

CHAPTER 5

Policing: Legal Aspects

Teaching Outline

- I. Introduction (p.124)
- II. The Abuse of Police Power (p.124)
 - A. The Rodney King Incident (p.124)
 - Rodney King drew public attention to police abuse of power
 - B. A Changing Legal Climate (p.125)
 - The legal environment surrounding the police is much more complex than it was just 45 years ago.
 - Supreme Court decision making has changed from the Warren Court's expansion of individual rights to the new conservative philosophy.

Bill of Rights: The popular name given to the first ten amendments to the U.S. Constitution, which are considered especially important in the processing of criminal defendants. (p.125)

Instructional Cue

This would be a good place to revisit the issues discussed in Chapter 1. Recall that one of the important issues discussed in Chapter 1 was the tension between individual-rights advocates and public-order advocates. During the Warren Court era, the Court was stacked with individual-rights advocates. A new conservative philosophy has resulted since a higher percentage of public-order advocates have come on the Court. Some say the Court may shift back toward an individual-rights focus or become significantly more focused on public order.

- III. Individual Rights (p.126)
 - A. Check and Balances (p.126)
 - The U.S. Constitution provides for a system of checks and balances among the legislative, judicial and executive branches so that each is accountable to the others.
 - B. Due Process Requirements (p.127)

Define, and then discuss, the impact of landmark cases.

Landmark Case: A precedent-setting court decision that produces substantial changes both in the understanding of the requirements of due process and the practical day-to-day operations of the justice system. (p.127)

- IV. Search and Seizure (p.127)

- The Fourth Amendment declares that people must be secure in their homes and in their persons against unreasonable searches and seizures.

Warrant: In criminal proceedings, a writ issued by a judicial officer directing a law enforcement officer to perform a specified act and affording the officer protection from damages if he or she performs it. (p.127)

Illegally Seized Evidence: Any evidence seized without regard to the principles of due process as described by the Bill of Rights. Most illegally seized evidence is the result of police searches conducted without a proper warrant or of improperly conducted interrogations. (p.127)

A. The Exclusionary Rule (p.127)

- *Weeks v. U.S.* formed the basis for the exclusionary rule.

Exclusionary Rule: The understanding, based on U.S. Supreme Court precedent, that incriminating information must be seized according to constitutional specifications of due process or it will not be allowed as evidence in a criminal trial. (p.127)

Instructional Cue

Help students visualize the process of obtaining a warrant by walking them through the steps. For example, a narcotics detective receives information from a reliable informant that a student is selling cocaine from his residence hall. The detective does three undercover buys over a two-week period, gets a warrant by demonstrating these facts to a magistrate, and executes the warrant. Link this situation to the checks on police behavior. First, require the police to get the warrant before searching and seizing evidence. Second, if the arrested suspect's case gets into the court system, his attorney would probably make a motion to suppress the evidence, arguing that the evidence was obtained in an unreasonable search and seizure. Be sure to explain such a motion.

1. Problems with Precedent (p.129)

- The Supreme Court can have an important influence on criminal justice policy.

Writ of *Certiorari*: A writ issued from an appellate court for the purpose of obtaining from a lower court the record of its proceedings in a particular case. In some states, this writ is the mechanism for discretionary review. A request for review is made by petitioning for a writ of *certiorari*, and the granting of review is indicated by the issuance of the writ. (p.129)

2. The Fruit of the Poisonous Tree Doctrine (p.129)

- Established by *Silverthorne Lumber Co. v. U.S.*

Fruit of the Poisonous Tree Doctrine: A legal principle that excludes from introduction at trial any evidence later developed as a result of an illegal search or seizure. (p.129)

B. The Warren Court (1953–1969) (p.129)

- Based on *Mapp v. Ohio*, the Fourth Amendment's exclusionary rule is applicable to the states through the due process clause of the Fourteenth Amendment.

1. Searches Incident to Arrest (p.130)

- In *Chimel v. California*, a search incident to a lawful arrest, is limited to the area in the immediate control or grabbing area of the suspect.
- *Minnesota v. Olson* (which extends the protection against warrantless searches to overnight guests) and *Minnesota v. Carter* (which states that a defendant has to establish that he or she has a reasonable expectation of privacy in the place searched).

C. The Burger Court (1969–1986) and the Rehnquist Court (1986–2005) (p.131)

1. Good-Faith Exceptions to the Exclusionary Rule (p.131)

- The Burger Court chipped away at the strict application of the exclusionary rule.
- In *United States v. Leon*, the court recognized the good faith exception to the exclusionary rule; this was reinforced in *Massachusetts v. Sheppard*.
- *Illinois v. Krull*, *Illinois v. Rodriguez*, *Maryland v. Garrison*, *Arizona v. Evans* and *Herring v. U.S.* all represent additional efforts by the Court to diminish the scope of the exclusionary rule.

Good-Faith Exception: An exception to the exclusionary rule. Law enforcement officers who conduct a search or seize evidence on the basis of good faith (that is, when they believe they are operating according to the dictates of the law) and who later discover that a mistake was made (perhaps in the format of the application for a search warrant) may still use the seized evidence in court. (p.131)

Probable Cause: A set of facts and circumstances that would induce a reasonably intelligent and prudent person to believe that a particular other person has committed a specific crime. Also, reasonable grounds to make or believe an accusation. Probable cause refers to the necessary level of belief that would allow for police seizures (arrests) of individuals and full searches of dwellings, vehicles, and possessions. (p.132)

2. The Plain-View Doctrine (p.133)

- Stated in *Harris v. U.S.* where a police officer inventorying an impounded vehicle found evidence of a robbery.
- *Arizona v. Hicks* and *U.S. v. Irizarry* both limit the scope of the plain-view search.
- *Horton v. California* states that inadvertence is not a necessary condition to justify a plain-view search.

Plain View: A legal term describing the ready visibility of objects that might be seized as evidence during a search by police in the absence of a search warrant specifying the seizure of those objects. To lawfully seize evidence in plain view, officers must have a legal right to be in the viewing area and must have cause to believe that the evidence is somehow associated with criminal activity. (p.133)

3. Emergency Searches of Property and Emergency Entry (p.135)

- Emergency searches are legally termed exigent circumstance searches and law enforcement officers are responsible for demonstrating that the situation was dire and justified their actions.
- The need for emergency searches was first recognized in *Warden v. Hayden* where the court affirmed the warrantless search of a residence into which an armed robber had fled, and was later supported in *Mincey v. Arizona*.
- In *Illinois v. McArthur*, the U.S. Supreme Court ruled that police officers with probable cause to believe that a home contains contraband or evidence of criminal activity may reasonably prevent a suspect found outside the home from reentering it while they apply for a search warrant.
- In *Maryland v. Buie* and *Richards v. Wisconsin*, the U.S. Supreme Court ruled that police can make “no-knock” entries if announcing their presence might inhibit the investigation of the crime.
- In *Wilson v. Arkansas* the U.S. Supreme Court ruled that police officers must knock and announce their identity before entering a dwelling even when they have a search warrant.
- In *Illinois v. McArthur* the U.S. Supreme Court ruled that police officers with probable cause to believe a home contains contraband or evidence of criminal activity may reasonably prevent a suspect found outside the home from reentering it while they apply for a search warrant.
- In *Kentucky v. King*, the U.S. Supreme Court affirmed a warrantless exigent-circumstances search.

Emergency Search: A search conducted by the police without a warrant, which is justified on the basis of some immediate and overriding need, such as public safety, the likely escape of a dangerous suspect, or the removal or destruction of evidence. (p.135)

4. Anticipatory Warrants (p.137)

Anticipatory Warrant: A search warrant issued on the basis of probable cause to believe that evidence of a crime, while not currently at the place described, will likely be there when the war-rant is executed. (p.137)

V. Arrest (p.138)

Arrest: The act of taking an adult or juvenile into physical custody by authority of law for the purpose of charging the person with a criminal offense, a delinquent act, or a status offense, terminating with the recording of a specific offense. Technically, an arrest occurs whenever a law enforcement officer curtails a person’s freedom to leave. (p.148)

Instructional Cue

It will be difficult for students to memorize the important holdings of the cases presented in Chapter 5. There are two strategies you can use to help students learn these cases. First, limit the

number of cases that they are expected to know. Have them focus on those cases that you think are most important, and provide them with the list of cases in advance of reading the chapter. Second, if you would like them to know all of the cases, then construct a study sheet with them. One side of the study sheet might be for Fourth Amendment cases. You can provide subcategories (such as search incident to arrest cases and emergency circumstance cases) to organize the cases presented in this chapter. Do the same for the Fifth Amendment cases. Construct three- or four-word descriptions of each holding. For example, *Mapp v. Ohio* could be the “exclusionary rule for state cases,” and *Warden v. Hayden* could be the “emergency search of property case.”

A. Searches Incident to Arrest (p.140)

- *U.S. v. Robinson* established that a search incident to a lawful arrest does not violate Fourth Amendment protections.
- *Terry v. Ohio* established the stop-and-frisk exception. A citizen can be briefly detained by law enforcement agents without probable cause when they have reasonable suspicion to believe the person has committed or is about to commit a crime. The agent can conduct a limited pat-down search of the suspect.
- In *U.S. v. Sokolow*, the Court held that the validity of a “Terry stop” will be based on the “totality of the circumstances.” – this was reinforced in *U.S. v. Arvizu*.
- *Minnesota v. Dickerson* established that the search subsequent to a “Terry stop” must be to identify a weapon.
- In *Brown v. Texas*, the Supreme Court held that officers may not stop and question an unwilling citizen whom they don’t suspect of breaking the law.
- In *Hiibel v. Sixth Judicial District Court of Nevada*, the Supreme Court upheld Nevada’s “stop-and-identify” law as an extension of the reasonable suspicion doctrine set forth in *Terry*.
- In *Smith v. Ohio*, the Court held that a citizen has the right to protect his or her belongings from police inspection.
- In *California v. Hodari D*, the court held that if a suspect runs from the police and discards incriminating evidence, the suspect can be arrested based on that evidence.

Search Incident to an Arrest: A warrantless search of an arrested individual conducted to ensure the safety of the arresting officer. Because individuals placed under arrest may be in possession of weapons, courts have recognized the need for arresting officers to protect themselves by conducting an immediate search of arrestees without obtaining a warrant. (p.140)

Reasonable Suspicion: The level of suspicion that would justify an officer in making further inquiry or conducting further investigation. Reasonable suspicion may permit stopping a person for questioning or for a simple pat-down search. Also, a belief, based on a consideration of the facts at hand and on reasonable inferences drawn from those facts, that would induce an ordinarily prudent and cautious person under the same circumstances to conclude that criminal activity is taking place or that criminal activity has recently occurred. Reasonable suspicion is a *general* and reasonable belief that a crime is in progress or has occurred, whereas probable cause is a reasonable belief that a *particular* person has committed a *specific* crime. (p.140)

B. Emergency Searches of Persons (p.142)

- In *Arkansas v. Sanders*, the Court recognized the need for emergency searches of persons.
- *U.S. v. Borchart* is a decision from the Fifth Circuit Court of Appeals that held that a defendant could be prosecuted for the drugs found during medical treatment. It did not matter that he objected to the treatment.

Discuss the FBI guidelines for conducting emergency warrantless searches of individuals when the possible destruction of evidence is at issue

C. Vehicle Searches (p.143)

- In *Carroll v. U.S.*, the Court held that a warrantless search of a vehicle is valid based on a reasonable belief that contraband is present.
- *Preston v. U.S.* defines the limit of a warrantless search of a vehicle. Officers should get a warrant when time and circumstances allow it.
- *South Dakota v. Opperman* established that a warrantless inventory search is not unconstitutional; in *Colorado v. Bertine*, the Court held that officers may open closed containers found during an inventory search.
- *Florida v. Wells* established that for evidence found during an inventory search to be used against the suspect, “standardized criteria” must be in place.
- In *Ornelas v. U.S.*, an exception (the fleeing targets exception) to the exclusionary rule that permits law enforcement officers to search a motor vehicle when they have probable cause but do not have a warrant was established. The fleeing targets exception is predicated on the fact that vehicles can quickly leave the jurisdiction of a law enforcement agency.
- *Florida v. Jimeno* established that once a suspect consents to a search, officers can assume that the consent applies to containers within the vehicle.
- In *United States v. Ross*, the Court held that once probable cause exists, officers can search the entire vehicle.
- In *Maryland v. Wilson*, the Court held that motorists and their passengers may be ordered out of stopped vehicles in the interest of officer safety, and any evidence resulting from this procedure may be used in court.
- In *Knowles v. Iowa*, the Court placed clear limits on warrantless vehicle searches.
- In *Wyoming v. Houghton*, the Court ruled that police officers with probable cause to search a car may inspect passengers’ belongings found in the car that are capable of concealing the object of the search; *Thornton v. U.S.* established warrantless searches of cars by arresting officers.
- In *Illinois v. Caballes*, the Court permitted the use of drug-sniffing dogs during routine and lawful traffic stops.
- In *Davis v. U.S.*, the Court created a good-faith exception to the exclusionary rule.

Fleeing-Targets Exception: An exception to the exclusionary rule that permits law enforcement officers to search a motor vehicle based on probable cause but without a warrant. The fleeing-targets exception is predicated on the fact that vehicles can quickly leave the jurisdiction of a law enforcement agency. (p.144)

1. Roadblocks and Motor Vehicle Checkpoints (p.146)

- *Michigan Department of State Police v. Sitz* involved the legality of highway sobriety checkpoints. The court ruled that such stops are reasonable insofar as they are essential to the welfare of the community as a whole.
- In *U.S. v. Martinez-Fuerte*, the Court upheld brief suspicionless seizures at fixed international checkpoints designed to intercept illegal aliens.
- In *Illinois v. Lidster*, the Court held that information-seeking highway roadblocks are permissible.

2. Watercraft and Motor Homes (p.146)

- *U.S. v. Villamonte-Marquez* applied the Carroll decision to watercraft.
- *California v. Carney* applied the Carroll decision to motor homes.
- *U.S. v. Hill* brought houseboats under the automobile exception to the Fourth Amendment warrant requirement.

D. Suspicionless Searches (p.146)

- In *National Treasury Employees Union v. Von Raab* and *Skinner v. Railway Labor Executives' Association*, the key is the compelling interest concept. This legal concept provides a basis for suspicionless searches (for example, urinalysis tests of train engineers) when public safety is at issue. In those cases, the Court held that public safety may provide a sufficiently compelling interest such that an individual's right to privacy can be limited under certain circumstances.
- *Florida v. Bostick* permits warrantless "sweeps" of intercity buses; this was affirmed in *U.S. v. Drayton*.
- In *U.S. v. Flores-Montano*, the Court permitted extensive suspicionless searches of vehicles at U.S. borders.

Compelling Interest: A legal concept that provides a basis for suspicionless searches when public safety is at issue. In two cases, the U.S. Supreme Court held that public safety may sometimes provide a sufficiently compelling interest to justify limiting an individual's right to privacy. (p.147)

Suspicionless Search: A search conducted by law enforcement personnel without a warrant and without suspicion. Suspicionless searches are permissible only if based on an overriding concern for public safety. (p.147)

E. High-Technology Searches (p. 148)

- The increased societal use of high technology is forcing courts to evaluate constitutional guarantees in order to uncover undiscovered criminal violations.

VI. The Intelligence Function (p.148)

A. Informants (p.149)

- *Aguilar v. Texas* clarified the use of informants and established the two-pronged test to decide if informant information establishes probable cause.
- Exceptions to the two-pronged test are identified in the *Harris v. U.S.* and *Spinelli v. U.S.* decisions.
- In *Illinois v. Gates*, the Court established the totality of the circumstances test for probable cause for a warrant based on information from an informant.
- In *Alabama v. White*, the Court ruled that an anonymous tip could form the basis for a stop when the informant accurately predicts the behavior of the suspect.
- In *Florida v. J.L.*, the Court rejected a firearm exception to the general stop-and-frisk rule.
- In *U.S. Department of Justice v. Landano*, the U.S. Supreme Court required that an informant's identity be revealed through a federal Freedom of Information Act request.

B. Police Interrogation (p.150)

Interrogation: The information-gathering activity of police officers that involves the direct questioning of suspects. (p.150)

Instructional Cue

The television reruns of NYPD Blue often provide interrogation footage. The characters (detectives) often use either psychological or physical coercion to elicit a confession from a suspect. Ask students to view a rerun episode, or show a brief clip of an interrogation in class to illustrate the tactics used by police to get confessions from suspects.

1. Physical Abuse (p.150)

- Law enforcement agents cannot use physically coercive interrogation techniques to elicit confessions (*Brown v. Mississippi*).

2. Inherent Coercion (p.150)

- In *Ashcraft v. Tennessee* the court found that interrogation involving inherent coercion was not acceptable.

Inherent Coercion: The tactics used by police interviewers that fall short of physical abuse but that nonetheless pressure suspects to divulge information. (p.150)

3. Psychological Manipulation (p.151)

- Based on *Leyra v. Denno*, police cannot use professionals skilled in psychological manipulation.
- In *Arizona v. Fulminante*, the Court ruled that a confession was coerced but also found that a coerced confession can be a harmless trial error if other evidence still proves guilt.

Psychological Manipulation: The manipulative actions by police interviewers, designed to pressure suspects to divulge information, that are based on subtle forms of intimidation and control (p.151)

C. The Right to a Lawyer at Interrogation (p.152)

- *Escobedo v. Illinois* recognized the defendant's right to have legal counsel present during police interrogation.

D. Suspects Rights: The Miranda Decision (p.543)

- Based on *Miranda v. Arizona*, a person in custody must be advised of various warnings and his or her legal rights prior to being subjected to custodial interrogation.

Miranda Warnings: The advisement of rights due criminal suspects by the police before questioning begins. Miranda warnings were first set forth by the U.S. Supreme Court in the 1966 case of *Miranda v. Arizona*. (p.153)

1. Waiver of Miranda Rights by Suspects (p.155)

- Miranda rights can be waived through a voluntary "knowing and intelligent" waiver according to *Colorado v. Spring* and *Moran v. Burbine*.

2. Inevitable-Discovery Exception to Miranda (p.155)

- In *Nix v. Williams* the court held that evidence, even if gathered inappropriately, can be used if it would have inevitably turned up in the normal course of events.

3. Public-Safety Exception to Miranda (p.156)

- In *New York v. Quarles* the court found that if there is an overriding concern for the public safety, it negates the need for rights advisement.

4. Miranda and the Meaning of Interrogation (p.157)

Miranda Triggers: The dual principles of custody and interrogation, both of which are necessary before an advisement of rights is required. (p.157)

E. Gathering of Special Kinds of Nontestimonial Evidence (p.158)

1. The Right to Privacy (p.158)

- *Hayes v. Florida* and *Winston v. Lee* placed limits on seizure of personal forms of non-testimonial evidence.

2. Body-Cavity Searches (p.158)

- In *U.S. v. Montoya de Hernandez* allowed confining a suspect based on supportable suspicion she was secreting cocaine in within her body.

F. Electronic Eavesdropping (p.159)

- *Olmstead v. U.S.* holds that telephone lines are not an extension of defendants' homes.
- *Lee v. U.S.* and *Lopez v. U.S.* say that recording devices carried on the body of an undercover agent or informant produce admissible evidence.
- In *Katz v. U.S.*, the Court held that seizing conversations when a person makes an effort to keep conversations private, even in a public place, requires a warrant.
- In *Lee v. Florida*, the Court applied the Federal Communications Act to telephone conversations.
- In *U.S. v. White*, the Court held that law enforcement may intercept electronic information when one of the parties involved in the communication gives his or her consent.

1. Minimization Requirement for Electronic Surveillance (p.160)

- As established in *U.S. v. Scott*, officers must make a reasonable effort to monitor only conversations that are related to the investigated criminal activity.

2. The Electronic Communications Privacy Act of 1986 (p.160)

Electronic Communications Privacy Act (ECPA): A law passed by Congress in 1986 establishing the due process requirements that law enforcement officers must meet in order to legally intercept wire communications. (p.160)

3. The Telecommunications Act of 1996 (p.160)

- Made it a federal offense for anyone engaged in the use of a wide range of communications devices to harass another person.

4. The USA PATRIOT Act of 2001 (p.161)

- It makes it easier for law enforcement to intercept many forms of electronic communication.
- It added felony violations of the Computer Fraud and Abuse Act to Section 2516(1) of Title 18 of the U.S. Code.
- It modified several aspects of the ECPA.

USA Patriot Act: A federal law (Public Law 107-56) enacted in response to terrorist attacks on the World Trade Center and the Pentagon on September 11, 2001. The law, officially titled the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act, substantially broadened the investigative authority of law enforcement agencies throughout America and is applicable to many crimes other than terrorism. The law was slightly revised and reauthorized by Congress in 2006. (p.161)

“Sneak and Peek” Search: A search that occurs in the suspect’s absence and without his or her prior knowledge. Also known as a *delayed-notification search*. (p.161)

5. Electronic and Latent Evidence (p.162)

Electronic Evidence: Information and data of investigative value that are stored in or transmitted by an electronic device. (p.163)

Latent Evidence: Evidence of relevance to a criminal investigation that is not readily seen by the unaided eye. (p.163)

Digital Criminal Forensics: The lawful seizure, acquisition, analysis, reporting, and safeguarding of data from digital devices that may contain information of evidentiary value to the trier of fact in criminal events. (p.163)

Learning Activities Utilizing the World Wide Web

The following are presented as instructor led activities, to be used in a classroom with online access.

Prior to class, go to the Prentice Hall Cybrary at <http://mycrimekit.pearsoncmg.com> to find information about legal issues and policing. Use the search function available to locate information about the exclusionary rule. Display the information you found. Other websites for organizations and agencies related to the material in Chapter 5 include:

American Bar Association <http://www.abanet.org>

American Civil Liberties Union (ACLU) <http://www.aclu.org>

American Prosecutors Research Institute <http://www.ndaa.org>

Justice Denied <http://www.justicedenied.org>

Electronic Frontier Foundation <https://www.eff.org/>