid, 16

⁷ Jon B. Gould and Stephen D. Mastrofski, “Suspect Searches: Assessing Police Behavior Under the U.S. Constitution,” *Criminology and Public Policy* 3 no. 3 (July 2004) 325-327, <http://jthomasniu.org/class/540/Readings/pol-const.pdf> (accessed January 5, 2012)

⁸ Ibid, 328, 333

⁹ Ibid, 334

understanding of the criminal process based on Packer's Crime Control Model, where the ends tend to justify the means.

In another similar study of New York City police officers, researchers found that stops violated *Terry* stop and frisk standards 14% of the time. *Terry v. Ohio* 392 U.S. 1 (1968) was a case where the Court held that police officers may stop a person on the street and frisk them without probable cause. This high number of *Terry* violations is concerning when one considers that *Terry* itself has already weakened the 4th Amendment by adopting a "reasonableness standard" on the part of the police, rather than probable cause.¹⁰ The study also showed that African Americans were more likely to be stopped as a percentage of the population as a whole.¹¹ The authors also pointed out that many studies suggest police officers are working with knowledge of search and seizure law that is not much more detailed than what the average citizen possess.¹² This lack of knowledge may account for what appears to be a relatively high incidence of unconstitutional searches conducted by police, and it also provides support for the claim of adherents to the Due Process Model that the courts should not indulge unlawful police behavior with rules such as "inevitable discovery" and "good faith," but should rather serve as an oversight body to make sure the "rules of the game" are not violated. However, there is a certain degree of subjectivity to the process, and even Gould and

¹⁰ Cornell University Law School, Legal Information Institute, "Terry v. Ohio," http://www.law.cornell.edu/constitution/fourth_amendment. (Accessed April 13, 2013)

¹¹ Wesley Skogan and Tracey L. Meares, "Lawful Policing," (May 2004): 72 http://skogan.org/files/Lawful_Policing.pdf (Accessed October 15, 2012)

¹² Jon B. Gould and Stephen D. Mastrofski, "Suspect Searches: Assessing Police Behavior Under the U.S. Constitution," *Criminology and Public Policy* 3 no. 3 (July 2004) 319, <http://jthomasniu.org/class/540/Readings/pol-const.pdf> (accessed January 5, 2012)

Mastrofski point out that it is often difficult to know how any given judge would rule on a case. Thus, the coding teams sometimes had difficulty reaching a consensus.¹³

They also admit that their study has many imperfections, and that other similar studies have achieved far different results. For instance, they cite a work entitled “Evaluating the Fourth Amendment exclusionary rule: The problem of police compliance with the law” by Heffernan and Lovely, which used a questionnaire distributed to law enforcement officers to conclude that in search and seizure situations nearly half of those who participated would have been inclined to carry out methods which were demonstrably unconstitutional.¹⁴ This is a much higher number than Gould and Mastrofski found, which is no doubt partially attributable to the difficulties in measuring such an amorphous standard.

However, the differences in specific statistics regarding the prevalence of searches and seizures does nothing to dispute the fact that the police now enjoy a greater degree of latitude in deciding whether to search than ever before. Why has police authority of search and seizure expanded so much over the years? One theory, advocated by Wayne LaFave, is that the war on drugs has made it much easier for police to stop and search suspects for seemingly insignificant things such as traffic stops for missed signals. He points out that stops are usually made for drug searches and violations, and that courts now often recognize a diminished degree of protection for citizens with regard to traffic stops. This diminished degree of protection makes it much easier for police to pull over a person and search them, and despite this potential for abuse, courts have refused to pose

¹³ Ibid, 328

¹⁴ Ibid, 319

additional limits on police rights because of the war on drugs. This undoubtedly has to do with the state's interest in catching and prosecuting drug offenders.¹⁵

Turning to Supreme Court jurisprudence with respect to vehicular searches and seizures, it is important to note that much of the literature discusses Court holdings on very divisive issues and that because of this, analysis necessarily requires evaluation or judgment by an author about what the Court has done. As I analyze the results of my survey, I will necessarily do the same, and I will no doubt reach conclusions of my own regarding the Court's jurisprudence. For now, I have tried to parse through the relevant material and include factual information in my literature review, but ultimately I do agree with most of the authors whose material I read for thesis, and therefore this literature review speaks from a somewhat "Due Process" point of view.

The text of the Fourth Amendment reads: "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."¹⁶ The Court has largely stayed true to the text of the Amendment with regard to homes, as the circumstances where police have a right to enter the home without a warrant most certainly constitute the exception rather than the rule. Police still must usually obtain a warrant to enter a home without permission, show that the warrant request is based on probable cause, and state the items to be seized. Furthermore, police may only search areas where the object sought may reasonably be found, and must

¹⁵ Wayne LaFave, "The Routine Traffic Stop From Start to Finish: Too Much Routine Not Enough Fourth Amendment," *Michigan Law Review* 102 no. 8 (August, 2004): 1847-1849. <http://www.jstor.org.prxy4.ursus.maine.edu/stable/4141969?seq=7> (Accessed January 8, 2012)

¹⁶ Cornell University Law School, Legal Information Institute, "Fourth Amendment," http://www.law.cornell.edu/constitution/fourth_amendment. (Accessed December 29, 2012)

confine their search to a reasonable space and time frame.¹⁷ While exceptions to the warrant requirement, such as the emergency requirement, do exist in the case of homes, there is no case law analogous to *Carroll v. United States*, 267 U.S. 132 (1925) and subsequent rulings, which have made the warrantless search of an automobile the rule rather than the exception.¹⁸

Since the 1920s the Court has chipped away at Fourth Amendment protections regarding the vehicle, creating a line of doctrine collectively known as the “automobile exception.”¹⁹ The first instance where the Supreme Court recognized a diminished level of protection regarding the vehicle was in *Carroll v. United States*, 267 U.S. 132 (1925), where the Court held that, due to the “inherent mobility” of vehicles, police with probable cause to believe an offense is being committed are allowed to search, and even seize, a vehicle in question without a warrant.²⁰ This laid the foundation for the automobile exception. Since then the Court has ruled in favor of the police in many instances where the mobility of the automobile almost certainly was not a factor. A few instances of this will be outlined later. The automobile exception originally required the threat that the vehicle would leave the vicinity if police took the time to obtain a warrant, but as we will see, the automobile exception has since been expanded to cover a range of other possibilities, rendering the protection afforded via the Fourth Amendment largely null and void.

¹⁷ Robert M. Bloom and Mark S. Brodin, *Criminal Procedure: The Constitution and the Police* (New York, NY: Aspen Publishers, 2010) 13.

¹⁸ *Ibid*, 134, 154

¹⁹ *Ibid*, 153

²⁰ James H. Newhouse, “Interference with the Right to Free Movement: Stopping and Search of Vehicles,” *California Law Review* 58, no. 5 (December, 1963) 909, <http://www.jstor.org/discover/10.2307/3479031?uid=3739712&uid=2129&uid=2&uid=70&uid=4&uid=3739256&sid=21101599113787> (accessed September 12, 2012)

For instance, since *Carroll* the Court has explicitly afforded police a number of other exceptions to the warrant requirement when it comes to vehicular searches. In *United States v. Rabinowitz*, 399 U.S. 56 (1950), the Court held that police may automatically conduct a search incident to a valid arrest even without a warrant. Likewise, searches without a warrant have been upheld for reasons such as officer safety and prevention of escape (*Pennsylvania v. Mimms*, 434 U.S. 106; *United States v. Busby*, 780 F. 2d 804, 1985) and “prevention of destruction of evidence” (*Illinois v. McArthur*, 531 U.S. 326 (2001); *Thorton v. United States*, 541 U.S. 615 (2004)).²¹ The Court has likewise upheld the constitutionality of roadblocks designed to check for drunk drivers, weapons, or illegal aliens [*United States v. Martinez-Fuerte*, 428 U.S. 543 (1976)].²²

One of the largest periods of expansion in police discretion to search a vehicle occurred during the tenure of the Burger Court. An example of this expansion can be found in *United States v. Ross*, 456 U.S. 798 (1982). While *Carroll* held that when probable cause exists to search a vehicle, the permissible scope of the search depends on the nature of the item being sought, *Ross* expanded the ruling in *Carroll* to cover the entire vehicle and all containers found therein.²³ Furthermore, prior to the Burger Court law enforcement officials needed probable cause to search a vehicle. This warrant exception was based on the inherent mobility of vehicles, and presumably if the threat

²¹ Public Agency Training Council, When Imminent Destruction of Evidence Authorizes Warrantless Home Entry, <http://www.patc.com/weeklyarticles/destruction-of-evidence-and-warrantless-home-entry.shtml> (Accessed April 29, 2013)

²² Jason Fiebig, “Police Checkpoints: Lack of Guidance from the Supreme Court Contributes to Disregard of Civil Liberties in the District of Columbia,” *The Journal of Criminal Law and Criminology*, 200, no. 2 (2010) 606-608, http://www.law.northwestern.edu/jclc/backissues/v100/n2/1002_599.Fiebig.pdf (Accessed January 28, 2013)

²³ Stephen D. Clymer, “Warrantless Vehicle Searches and the Fourth Amendment: The Burger Court Attacks the Exclusionary Rule,” *Cornell Law Review* 68, rev. 105 (November, 1982) LexisNexis 1, <http://www.lexisnexis.com.prxy4.ursus.maine.edu/hottopics/lnacademic/> (Accessed September 15, 2012)

that the vehicle would leave the vicinity did not exist a warrantless search would have been seen as impermissible. While *Ross* did not change the standard used to determine if a search is lawful, other decisions by the Court had already effectively destroyed *Carroll*'s "inherent mobility" requirement. The Court held in *Chambers v. Maroney*, 399 U.S. 42 (1970), that a warrantless search of a vehicle conducted after the vehicle had been transported to the police station was constitutional because *Carroll* explicitly supports both the immediate search of a vehicle based on probable cause and the taking of a vehicle without a warrant, so there are few practical consequences between searching a car without a warrant at the police station and doing so on the road. The only real difference is an unnecessary wait for the warrant on the part of police.²⁴ In this instance the Court effectively broadened *Carroll* by ignoring the rationale of "inherent mobility" and permitting a search even when that justification was not present.

Chambers is not the only decision in which the Burger Court greatly expanded police discretion to search a vehicle. In *New York v. Belton*, 453 U.S. 454 (1981), the Court ruled constitutional a search wherein a police officer, "arrested occupants of a speeding car for possession of marijuana" and then proceeded to search the passenger compartment of their car, where he found cocaine inside of a jacket.²⁵ The Court reasoned that they needed to give officers a predictable application of the law wherein an officer who had made a lawful arrest may search the car and anything containers found therein. Thus, they set down a "bright line rule," wherein an officer who has made a lawful arrest of a person can, incident to that arrest, conduct a search of the entire passenger compartment of the vehicle. Together, *Ross* and *Belton* cemented probable

²⁴ Ibid, LexisNexis 1

²⁵ Ibid, LexisNexis 1

cause as the standard that must be met in order to search a vehicle. In addition, these cases and many others, along with *Carroll*, created and defined what is now known as the “automobile exception.” When police make a lawful arrest, they may search the entirety of the vehicle and the contents therein.²⁶ As I will discuss later, although *Ross* has never been distinguished, subsequent cases have watered down the probable cause standard applied in *Ross* by citing *Terry* logic to allow certain police actions.

However, the Burger Court was not the only court to substantially limit protections afforded to the public, and in fact the rationale for *Belton* was originally established during the tenure of the Warren Court. In *Chimel v. California*, 395 U.S. 752 (1969), the Court held that a search incident to lawful arrest in the home may “encompass the person of the arrestee” as well as the immediate “area surrounding him” and any objects within his immediate control.²⁷ This rationale was then extended to the vehicle in *Belton* (under the assumption that within the confines of the interior of a vehicle anything is within the reach of the suspect) and further expanded in *Ross*, both of which came during the tenure of the Burger Court. One can clearly see how the Burger Court took a line of reasoning first introduced by the Warren Court and applied it to many cases involving vehicles.

Subsequent decisions by the Court have even further expanded police discretion to search a vehicle. In *United States v. Arvizu*, 534 U.S. 266 (2002), the Court reaffirmed the notion that a traffic stop is for all intents and purposes a *Terry* stop, and that armed with reasonable suspicion that a subject has been involved in criminal activity, police can conduct a search of the persons of all occupants of the vehicle and of the passenger

²⁶ Ibid, LexisNexis 1

²⁷ Ibid, LexisNexis 1

compartment of the aforementioned vehicle.²⁸ This warrantless search applies a “totality of the circumstances” test, which says that the “balance between the public interest and the individual’s right to personal security...tilts in favor of a standard less than probable cause in investigatory stops of persons or vehicles.”²⁹ Reasonable suspicion falls short of probable cause, and it appears here that the Court has explicitly stated that vehicular stops often demand a standard less arduous for police to demonstrate than probable cause when seeking to search a vehicle. This is also a huge expansion of *Terry* logic, in which the search incident to seizure was originally upheld for the purpose of officer safety, not for gathering evidence. In spite of this, the Court uses *Terry*’s assertion that the officer’s actions are justified if he has reasonable suspicion to believe that “criminal activity may be afoot.”³⁰

The Court’s decision to treat a vehicular stop as a *Terry* stop has given police officers the ability to perform a variety of functions that have in the past been contentious but that today are routine and pervasive in our society. For instance, via *Pennsylvania v. Mimms*, 434 U.S. 106 (1977) it is considered “beyond constitutional scrutiny” for a police officer to ask a suspect in a vehicular stop to step out of their vehicle and even conduct a *Terry* style weapons check at their discretion.³¹

²⁸ Cornell University Law School, Legal Information Institute, “United States v. Arvizu” <http://www.law.cornell.edu/supct/html/00-1519.ZS.html> (Accessed December 29, 2012)

²⁹ Ibid.

³⁰ Supreme Court, “United States v. Arvizu – 534 U.S. 266 (2001), 273-274, <http://supreme.justia.com/cases/federal/us/534/266/case.html> (Accessed January 28, 2013)

³¹ George Dix, “Nonarrest Investigatory Detentions in Search and Seizure Law,” *Duke Law Journal* 34, no. 5 (November, 1985) 858, <http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2925&context=dlj&sei-redir=1&referer=http%3A%2F%2Fwww.google.com%2Furl%3Fsa%3Dt%26rct%3Di%26q%3Dnon-arrest%2520investigatory%2520detentions%2520in%2520search%2520and%2520seizure%2520aw%2520-%2520george%2520dix%26source%3Dweb%26cd%3D2%26ved%3D0CEEQFjAB%26url%3Dhttp%253A%252F%252Fscholarship.law.duke.edu%252Fcgi%252Fviewcontent.cgi%253Farticle%253>

vehicle of the arrestee, as all areas of the cab are presumably “within his immediate reach.”³³

The next two doctrines have not only expanded police authority in the vehicle, but have also chipped away at the exclusionary rule, the traditionally relied upon mode of protection against police misconduct in the case of Fourth Amendment violations. The second doctrine is the good faith exception. The good faith exception, which is perhaps the largest breach of constitutional safeguards against police misconduct ever introduced by the Court, holds that evidence obtained in violation of the Fourth Amendment does not require exclusion when the police have acted in “good faith.”

The idea of the “good faith” exception was introduced in *United States v. Leon*, 468 U.S. 897 (1984), where police searched the apartment of respondents and found large quantities of drugs, which led to arrest of respondents. Later, the warrant was found to be deficient, but the Court upheld the evidence as admissible because the officers in question had acted in “good faith” in executing the warrant. The rationale of the Court was that police officers are not lawyers and are often under considerable pressure to make quick decisions. This means that they cannot be expected to know all of the constitutional safeguards regarding collection of evidence and to apply those often-complicated safeguards in the limited time frame afforded them. Thus, when police make a mistake under “...the objectively reasonable belief that their conduct did not violate the Fourth Amendment,” the Constitution does not demand the exclusion of such evidence.³⁴ In their dissenting opinion, Justices Brennan and Marshall argued that the good-faith

³³ Casebriefs, “New York v. Belton,” <http://www.casebriefs.com/blog/law/criminal-procedure/criminal-procedure-keyed-to-saltzburg/searches-and-seizures-of-persons-and-things/new-york-v-belton/2/> (Accessed January 28, 2013)

³⁴ Robert M. Bloom and Mark S. Brodin, *Criminal Procedure: The Constitution and the Police* (New York, NY: Aspen Publishers, 2010) 218-219

exception would “encourage police to provide only the bare minimum necessary for securing a search warrant.”³⁵ This would allow them to essentially search for anything they wanted under the premise that everything they found was found in “good faith” while executing a very unspecific warrant.

The Court further expanded the “good faith” exception in *Herring v. United States*, 555 U.S. 135 (2009), where police arrested Herring on a warrant issued in another county that has expired months earlier. In this case, police held that the “good faith” exception applies where police have made an arrest on an outstanding warrant in another jurisdiction, and that warrant later turns out to be invalid because of negligence by the issuing agency.³⁶ Further, in *Davis v. United States*, 564 U.S. ____ (2011), where Davis was arrested for using a false name and found to have been in possession of an illegal revolver in the search incident to arrest, the Court denied his motion for suppression of evidence founded on the newly decided *Arizona v. Gant* because the search was conducted on binding appellate precedent and thus was not subject to exclusion.³⁷

The Court does say that the good faith exception does not apply where the police mislead a magistrate in their warrant application or should have known that their warrant was not valid, where the warrant is obviously invalid, or where the magistrate is no longer acting as a disinterested party, but subsequent cases have shown that the Court is

³⁵ Casebriefs, “United States v. Leon,” <http://www.casebriefs.com/blog/law/criminal-procedure/criminal-procedure-keyed-to-weinreb/the-fourth-amendment-arrest-and-search-and-seizure/united-states-v-leon-4/2/> (Accessed April 13, 2013)

³⁶ Cornell University Law School, Legal Information Institute, “Herring v. United States,” <http://www.law.cornell.edu/supct/cert/07-513> (Accessed April 16, 2013)

³⁷ Cornell University Law School, Legal Information Institute, “Davis v. United States,” <http://www.law.cornell.edu/supct/html/9-11328.ZS.html> (Accessed April 16, 2013)

prepared to be extremely lenient even with these exceptions.³⁸ For example, in *Maryland v. Garrison*, 480 U.S. 79 (1987), the Court upheld a search where police used a warrant describing the place to be searched as “2036 Park Avenue third floor apartment” to search not only the apartment in question but also another apartment on that floor.³⁹ With the good faith exception the Court distinguished *Mapp v. Ohio*, 367 U.S. 643 (1961), in which the Court held that violations of unreasonable search and seizure would result in a suppression of evidence. The Court did not overrule *Mapp* in this case because the exclusionary rule could still apply in situations similar to those found in *Mapp*, where police forcibly entered a home brandishing a false warrant and tied Ms. Mapp up, searching the entire house and eventually finding sexually illicit material instead of the bomb they were originally looking for.⁴⁰ The good faith exception, the lessening reliance on and deference toward probable cause, and the plain sight doctrine have all contributed toward the dilution of the exclusionary rule.⁴¹

The third doctrine, established in *Nix v. Williams*, 467 U.S. 431 (1984), is known as inevitable discovery. Inevitable discovery holds that where evidence was discovered through illegal means (in this case via police coercion), exclusion is not demanded when the evidence would have been discovered in a short period of time even without the

³⁸ Robert M. Bloom and Mark S. Brodin, *Criminal Procedure: The Constitution and the Police* (New York, NY: Aspen Publishers, 2010) 220

³⁹ Casebriefs, “Maryland v. Garrison,” <http://www.casebriefs.com/blog/law/criminal-procedure/criminal-procedure-keyed-to-israel/arrest-search-and-seizure/maryland-v-garrison/> (Accessed April 13, 2013)

⁴⁰ Casebriefs, “Mapp v. Ohio,” <http://www.casebriefs.com/blog/law/criminal-procedure/criminal-procedure-keyed-to-saltzburg/searches-and-seizures-of-persons-and-things/mapp-v-ohio-3/2/> (Accessed January 28, 2013)

⁴¹ Robert M. Bloom and Mark S. Brodin, *Criminal Procedure: The Constitution and the Police* (New York, NY: Aspen Publishers, 2010) 3-6

police misconduct.⁴² This in a sense picks up where the good faith exception left off by not only allowing courts to admit evidence obtained illegally but in “good faith,” but also allowing courts to admit of evidence obtained in a completely fraudulent and unconstitutional manner. Armed with this knowledge, it is my belief that police officers can go to almost any extreme to find evidence of a crime so long as they can show that that the evidence would have been found sooner or later through legal means.

These decisions are consistent with Packer’s “Crime Control Model” of law enforcement, which states that crime control and prevention are the most important things regarding law enforcement and thus should be given deference, even if this sometimes comes at the expense of citizens’ rights.⁴³ It should be noted that there is another model of law enforcement that is equally if not more supported among both the academic community and the average citizen. It is called the “Due Process Model,” and as I have argued in this literature review, the Supreme Court has largely ignored it, to the chagrin of many legal scholars. The Due Process Model is designed to make it very difficult for the criminal justice system to work efficiently. It sees efficiency as potentially dangerous to the fact-finding process and would rather spend time and resources making sure the system discovering the facts regarding guilt or innocence than risk putting an innocent person in jail.⁴⁴ Thus, it is less likely to trust the fact-finding ability of law enforcement

⁴² Casebriefs, “Nix v. Williams,” <http://www.casebriefs.com/blog/law/criminal-procedure/criminal-procedure-keyed-to-weinreb/the-fourth-amendment-arrest-and-search-and-seizure/nix-v-williams-williams-ii-2/2/> (Accessed January 30, 2013)

⁴³ Herbert L. Packer, “Two Models of the Criminal Process,” *The Limits of the Criminal Sanction* (Stanford University Press: 1968) 3

⁴⁴ *Ibid*, 6-7

and the legal system, and more inclined to place obstacles in the path of the system in order to assure a just result in any criminal case.⁴⁵

This all goes back to the distinction I made earlier in the chapter between legal and factual guilt. The Court has clearly gone in the direction of the Crime Control Model of crime prevention in recent history, using the good faith exception and inevitable discovery to secure convictions against criminals who are found to be factually guilty, thereby expediting and streamlining the justice system. The Due Process Model forces the government to “play by the rules” and treat the 4th Amendment and the prophylactic tool that it was mean to be. This makes crime prevention more difficult, but ensures that citizens’ rights are not violated.⁴⁶ This has been made a lower priority by the Court with recent cases and the introduction of the doctrines discussed above.

Finally, there are a few other areas pertaining to police rights of search and seizure in my questionnaire that I must address. These situations may seem uncontroversial and intuitive, but for the purposes of a substantive literature review and in deference to my questionnaire I must acknowledge them. First is the issue of consent. It must be noted that in situations where a stop has occurred but no one is yet in custody, as soon as a person consents to a search they have forfeited any Fourth Amendment rights they had before the consent. The consent must be voluntary and not coerced by police, although consistent with cases like *U.S. v. Drayton*, 536 U.S. 194 (2002), it does not even matter if the suspect knows his or her rights or how the law works. In fact, *Drayton* showed that one could give consent even if the police do not advise the person

⁴⁵ Ibid, 6-8

⁴⁶ Ibid, 6-8

that they have the right to refuse police the right to search.⁴⁷ Police are under no obligation to inform an individual of his or her right to decline a search in this instance. According to the Court, police action is only considered a stop where a “reasonable person” would not feel that they are free to leave at any time. Thus, even when a person is not advised of their right to refuse consent, if the court’s imagined “reasonable person” would feel he or she were free to leave, the consent is voluntary.⁴⁸ This definition of consent to search shows that the Court typically affords suspects less protection before arrest than they are automatically given after arrest, when the protections afforded via *Miranda v. Arizona* 384 U.S. 436 (1966) and the 5th Amendment automatically attach themselves to defendants.

There is no question that on the issue of vehicular search and seizure the Court has significantly expanded police authority. This movement often comes at the expense of citizens’ constitutional protections, and since the inception of automotive transportation many scholars have argued that each subsequent Court holding has further eroded the prophylactic tool that the Fourth Amendment was designed to be.⁴⁹ However, as technology expands, there is an interesting new intersection between transportation and technology that the Court has yet to address in any meaningful way. As law enforcement moves toward GPS tracking devices as a way to monitor the movements of

⁴⁷Robert M. Bloom and Mark S. Brodin, *Criminal Procedure: The Constitution and the Police* (New York, NY: Aspen Publishers, 2010) 68

⁴⁸ Casebriefs, “Florida v. Bostick,” <http://www.casebriefs.com/blog/law/criminal-procedure/criminal-procedure-keyed-to-weinreb/the-fourth-amendment-arrest-and-search-and-seizure/florida-v-bostick/2/> (Accessed April 13, 2013)

⁴⁹ Erin Morris Meadows, “Better Off Walking: Wyoming v. Houghton Exemplifies What Acevedo Failed to Rectify,” *University of Richmond Law Review* 34 no. 329 (March, 2000) 1-2, LexisNexis Academic. (Accessed October 24, 2012)

suspected criminals, many moral and ethical problems arise, some of which will presumably be decided by the Supreme Court.

Historically, the Court has been much more willing to protect the Fourth Amendment rights of individuals in beeper and tracker situations. In *Katz v. United States*, 389 U.S. 347 (1967), for instance, the Court held that, “The Fourth Amendment governs not only the seizure of tangible items, but extends as well to the recording of oral statements.” The Court reversed Katz’ conviction on the grounds that the use of a recording device outside the telephone booth he was talking in was in violation of his Fourth Amendment rights because he had a “reasonable expectation of privacy” in the telephone booth and the police had not obtained a warrant.⁵⁰ This case marked the beginning of the notion that the Fourth Amendment protects people rather than just places and set the precedent for future rulings upholding citizens’ Fourth Amendment protections. This advancement of citizen protections has been similarly upheld in vehicular cases such as *United States v. Karo*, 468 U.S. 705 (1984), where despite upholding the conviction of Karo on other grounds, the Court held that the use of a beeper without a warrant did constitute a search that would have been illegal if officers had followed up on the beeper by searching the residence containing the signal to see if the container was there.⁵¹ This is because the location was not open to visual surveillance, and the issue of whether the beeper or tracker is simply aiding what could already be seen or heard, or whether it is being used to find something that otherwise

⁵⁰ Cornell University Law School, Legal Information Institute, “Katz v. United States,” http://www.law.cornell.edu/supct/html/historics/USSC_CR_0389_0347_ZS.html (Accessed January 1, 2013)

⁵¹ Ramya Shah, “From Beepers to GPS: Can the Fourth Amendment Keep Up with Electronic Tracking Technology,” 290-291, <http://www.jltp.illinois.edu/recdevs/Shah.pdf> (Accessed January 29, 2013)

would not be seen or heard is the issue that many of these cases have hinged on. In *Karo*, the search would have been illegal because the can was in a private residence.⁵²

However, rulings enhancing citizens' Fourth Amendment protections in the area of beepers have been far from universal. In *United States v. Knotts*, 460 U.S. 276 (1983), the Court held that there was no Fourth Amendment violation in the placing of a beeper on the exterior of a vehicle without a warrant because a person could not have a "legitimate expectation of privacy" in their movements in a vehicle, where the occupants and contents are in plain sight.⁵³ In spite of this, it seems for now that the Court is more willing to respect (or at least more hesitant to strip) the Constitutional provisions provided for citizens with respect to this type of surveillance than they are with straightforward vehicular search and seizure cases, where the direction the Court has taken has unilaterally trended toward the stripping of Fourth Amendment protections. As technology increases at an ever-increasing rate, the Court will have the unenviable job of incorporating increasingly invasive forms of technology into existing case law. As GPS tracking gives way to more advanced technology, the Court may be forced to scrap previous decisions due to their increasing irrelevance in a technologically advanced world.

It would be unfair to insinuate that every Supreme Court decision since the 1920s has stripped citizens of their Fourth Amendment protections against unreasonable search and seizure. While it has overwhelmingly been the case that early decisions such as *Robbins v. California*, 453 U.S. 420 (1981), which held that police must obtain a warrant

⁵² Find Law, Supreme Court, "United States v. Karo," <http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=us&vol=468&invol=705> (Accessed April 13, 2013)

⁵³ Ramya Shah, "From Beepers to GPS: Can the Fourth Amendment Keep Up with Electronic Tracking Technology," 285-286, <http://www.jltp.illinois.edu/recdevs/Shah.pdf> (Accessed January 29, 2013)

before searching most types of containers found in a vehicle, have been overturned, recently the Court has issued one decision that seems to go against the grain and bolster citizens' protections.⁵⁴ This case is *Arizona v. Gant*, 556 U.S. 332 (2009), in which the Court rejected the bright-line rule established in *New York v. Belton* that had allowed officers to conduct a warrantless search of the passenger compartment of an automobile following an arrest, even after the arrestee had been secured. According to the holding in *Gant*, officers must now demonstrate an "actual and continuing threat to their safety or a need to preserve evidence related to the crime the prompted the stop in the first place in order to justify a warrantless vehicular search."⁵⁵ Thus, the Court limited the universality of search incident to arrest.

In lieu of the bright line rule established in *Belton*, which would have granted police automatic power to search the automobile in question, the Court affirmed *Chimel*, opting for its twin rationale test of officer safety and preservation of evidence. The Court also concurred with Justice Scalia's reasoning that "circumstances unique to the automobile context justify a search incident to arrest when it is reasonable to believe that evidence of the arrest might be found in the vehicle."⁵⁶ The twin rationale test is stricter than the *Belton* bright line rule and held that the search in *Gant* was only justified if the

⁵⁴ Stephen D. Clymer, "Warrantless Vehicle Searches and the Fourth Amendment: The Burger Court Attacks the Exclusionary Rule," *Cornell Law Review* 68, rev. 105 (November, 1982) LexisNexis 1, <http://www.lexisnexis.com.prxy4.ursus.maine.edu/hottopics/lnacademic/>? (Accessed September 15, 2012)

⁵⁵ Meredith N. Garagiola, "When the Constable Behaves and the Courts Blunder: Expanding the Good-Faith Exception in the Wake of *Arizona v. Gant*," *American Criminal Law Review* 47 no. 3 (Summer 2010) LexisNexis 1, <http://www.lexisnexis.com.prxy4.ursus.maine.edu/hottopics/lnacademic/>? (Accessed September 20, 2012)

⁵⁶ Cornell University Law School, Legal Information Institute, "*Arizona v. Gant*," <http://www.law.cornell.edu/supct/html/07-542.ZO.html> (Accessed April 13, 2013)

suspect was not cuffed and within reaching distance of the cab of the vehicle.⁵⁷ Further, police would have to explain why they did not secure the suspect rather than searching if that was the course they took. However, the Court also adopted Justice Scalia's approach from *Thorton v. United States*, 541 U.S. 615 (2004) that a search is, "...still permissible if it is reasonable to believe that evidence of the crime of arrest might be found in the automobile."⁵⁸ Adopting this standard rather than *Belton* does have a limiting effect of pretext stops (where police stop a person for no reason other than to conduct a search incident to that stop), but still seems to temper what could be seen as a victory for advocates of Fourth Amendment protections, because with Scalia's standard it becomes very difficult to prove that an officer did not have "reasonable suspicion" that evidence of a crime might be found in the vehicle when he conducted the search of a vehicle in question. Thus, even the cases that seem on the surface to bolster citizens constitutional rights in the vehicular context often fall short of any substantive change in the Court's jurisprudence.

One article that is illustrative of the points I have made throughout this literature review is "Better off Walking" by Erin Morris Meadows. This article holds that in trying to create bright line rules that are easy to apply for police and lower courts, the Court has

⁵⁷ Angad Singh, "Stepping Out of the Vehicle: The Potential of *Arizona v. Gant* to End Automatic Search Incident to Arrest Beyond the Vehicular Context," *American University Law Review* 59, no. 6 (August, 2010) 1769-1770, http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1156&context=aulr&sei-redirect=1&referer=http%3A%2F%2Fwww.google.com%2Furl%3Fsa%3Dt%26rct%3Dj%26q%3Dstepping%2520out%2520of%2520the%2520vehicle%253A%2520the%2520potential%2520for%2520arizona%2520v.%2520gant%2520to%2520end%26source%3Dweb%26cd%3D2%26sqi%3D2%26ved%3D0CDwQFjAB%26url%3Dhttp%253A%252F%252Fdigitalcommons.wcl.american.edu%252Fcgi%252Fviewcontent.cgi%253Farticle%253D1156%2526context%253Daulr%26ei%3DW5rsUK6hL8fV0gGKxoDYAg%26usg%3DAFQjCNEauHk3NVrhxaV2ZRbeCa_q-HeNNA%26bvm%3Dbv.1357316858%2Cd.dmQ#search=%22stepping%20out%20vehicle%3A%20potential%20arizona%20v.%20gant%20end%22 (Accessed October 24, 2012)

⁵⁸ *Ibid*, 1770.

substantially narrowed Fourth Amendment rights with regard to the vehicle. Further, as if the bright line rules themselves were not restrictive enough, subsequent decisions by the Court have blurred the lines and produced often-confusing doctrine that is both hard to follow and extremely favorable to police, who are now granted almost unimpeachable authority to conduct searches in most situations.⁵⁹

Specifically, in *California v. Acevedo*, 500 U.S. 565 (1991), the Court overruled *Sanders* and *Chadwick* by holding that all containers in all vehicles could henceforth be searched where police have probable cause to believe contraband may be inside.⁶⁰ Later in *Wyoming v. Houghton*, 526 U.S. 295 (1999), the Court held that police with probable cause to search a vehicle may search all parts of the vehicle and all containers therein that may hold the object as an extension of the “automobile exception.”⁶¹ The Court applied a two-prong test laid down in *Houghton*, which would become the final nail in the coffin for citizens’ privacy rights in the vehicle, to determine whether government action has violated the Fourth Amendment. This test first asks whether the search and seizure would have been unlawful at the time the Fourth Amendment was framed. If this line of inquiry reveals no answer (which I would argue it never could) the Court must use “traditional reasonableness standards” that balance the degree of an act’s intrusion against the degree to which the action was necessary to further a legitimate government interest.⁶² The Court in this case found both that the actions of the police officer in

⁵⁹ Erin Morris Meadows, “Better Off Walking: Wyoming v. Houghton Exemplifies What Acevedo Failed to Rectify,” *University of Richmond Law Review* 34 no. 329 (March, 2000) 1-2, LexisNexis Academic. (Accessed October 24, 2012)

⁶⁰ *Ibid*, 3

⁶¹ *Ibid*, 1

⁶² *Ibid*, 5

question were reasonable and, perhaps more importantly, upheld *Ross*, using both it and *Carroll* as an integral part of their ruling.⁶³

According to Meadows, the problem with this expansive exception is that the Fourth Amendment was designed as a prophylactic tool to defend citizens against police breaches of power. Pursuant with the intended effect of this Amendment, exceptions to the rule must be “narrowly tailored.” This line of reasoning has not been adhered to with regard to the auto exception, where cases such as *U.S. v. Chadwick*, 433 U.S. 1 (1977), and *Arkansas v. Sanders*, 442 U.S. 753 (1979), both of which limited the scope of warrantless searches, have been stripped of their constitutional muster by more recent rulings such as *Belton* and *Ross*, which were outlined earlier in this chapter.⁶⁴

Furthermore, the Court seemed in this case to make a clear distinction between the degree of protection the package enjoyed in the car versus in an apartment. In *Acevedo*, Defendant entered an apartment and left with a package, which police were notified contained marijuana. Police had been notified that the package had contained marijuana before it was in the Defendant’s possession, but at that time it was in Mr. Danza’s apartment, an area police would have needed a warrant to search. They could easily have obtained a warrant, but decided to wait until the marijuana left the apartment because it would be much easier to search at that point. Once the package was in Defendant’s car, police were able to pull the car over and search the container in the car even though they did not have probable cause to search the car.⁶⁵

⁶³ Ibid, 5

⁶⁴ Ibid, 2-3

⁶⁵ Casebriefs, “California v. Acevado,” <http://www.casebriefs.com/blog/law/criminal-procedure/criminal-procedure-keyed-to-saltzburg/searches-and-seizures-of-persons-and-things/new-york-v-belton/2/> (Accessed January 29, 2013)

The Court in *Houghton* held that, “a general search of a vehicle and all its contents is permitted, even if probable cause attached to only one person or container.”⁶⁶ Consistent with prior Supreme Court decisions regarding vehicles, this ruling will further diminish citizens’ rights and make law enforcements job much easier. The Court reasoned that lower courts would “benefit from the administrative efficiency” regarding the rule and thus lead to greater uniformity in decisions.⁶⁷ They finally noted that this would allow police the ability to work without fear that they are making a mistake when forced to make a split second decision.⁶⁸ This is just another example of a recent Court decision that has substantially limited citizens’ privacy rights in the vehicle.

I next turn my attention to the subject of public knowledge of politics. As I stated earlier, there is an utter lack of data pertaining to public knowledge of Fourth Amendment rights regarding search and seizure. Due to this lack of data, I was forced to broaden my scope. However, there is an abundance of available data about public political knowledge in general. Due to the political nature of Court jurisprudence on Fourth Amendment issues, it is reasonable to posit that patterns of political knowledge regarding the Fourth Amendment would roughly line up with patterns of political knowledge in general. Thus, the final part of my Literature Review will consist of a summary of the available literature regarding public knowledge of politics overall.

I consulted many sources in order to discern just how much the public knows about politics, and while there is variation, the numbers all pointed to the same general conclusion: the public knows very little about most aspects of politics beyond very basic

⁶⁶ Erin Morris Meadows, “Better Off Walking: Wyoming v. Houghton Exemplifies What Acevedo Failed to Rectify,” *University of Richmond Law Review* 34 no. 329 (March, 2000) 7, LexisNexis Academic. (Accessed October 24, 2012)

⁶⁷ *Ibid*, 8

⁶⁸ *Ibid*, 8

questions regarding the most prevalent political figures of the time. Indeed, in his article “Political Knowledge, Political Engagement, and Civic Education,” William Galston notes that despite the fact that knowledge of institutions and processes tends to be higher than that of people and policies, data collected over more than fifty years from the Roper Center, National Surveys, and Delli Carpini and Keeter’s own surveys used for their book *What Americans Know About Politics and Why it Matters* (which I will discuss in some depth later) have found that the median score of correct answers never tops 50% on any metric.⁶⁹ In fact, the results of a 1998 National Assessment of Education Progress test on civic knowledge showed that 35% of high school seniors tested below basic levels and 39% tested at basic levels, both deemed to be less than the level of knowledge citizens are perceived to need in order to be able to exercise the rights and responsibilities of every citizen (voting, participation in local, regional, and national politics, etc.) in a manner that retains some ideological consistency and avoids being completely arbitrary. This survey was based on a decade of research done by scholars and scientists, and even included the opinions of average citizens about what standards are necessary to achieve “civic competence.”⁷⁰ Additionally, Galston notes, as do Delli Carpini and Keeter, that levels of knowledge have not budged in over fifty years despite more college graduates the advent of cable news and the Internet.⁷¹ These findings are supported by many questionnaires distributed by the Pew Research Center, which point to the fact that while the public does tend to know basic facts about politics and the economy, they struggle

⁶⁹ William A. Galston, “Political Knowledge, Political Engagement, and Civic Education,” *Annual Review of Political Science* 4 (June 2001) 221: <http://bill.ballpaul.net/archives/publicleaders/documents/galston.pdf> (Accessed October 15, 2012)

⁷⁰ Ibid, 222

⁷¹ Ibid, 222-223

with specifics, especially with questions about foreign politics. This is because, as with any other discipline, individuals are unlikely to spend the time learning a lot about an area that is of little interest to them. For instance, only 15% of people could name the Prime Minister of Britain in November 2011, compared to 77% who knew that the federal deficit is currently larger than it was in the 1990s.⁷²

In another of his works, Delli Carpini eloquently summarizes what the prevalent literature says about public knowledge of politics:

The literature on political knowledge provides fairly compelling evidence for five characterizations regarding what Americans know: (1) the average American is *poorly informed* but not *uninformed*; (2) aggregate levels of political knowledge have remained relatively stable over the past 50 years; (3) Americans appear to be slightly less informed about politics than are citizens of other comparable nations; (4) "average" levels of knowledge mask important differences across groups; and (5) knowledge is tied to many attributes of "good" citizenship.⁷³

Unlike many researchers, Delli Carpini takes a rather optimistic view of the American public, saying that significant proportions of the population could answer

⁷² Pew Research Center for the People and the Press, "Public Know Basic Facts About Politics, Economics, But Struggles With Specifics," 11/18/10, <http://www.people-press.org/2010/11/18/public-knows-basic-facts-about-politics-economics-but-struggles-with-specifics/> (Accessed October 27, 2012)

⁷³ Michael X. Delli Carpini, "An Overview of the State of Citizen's Knowledge About Politics," *Annenberg School for Communication Department Papers*, University of Pennsylvania (2005) 27: http://repository.upenn.edu/cgi/viewcontent.cgi?article=1053&context=asc_papers&sei-redir=1&referer=http%3A%2F%2Fwww.google.com%2Furl%3Fsa%3Dt%26rct%3Dj%26q%3Dan%2520overview%2520of%2520the%2520state%2520of%2520citizens%27%2520knowledge%2520about%2520politics%26source%3Dweb%26cd%3D1%26sqi%3D2%26ved%3D0CDEQFjAA%26url%3Dhttp%253A%252F%252Frepository.upenn.edu%252Fcgi%252Fviewcontent.cgi%253Farticle%253D1053%2526context%253Dasc_papers%26ei%3DGnToUP34DOXy0QHQnoGIDg%26usg%3DAFQjCNE8-pFjRxe0Vs5uYW60c-oyTh9SsA%26bvm%3Dbv.1355534169%2Cd.dm0#search=%22an%20overview%20state%20citizens%20knowledge%20about%20politics%22 (Accessed October 24, 2012)

many of the questions regarding basic tenants of our government, such as separation of powers.⁷⁴

Additionally, he pointed out that average levels of knowledge are not necessarily the most important portraits of a population, as speaking to the average level of knowledge across a population often masks important differences among subgroups. For instance, the prevailing literature on the subject shows that men are more informed than women, whites are more informed than blacks, people of higher income are more informed than the impoverished, and older people are more knowledgeable than younger demographics.⁷⁵ This notion is supported by Philip Converse, who noted that differences in information vary across the population, and that little of the information held by elites “trickles down to the masses.”⁷⁶ As a result, many Americans hold many inconsistent beliefs that cannot be condensed into a cognizant ideology and lose their grasp of which beliefs can logically go together. This makes terms such as liberal and conservative, which depend on a conceptual understanding of how beliefs fit together in a framework, utterly useless and even misleading to the majority of the population, who do not have the conceptual sophistication necessary to understand the terms.⁷⁷ Finally, he found that based on the available data Americans are slightly less informed about their politics than citizens of other nations are about theirs. Although the data on this

⁷⁴ Ibid, 29

⁷⁵ Ibid, 33

⁷⁶ Philip Converse, “The Nature of Belief Systems in Mass Publics,” In David Apter, *Ideology and Discontent*. (New York: Free Press, 1964) 212:

http://politicalbubbles.com/The_Nature_of_Belief_Systems_in_Mass_Publics_Converse_1964.pdf

(Accessed October 27, 2012)

⁷⁷ Ibid, 214

subject are hard to come by, surveys conducted in eight countries did show that America was able to answer the second lowest number of questions regarding political actors and current events correctly, coming in ahead of only Spain.⁷⁸

The implications of an uninformed public are dramatic. Despite differences among researchers as to what constitutes “uninformed” and how this affects a democracy, Converse, Delli Carpini, and others agreed on several effects of political knowledge on the United States citizenry and style of government. First, research shows that the more efficacious a person is, the more likely he or she is to be “accepting of democratic norms,” which contributes to successful governance. Such people are also more likely to talk about, follow, and participate in politics, and are more likely than others to change their opinion in the face of new or contradictory information.⁷⁹ Converse states all of this in his work and adds that those with greater levels of knowledge are much more likely to hold meaningful and consistent beliefs on a wide range of subjects rather than simply fitting into “issue publics” that have very little ideological constraint and often cannot even place their positions with the candidate that supports that particular position.⁸⁰

⁷⁸ Michael X. Delli Carpini, “An Overview of the State of Citizen’s Knowledge About Politics,” *Annenberg School for Communication Department Papers*, University of Pennsylvania (2005) 31: http://repository.upenn.edu/cgi/viewcontent.cgi?article=1053&context=asc_papers&sei-redirect=1&referer=http%3A%2F%2Fwww.google.com%2Furl%3Fsa%3Dt%26rct%3Dj%26q%3Dan%2520overview%2520of%2520the%2520state%2520of%2520citizens%27%2520knowledge%2520about%2520politics%26source%3Dweb%26cd%3D1%26sqi%3D2%26ved%3D0CDEQFjAA%26url%3Dhttp%253A%252F%252Frepository.upenn.edu%252Fcgi%252Fviewcontent.cgi%253Farticle%253D1053%2526context%253Dasc_papers%26ei%3DGnToUP34DOXy0QHQnoGIDg%26usg%3DAFQjCNE8-pFjRxe0Vs5uYW6OcoyTh9SsA%26bvm%3Dbv.1355534169%2Cd.dmQ#search=%22an%20overview%20state%20citizens%20knowledge%20about%20politics%22 (Accessed October 24)

⁷⁹ Ibid, 31

⁸⁰ Philip Converse, “The Nature of Belief Systems in Mass Publics,” In David Apter, *Ideology and Discontent*. (New York: Free Press, 1964) 245-248: http://politicalbubbles.com/The_Nature_of_Belief_Systems_in_Mass_Publics_Converse_1964.pdf

One article I found that did speak on what citizens' know about Fourth Amendment rights with regard to search and seizure took a rather different approach than I expected to find in my research. I had expected the articles I read to be based on basic research about what respondents know about politics. However, in "Free to Leave? An Empirical Look at the Fourth Amendment's Seizure Standard," David Kessler asks if what the Supreme Court has touted as the "reasonable person" is supported by empirical data. In other words, in contact with police, do people actually feel free to end their encounter? What Kessler found is that overall people do not feel free to leave even when they knew their rights and knew they had a right to. On a "free to leave" scale from one to five (one feeling not free to leave at all and five feeling very free to leave) he found that 40% of respondents who knew their rights still selected either one or two, with two-thirds of respondents reporting a score three or less.⁸¹ Additionally, he found that some groups (minorities, the poor) feel less free to leave than others, and that most people will consent to speak with police even when they know they do not have to.⁸²

In the aptly titled *What Americans Know About Politics and Why it Matters*, Delli Carpini and Keeter seek to understand what different subsets of the American population know about politics and what impact this has on our republican form of government. First, the authors clarified what they thought the public should know about politics: namely, "what government is, what it does, and who government

(Accessed October 27, 2012)

⁸¹ David K. Kessler, "Free to Leave? And Empirical Look at the Fourth Amendments Seizure Standard," *The Journal of Criminal Law and Criminology*, 99, no. 1 (2009): 78-79. http://www.law.northwestern.edu/jclc/backissues/v99/n1/9901_51.kessler.pdf (Accessed October 12)

⁸² *Ibid*, 73

is.”⁸³ What they found is that while the early studies of the 1940s-1960s portrayed the public as “apathetic, uninterested in politics, unconcerned about who wins or loses presidential elections, [and] only marginally interested in voting,” this generalization masks some very important things.⁸⁴ They found that the public knows the most about institutions and processes, which are taught in schools, and the least about specific players in the political sphere. However, in no area (including domestic politics) does the median knowledge top 50%.⁸⁵ For example, 96% of people knew that the United States was part of the United Nations in 1985, while only 59% of people could say whether their governor was a Democrat or a Republican, but in neither the institutions nor actors areas did knowledge top 50%.⁸⁶

They also found that “citizens tend to be generalists in their knowledge of politics,” knowing a little bit about a broad range of political topics and having little in depth knowledge, but that specific factors, such as “general interest in politics,” the nature of their environment and education, and the perceived relevance of information can have a significant impact on how much a person knows.⁸⁷ To generalize, they found that, “People learn about a subject if they have the ability, motivation, and opportunity to do so (Luskin, 1990).”⁸⁸ Education is key where ability is concerned, and one of the reasons why people know so much more about

⁸³ Michael X. Delli Carpini and Scott Keeter, *What Americans Know about Politics and Why It Matters*, (Yale University Press, 1996), 65.

⁸⁴ Ibid, 41

⁸⁵ Ibid, 68-69

⁸⁶ Ibid, 70, 74

⁸⁷ Ibid, 174-175

⁸⁸ Ibid, 179

institutions is that they are fairly unchanging. Thus, the curriculum remains largely the same from year to year, making it easier for teachers to accurately lecture on the subject.

What they conclude is that talking about how much the public as a whole knows about politics is useless. It is more meaningful to talk about what certain segments of the population know, because much of the public knows enough about politics to be considered well informed.⁸⁹ It is considering these people as one with the least informed subset of the population that makes the entirety of America look so woefully uninformed. They also found that levels in political knowledge have not changed at all in the last fifty years, that most people are generalists and only know about the aspects of politics which mean a lot to them, and that “informed citizens are better citizens” in that they are more likely to participate, more likely to hold meaningful and stable attitudes about politics, more likely to support “democratic norms.”⁹⁰

In summary, while there are different views on what constitutes an informed citizenry and how important this is to the functioning of the American government, the literature reviewed here agreed on several things. First, over the years the Court has afforded police increasing discretion to search vehicles and seize the contents therein. Second, citizens know little about their rights in these specific circumstances, and finally, substantial portions of the population lack the ability or motivation to become informed about politics in general. In the remainder of this thesis I will present the findings of my questionnaire to hopefully shed some light on

⁸⁹ Ibid, 269

⁹⁰ Ibid, 268-272

the following questions: How much does the average person know about his or her rights with regard to vehicular search and seizure? And what do people think the appropriate scope of police power should be in these circumstances.

CHAPTER THREE

Data Collection and Methods of Analysis

Setting

I made the decision to conduct a survey because I wanted to include some original research in my Honors Thesis, and I knew that I might never again be in a setting as conducive to original research as college. This decision being made, the first order of business was to find out what exactly I wanted to measure. I chose college students as my survey population because on a college campus students exist in abundance. I chose to study students in Greek life specifically because, due to time constraints, I knew I would not be able to construct a survey representative of the population, and I wanted to be able to say something about the population that my sample was collected from. The only way to do this with a survey using convenience sampling as the response collection method is to find a population small enough that I could get a significant proportion of that population to respond. This was what I hoped to achieve with Greek life.

After the decision to sample Greek life was made I had to decide what demographic indicators I wanted to include in the survey. I wanted to ask only about those factors that I felt would make a difference in levels of knowledge, and so I chose to add background questions about family income, gender, and ethnicity. For family income, I started at the poverty line of less than \$25,000 and proceeded up to \$125,000 in \$50,000 intervals in order to see if a certain familial income level would be correlated with different levels of knowledge, as is suggested by much research.⁹¹

⁹¹ Michael X. Delli Carpini, "An Overview of the State of Citizen's Knowledge About Politics," *Annenberg School for Communication Department Papers*, University of Pennsylvania (2005) 27: http://repository.upenn.edu/cgi/viewcontent.cgi?article=1053&context=asc_papers&sei-

Survey Instrument

The Survey is divided into three parts. The first two parts aim to find out both what students know about vehicular seizure and what effect a minimal level of instruction would have on knowledge of vehicular law. The two parts are separated by a prompt, designed to give students a small lesson on vehicular search law. Finally, I wanted to take this study a step further and ask what college students' thought the law *should be* with regard to vehicular searches and seizures. This would constitute the third section of the questionnaire.

I went through several drafts of the questionnaire as I tried to avoid any ambiguity with my questions. The goal was to make each question in the first two parts of the questionnaire have an obvious answer grounded in Supreme Court jurisprudence. To have a question without a definite answer would undermine my survey results. I also wanted to ask questions that would have the most applicability to college students, and so I did a lot of research in the drug, alcohol, and search areas of Supreme Court jurisprudence.

In its final form, the survey consisted of a consent form followed by a series of demographic questions and a prompt, which instructed respondents to answer each of the following five questions (questions 7-11) to the best of their knowledge. After these questions were asked, students were presented with a prompt that explained some

[redir=1&referer=http%3A%2F%2Fwww.google.com%2Furl%3Fsa%3Dt%26rct%3Di%26q%3Dan%2520overview%2520of%2520the%2520state%2520of%2520citizens%27%2520knowledge%2520about%2520politics%26source%3Dweb%26cd%3D1%26sqi%3D2%26ved%3D0CDEQFjAA%26url%3Dhttp%253A%252F%252Frepository.upenn.edu%252Fcgi%252Fviewcontent.cgi%253Farticle%253D1053%2526context%253Dasc_papers%26ei%3DGnToUP34DOXy0QHQnoGIDg%26usg%3DAFQjCNE8-pFjRxe0Vs5uYW6Oc-oyTh9SsA%26bvm%3Dbv.1355534169%2Cd.dmQ#search=%22an%20overview%20state%20citizens%20knowledge%20about%20politics%22](http://www.google.com/Furl/Fsa%3Dt%26rct%3Di%26q%3Dan%2520overview%2520of%2520the%2520state%2520of%2520citizens%27%2520knowledge%2520about%2520politics%26source%3Dweb%26cd%3D1%26sqi%3D2%26ved%3D0CDEQFjAA%26url%3Dhttp%253A%252F%252Frepository.upenn.edu%252Fcgi%252Fviewcontent.cgi%253Farticle%253D1053%2526context%253Dasc_papers%26ei%3DGnToUP34DOXy0QHQnoGIDg%26usg%3DAFQjCNE8-pFjRxe0Vs5uYW6Oc-oyTh9SsA%26bvm%3Dbv.1355534169%2Cd.dmQ#search=%22an%20overview%20state%20citizens%20knowledge%20about%20politics%22) (Accessed October 24, 2012)

⁹¹ Ibid, 29

important Court rulings that may impact their response to the survey (*United States v. Ross*, *Arkansas v. Sanders*, *Arizona v. Gant*) and told to answer the next five questions (questions 13-17) to the best of their ability. Each of these five questions was analogous to one of the first five questions asked, and ideally could be answered more easily based on the information provided by the prompt. Finally, I gave respondents a prompt telling them to answer the final five questions (questions 19-23) with what *they thought* the law should be in the five scenarios presented. This was done to gauge respondents' thoughts about Supreme Court vehicular decisions. A copy of the questionnaire can be found in Appendix A.

As I had previously mentioned, each question in the survey had a definite answer grounded in Supreme Court doctrine, and in each section with the exception of the final one, where there was a question about GPS tracking devices that the Court has yet to rule on definitively (*United States v. Jones*), the questions were analogous. For instance, in question nine I presented a scenario where a police officer approaches a car to see a man extinguishing a marijuana cigarette. The police officer then orders the man out of the car and searches it. Then, in question fifteen of the second part of the survey, I asked the functional equivalent of that question, substituting alcohol in for marijuana. Both searches would be legal due to plain sight doctrine, but in each question I provided the additional stipulation of the search of a suitcase found in the vehicle during the search. The questions are still analogous to one another, and in each, the search becomes illegal with the addition of the search of the suitcase.

Data Collection

Once the questionnaire had been finalized, I got my project approved by the Institutional Board of Review and went into the Interfraternal and Panhellenic fraternity and sorority meetings to pitch my project. There I asked representatives from each fraternity and sorority on campus for their participation in my survey. They were told that they would be compensated for their time, and that if they should choose to participate to sign up on a piece of paper I had provided and I would contact them within the week with a link to the survey to put on their organizations' folder. I encouraged them to sign up and encourage their members to participate. In the end I got the signatures of six sororities and twelve fraternities to participate, and I emailed them a link to the survey, which was conducted through SurveyMonkey, and told them it would be open for two weeks. A total of 253 students completed the survey.

Data Analysis Methods

The first step in analyzing the data was to summarize the general trends of the survey. This included calculating basic percentages of answers of all respondents. In addition to summarizing the general results of the survey, I approached the data from two angles. First, I examined whether a short "teaching lesson" on Supreme Court jurisprudence would have any effect on students' responses as to whether certain police actions are legal (questions 7-17). That is to say, if I tried to "teach" respondents' a little bit about Supreme Court decisions, would a higher percentage of respondents get questions 13-17 correct than did questions 7-11? Secondly, I examined whether gender and income level had any effect on respondents' opinions as to whether certain police actions should be legal (questions 19-23).

Effects of Teaching Module on Respondents Answers to Questions 7-17

Since I included two sets of questions separated by a “learning” element designed to teach respondents a little bit about the Supreme Court jurisprudence surrounding our hypothetical scenarios, I wanted to explore whether there was a statistically significant effect of the teaching on the distribution of respondents’ answers. To do this I again collapsed the original five categories into three (agree, unsure/neutral, disagree). Next, because each scenario in the first set of responses was analogous to one in the second set of responses, we had to find a way to compare the analogous answers with each other.

The survey was designed so that questions seven and fourteen, eight and seventeen, nine and fifteen, and ten and sixteen, and eleven and thirteen contained analogous scenarios. In order to determine whether the “taught” element had any significant impact on levels of knowledge, I coded responses by creating a three-by-three grid for each set of analogous responses.

Question 7 Prompt				
Question 14 Prompt		Agree	Neutral	Disagree
	Agree			
	Neutral			
	Disagree			

Table 3(a)

The top of the grid corresponds with the scenario asked before the “taught” element, and the side of the grid corresponds with the scenario asked after. From left to right and top to bottom each box read agree, unsure, neutral, and each answer fit into the box corresponding to how respondent answered both questions. Thus, the top left box of the grid corresponds with those respondents who answered agree both before and after

the “taught” element. The bottom right of the grid corresponds with those respondents who answered disagree both before and after the “taught” element. In contrast, the top right of the grid corresponds with someone who answered disagree before the prompt and agree after. We refer to the agree/agree, neutral/neutral, disagree/disagree cells as the diagonal in our tables. Table 3(a) is an example of the grid used.

Once the answers were coded my goal was to see if there was any statistically significant difference between the distribution of answers given in the first set of scenarios and those given in the second set. Of course, I had to keep in mind that factors other than the “taught” element of our survey could come into play. Thus, I had to be very cautious of attributing any change in correctness of answers to the prompt. For example, question set ten and sixteen was eliminated because I did not include the information necessary in the teaching lesson to give respondents a chance to formulate an educated opinion.

In order to determine whether there was a statistically significant difference between the distribution of results before and after the teaching, I performed a Stuart-Maxwell test using an alpha-value of .05. The Stuart-Maxwell test is a version of the McNemar test that tests marginal homogeneity for a table larger than 2x2.⁹² Marginal homogeneity is the idea that the sum of any given row will match the sum of the corresponding column. The Stuart-Maxwell test examines the counts that fall off of the diagonal to see whether they are “balanced.” For example, if a similar number of people switched their responses from disagree to agree and agree to disagree, we would conclude that there was no significant difference in results. However, an imbalance in these values

⁹² Dr. John Uebersax, McNemar Tests of Marginal Homogeneity. “Stuart-Maxwell Test,” <http://www.john-uebersax.com/stat/mcnemar.htm> (accessed February 19, 2013)

(measured by a greater number of people switching from disagree to agree than from agree to disagree) would signal a significant difference. The test thus ignores responses falling on the diagonals of the grid, for example those who answers agree/agree, disagree/disagree, or neutral/neutral. For those that showed a significant difference ($p < .05$) I looked at the actual question to determine if the change was in the direction that the teaching test was designed to prompt respondents (respondents who changed their answers went from being incorrect prior to the prompt to correct after) or negative (respondents went from being correct before the prompt to incorrect after).

Results of Questions 19-23 by Gender and Income Levels

I decided to look at questions 19 through 23 and find out if there were any significant differences between respondents of different incomes or genders. I had originally included ethnicity in my questionnaire in hopes of finding out what effects ethnicity would have on my results, but I dropped ethnicity in my survey because no category other than Caucasian/white had more than ten respondents. I filtered for men and women, leaving me with 104 male responses and 130 female responses. I then collapsed the answers for questions 19 through 23 into three categories (Agree, Unsure/Neutral, Disagree) in order to ensure enough responses in each category to attain meaningful results.

With this done, I next looked at how people responded to each question versus what the law currently states as the correct answer. Questions 19-23 asked respondents' opinions about whether certain police actions should be legal, and thus had no real right or wrong answer; my interest here was purely to find out if students agree with the law as it is or think existing laws are unfair. I looked at questions 19-23 data broken down by

both gender and income levels. For income, I collapsed the data into two categories (less than \$75,000 and greater than \$75,000) in order to have enough responses in each category. I compared the expected frequencies in each of three categories (agree, unsure/neutral, disagree) to my results under the null hypothesis that response was independent of income. I performed a chi-squared test for independence to see if differences between income levels were significant using an alpha-value of .05. The test for gender was conducted in the same way, with our only two categories being male and female.

CHAPTER FOUR

Results and Interpretation

Overall Results

After deleting responses so incomplete that they could not be used, I was left with 243 responses. Responses not counted were those in which no questions were answered. Any respondent who answered enough questions to aid statistical analysis in any section was kept in for the analysis. Of these 243 responses, 139 (57.2%) respondents were women and 104 (42.8%) were men. The distribution of responses for family income can be seen in table 4(a).

Family Income	
<25,000	14 (5.8%)
25,000-75,000	99 (40.7%)
75,000-125,000	81 (33.3%)
>125,000	31 (12.8%)
Do Not Know	18 (7.4%)
Total	243

Figure 4(a)

In the category of race, 224 respondents (92.9%) were Caucasian/White, with only 7 (2.9%) reporting that they were Asian, and three (1.2%) in each of Hispanic/Latino, African American, and Native American Indian categories. 6 respondents (2.5%) answered other. Due to these small numbers, race was dropped from statistical evaluation. Overall, nine fraternities and six sororities were represented.

Questions 7-17

The first pair of analogous questions is seven and fourteen, presented in appendix A on pages 77 and 80. Both questions present a scenario where police to pull a person over and arrest them, securing them in the back of the cruiser and then conducting a full search of the inside of the vehicle, finding cocaine and marijuana, respectively.

Question 7 (Before Prompt)				
Question 14 (After Prompt)		Agree	Unsure/Neutral	Disagree
	Agree	28	20	80
	Unsure/Neutral	6	6	20
	Disagree	7	4	72

Figure 4(b)

Table 4(b) shows the results for each question before and after the learning element. For each pair of questions the table will show the answers for the first question in the set in the columns and the answer for the second question of the set in the rows. For example, if a respondent answered agree for seven and disagree for fourteen, that respondent falls in the bottom left cell of the table.

Looking at the table, it seems clear that the distribution for the post-teaching lesson is much different than the distribution for the pre-teaching lesson. For example, 80 students switched from disagree to agree, while only 7 switched from agree to disagree. Consistent with this finding, significant statistical differences were found between the patterns of responses for questions 7 and 14 (Stuart-Maxwell, $p < .0001$). Unfortunately, these were not the changes expected or hoped for. Indeed, though in both cases the search was illegal, figure 4(b) shows us that the vast majority of respondents who switched their answers said that the first search was illegal and the second legal. In fact, only a total of 5.4% (13) changed their answer from stating the search was legal in question seven to being either unsure or believing it to be illegal in question fourteen. If the prompt in question twelve was designed to teach respondents about the law, then how could they have answered question seven correctly but question fourteen wrong? The answer to this query most likely lies in how respondents interpreted the scenarios presented in each “analogous” question. In fact, after looking at the results to the survey,

I would have to admit that there was a serious flaw in this question that most likely led respondents to answer in the ways reflected in the table.

Though the scenarios in each question, both of which were standard search incident to arrest situations made illegal by *Arizona v. Gant*, were identical, the reason criminals were pulled over were not. In question seven the criminals were pulled over for criminal speeding, whereas in question fourteen they were pulled over for driving under the influence. Although both are punishable by arrest, driving under the influence may have been seen as much more serious by respondents. Thus, they may have been tempted to answer that the first search was illegal based on the reason for the stop and arrest alone. This could lead to the statistically significant incorrect change in respondents' answers. Still, a notable plurality (29.6%) of respondents did answer both before and after that the search would be illegal. This is encouraging in light of recent studies included in my literature review that suggest that people know very little about their rights.⁹³

The second pair of analogous questions is eight and seventeen. In both of these questions police pulled a person over for committing a crime punishable by arrest, arrested the occupants of the vehicle, and secured them in the back of the cruiser, then searching the vehicle and finding drugs within.

⁹³ William A. Galston, "Political Knowledge, Political Engagement, and Civic Education," *Annual Review of Political Science* 4 (June 2001) 221: <http://bill.ballpaul.net/archives/publicleaders/documents/galston.pdf> (Accessed October 15, 2012)

Question 8 (Before Prompt)				
Question 17 (After Prompt)		Agree	Unsure/Neutral	Disagree
	Agree	110	23	29
	Unsure/Neutral	19	6	9
	Disagree	18	5	22

Figure 4(c)

This table seems more “balanced” than the last. For example, 19 respondents switched from agree to unsure, and 23 switched from unsure to agree. Consistent with the apparent trend in the table, significant statistical differences were not found in the distribution of results (Stuart-Maxwell, $p=.1413$).

Interestingly, a high plurality of people agreed that the search in both situations was legal, with 45.6% (110) of respondents answering “agree” to both questions. This was the incorrect answer, as the search was illegal, and only 12% (29) of respondents changed their opinion from agree (the search was legal) to disagree (the search was illegal) after viewing the prompt. This means that there was both a high level of stability in answers before and after the prompt and an incredibly high plurality of incorrect answers on both questions. Perhaps respondents believed that arresting a person and securing them in the back of their cruiser, as was done in both scenarios, was not enough to eliminate the need to preserve evidence of the crime. Thus, they may have believed that an officer could search the vehicle without a warrant even though occupants were no longer in danger of destroying the evidence. This would be a very reasonable, though ultimately incorrect, belief, and without a deeper knowledge of *Arizona v. Gant* that could only be obtained through a much more detailed study than the one sentence I provided, one could easily make this mistake.

The next pair of analogous responses is nine and fifteen. The two questions were a bit different from the first two sets in that these questions involved a plain-sight

detection by police, (marijuana in question nine and cocaine in fifteen) which resulted in police searching the vehicle in question and opening a suitcase found therein.

Question 9 (Before Prompt)				
Question 15 (After Prompt)		Agree	Unsure/Neutral	Disagree
	Agree	84	7	11
	Unsure/Neutral	16	8	3
	Disagree	89	5	18

Figure 4(d)

Significant statistical differences between these two questions were found (Stuart-Maxwell, $p < .0001$), making this the first question set in which respondents' answers were significantly different from one another and made the switch from being incorrect to correct. These questions were both based around a search incident to arrest that included the search of a suitcase, a search that is illegal without a warrant pursuant to *Arkansas v. Sanders*. As we can see in figure 4(d), 36.9% (89) of respondents made the switch from agreeing that the search was legal in question nine to believing it to be illegal in question fifteen. This is probably due to the fact this is the first pair of questions where the reason for the illegality of the search was explicitly mentioned in the prompt between the questions. In light of this fact, it is interesting to note that 34.8% (84) of people still answered "agree" for both questions, a phenomenon attributable only to people's lack of desire to read the prompt thoroughly.

Skipping over questions ten and sixteen (standard legal *Terry* stop-and-frisks), which I explained earlier were accidentally left out of the prompt, we next move on to question set eleven and thirteen. Eleven and thirteen both have to do with police arresting a person for impaired driving and searching their car, a search made legal by the probable cause established in discovering that the driver was indeed impaired. These are different than the *Arizona v. Gant* cases earlier in the survey because the criminals were

not secured in the back of the cruiser at the time of the search. While *Gant* may in the future demand that criminals in these situations be secured and the car not searched until a warrant is obtained, the full constitutional impact of *Gant* (a 5-4 ruling with Scalia joining the opinion) has not yet been discovered, and until the Court rules on a case such as this it is almost surely a legal search. The only things *Gant* currently does is make it unquestionably illegal to search a vehicle when suspects are no longer in reaching distance of the passenger compartment and thus cannot destroy any evidence, and allow police to search for reasons pertaining to officer safety and destruction of evidence.

Question 11 (Before Prompt)				
Question 13 (After Prompt)		Agree	Unsure/Neutral	Disagree
	Agree	137	35	27
	Unsure/Neutral	5	5	7
	Disagree	6	4	16

Figure 4(e)

The data shows a huge migration of answers between questions. For instance, thirty-five people who answered “neutral” on the first question answered “agree” on the second, whereas only five people answered “agree” on the first and “neutral” on the second. This points to very little stability in answers, and significant differences in answers were found (Stuart-Maxwell, $p < .0001$).

It is important to note that 56.6% (137) of respondents got the answer correct for both questions, with another 11.2% (27) switching from disagreeing on question 11 (the incorrect answer) to agree on question 13 (the correct answer). This could be due to the fact that these are perhaps the most straightforward questions on the entire survey. Both are basic plain sight questions where the officer smelled alcohol or marijuana on the drivers breath, and it is not surprising that most people would know that in a scenario where the police know you have been operating under the influence and the evidence of

your illegal conduct is in “plain sight” they may search your vehicle. In fact, many people have been or know people who have been subjected to this, which is all the more reason that people would know. The responses for these questions can be found in 4(e).

Overall, it appears as though the teaching element of my survey did in a few instances have the ability to give respondents the skills necessary to answer some of the scenarios correctly. This worked best when the answer was provided as explicitly as possible in the taught element, as was the case with the luggage scenarios. In question sets where the answer to the scenario was less obvious respondents were far less educated. This was especially the case in any question regarding procedure outlined in *Arizona v. Gant*, which makes sense due to the confusing nature of the court’s ruling.

Questions 19-23 Irrespective of Gender or Income

Now we will move on to section three of the questionnaire, which asked about respondent’s opinions regarding various aspects of search and seizure law rather than what the law actually is. The following table presents the results of questions 19-23.

Answers	Total Numbers				
	Question 19	Question 20	Question 21	Question 22	Question 23
SA/A	135 (56%)	47 (19.5%)	100 (41.3%)	82 (34%)	141 (58.3%)
Neutral	31 (12.9%)	23 (9.5%)	33 (13.6%)	77 (32%)	40 (16.5%)
SD/D	75 (31.1%)	171 (71%)	109 (45%)	82 (34%)	61 (25.2%)
N	241	241	242	241	242

Figure 4(f)

Figure 4(f) shows the data for the total responses irrespective of gender or income. Overall, people were surprisingly supportive of police searches. In question 19 respondents supported police ability to search a vehicle after a DUI arrest despite the fact that the suspect was already handcuffed and in the back of the cruiser. This is

inconsistent with *Gant*, which made such a search illegal. The fact that a solid majority of respondents think such a search should be allowed is surprising, although a third of respondents did say they think such a search should be illegal.

Question 20 shows a total reversal of opinion. In a situation where police pull a person over and ask them out of the car, patting them down for weapons, our survey shows that over 70% of respondents believe such a search should be illegal. Again, this is inconsistent with Court doctrine, as the Court held in *Pennsylvania v. Mimms* (434 U.S. 106 (1977)) that such a search is “beyond Constitutional scrutiny.”⁹⁴ This is less surprising, as *Terry* has always been a very controversial decision among the public, and the trepidation shown by respondents about its incorporation to the vehicle is unsurprising.

Question 21 shows much more diversity of opinion. When police pull a person over for a DUI and arrest them, and then search a suitcase they find in the car, our study shows that 41% of people support the search of the suitcase and 45% do not support the search. This is one of two questions in the survey where we do not see a majority in one category for all respondents, but the plurality of opinion is consistent with Supreme Court doctrine, which holds that such a search is not legal, as the suitcase is afforded a greater level of protection and is subject to the warrant requirement.⁹⁵

Question 22 is the second question where there is no majority of opinion, and there is no clear trend in responses, with about a third of responses falling into each category. This is interesting because this question is also the only question that appears

⁹⁴ Cornell University Law School, Legal Information Institute, “United States v. Arvizu” <http://www.law.cornell.edu/supct/html/00-1519.ZS.html> (Accessed December 29, 2012)

⁹⁵ United States Supreme Court, “Arkansas v. Sanders,” Justia: U.S. Supreme Court Center, <http://supreme.justia.com/cases/federal/us/442/753/> (Accessed, February 25, 2013).

only once in the survey. It describes closely the situation found in *United States v. Jones*, where police obtained a warrant to attach a GPS tracking device to a vehicle that had no specified time period in which the search would take place. The Court in this case did not answer whether the search, which took place over the course of a month, was illegal. Instead, they said that a search took place, but that the question of whether the search was legal was not raised and thus would not be considered in the case. It is certainly a problematic question, and it appears as though our respondents are as hesitant to provide an answer as the Court was, with 32% of respondents offering no opinion, the highest number of any of our questions by almost 15%. This could also indicate that the earlier portion of our survey had some effect on answers to this portion of the survey, as the only question not mentioned at any other part of the survey had the highest number of unsure responses.

Finally, question 23 presents a solid majority of opinion favoring the legality of the police action in question. In this scenario police pull a man over and find that he has been driving under the influence of marijuana. They search his vehicle and find drug paraphernalia in the glove compartment. This is, as of right now, a legal search, and the majority of respondents agreed to this, with over half saying the search should be legal and one in four saying it should not.

Before breaking the information down along gender or income lines, we can learn a lot from the data as presented. First, there is a high degree of support for police search powers in the vehicular context. In fact, across all questions we see an overall support level for answers strongly agree and agree across all questions was 41.8%. However, this is not to say that there was no trepidation toward police powers, and in fact questions 19-

23 turned out a 41.3% disapproval rate. We can also see that most respondents did in fact have an opinion about the questions, with only 19% of all responses falling into the neutral category. The summary of this data can be found on table 4(g). Specifically, it appears as though respondents are receptive of searches incident to arrest, especially when the arrest was made for a driving under the influence. They are less receptive of searches of personal effects such as luggage or presumably a purse, and there is very little support for any type of *Terry* style stop and frisk.

Questions 19-23	
SA/A	505 (41.8%)
Neutral	204 (16.9%)
SD/D	498 (41.3%)
Total	1207

Figure 4(g)

Questions 19-23 based on Gender

In this section, I looked at questions 19-23 to see if the results I obtained were independent of gender. Question 19 turned out to be the only question that showed significant differences by gender (chi-squared for independence, $p=.028$). Question 19 dealt with a police officer pulling a man over for driving under the influence and arresting him. The officer then placed suspect in the back of the cruiser and conducted a search of the interior of the vehicle. According to our test, women were much more likely to answer either that such a search should be legal or that they were neutral on the subject. Notably, 16.8% of women answered that they were neutral as to whether the search should be legal or not compared to just 7.7% of men. The results for question 19 can be found in figure 4(h).

Question 19	Women	Men	Total
SA/A	79 (57.6%)	56 (53.8%)	135 (56%)
Neutral	23 (16.8%)	8 (7.7%)	31 (12.9%)
SD/D	35 (25.5%)	40 (38.5%)	75 (31.1%)
N	137	104	241

p-value = 0.028

Figure 4(h)

However, question 21 was very close to reaching the threshold of $p < .05$, which shows some difference between the two genders, but not enough to be deemed statistically significant at the alpha-level of 0.05 (chi-squared for independence, $p = .054$). However, interesting information can be derived from these, and we see from looking at figure 4(i) that 45.7% of women and just 35.6 percent of men believe a search in which a police officer arrests someone for DUI and opens a suitcase found in the suspect's car should be legal. Further, just 38.4% of women compared to 53.8% of men disagreed that such a search should be legal.

Question 21	Women	Men	Total
SA/A	63 (45.7%)	37 (35.6%)	100 (41.3%)
Neutral	22 (15.9%)	11 (10.6%)	33 (13.6%)
SD/D	53 (38.4%)	56 (53.8%)	109 (45%)
N	138	104	242

p-value = 0.054

Figure 4(i)

The other three questions were not even close to low enough to show significant differences by gender and thus were left out of discussion. Figures 4(j), 4(k), and 4(i) show the data for these questions.

Question 20	Women	Men	Total
SA/A	25 (18.1%)	22 (21.4%)	47 (19.5%)
Neutral	10 (7.2%)	13 (12.6%)	23 (9.5%)
SD/D	103 (74.6%)	68 (66%)	171 (71%)
N	138	103	241

p-value = 0.257

Figure 4(j)

Question 22	Women	Men	Total
SA/A	44 (32.1%)	38 (36.5%)	82 (34%)
Neutral	51 (37.2%)	26 (25%)	77 (32%)
SD/D	42 (30.7%)	40 (38.5%)	82 (34%)
N	137	104	241

p-value = 0.124

Figure 4(k)

Question 23	Women	Men	Total
SA/A	84 (60.9%)	57 (54.8%)	141 (58.3%)
Neutral	26 (18.8%)	14 (13.5%)	40 (16.5%)
SD/D	28 (20.3%)	33 (31.7%)	61 (25.2%)
N	138	104	242

p-value = 0.105

Figure 4(l)

Questions 19-23 Based on Income

When we break down the data for questions 19-23 along income lines we see, as was the case with gender, that for the most part there is insufficient evidence to reject the null hypothesis that that respondents' answers were independent of income. In fact, as with gender, only one question returned a p-value low enough to be considered statistically significant. This was question 22.

Question 22	0K-75K	75K+	Total
SA/A	47 (42.3%)	29 (25.9%)	76 (34.1%)
Neutral	31 (27.9%)	39 (34.8%)	70 (31.4%)
SD/D	33 (29.7%)	44 (39.3%)	77 (34.5%)
N	111	112	223

p-value = 0.03

Figure 4(m)

Question 22 had a p-value of .03, and was the only question that returned a p-value low enough to show that data were not independent of income. As you recall, this was the tracking device question elaborated upon earlier, and overall it seems as though those in the lower income bracket were substantially more likely to agree that the search should be legal. In fact, 42.3% of respondents in the lower income bracket agreed that the search in question should be legal, while only 25.9% of those in the higher income bracket believe the search could be legal. These results are mirrored in the disagree

category, where those in the higher income bracket were almost 10% more likely to disagree that the search should have been legal. The data for this question can be seen on table 4(m).

Questions 19, 20, 21 and 23 proved not to be related to income, each with p-values above .25.

Question 19	0K-75K	75K+	Total
SA/A	61 (54.5%)	63 (56.8%)	124 (55.6%)
Neutral	10 (8.9%)	16 (14.4%)	26 (11.7%)
SD/D	41 (36.6%)	32 (28.8%)	73 (32.7%)
N	112	111	223

p-value = 0.28

Figure 4(n)

Question 20	0K-75K	75K+	Total
SA/A	19 (17.1%)	24 (21.4%)	43 (19.3%)
Neutral	7 (6.3%)	12 (10.7%)	19 (8.5%)
SD/D	85 (76.6%)	76 (67.9%)	161 (72.2%)
N	111	112	223

p-value = 0.30

Figure 4(o)

Question 21	0K-75K	75K+	Total
SA/A	44 (39.3%)	50 (44.6%)	94 (42%)
Neutral	12 (10.7%)	16 (14.3%)	28 (12.5%)
SD/D	56 (50%)	46 (41.1%)	102 (45.5%)
N	112	112	224

p-value = 0.38

Figure 4(p)

Question 23	0K-75K	75K+	Total
SA/A	68 (60.7%)	59 (52.7%)	127 (56.7%)
Neutral	15 (13.4%)	23 (20.5%)	38 (17%)
SD/D	29 (25.9%)	30 (26.8%)	59 (26.3%)
N	112	112	224

p-value = 0.31

Figure 4(q)

Summary

My chief concern in analyzing the results of this survey was to see if, using the chi-squared and Stuart-Maxwell tests, some demographic characteristic or the “taught” element of my survey could be shown to have an effect on the distribution of answers. For questions 7-17 we wanted to see if the “taught” element in my survey, presented between two sets of analogous questions, would have a statistically significant effect on responses. Using the Stuart-Maxwell test, we found that three of the four questions we tested showed significant differences between answers given before and after the prompt. However, in only two question sets (9:15 and 11:13) did respondents’ answers shift in most instances from the incorrect answer before the prompt to the correct answer after the prompt. In question set 7:14 a large plurality of respondents switched their answer from the correct answer in question 7 to the incorrect one in 14, and the p-value in question set 8:17 was too large to suggest a difference between answers before and after the prompt. Overall, it would appear that giving people a small lesson on Supreme Court doctrine does have a positive effect on their ability to answer questions about the legality of searches when the lesson is relatively straightforward. However, when some interpretation was involved, as was the case with our questions based on *Gant*, respondents are much less likely to get the answer right the second time around.

For questions 19-23 most responses were shown to be independent of gender or income. Only in question 19 could answers be shown to be different by gender, and only in question 22 could answers be shown to be different by income. In questions 19 and 23 respondents were likely to support the legality of the search, and in questions 20 and 21 respondents were likely to disagree with the legality of the search. This leaves question

22, which had no clear trend either way. Overall, respondents were much more likely to support situations where police pulled a person over for a drug or alcohol related reason prior to their search, and were much less likely to support situations including a *Terry* style pat down. They were inconclusive about their opinion toward the use of a GPS tracking device.

CHAPTER 5

Conclusion

In general, my findings on public political knowledge are consistent with other scholars' research in the area. I found that before the taught element a large plurality of respondents' answered the prompts incorrectly. This was especially true with question eight, where 61% of respondents answered the question incorrectly, and question nine, where 78% of respondents got the question wrong. However, respondents were far from universally uninformed. In fact, in question seven 70.8% of respondents got the question correct, and in question eleven 61.2% of respondents got the question correct, suggesting that in some areas of vehicular search and seizure citizens may be more informed than in others, and that ignorance of the law with regard to vehicles is far from universal.

It is also important to note that giving students a short lesson on vehicular search and seizure does seem to make a difference in how well they are able to answer the questions. In question set nine and fifteen 36.9% of respondents changed their answer from the incorrect to correct answer, and in question set eleven and thirteen 11.2% of people switched from the incorrect to the correct answer even with 56.6% of respondents answering both questions correctly. These figures support my position that teaching students even a little about search and seizure has the propensity to increase their ability to answer questions correctly. There were questions where this was not the case, but much of this had to do with how I presented the questions, not with a lack of ability to understand on respondents' parts.

Obviously, one shortcoming of this project is that the entire teaching element is given within about a five-minute period and respondents are immediately retested to see

how much they learned. This could lead to questions about how much of the information actually sticks, or how much attention respondents really pay to the prompt. However, the information gathered is sufficient to show that the average person does have the propensity to understand the basics of vehicular search and seizure law, which is what I was trying to show with my questionnaire.

This leads me to a few of the “bigger” questions I pose in my thesis. What does this mean for the average citizen? It means that if America were to decide that it was a priority to teach citizens a little bit more about the rights and responsibilities associated with obtaining a license it could easily do so. Requiring licensed driving school instructors to teach a lesson on vehicular search and seizure law does not seem too onerous a requirement for me, and in light of the very short lesson I gave it appears that it would not take too long to impart the minimum level of knowledge necessary to go through life with an adequate level of knowledge about what police can do when they pull a person over. Even if Driver’s Education programs were not the chosen medium, it strikes me as important for citizens to know just how minimal and tenuous their rights are when they enter a vehicle.

Of course, the Court has held in many areas that police are not responsible for a citizen’s ignorance about his or her rights, but my contention is that this is an area where the government, not the courts, need to realize that citizens are not presently equipped with adequate information to travel responsibly. This is because though most police have good intentions and want to perform their jobs in efficacious ways, there are police who are looking to take advantage of citizens. Since these police are employees of the state, it falls on the state to provide another barrier between the people and law enforcement

officers. This barrier need only be as simple as a statement wherein a police officer asks a citizen for permission to search their car and informs them that they have the right to refuse. One obvious problem is that the case law in this area is somewhat mutable, and thus what one class learns could become bad law in one Supreme Court term, but there are certain cases (*Carroll* for example) that are unlikely to be changed and could be instructed upon. Even if certain rulings or interpretations change, I would argue that knowing something is better than knowing nothing, and it is rare that a case is distinguished so clearly or overturned so concisely as to render any previously correct understanding completely erroneous. In thinking that our citizens cannot understand these often complicated decisions we are both selling them short and sending them into the world with inadequate knowledge. Although the “average” college student knows somewhat more than I originally gave them credit for, they still need to be equipped with greater knowledge, and it is not that difficult to teach them. The lesson of such knowledge would not be to fear or loathe police officers. Rather, the goal is to both teach citizens about their rights in search and seizure situations and how to handle certain types of situations. For instance it is never a good idea to resist arrest or fight back, but it might be helpful to know that the arrest you are being subjected to is not legal so that you can challenge it later.

For questions 19-23 I asked respondents how they felt about certain police search and seizure situations. I essentially presented a scenario and asked respondents whether they agreed or disagreed with the legality of the search. I analyzed this question both irrespective of gender and income and with these controls in place. This gave us some very interesting results. In general, there was a greater degree of support for police

search and seizure than I had anticipated. Specifically, a majority of respondents were supportive of search incidents where respondents were pulled over for driving under the influence. A majority of respondents were even willing to go as far as to say that police should be able to search at the scene of arrest even when the arrestee was secured and away from their vehicle. This was something I did not expect. However, respondents were generally less likely to be supportive of pat-downs, searches of personal effects in cars such as suitcases, and the use of tracking devices attached for an undisclosed amount of time to monitor the movements of a vehicle.

When we controlled for gender we found that it had no effect in most questions. In fact, only one question (19) showed significant differences by gender. This shows us that being a man or a woman was unlikely to affect a person's response to any one of the questions other than 19. I had expected men to be slightly less likely to be supportive of police search measures, and while this generally turned out to be the case, the differences were not enough in any question other than 19 to be statistically significant. However, in question 19 men were significantly more likely than women to disagree that the search in question was legal (38.5% compared to 25.5%). This does seem to support my thesis. In every other question with the exception of 20, the *Terry* pat-down question, women were more likely to agree with the legality of a search than men. This is consistent with my initial postulations.

As was the case with gender, we found that after controlling for income only one question was statistically significant. I had expected those of higher income families to have a better understanding, and possibly more acceptance (due to the fact that they are less likely to be subject to a search) of vehicular search and seizure law. Many scholars

of levels of political knowledge have found that levels of income are one determinant of how much people know about politics.⁹⁶ The actual results showed that income made little difference in this specific subset of political knowledge. In fact, in question 22, the only question where a relationship between income and opinion was found, those of low incomes were significantly more likely to agree with the legality of the search, which was the tracking device case discussed earlier in the thesis. 42.3% of those respondents whose families made 0K-75K a year agreed that such a search should be legal, while only 25.9% of those making 75K+ agree that such a search should be legal. Even looking at the other non-significant questions shows that my initial supposition is unfounded in any of my results. The results seem to be equally distributed between those of higher incomes thinking a search should be legal and those of lower incomes feeling that way. In other words, there is no clear connection that can be found in the data. This may be due to the fact that there is little variability of family incomes among my college students. Perhaps in a larger sample more representative of the population my original suppositions may have been founded, but there is no evidence to support that in this report.

So, what does this mean for our citizens? What it means is that most people with the level of intelligence needed to obtain a license have the ability to comprehend some basic facts about what rights one does and does not have with regard to their vehicle. My

⁹⁶ Michael X. Delli Carpini, "An Overview of the State of Citizen's Knowledge About Politics," *Annenberg School for Communication Department Papers*, University of Pennsylvania (2005) 27: http://repository.upenn.edu/cgi/viewcontent.cgi?article=1053&context=asc_papers&sei-redir=1&referer=http%3A%2F%2Fwww.google.com%2Furl%3Fsa%3Dt%26rct%3Dj%26q%3Dan%2520overview%2520of%2520the%2520state%2520of%2520citizens%27%2520knowledge%2520about%2520politics%26source%3Dweb%26cd%3D1%26sqi%3D2%26ved%3D0CDEQFjAA%26url%3Dhttp%253A%252F%252Frepository.upenn.edu%252Fcgi%252Fviewcontent.cgi%253Farticle%253D1053%2526context%253Dasc_papers%26ei%3DGnToUP34DOXy0QHQnoGIDg%26usg%3DAFQjCNE8-pFjRxe0Vs5uYW60c-oyTh9SsA%26bvm%3Dbv.1355534169%2Cd.dmQ#search=%22an%20overview%20state%20citizens%20knowledge%20about%20politics%22 (Accessed March 21, 2013)

belief is that it is our responsibility to equip young drivers with this knowledge so that they know the best way to react when confronted with the possibility of a police search. When the police mean well, which is surely most of the time, they will be able to understand what is going on and not frustrate police with unfounded accusations and false understanding of their rights. When police do not mean well, which also certainly happens, drivers will know that they are being taken advantage of and that their rights are being infringed upon. This is not to say that they should refuse the search or contest police authority at the scene, but rather that they may know there is a potential for appealing it later. Further, it is imperative that citizens understand how few protections they are currently afforded in the vehicle. Although the Court does not recognize ignorance of the law as a viable defense, that we can erase it as a distinct possibility in vehicular search situations is preferable.

While in a few questions there appeared to be a difference in answers between those of different genders or income levels, there are certainly no differences in the ability of individuals of college level intelligence to be able to understand their rights in the vehicular context. To the extent that those of different genders and income levels have differing views on police powers of search and seizure in the vehicular context it is a difference of opinion, rather than of factual knowledge. It is the responsibility of our government to mandate that driver's education teachers spend a certain amount of time on police search and seizure powers. It is not enough to impart basic knowledge of how to operate a vehicle and the "rules of the road." Instead, instructors must make sure students understand the risk they take when they enter a vehicle. They forfeit certain rights that they enjoy in other places that the Supreme Court has deemed "more

protected,” and they do not retain the same protection from search and seizure in the vehicle that they do in their homes.

Afterword

Upon embarking on my thesis, I endeavored to find a topic that would challenge me intellectually. I decided to include a questionnaire in my thesis precisely because I had little experience working with statistics, and I wanted to add an element to my thesis that would set it apart. Thus, my thesis quickly became a very ambitious project. And in completing this very ambitious project I made some very ambitious mistakes. It would be remiss of me to pretend as if these mistakes did not exist, and because of this I present them to you in this brief afterword.

Most importantly, I based two of the questions in the first part of my thesis (questions 9 and 15) on *Arkansas v. Sanders*, 442 U.S. 753 (1979). These questions dealt with the legality of a police search of a briefcase found in the back of a vehicle during an otherwise legal search. Using *Sanders* I concluded that the searches were illegal, because the Court in *Sanders* held that absent exigency, the warrantless search of personal luggage located in a vehicle solely because it is in the vehicle at the time of the search is illegal.⁹⁷ Had my thesis been published any time before 1991 my interpretation would have been correct. However, *Sanders* was overruled in 1991 by *California v. Acevedo* 500 U.S. 565 (1991), wherein the Court held that police do not need to obtain a warrant to search any container in a vehicle where there is probable cause to search that container.⁹⁸ While the Court never explicitly states in *Acevedo* that it is overruling *Sanders*, that is the general interpretation of the case, and it has the effect of making a

⁹⁷ U.S. Supreme Court Media, Oyez, “Arkansas v. Sanders,” http://www.oyez.org/cases/1970-1979/1978/1978_77_1497 (Accessed April 18, 2013)

⁹⁸ Casebriefs, “California v. Acevedo,” <http://www.casebriefs.com/blog/law/criminal-procedure/criminal-procedure-keyed-to-saltzburg/searches-and-seizures-of-persons-and-things/new-york-v-belton/2/> (Accessed January 29, 2013)

search that I called illegal instead legal. While I noted this development correctly in Chapter 2, I misinterpreted it in the construction of my survey prompt.

That is not to say that my findings are completely nullified. Although I mistakenly gave respondents the wrong information, I still ardently contend that something can be learned from the results I obtained. What can still be gleaned from these two questions is that the public *can* be taught about vehicle search and seizure in such a way that they understand some of relevant law in the area. While I mistakenly gave them the wrong information to work with, a statistically significant portion of people still made the switch to the answer they believed to be correct based on the information I provided them with.

The other mistakes I made were in my interpretation of *Arizona v. Gant*, 556 U.S. 332, and both mistakes were decidedly less obvious than my previous error. In both cases (questions 7 and 14; 8 and 17) I made the mistake of ignoring a piece of the holding that could change one's interpretation of the cases. In addition to applying *Chimel*-logic of officer safety and preservation of evidence in *Gant* (a more narrow standard than the one used in *Belton*), the Court adopted Scalia's reasoning in *Thornton* that "circumstances unique to the automobile context justify a search incident to arrest when it is reasonable to believe that evidence of the arrest might be found in the vehicle."⁹⁹ Armed with this portion of the holding, one could argue that the DUI searches were legal, because in DUI searches such as the ones presented in questions 8, 14, and 17 it may indeed be "reasonable to believe that evidence of the arrest might be found in the vehicle." With question set 7 and 14 I made the additional error of treating criminal speeding and DUI as

⁹⁹ Cornell University Law School, Legal Information Institute, "Arizona v. Gant," <http://www.law.cornell.edu/supct/html/07-542.ZO.html> (Accessed April 13, 2013)

equivalent offenses, both of which would not justify a search. With “Scalia logic” in hand, it would appear that the criminal speeding search would be illegal, as there is no reason to believe that evidence related to the crime would be found in the vehicle, while the DUI search would be legal.

These are the mistakes I made in the questionnaire portion of the thesis, and though they make it difficult to determine what people actually know about vehicular search and seizure, I assert again that we can still draw some conclusions from them. As I stated before, it is possible to see that people are able to learn about vehicular search and seizure given the chance. In this respect my findings were not compromised by my mistakes, but in the interest of transparency it was important that I draw attention to them.

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APPENDIX A:

Questionnaire

(The Questionnaire was formatted by SurveyMonkey, and thus looks a little different, but the substance is the same.)

Q2. What organization (Greek or Otherwise) are you a part of on the University of Maine Campus.

- Alpha Gamma Rho
- Alpha Omicron Pi
- Alpha Phi
- Alpha Tau Omega
- Beta Theta Pi
- Chi Omega
- Delta Phi Epsilon
- Delta Tau Delta
- Delta Zeta
- FIJI
- Iota Nu Kappa
- Kappa Delta Phi
- Kappa Sigma
- Lambda Chi Alpha
- Phi Eta Kappa
- Phi Kappa Sigma
- Phi Mu
- Pi Beta Phi
- Pi Kappa Alpha
- Sigma Alpha Epsilon
- Sigma Chi
- Sigma Phi Epsilon
- Tau Kappa Epsilon
- Theta Chi

Q3. Please choose the ethnicity that best describes you:

- Caucasian/White
- Hispanic/Latino
- African American
- Asian/Pacific Islander
- Native American Indian
- Samoan
- Other

Q4. Sex

- Male
- Female
- Transgender

Q5. In the home where you grew up, what was the income of your parent(s) per year, approximately?

- Less than \$25,000
- \$25,000-\$75,000
- \$75,000-\$125,000
- Greater than \$125,000
- Do Not Know/Not Applicable

[Page Break]

Q6. The first set of questions all present you with a scenario, and then ask if you believe the police acted within the law in the given scenario. Please choose the answer that you believe to be most factually accurate.

- Continue

[Page Break]

Q7. A police officer pulls a car over for criminal speeding. He orders all of the occupants out of the car and arrests them, handcuffing them and securing them in the back of his cruiser. The suspects are then driven away from the scene of the crime by another police officer. He then searches the interior of the car and finds cocaine in the glove compartment. This was a legal search by the police officer.

- Strongly Agree
- Agree
- Unsure
- Disagree
- Strongly Disagree

Q8. Police pull a person over for driving under the influence of alcohol. They arrest the person and secure him in the cruiser. After this, the police officer conducts a full search of the car and finds marijuana in a closed thermos in the back of the car. The search the police officer made was legal.

- Strongly Agree
- Agree
- Unsure
- Disagree
- Strongly Disagree

Q9. A police officer pulls a person over for a routine traffic violation, and upon approaching the car sees the man extinguishing a marijuana cigarette. He arrests the man and searches his vehicle. During the search, he finds a suitcase, which he opens and discovers a large amount of marijuana within. The search by the police officer was legal.

- Strongly Agree
- Agree
- Unsure
- Disagree
- Strongly Disagree

Q10. A police officer pulls a man over for a traffic violation. Approaching the car, he sees nothing unusual, but on a "hunch" asks the man to step out of the car. He then notices a bulge in his shirt pocket and proceeds to pat the man down for weapons. He finds capsules containing what appear to be heroin in the shirt pocket. The search by the police officer was legal.

- Strongly Agree
- Agree
- Unsure
- Disagree
- Strongly Disagree

Q11. An officer pulls a person over for a traffic violation and can smell marijuana on his or her breath. The officer searches the car and finds marijuana in the glove compartment. The search was legal.

- Strongly Agree
- Agree
- Unsure
- Disagree
- Strongly Disagree

[PAGE BREAK]

Q12. Now that you have answered the first set of questions, I will provide you with some background information about the Fourth Amendment, after which you will answer questions based on another set of scenarios.

The purpose of the Fourth Amendment is to provide a safeguard between the people and the government. Specifically, the Amendment guards against "unreasonable searches and seizures" and forbids the government from searching an area except upon issuance of a warrant based on probable cause and specifically stating the place to be searched.

However, in *Carroll v. United States* (1925) the Court ruled that due to the "inherent mobility" of vehicles, an exception to the warrant requirement would be established that would allow police to search a vehicle without first obtaining a warrant. As long as police could demonstrate probable cause to believe there was evidence of a crime in the vehicle, or that a crime had been committed, they could search the vehicle. Since then, the Court has used the ruling in *Carroll* to expand the scope of warrantless searches.

Now, it is generally held that a police officer with authority to search a vehicle has the ability to search any containers therein (*United States v. Ross*). Still, there are limitations to what has been dubbed the "automobile exception." For instance, luggage is protected from a warrantless search (*Arkansas v. Sanders*). Also, law enforcement officers must now demonstrate an actual threat to their safety or a need to preserve evidence related to a crime in order to justify a warrantless search (*Arizona v. Gant*)

With this information in mind, please answer the next set of questions.

- Continue

[Page Break]

Q13. An officer pulls a man over and can smell alcohol on his breath. He searches the car and finds liquor in the glove compartment. The search of the vehicle was legal.

- Strongly Agree
- Agree
- Unsure
- Disagree
- Strongly Disagree

Q14. A police officer pulls a man over for driving under the influence. He orders the man out of the car and arrests him. Following the arrest, the man is driven away from the scene of the crime by another police officer. The first officer then makes a full search of the car and finds marijuana in the glove compartment. The search was legal.

- Strongly Agree
- Agree
- Unsure
- Disagree
- Strongly Disagree

Q15. An officer pulls a woman over for a routine traffic violation, and upon approaching the car sees the woman shoving what appears to be cocaine into her pants. He arrests the woman and, after finding the cocaine in her pant pocket, conducts a full search of the vehicle. He finds a suitcase in the back seat and opens it, finding more cocaine therein. The search was legal.

- Strongly Agree
- Agree
- Unsure
- Disagree
- Strongly Disagree

Q16. A police officer pulls a woman over for a routine traffic violation. He seems nothing unusual, but asks her to step out of her vehicle. Upon her exit of the vehicle, the police officer notices a bulge in her pants. He conducts a pat down search and finds a gun. He then arrests the woman. The search was legal.

- Strongly Agree
- Agree
- Unsure
- Disagree
- Strongly Disagree

Q17. A police officer pulls a man over for driving under the influence. He arrests the man and secures him in the back of the cruiser. He then conducts a search of the vehicle, and finds cocaine in a small Tupperware container in the back seat of the car. The search was legal.

- Strongly Agree
- Agree
- Unsure
- Disagree
- Strongly Disagree

[Page Break]

Q18. Finally, I will present you with five scenarios of the same type presented before. This time, your job is to give your opinion as to whether the search presented in the scenario should be legal or not. There are no right or wrong answers in this section.

- Continue

[Page Break]

Q19. A police officer pulls a person over for driving under the influence. He proceeds to handcuff the person and place them in the back of his cruiser. He then conducts a full search of the interior of the vehicle. Should such a search be legal?

- Strongly Agree (such a search should be legal)
- Agree
- Unsure
- Disagree
- Strongly Disagree (such a search should not be legal)

Q20. A police officer pulls a person over for a routine traffic violation. He asks the person to step out of the car and gives him a pat down for weapons. Should such a search be legal?

- Strongly Agree (such a search should be legal)
- Agree
- Unsure
- Disagree
- Strongly Disagree (such a search should not be legal)

Q21. A police officer pulls a woman over for driving erratically, and upon approaching the car and questioning her suspects that she has been drinking. He orders her out of the car and, after giving her a field sobriety test, places her under arrest. He then searches the entire interior of the vehicle, eventually finding a suitcase in the back seat. He opens the suitcase and finds cocaine therein. Should such a search be considered legal?

- Strongly Agree (such a search should be legal)
- Agree
- Unsure
- Disagree
- Strongly Disagree (such a search should not be legal)

Q22. Police obtain a warrant to attach a tracking device to a vehicle. The warrant does not specify the amount of the time the tracking device can be attached to the vehicle without further action being taken. Police proceed to track the vehicle's position for a period of a month. Should such a search be legal?

- Strongly Agree (such a search should be legal)
- Agree
- Unsure
- Disagree
- Strongly Disagree (such a search should not be legal)

Q23. An officer pulls a man over and can smell marijuana on his breath. He arrests the man and conducts a full search of the vehicle, finding drug paraphernalia in the glove compartment. Should such a search be legal?

- Strongly Agree (such a search should be legal)
- Agree
- Unsure
- Disagree
- Strongly Disagree (such a search should not be legal)

APPENDIX B:

Printed by: Gayle Jones
Title:

Monday, November 05, 2012 8:41:21 AM
Page 1 of 1

APPLICATION FOR APPROVAL OF RESEARCH WITH HUMAN SUBJECTS
Protection of Human Subjects Review Board
114 Alumni Hall, 581-1498

PRINCIPAL INVESTIGATOR: Mark Rucci
EMAIL: Mark.Rucci@umit.maine.edu TELEPHONE: (207) 731-1114
CO-INVESTIGATOR(S): Timothy Cole
FACULTY SPONSOR (Required if PI is a student): Timothy Cole
TITLE OF PROJECT: Safe to Drive? How well do we know our Police Rights of Search and Seizure
START DATE: 11/29/2012 PI DEPARTMENT: Political Science
MAILING ADDRESS: 11 Bond St. APO 30200, ME. 04473
FUNDING AGENCY (if any):
STATUS OF PI: FACULTY/STAFF/GRADUATE/UNDERGRADUATE

- 1. If PI is a student, is this research to be performed:
 for an honors thesis/senior thesis/capstone? for a master's thesis?
 for a doctoral dissertation? for a course project?
 other (specify)
- 2. Does this application modify a previously approved project? (Y/N). If yes, please give assigned number (if known) of previously approved project: (Y/N)
- 3. Is an expedited review requested? (Y/N)

SIGNATURES: All procedures performed under the project will be conducted by individuals qualified and legally entitled to do so. **No deviation from the approved protocol will be undertaken without prior approval of the IRB.**

Faculty Sponsors are responsible for oversight of research conducted by their students. By signing this application page, the Faculty Sponsor ensures that the conduct of such research will be in accordance with the University of Maine's Policies and Procedures for the Protection of Human Subjects of Research.

7/20/12 _____
Date Principal Investigator Faculty Sponsor

Co-Investigator

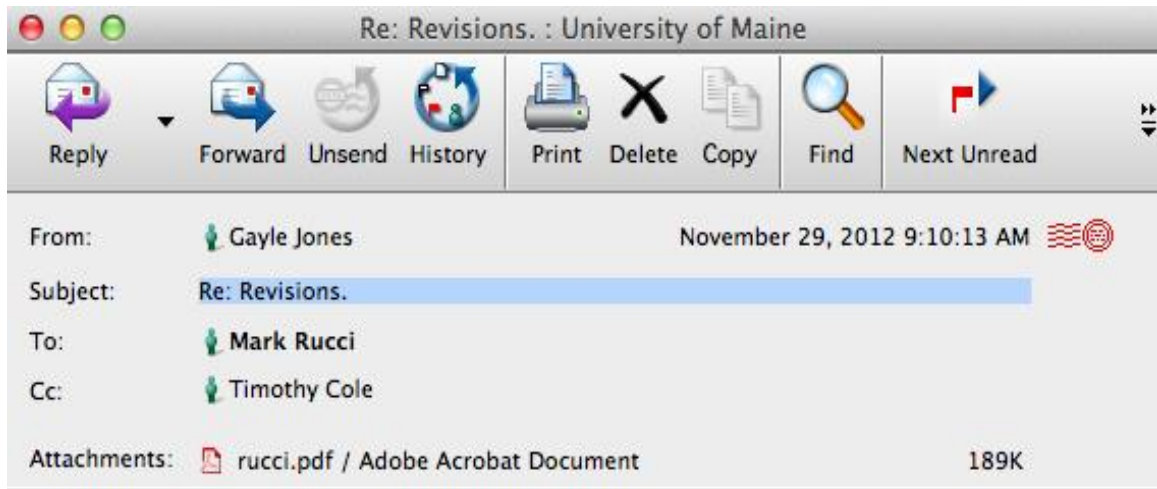
FOR IRB USE ONLY Application # 2012-11-09 Date received 11/6/12 Review (F/E): F
Expedited Category: _____

ACTION TAKEN:
 Judged Exempt; category 2. Modifications required? Y (Y/N) Accepted (date) 11/29/2012
____ Approved as submitted. Date of next review: by _____. Degree of Risk: _____
____ Approved pending modifications. Date of next review: by _____. Degree of Risk: _____
____ Modifications accepted (date): _____
____ Not approved. (See attached statement.)
____ Judged not research with human subjects

Date: 11/13/12 Chair's Signature: Cynthia A. Erdley 1009

APPENDIX C:

Email approval from Gayle Jones:



Mark,

The study has final approval to begin. I have attached the signed cover page for your records. Good luck with your study! Gayle

Gayle M. Jones
Office of the Vice President for Research
University of Maine, 5703 Alumni Hall, Room 114
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AUTHOR'S BIOGRAPHY

Mark A. Rucci is a native of Millinocket, Maine. Born on December 4, 1990, Mark attended Stearns High school, graduating in 2009. Majoring in Political Science at the University of Maine, Mark has a minor in pre-law. He is a proud member of Sigma Phi Epsilon and Pi Sigma Alpha. He has received a Top Scholar Scholarship, an Honors Thesis Fellowship, and the Andrew D. Gerke Memorial Scholarship.

Upon graduation, Rucci plans on attending the Maine School of Law to earn his Juris Doctorate before entering the work force.