# Chapter 8 - Administrative Information Collection

## Review of criminal law searches

### What does the 4th amendment require for a search warrant?

### What is the plain view exception?

### What is the hot pursuit exception?

### Do you need a warrant if the person consents to the search?

### What is the remedy if the prosecutor wants to use evidence obtained without a necessary warrant?

### What is the remedy problem if you client suffers an illegal search but is not prosecuted?

## Administrative Searches

### Why did *Frank* say that traditional public health and safety inspections did not trigger 4th Amendment warrant requirements?

### What is the key distinction that the courts use to determine whether a search is a criminal law search or an administrative law search?

#### How is it that the Guantanamo detainees are administrative detainees, rather than criminal law detainees?

### What were the *See* and *Camara* Courts concerns that lead to their modifying the Frank rule?

#### The *See* Court created the notion of an area warrant.

##### What are area warrants used for?

##### How do they differ from criminal law warrants?

##### Be specific about specificity and probable cause.

##### Give examples of factors that might be used to justify an area warrant.

#### When did the *See* court tell us that even area warrants would not be necessary?

##### What are examples?

### *New York v. Burger*, 482 U.S. 691 (1987)

#### What are the basics facts in *Burger*?

#### What was defendant’s argument that the evidence obtained in the search should be excluded from his criminal prosecution?

#### What are the *Burger* factors for deciding if a business is pervasively regulated?

#### How do warrant requirements differ for these businesses?

#### What is the rationale for why warrants are not necessary for pervasively regulated businesses?

#### What does the statute or regulation have to provide to be an adequate substitute for a 4th amendment warrant?

#### What is the role of the expectation of privacy in deciding if a warrant is necessary to use evidence in subsequent criminal proceedings?

#### How can licensing and permits meet the Burger factors and allow warrantless searches?

### What are the issues when an administrative search, such as a restaurant inspection, turns up evidence of an unrelated crime - say the health inspector finds the cook's cocaine stash?

#### What did *Frank* tell us?

#### Why would allowing this undermine the rationale for area warrants?

#### Would it matter where the cocaine was found, i.e., in the meat freezer versus the restaurant’s business office?

### Administrative exclusionary rule

#### Can OSHA enter a business for an inspection without a warrant?

#### Assume OSHA has a warrant for a limited search, but goes beyond the limits of the warrant?

##### What can the evidence found in the ex-warrant search be used for?

##### What use did the court exclude for the evidence?

##### What is the rationale for the differ treatment?

## Silver Platter Doctrine

### (NB – you may have heard in a criminal law class that the SPD is no longer good law. That refers to an older interpretation that allowed state police to give illegally obtained evidence to the feds, who could then use it. That inter-sovereign SPD is no longer good law. The private party version is still good law.)

### What is the Silver Platter Doctrine in criminal law?

### What are the limits on the doctrine, i.e., what keeps the police from just asking your neighbor to break into your house and look for evidence?

### In the context of private data aggregators such as Equifax and Facebook, how does the Silver Platter Doctrine undermine constitutional protections?

#### How might you argue that there are constitutional limits on the use of third party aggregator data in criminal prosecutions?

#### Do you think it matters whether individuals consent to, or even know about third party data aggregation?

#### Are there any constitutional limits on the administrative use of data from third party aggregators?

## Reporting

### What is the difference between first party reporting and third party reporting?

### What are common examples of each type of reporting?

### Why are an individual's constitutional rights diminished in third party reporting compared to first party reporting?

#### How is this related to the rationale in *Burger* for alternatives to a 4th amendment warrant?

### When can a first party reporting law be unconstitutional?

#### What Amendment does it violate and why?

#### What does *Marchetti v. United States*, 390 U.S. 39 (1968) tell us about required records?

### Why do we have child abuse reporting laws?

#### How could third party child abuse reporting laws raise attorney client privilege issues?

### What sort of medical information must be reported to the state?

#### Why doesn’t this violate the constitutional physician patient privacy privilege?

## Administrative subpoenas

### How do you distinguish a reporting requirement and a subpoena?

#### Which can require the creation of new records?

### What is the difference between a first party subpoena and a third party subpoena?

#### When does an individual retain some rights against a third party subpoena?

#### What are examples of situations where an individual does not have rights against a third party subpoena?

### Your client has been served with an administrative subpoena.

#### What are the options for dealing with the subpoena if your client does not want to comply?

#### What are the *Morton Salt* factors for contesting a subpoena?

## Self-incrimination

### What is self-incrimination?

### Corporations may be people, but can a corporation take the 5th, i.e., claim the privilege against self-incrimination?

### Is forcing your client to give a blood sample a self-incrimination issue?

#### If not, what is it?

### Why doesn’t self-incrimination apply in administrative proceeding?

#### What is the usual result if your client claims a 5th amendment privilege in an administrative proceeding and refuses to testify?

#### If your client does provide the testimony, may it be used against him in a criminal proceeding?

#### What the circumstances when a criminal court might exclude testimony provided in an administrative proceeding?

### How can the DA or the court cure self-incrimination conflicts?

## What is the purpose of the Paperwork Reduction Act?

### What are the legal consequences if an agency covered by the act does not comply with it in promulgating a data collection form?