

# United States Constitutional Law: Theory, Practice, and Interpretation

Class 5: Enforcing the Constitution

*Wednesday, October 9, 2019*



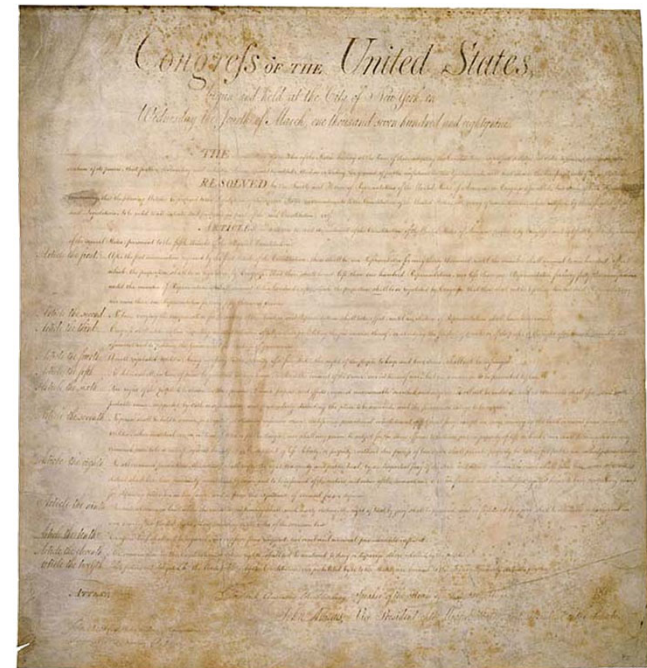
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# Supreme Court Case Presentations

- Background
  - Who were the parties?
  - What happened (what were the facts of underlying the dispute)?
  - How did the case get to the Court (what was the procedural history)?
- Court's ruling, justices' votes, and final disposition
  - Who won (which party prevailed) and what did the Court do (affirm or reverse the last lower court)?
  - How did each justice vote (to affirm or to reverse)?
  - What happens next (did the Court remand and, if so, to where and for what)?
- Rationale and reasoning of each opinion (majority, concurrences, dissents)
  - What approach to constitutional interpretation did each opinion take?
  - What role did precedent and *stare decisis* play in each opinion?

# United States Constitutional Law: Theory, Practice, and Interpretation

- Introduction
- Governmental structure
- Individual rights
- Enforcing the Constitution
- Interpreting the Constitution
- The Constitution in action



# Enforcing the Constitution

- Introduction
- Judicial review
- Motions to suppress and the exclusionary rule
- Civil-rights litigation



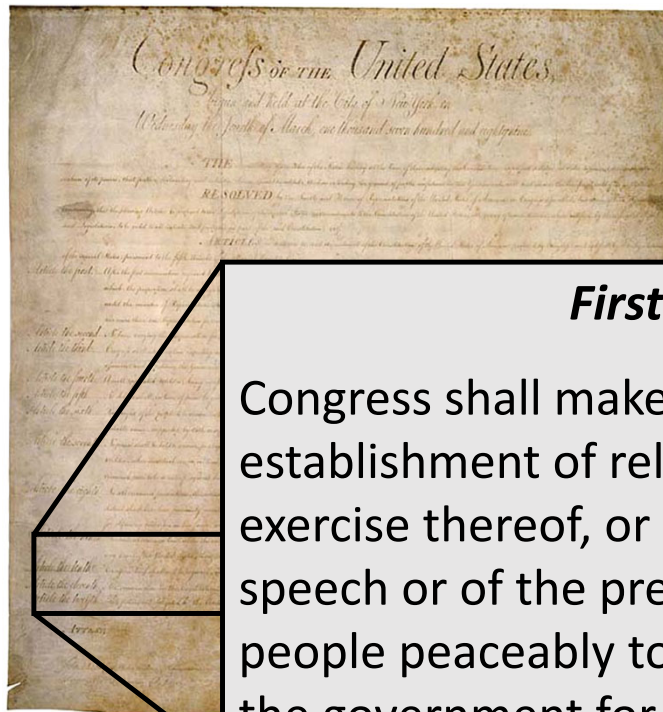
# Judicial Review

# Hypothetical

- City passes ordinance to include cross on Christmas tree and to display the Ten Commandments in city hall.
- What should be done about it?



# First Amendment



## **First Amendment**

Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press, or the right of the people peaceably to assemble and to petition the government for a redress of grievances.

# *Marbury v. Madison* (1803)

I wish for  
the power to  
declare laws  
unconstitutional.



Why waste a  
wish on something  
you can grant  
yourself?





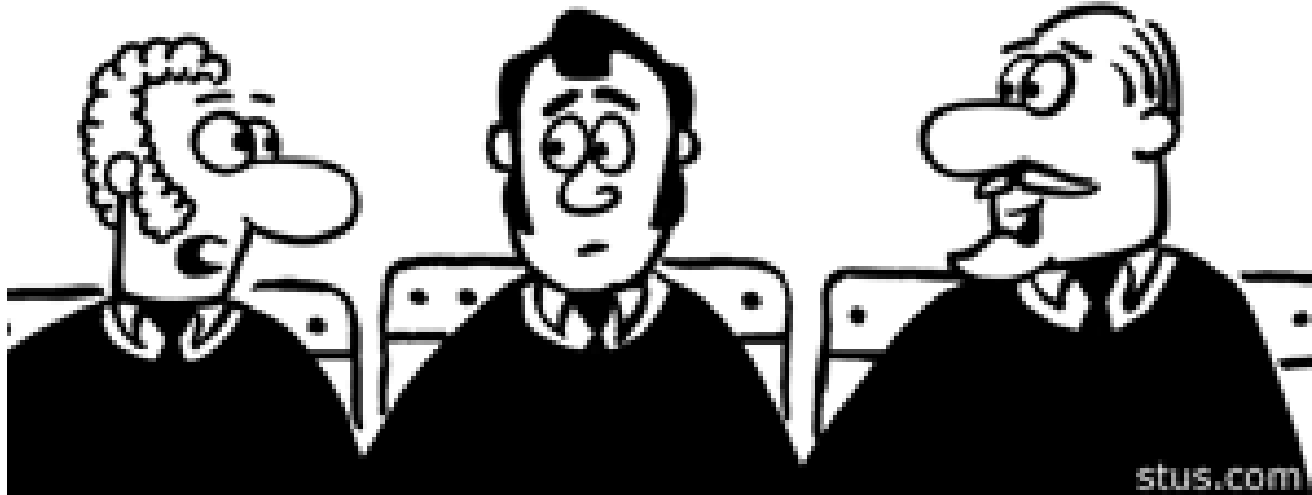
## *Marbury v. Madison* (1803)

- Chief Justice John Marshall held that the Constitution is the “supreme law of the land” and that the Supreme Court has the final say over the meaning of the Constitution.
- He wrote, “[i]t is emphatically the province and duty of the judicial department to say what the law is.”
- The Court’s ruling meant the Supreme Court had the power of judicial review. That is, the Court had the right to review acts of Congress and, by extension, actions of the President. If the Court found that a law was unconstitutional, it could invalidate the law.

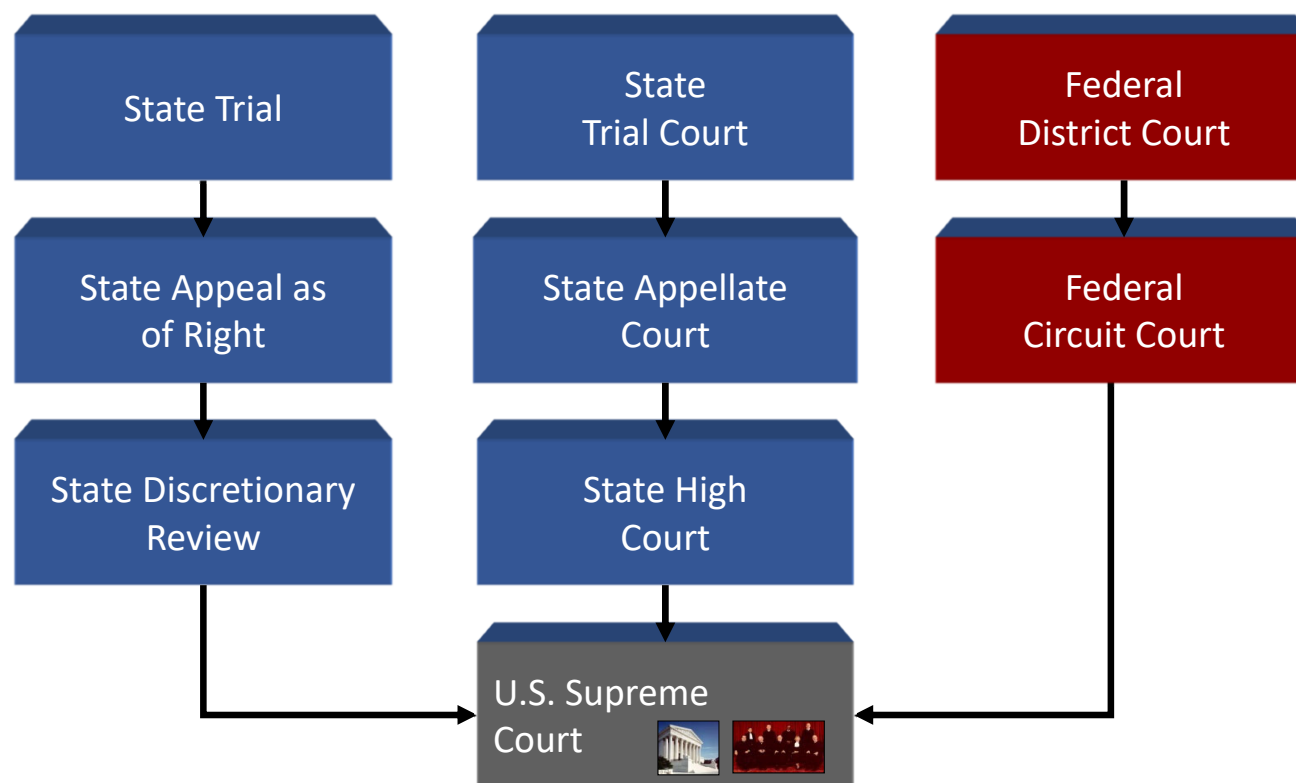
# *Martin v. Hunter's Lessee* (1816)

Are we so  
"Supreme" that we  
can simply declare  
ourselves supreme  
over state courts?

Let's try it  
and see if  
it sticks.

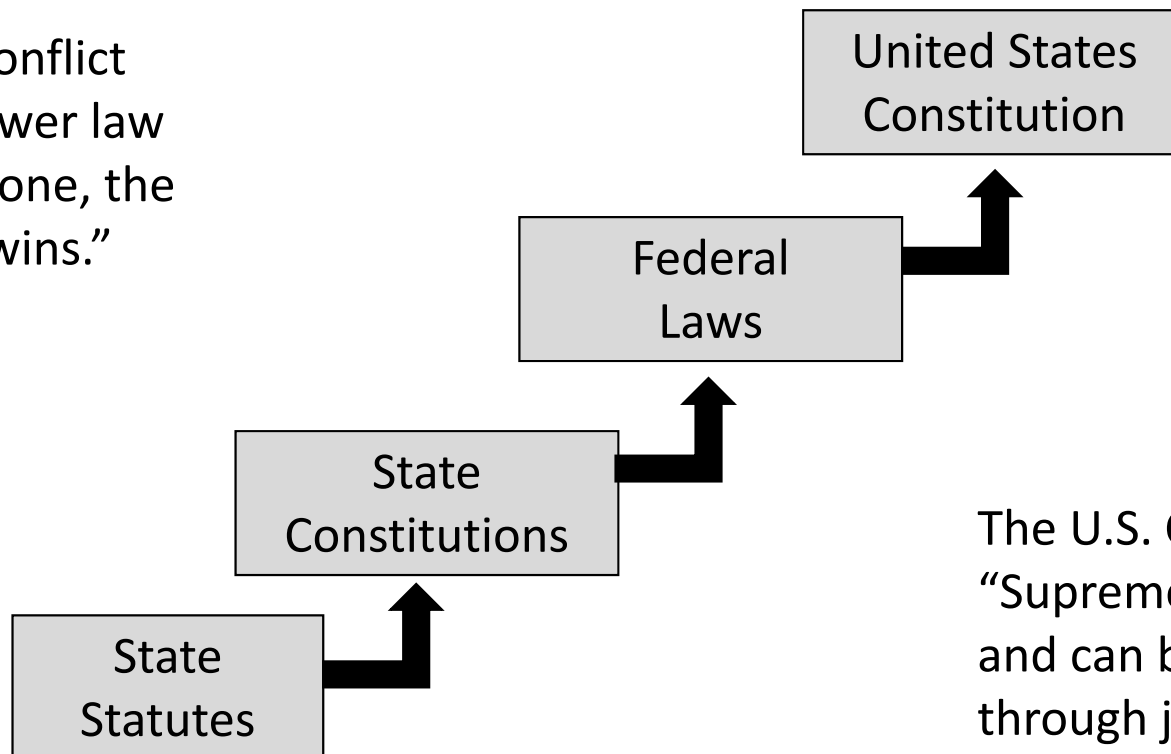


# Trial, Appeal, State Post-Conviction, and Federal Habeas Processes



# The Supremacy Clause (Article VI, Section 2)

If there is a conflict between a lower law and a higher one, the higher one “wins.”



The U.S. Constitution is the “Supreme Law of the Land” and can be enforced through judicial review.

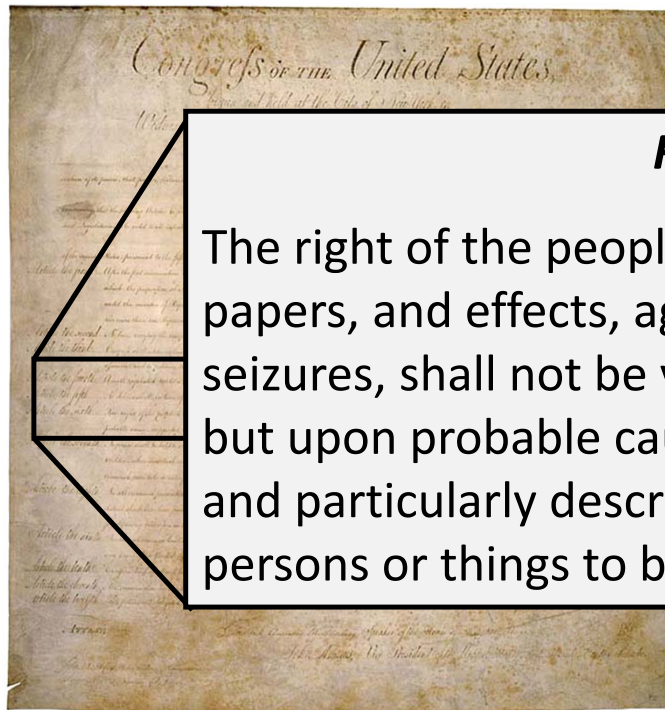
# Motions to Suppress and the Exclusionary Rule

# Hypothetical: Search in Violation of Fourth Amendment

- Police search home without warrant
- Seize drugs from drug dealer
- Find dead body in bathroom
- Search violates Fourth Amendment
- What should be done about it?



# Fourth Amendment

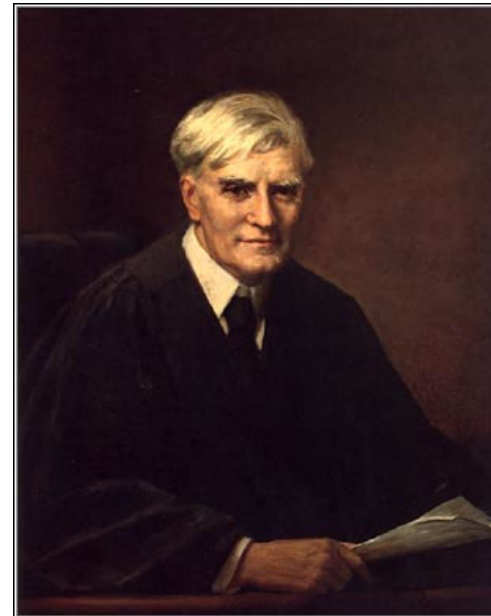


## ***Fourth Amendment***

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.

# Controversial Consequence of Exclusionary Rule

“[T]he criminal is to go free because the constable has blundered.” *People v. Defore* (N.Y. 1926) (Cardozo, J.).



Benjamin N. Cardozo



# Possible Approaches?

- Exclude evidence
- Civil action against offending officer for punitive and compensatory damages
  - Civil-rights action
    - *Bivens* action against federal officer
    - 28 U.S.C. § 1983 action against state officer
  - Tort action (*e.g.*, trespass, replevin)
- Criminal prosecution of offending officer
- Administrative action against offending officer
- Public outcry and political pressure
- Increase police professionalism

# The Exclusionary Rule

- The Rule's application to federal and state criminal proceedings

# Rutledge Dissent in *Wolf v. Colorado* (U.S. 1949)

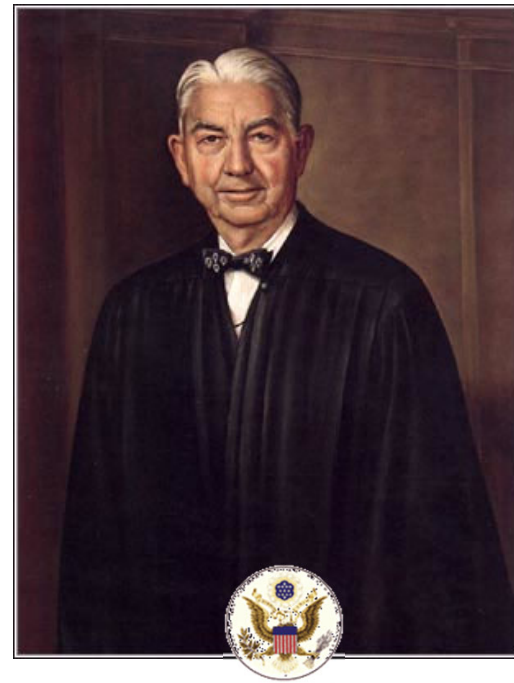
The Fourth Amendment  
“without the sanction is dead  
letter.” *Wolf v. Colorado* (U.S.  
1949) (Rutledge, J, dissenting).



Justice Wiley  
Rutledge

## *Mapp v. Ohio* (U.S. 1961)

“There is no war between the Constitution and common sense. . . . Nothing can destroy a government more quickly than its failure to observe its own laws.”

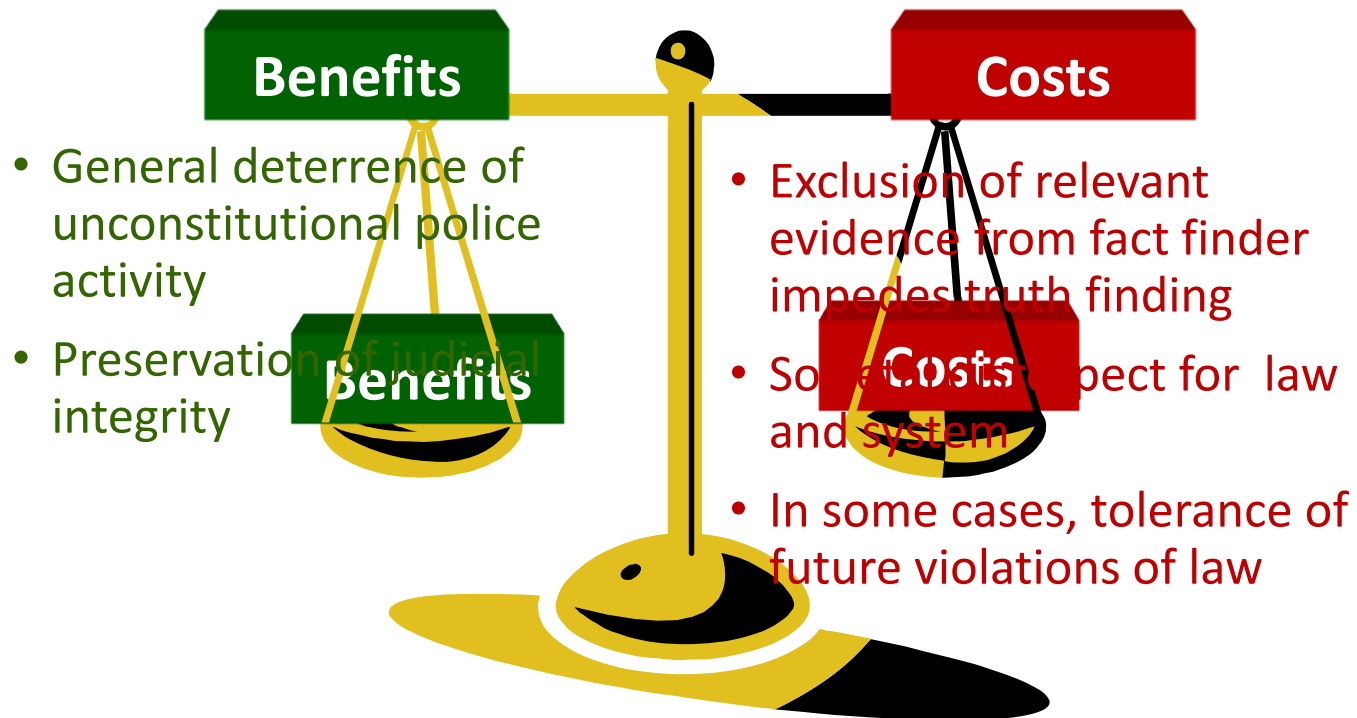


Justice Tom C. Clark

# The Exclusionary Rule

- The Rule's application to federal and state criminal proceedings
- Limiting the exclusionary rule
  - The "Good Faith" exception
  - The Rule's application in other contexts
  - The scope of the Rule
    - "Fruit of the poisonous tree" or "taint" doctrine
    - Impeachment
    - Standing

# Weighing the Costs and Benefits of the Exclusionary Rule



# Scope of Exclusionary Rule



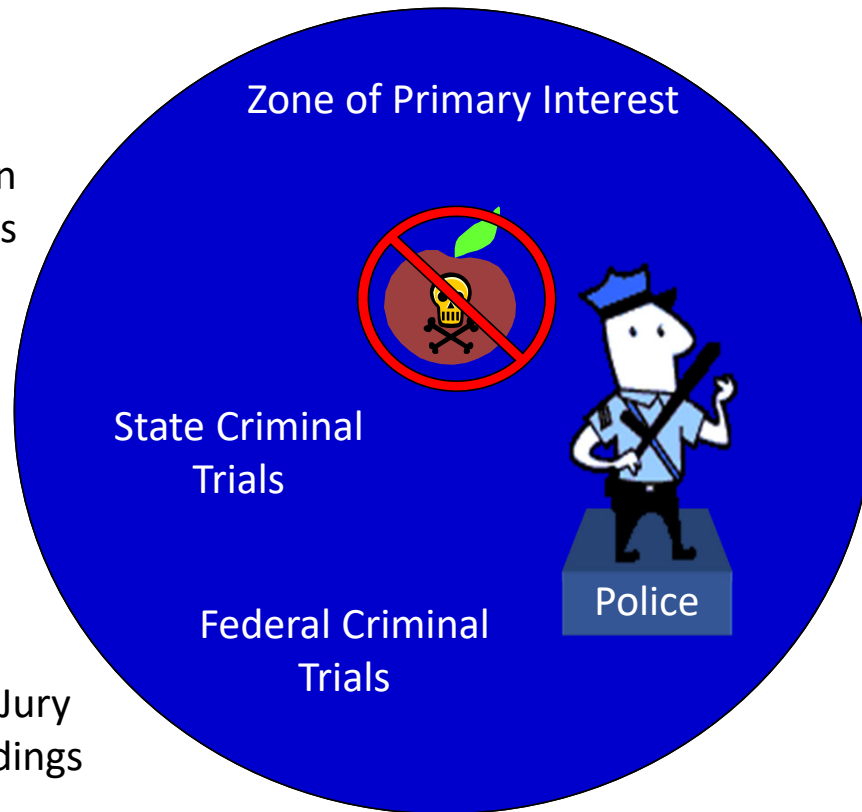
Deportation Proceedings

Civil Actions

Immigration Proceedings

Federal Habeas Proceedings

Grand Jury Proceedings



## *Leon* Good Faith Exception

“[T]he marginal or nonexistent benefits produced by suppressing evidence obtained in objectively reasonable reliance on a subsequently invalidated search warrant cannot justify the substantial costs of exclusion.” *United States v. Leon* (1984) (White, J.)



Byron R. White



# Civil-Rights Litigation

# Civil Rights Litigation

- By whom?
  - By the United States Department of Justice
  - By private person
    - Against state actor in action under 28 U.S.C. § 1983

## 28 U.S.C. § 1987

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . .

# Civil Rights Litigation

- By whom?
  - By the United States Department of Justice
  - By private person
    - Against state actor in action under 28 U.S.C. § 1983
    - Against federal actor in action under *Bivens*
- Persons liable?
  - Individual actor
  - State or arm of the state?
- Remedies?
  - Injunctions
  - Damages
  - Attorneys' fees