

# Criminal Procedures & Laws



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# Liability Limitation

You should consult the legal advisor for your agency before taking security, police or administrative actions based on the materials provided and/or the opinions of law expressed in this unit of instruction. What is permissible in one jurisdiction may not be legal in all jurisdictions. Legal opinions can vary. Check and be safe!

# Purpose

- Examine legal issues faced by security, public safety, and police administrators
- Establishing policy and supervising practices involving criminal investigations and law enforcement efforts.

# Topics For Discussion

- Law enforcement and the community
- Supreme Court cases and law enforcement
- The Constitution and enforcement efforts
- Current issues and enforcement practices
- Management response to legal issues
- Federal involvement in policing police agencies

# Challenge For Police

- To appreciate the duty in determining agency expectations, performance standards, and appropriate discipline.
- To understand some of the history and current interpretation of a variety of legal principles and rules that arise in investigative and criminal cases.
- To apply the current legal principles and rules to a variety of operational activities in a social and legal environment often quick to criticize the actions of the police agency and police officers.

# Traffic Enforcement

- High profile police activity
- Significant resource allocation by police
- Numerous legal restrictions for enforcement
- Revenue source for community
- Emergency responses frequently required
- Community interest .....BUT not me!
- Significant number of community contacts

# Traffic Enforcement

- Contact population generally not criminal
- Anticipated threat level
- Length of police intervention or contact
- Officer discretion in stopping
- Officer discretion in stop resolution
- Most often a one on one interaction
- Potential for citizen and officer misconduct

# Changing Nature of Traffic Enforcement

- Going beyond mere traffic enforcement to develop criminal cases
- Aggressive tactics in traffic stops
- Drug interdiction programs
- Asset forfeiture laws

# Criminal Investigations

- Lower profile police activity
- Cases and legal issues more complex
- Greater latitude in time management
- Thought to be a more senior assignment
- Pressure to resolve “significant cases”

# 14<sup>th</sup> Amendment

- “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; **or deny to any person within its jurisdiction the equal protect of the law.**”

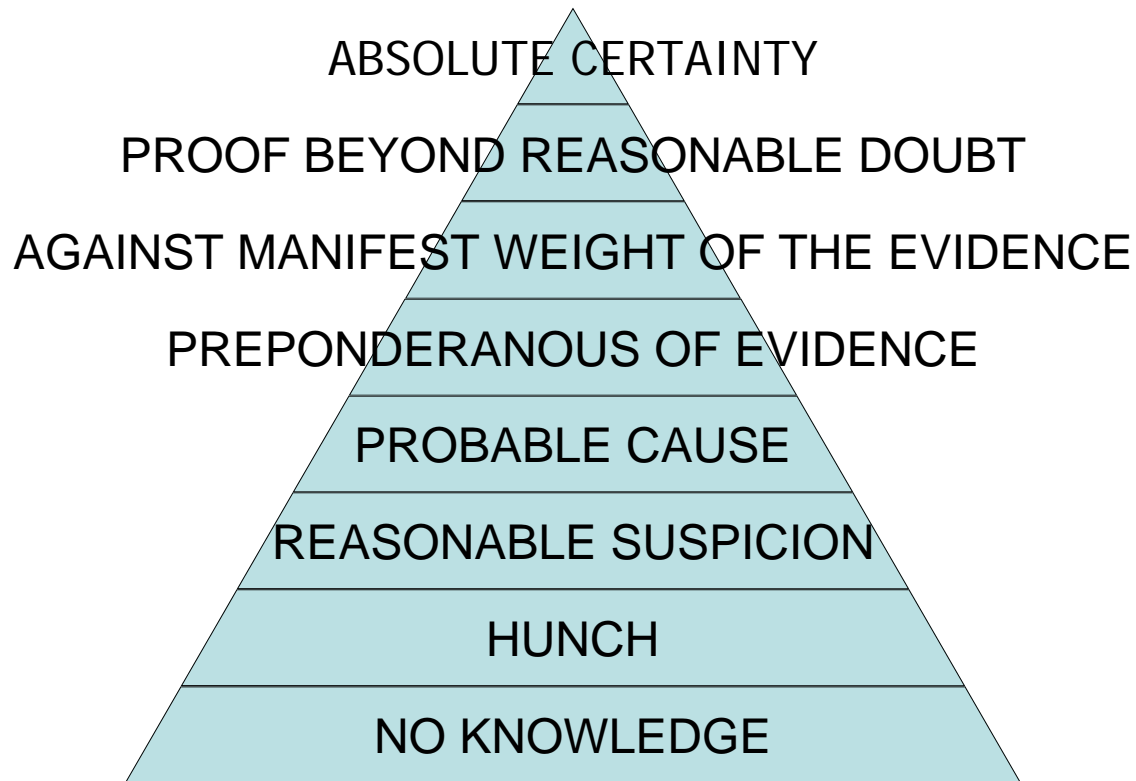
# 4<sup>th</sup> Amendment

“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 Warrant 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”.

# Understanding the 4<sup>th</sup> Amendment

- Only 54 words
- Extensive debate
- Changing Supreme Court positions
- Impacts virtually all police activity
- Primary focus of defense attorneys
- Applies to both old and new technologies and developments within society

# Legal Requirements & Mental States



# Supreme Court & 4<sup>th</sup> Amendment

- majority of Supreme Court cases dealing with police, vehicles, traffic stops, police pursuits, or road blocks have as the primary question:  
“To what extent does the 4<sup>th</sup> Amendment apply to the particular facts of this case?”
- The same 4<sup>th</sup> Amendment question is raised in criminal investigations.

# 2 Parts of the 4<sup>th</sup> Amendment

- 1) 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
- 2) No **warrant** 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.

# What is Reasonable?

- **Reasonable Defined:** Fair, proper, just, moderate, suitable under the circumstances; governed by reason; not immoderate or excessive; justified within the knowledge of the officer (therefore officer need not always be correct but must be reasonable).
- Compare to a person of average caution – to be based on the facts and circumstances of the situation.
- Must be guided by the current law and court opinions.

# Search Defined

- Search – an examination of a person’s house, building, the person, the person’s means of transportation, or other property which intrudes upon an expectation of privacy with a view to the discovery of contraband or some evidence of guilt to be used in the prosecution of a criminal action.
- The search must always be “reasonable.”
- Reasonable in purpose AND execution.

# Seizure Defined

- Seizure – the act of taking a person or restricting a person's freedom of movement, personal property, or real property by actual or constructive possession.
- Actual Possession – real possession and control – not merely theoretical or possible.
- Constructive Possession – the power to control and the intent to control.
- Seizure must always be “reasonable.”
- Reasonable in purpose AND execution.

# EXCEPTIONS TO 4<sup>TH</sup> AMENDMENT

- PLAIN VIEW/PLAIN FEEL/PLAIN SMELL
- EXIGENT CIRCUMSTANCES
- INVENTORY
- SEARCH INCIDENCE TO ARREST
- HOT PURSUIT
- CONSENT
- AUTOMOBILE/MOBILITY EXCEPTION
- PUBLIC SAFETY
- SAFETY SENSITIVE EMPLOYEE

# EXCLUSIONARY RULE

- Evidence obtained in violation of 4<sup>th</sup> Amendment or without an exception thereto, is not admitted into evidence.
- Evidence is “excluded” from trial.

# 4<sup>th</sup> Amendment Protections

- **Conduct by government officials/agents** – not private citizens.
- It is government action that can result in the suppression of the evidence.
- Rationale of Exclusionary Rule:
  - 1) Prevent police misconduct
  - 2) If no police participation – no deterrent
  - 3) Evidence clearly reliable should be allowed, if no misconduct

# FRUITS OF POISONOUS TREE



- Illegally obtained evidence will not be admitted.
- Any evidence recovered after a constitutional violation occurs will be “excluded.”
- Unless inevitable recovery!

# Key 4<sup>th</sup> Amendment Issues

- Who are “the people” protected?
- What is the extent of the protection?
- What is reasonable and unreasonable?
- What constitutes a search?
- What constitutes a seizure?

# Protects “People”

Any person – (meaning any resident, visitor, citizen, passenger, driver, etc.) who has a legitimate expectation of privacy in the invaded place –does not depend upon a property right.

*Rakas v. Illinois*, 439 U.S. 128 (1978)

# Protected People

- Must Have Standing – in order to invoke the exclusionary rule to challenge the admissibility of evidence.
- Must sustain claim that his or her own constitutional rights have been violated by the police.

# Protection/Standing Case

- ***Minnesota v. Carter, 119 S.Ct. 469 (1998)*** Informant call regarding seeing drugs - police peer through drawn shades see 3 people – 2 exit – police make car stop and find gun and drugs. Issue: Was the peering a 4<sup>th</sup> violation? Supreme Court says: No Reasonable Expectation of Privacy (REP).
- Visit purely commercial in nature coupled with short time on location and lack of connection to tenant.
- No standing by the 2 drug offenders – Not a Social or Overnight Guest Protection as described in ***Minnesota v. Olson, 495 U.S. 91 (1990)***.

# Issues With Carter Case

- Hind Sight Is Nice..... BUT status was unknown to the police at time of the police action
- Would the tenant have standing?
- Defense advice to the Bad Guys: Bring luggage next time!!

# Moving from Private Side to Police Side

- Federal Express discovers contraband during routine damage inspection – re-packs - calls DEA- DEA re-opens – Re-exam by DEA of what was already revealed not a search - revealed nothing additional. *U.S. v. Jacobsen*, 466 U.S. 109 (1984)
- Company opens misdirected package containing porno per labels – calls FBI – FBI screens movies – screening by FBI without warrant exceeded private action. *Walter v. U.S.*, 447 U.S. 649 (1980)

# School Officials on Private Side

- **School officials acting alone** may search the person and property of a student without a warrant IF there is “reasonable grounds” for suspecting the search will reveal evidence of school rule or law violations.
- The scope of the search must be reasonably related to the objectives of the search and not excessively intrusive in light of age and sex and the nature of the infraction. *New Jersey v. T.L.O.*, 469 U.S. 325 (1985)

# Police Access To Drug Tests – Keeping It Private

- **School officials acting alone** have the authority to require athletes to submit to a drug test.
- No individual suspicion required - school interest was great.
- Test results limited to school authorities. *Vernonia School District v. Acton*, 515 U.S. 646 (1995)

# Who Will be Tested Next?

- ***Pottawatomie v. Earls***, US Supreme Court – Oklahoma school district policy requiring all middle and high school students to consent to drug test for ANY extracurricular activity is OK.
- No suspicion required.
- School need not articulate an identifiable drug problem in the school in order to justify the program – drugs and kids are a natural.

# Barrier To Cooperation?

- A discretionary public hospital drug testing program was aimed at pregnant women suspected of drug use – no warrant – positive results forwarded to police for criminal charging.
- Legal Issue: Where to draw the line between sanctioning certain search actions and those in conjunction with or at the request of law enforcement?

# Supreme Court Says:

- *Ferguson v. City of Charleston*, No. 99-936 (March 21, 2001) held that the performance of this diagnostic test for *law enforcement purposes* was an unreasonable search and seizure if the patient had not consented to the procedure.
- Here, the hospital employees were government actors subject to the 4<sup>th</sup> Amendment. “Special needs” exception does not prevail based on the extensive police involvement in the policy.

# Pre-1967 Rule

- 4<sup>th</sup> Amendment Protects Places – the private property owned by the subject.
- **Example-** Involving wire taps on phones and electronic listening devices utilized by police.
- In both phone taps and no consent overhears accomplished with a secret listening device, none of the parties being recorded is aware that the police are listening / recording their conversations.

# Pre-1967 Rule - Case Examples

- *Olmstead v. U.S.*, 277 U.S. 438 (1928) phone tap on poll outside the home - conversations not a “thing” protected by 4<sup>th</sup> – the 4<sup>th</sup> Amendment can only be violated by physical trespass.
- *Goldman v. U.S.*, 316 U.S. 129 (1942) Listening device on outside wall not a physical trespass therefore no 4<sup>th</sup> Amendment issue.
- *Silverman v. U.S.*, 365 U.S. 505 (1961) Spike-mike into wall is a physical trespass therefore 4<sup>th</sup> Amendment protection.

# 1967 Rule

- 4<sup>th</sup> Amendment Protects People Not Places
- *Katz v. U.S.*, 389 U.S. 347 (1967) A police listening device on top of a phone booth installed without a warrant is an unreasonable search and seizure under the 4<sup>th</sup> Amendment despite no physical trespass to the booth.
- Issue: The degree of intrusion on an expectation of privacy.
- Expectation of privacy must be reasonable.
- Reasonable Expectation of Privacy (REP)

# Balancing Privacy Interests

- Subjective Interest – the expectation of privacy the *individual* desires from society.
- Objective Interest – the expectation of privacy *society* desires.
  
- Apply the balancing test in the Katz case!

# Turning Unreasonable into Reasonable via Warrants

- Title III of the Omnibus Crime Control and Safe Streets Act of 1968 – turning unauthorized acts (no consent taps and bugs) into authorized acts through a legislative prescription guided by the requirements of part 2 of the 4<sup>th</sup> Amendment.
- Federal law now permits the authorization of taps and bugs by securing a proper court order (search warrant).
- State statutes can be more restrictive on taps and bugs.

# Not All Government Listening & Recording Requires Warrant

- Federal law and some States: If one party in a private conversation gives consent to the police to hear or record that conversation, police agency may listen and record without a court order (1 party consent overhear).
- Implications for policy:
  1. In car video?
  2. Taping interviews and interrogations?
  3. Camera surveillance?

# More Restrictive States

- Illinois and some States: General Rule: Police must have the consent of one party in the private conversation AND a court order to hear or record conversations
- BUT THERE CAN BE EXCEPTIONS
- Illinois Exceptions: 911 calls – victim of crime – in car video – officer safety but with limited admissibility – others at 720 ILCS 5/14-3

# Crafting Legislation to meet Police Objective

- **General Rule:** No recording without consent
- **One Exception:** “A recording made simultaneously with a video recording of an oral conversation between a peace officer, who has identified his or her office, and a person stopped for an investigation of an offense under the Illinois Vehicle Code.”
- Implications for policy and practice.

# General Search Rule

- The General Search Rule: In order for police to conduct a search they should have a warrant which satisfies the requirements of the 4<sup>th</sup> Amendment BUT... There are certain exceptions recognized by the courts.
- Warrant: Presumption Reasonable
- No Warrant: Presumption Unreasonable-unless there is an Exception.

# Warrant Exceptions

- **1) Search Incident To Valid Custodial Arrest**
- **Pre-1969 Rule:** Police can conduct extensive and extended searches in areas that are considered to be in the possession of or under the control of the person arrested incident to arrest. *U.S. v. Rabinowitz*, 339 U.S. 56 (1950)

# Warrant Exceptions

- **1969 Rule:** Scope of police searches limited incident to arrest. *Chimel v. California* 395 U.S. 752 (1969)
- Purpose:
  - 1) Protection
  - 2) Prevent evidence destruction
  - 3) Remove instruments for escape
- Scope: Full Person and Immediate Control  
Area Contemporaneous with lawful arrest

# Street Stops and Arrests

- Custodial arrest inside car: Scope of search incident to lawful custodial arrest extends to the entire passenger compartment and all open or closed containers, glove boxes, luggage.
- Even if defendant is away from vehicle - concept of “immediate control” often abandoned in car cases (until *Arizona v. Gant*).
- Not the trunk UNLESS Probable Cause. *New York v. Belton* 453 U.S. 454 (1981)

# Limit to “Search incident to Arrest”

- *Arizona v. Gant* (U.S. Supreme Court, 2009)
- Held that “search incident to arrest” limited by:
- *Belton* does not authorize vehicle search after the arrestee has been secured and cannot access the interior of the vehicle.
- However, search of vehicle incident to arrest may be allowed when it is reasonable to believe that evidence of the offense of arrest might be found in the vehicle.

# Street Stops and Arrests

- Terry v. Ohio 392 U.S. 1 (1969) extended to vehicles prior to arrest (Passenger compartment) with Terry requirements in Michigan v. Long 463 U.S. 1032 (1983).

# Street Stops and Arrests

- Ordering driver out of the car.  
*Pennsylvania v. Mimms*, 434 U.S. 106 (1977)
- Ordering passengers out of the car.  
*Maryland v. Wilson*, 519 U.S. 408 (1997)
- Searching passenger property left in the car after passenger is out of the vehicle if probable cause to search the vehicle is permitted.  
*Wyoming v. Houghton*, 98-184 April, 1999

# Reasonable Suspicion

- *U.S. v Arvizu*, No. 00-1519 (1/15/02) – Border Patrol Case.
- Supreme Court says that in reviewing reasonable suspicion to stop a vehicle, the officer is permitted to take into account both innocent and not so innocent behaviors, “the totality of the circumstances”, that lead the officer to suspect wrongdoing drawing on the officer’s own experiences and specialized training.

# Search Incident to Arrest – Fixed Locations

- **Protective Sweeps**

*Maryland v. Buie*, 494 U.S. 325 (1990)

- Police making an arrest inside a premises can conduct a quick and limited search without P/C or suspicion in immediate area adjoining the arrest area.....
- BUT.... beyond that area police need reasonable belief that additional area harbors persons posing a danger to the arresting officers.

# Cooperating Citizens

- **Consent:** *Schneekloth v. Bustamonte*, 412 U.S. 218 (1973)
- Requires no probable cause – no reasonable suspicion – must be free and voluntary under the totality of the circumstances.
- Burden on State – Not a product of force or threat.
- Need not inform person has right to refuse or to halt the search as a matter of constitutional or current federal law.
- Police must stop if asked to stop and there is no P/C to continue.

# Consent Issues

- U.S. Supreme Court says no need to advise the driver “free to go” after issuing ticket or warning before asking for consent to search where no P/C developed during stop.  
*Ohio v. Robinette*, 519 U.S. 33 (1996)  
NOTE: Not so in all states – Ohio requires it
- Search limited to scope of consent.  
*Florida v. Jimeno*, 500 U.S. 248 (1991)

# Inventory Searches

- **Inventory Of Vehicles:** *South Dakota v. Opperman*, 428 U.S. 364 (1976)
- Police had no P/C but a standard procedure and practice can make it OK.
- Purpose: to protect against claims NOT a ruse to find evidence.
- Detail what can be opened or not opened.
- Be prepared to show this is Standard Operating Procedure (SOP).

# Open Fields vs. Curtilage

- **Open Fields** – search outside curtilage OK  
*Hester v. U.S.*, 265 U.S.57 (1924)
- Curtilage - the area to which extends the intimate activity associated with a person's house.
- Determined by proximity to home or enclosure nature of use – effort to screen from public.
- Protected from ground observation, not necessarily from air view.

# Aerial Surveillance

- **Aerial Surveillance** – plane at 1,000 feet viewing curtilage for pot. *California v. Ciraolo*, 476 U.S. 207 (1986)
- Helicopter at 400 feet observing open greenhouse for pot. *Florida v. Riley*, 488 U.S. 445 (1989)
- Plane using sophisticated camera. *Dow Chemical Co. v. U.S.*, 476 U.S. 227 (1986)

# Plain View

- **Plain View** – where objects on private property can be seen from public places.
- *Observation* does not constitute a 4<sup>th</sup> search.
- BUT observation of contraband or evidence must be from *appropriate* vantage point.

# Technology Searches

- High Tech Devices – OK only if police in place they have a right to be AND information obtained could have been gained from “Plain View” executed without the special device.
- Heat Sensing Devices: U. S. Supreme Court in *Kyllo v. U.S.*, 99-8508.

Legal Issue: Does the use of a thermal imaging device to detect pot growing in a private home violate the 4<sup>th</sup> Amendment?

- Supreme Court says YES!

# Electronic Devices

- Electronic Trackers and Beepers *U.S. v. Knotts*, 460 U.S.276 (1983)- No 4<sup>th</sup> Amendment Issue
- *U.S. v. Karo*, 468 U.S. 705 (1984) Yes, 4<sup>th</sup> Amendment Issue
- Geo-tracking device monitoring.
- Placing Electronic Trackers and Beepers on Cars Public place simple attachment.  
Private property or complex attachment.

# Pagers

- Is recalling *Stored* Numbers and Messages by Police a Search? Incident to arrest –OK  
Not incident to arrest – Warrant
- Is intercepting *current* Incoming Numbers and Messages by Police a Search?  
Incident to arrest – Warrant  
Not incident to arrest – Warrant

# Dissemination of Illegal Overhear Information

- General Rule Per The Federal Statute: The use of illegally obtained overhear recordings or information is illegal – excluded as evidence in court and civil litigation.
- But can be used against the person(s) illegally recording or using the recording(s) or the information obtained from the tapes.
- Purpose: To discourage participation in illegal interceptions and prevent further privacy invasions based on the initial illegal conduct.

# Dissemination of Illegal Overhear Information

- Recent Issue: Does the 1<sup>st</sup> Amendment (Freedom of Speech) preclude civil damages as permitted by a federal law for the disclosure of illegal tapes containing information of public significance where an innocent broadcaster receives illegally recorded tapes from an anonymous source and plays them on a talk radio show?
- In *U.S. v. Vopper*, No. 99-1687 (May 21, 2001) the U.S. Supreme Court said YES!

# Plain Touch or Plain Feel

- **Plain Touch or Feel:**
- *Minnesota v. Dickerson*, 508 U.S. 366 (1993) In a Terry type frisk police can seize an item where touch gives the officer probable cause the item is contraband or evidence - but not immediately apparent, required further manipulation therefore not admissible.
- *Bond v. U.S.*, No. 98-349 US Supreme Court April, 2000 – manipulation of luggage on the bus was an unlawful search.

# Odors and Dog Sniffs

- **Plain Smell:** *U.S. v. Johns*, 469 U.S. 478 (1985)
- Officer smells pot in stop of truck – Court implies OK.
  
- **Dog Sniffs:** *U.S. v. Place*, 462 U.S. 696 (1983)
- Use of dogs to discover drugs in luggage not a search.

# P/C But No Warrant

- **Probable Cause** - car contains evidence or contraband– no warrant required based on exigent circumstances – to preserve evidence – search at scene anywhere item could be found. *Carroll v. U.S.*, 267 U.S. 132 (1925)
- **Auto Search with P/C at Station**
- Search of car at station after arrest – police had P/C. *Chambers v. Maroney*, 399 U.S. 43 (1970)

# P/C and Closed Containers

- P/C without warrant in auto searches permits inspection of all closed containers and luggage in vehicle that could contain the object of the search. *U.S. v. Ross*, 456 U.S. 798 (1982)

# Traffic Ticket Stops – Search Powers Limited

- Traffic ticket stops where there is **no custodial arrest**
  - Police search powers are LIMITED....
- May NOT search car or person UNLESS P/C to believe evidence of crime other than the traffic violation.
- *Knowles v. Iowa*, 525 U.S. 113 (1998)

# Asking Power Also Limited?

- An Appellate Ct. in Illinois - ***People v White***, 770 N.E.2d 261, 264 Ill.Dec.367 – Naperville PD - Questions during a lawful traffic stop must be related to the purpose of the stop.
- Officer can only expand the scope of the detention and questions ONLY when the officer has reasonable and articulable suspicion that there is another crime afoot or matters arise during the stop cause reasonable suspicion.
- Unrelated questions calculated to to elicit incriminating responses not permitted unless supported by reasonable suspicion.

# Arrest In Traffic Cases

- Recent Issue: Does the 4<sup>th</sup> Amendment prohibit the police from exercising a custodial arrest in a fine only traffic offense case (seat belt violation)?
- In *Atwater v. City of Lago Vista*, No. 99-1408 April 24, 2001 the U.S. Supreme Court said NO!

# Check Points

- Police may NOT follow a practice of randomly stop cars in order to check license and registration (referred to as a roving road block).
- Check points with limited officer discretion in stopping which cars is OK. *Delaware v. Prouse*, 440 U.S. 648 (1979)
- Fixed checkpoints for sobriety - checks all or follows detailed stop procedure. *Michigan Dept. of State Police v. Sitz*, 496 U.S. 444 (1990)

# Expanding Check Points?

- *City of Indianapolis v. Edmond*, No. 99-1030 (November, 2000)- Check point established for primary purpose of drug interdiction.
- G/R is search or seizure is unreasonable absent individualized suspicion BUT there are limited exceptions. Drug checks are unlike sober checks – not related to roadway safety or border issues.
- Would give police power for any purpose – even if arrest for safety if the PRIMARY PURPOSE IS Drugs – No Good!

# Still OK

- **Under emergency circumstances – check points still OK.**
- **Dog sniffs still not searches per Constitution or federal law.**
- **Dog sniffs at legal checkpoints not illegal per Constitution or federal law.**
- **But in some states dog sniffs may require something more.....namely: reasonable suspicion.**
- **BUT ..... Supreme Court message to police administrators – watch it!**

# Illinois Officers

- ***State of Illinois v. Cox***, 739 N.E.2d 1066, 251 Ill.Dec. 133 (Dec. 5, 2000) - Fairfield PD case –was appealed to the IL Supreme Court, No.90759 (12/5/2002) which affirmed the suppression of evidence based on a dog sniff walk around conducted while an officer was writing a traffic ticket.
- No reason to suspect a drug offense and detained too long.
- Need reasonable suspicion to call for a sniff.

# Information From 3<sup>rd</sup> Parties

- Issue of reliability of the source and the basis of the source's knowledge – the known source versus the anonymous source.
- Anonymous tip – black males at bus stop – one with plaid shirt has gun- police stop and recover weapon.
- Tip not enough- police only verified innocent details and did not establish suspicious behavior.
- *Florida v. J.L., a Minor*, No. 98-1993 US Supreme Ct. (March, 2000)

# Unprovoked Flight

- Subject flees from a high crime area after seeing caravan of police cars – Subject is chased – stopped and gun recovered. Governed by Terry rules.
- Location and evasive behavior are pertinent factors in determining reasonable suspicion justifying a stop.  
*Illinois v. Wardlow*, No. 98-136 U.S. Supreme Ct. (January, 2000)

# Bringing The Media Along

- Media ride along programs violate the 4<sup>th</sup> Amendment when persons who are not authorized or necessary for the execution of the arrest or search warrants enter the home of another. Covers Print-Photo-TV
- *Wilson v. Layne*, 119 S.Ct. 1692 (1999)
- *Hanlon v. Berger*, 119 S.Ct. 1706 (1999)

# Waiting for Warrant to Arrive

- Recent Issue: To what extent may police exercise control over a residence and the owner while awaiting the arrival of a search warrant for the premises?  
*Illinois v. McArthur*, No, 99-1132 (February, 2001).
- The Supremes Court said there can be exceptions to the warrant requirement if reasonable under the particular facts of the case.
- Police in this case had a plausible claim of a specially pressing or urgent law enforcement need.

# Probation Searches

- *U.S.v. Knights*, No. 00-1260 (12/10/01) Can police based on reasonable suspicion and authorized by a probation condition conduct a warrantless search of the residence of a probationer separate and apart from carrying out a “probationary purpose” in the search?

Supreme Court says: YES!!

# Homicide Exception?

- *Flippo v. West Virginia*, No. 98-8770 (10/18/99) There is no “homicide warrant exception” which permits police to conduct an extensive crime scene search (here 16 hours) in a residence without a warrant or justification based on a recognized search warrant exception – like consent.
- OK – if person is need of help – prompt search for victims or offender(s)

# Forfeiture & Notice Requirements

- *Dusenbery v. U.S.*, No. 00-6567 (1/8/02) – FBI forfeiture action with notice of action delivered to prison, residence of arrest, and mother’s house. Claims notice not received.
- Does due process require actual notice? Statute required to send written notice.
- Supremes say: D/P does not require heroic efforts to assure notice delivery, only an attempt to provide actual notice. Certified mail delivery was sufficiently calculated to provide that notice as required by statute in this case.

# Custodial Interrogations

- Police have 48 hours to conduct interrogation
- 48 hours- charge or release
- Clock starts a time of arrest

# Delays Not Permitted

- Gathering additional evidence to justify arrest
- Gathering evidence relating to another crime
- Waiting for charge approval by prosecutor
- Delay motivated by ill will against arrestee

# Implications of 48 Hour Rule

- Ensures arrestee is brought before judge for determination of probable cause w/in 48 hours
- Applies only to warrantless arrests
- Violate 48 rule and expect:
  1. Suppression of evidence
  2. Quash arrest
  3. Civil lawsuit plus possibility for punitive damages
- Implications of terrorism?

# Constitutional Claims via 1983

- Against the officer – for the officer’s specific actions.
- Against the Police Agency – for the policy, customs, practices of the department.
- Compensatory damages against officer and agency possible.
- Punitive damages against the officer.
- Attorney Fees - for successful plaintiff.

# Also Prohibited By Statutes

- 42 USC Section 14141 – Violent Crime Control and Law Enforcement Act (1994) - cannot deny juveniles Constitution rights.
- 18 USC Section 242 – prohibition against discrimination based on color or race.
- 42 USC Section 2000d – prohibits discrimination by any entity receiving federal financial assistance or grants including Community Orientated Policing Services (COPS) Program Funds.

# Role of U.S. Dept. of Justice

- Attorney General - Authority by statute to investigate and bring criminal and civil charges.
- Special Unit – Special Litigation Section within Civil Rights Division of DOJ.
- Sources of complaints.
- DOJ Review – looking for policy, custom, pattern, or practice which indicates larger agency issue – non-qualifying cases to other DOJ units or referred back for private litigation.

# Elements in a DOJ Case

- Interviews reflecting misconduct
- Inadequacy of agency education / training
- Lack of policies / Questionable practices
- Failure to document misconduct
- Lack of supervision
- Failure of supervisors in reporting misconduct
- No meaningful complaint investigations
- Past / current discipline fails to remedy violations

# Types of DOJ Cases

- Excessive Force
- False Arrest
- Illegal Searches
- Racial Profiling

# Goal Should Be:

- Design, implement, and enforce an effective program to prevent, detect, and insure accountability for incidents of misconduct and civil rights violations.
- But for those agencies that have or could be accused of misconduct by DOJ or the ACLU or private individuals you need to know more.....

# Consent Decree

- Consent Decree: A voluntary agreement between litigating parties under the sanction of a court, in the nature of a contract or solemn promise, to perform or otherwise comply with stated objectives or goals in order to remedy matters at issue between the parties.
- Purpose: To bring a resolution to the issue without the time and expense of litigation.

# Terms and Conditions

- The consent decree is normally like a contract that requires the police agency to create or re-write policies, better train officers, better supervise officers, and demands discipline employees for conduct that is the subject of the litigation.
- Conditions of the decree often include:
  1. Time lines to complete tasks
  2. Right to review and inspect police records
  3. Meetings to review progress
  4. Designation of a monitor.

# The Decree Monitor

- Can be ACLU or an Independent 3<sup>rd</sup> Party.
- Charged with the responsibility with overseeing agency progress toward compliance with the goals and objectives stated in the consent decree.
- Reports to the parties and the court – judge has option of continuing the case or ordering the decree suspended and proceeding in the litigation.

# Good and Bad of Consent Decrees

- Resolves the immediate threat of litigation
- Avoids litigation costs, but not all costs
- May defuses the negative publicity
- Is not a means to maintain status quo
- Requires agency resolution to police itself
- Forfeits control of the agency
- Policy, training, and supervision impact

# Steps Intended to Prevent Police Liability

- Policy- clearly prohibiting ALL forms of discrimination
- Policy – Profiling is not to be used
- Policy should be easily understood
- Policy should be distributed AND discussed

# Steps Intended to Prevent Police Liability

- Appropriate discipline for violations
- Customs and practices must not defeat policies
- Data Collection
- Data Analysis

# Steps Intended to Prevent Police Liability

- First interpretation issues
- Training
- Assessments of training in performance
- Documentation of stops/actions
- Required officer reporting of illegal conduct
- Meaningful performance evaluations
- A “real” complaint procedure

# QUESTIONS



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