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Laws of the State
and the State of the Law

The Relationship Between Police and Law

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INTRODUCTION

For almost the first one hundred years of the history of the United States, the law set few parameters on policing. This resulted in numerous problems, including the police corruption that was rampant in the early 1900s (shakedowns, extortion, or officers committing crimes themselves), the practice of coercing persons into making (sometimes false) confessions that was unchecked until the mid-1900s, and the ability of police officers to use deadly force on practically anyone seeking to escape that was not changed until 1985. Although the legal system seemed reluctant to control itself, over time, laws were changed in many areas related to policing that changed the way police officers performed their duties.

Near the end of the nineteenth century, states and the federal government began to more closely examine police conduct as it applied to rights guaranteed by the Constitution. In Boyd v. United States (1886), the Supreme Court held that the forced disclosure of papers amounting to evidence of a crime violated the Fourth Amendment, and therefore the evidence could not be used in court. This ruling established the exclusionary rule, which made the fruits of police misconduct inadmissible in court, rather than the more common practice at that time of requiring a separate trial on the evidence or misconduct.

Following Boyd, there was a slow but progressive movement by the courts and lawmakers to incorporate the Bill of Rights to the states and to make it applicable to federal police agencies. This chapter briefly outlines those efforts, especially as they
apply to Supreme Court decisions. The decisions of the Supreme Court were chosen to establish the state of the law because many of the legal restrictions and laws in the area placed the police came from the Supreme Court; and in many cases the Court has overturned state or other laws governing police behavior. Several of the issues included in this chapter will be addressed in more detail in the chapters that follow.

PROBABLE CAUSE

The foundation of the relationship between policing and the law falls within probable cause. The relationship between probable cause and searches and seizures is obvious, but probable cause is also necessary for almost all other interactions with the police, from investigative stops to use of deadly force. Probable cause is also closely linked to alleged police misconduct, such as racial profiling of drivers of stopped vehicles.

Probable cause is a very elusive concept, the definition of which is often debated in court cases. Although courts (even the Supreme Court) have defined probable cause in different ways, an accepted definition comes from Brinegar v. United States (1949). This definition provides that probable cause exists when "the facts and circumstances within the officers' knowledge and of which they had reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed."

Even with this definition, it is obvious that probable cause is a subjective measure that varies from one police officer to the next and one judge to the next. The strongest case for probable cause is having a search or arrest warrant. Failing that, officers are required to be able to articulate the "reasonably trustworthy information" available to them that supports "the belief that an offense has been or is being committed." Although there are many cases that determine the present parameters of probable cause, three are briefly discussed here to show some of the important points in this key element of policing and how they have developed.

In Draper v. United States (1959), an officer received information from an informant that Draper had gone to Chicago to bring three ounces of heroin back to Denver by train on either the morning of September 8 or 9. The informant also gave a detailed description of Draper, and the clothes he would be wearing, and said that he habitually walked really fast. Based on this information, police officers set up surveillance of all trains coming from Chicago. The morning of the eighth produced no one fitting the informant's description. The next morning, officers observed an individual matching the exact description the informant had supplied get off a train from Chicago and begin to walk quickly toward the exit. They overtook the suspect and arrested him. Heroin and a syringe were seized in a search incident to the arrest. The informant died before the trial and was unable to testify.

The issue in this case was whether information provided by an informant, which was subsequently corroborated by an officer, could provide probable cause for an arrest. The Court held that this information could be used to establish probable cause when verified by the officer. This case is important because, prior to it, officers could only use information they personally generated. This case allows officers to also use information from other sources in establishing probable cause—as long as they can verify the veracity of the information before going further.

Probable Cause

Following Draper, there were several cases outlining the requirements for establishing probable cause based on information not generated by police officers. Specifically, Aguilar v. Texas (1964), and Spinelli v. United States (1969) established a two-pronged test that both the informant and the information had to be verified for the information to be valid. That standard was changed in Illinois v. Gates (1983).

In Gates, Illinois police received an anonymous letter stating that Gates and his wife were engaged in selling drugs, that the wife would drive her car to Florida on May 3 to be loaded with drugs, that Gates would fly down and drive the car back, that the trunk would be loaded with drugs, and that Gates had more than $100,000 worth of drugs in his base-
ment. Acting on the tip, a police officer obtained Gates's address and learned that he had made reservations for a May 5 flight to Florida. Arrangements for surveillance of the flight were made with the DEA. The surveillance disclosed that Gates took the flight, stayed overnight in a hotel room registered in his wife's name, and left the following morning with a woman in a car bearing an Illinois license plate, heading north. A search warrant for Gates's house and automobile was obtained on the basis of the officer's affidavit and a copy of the anonymous letter. When Gates arrived home, the police were waiting. A search of the house and car revealed marijuana.

The issue in this case was whether the anonymous tip, which was later corroborated by the officers, was sufficient to establish probable cause even though there was no identified informant. The Court held that the two-pronged test established under Aguilar and Spinelli was to be abandoned in favor of a "totality of the circumstances" approach. This means that in determining whether an officer has probable cause for taking action, courts will look at all the information available to the officer. The application of this standard of establishing probable cause is evident in many actions of police officers. One such application is discussed below—investigative stops.

In United States v. Sokolow (1989), Sokolow purchased two round-trip tickets under an assumed name. He paid for the tickets from a roll of $20 bills that appeared to contain about $4,000. He appeared nervous during the transaction. Neither he nor his companion checked their luggage. Based on these facts, which fit a "drug courier profile," officers stopped the couple and took them to the DEA office at the airport where a drug dog examined their luggage. The examination indicated the presence of narcotics in one of Sokolow's bags. Sokolow was arrested and a search warrant obtained for the bag. No narcotics were found in the bag, but documents indicating involvement in drug trafficking were discovered. Upon a second search with the drug dog, narcotics were detected in another of Sokolow's bags. Sokolow was released until a search warrant could be obtained the next morning. A search of the bag revealed 1,063 grams of cocaine.

The issue in this case was whether pre-established guidelines that represented a "drug courier profile" were sufficient to meet the standard of totality of the circumstances when verified by police officers. The Supreme Court held that the circumstances of this case were sufficient to establish probable cause under totality of the circumstances. This is important in police work because of the current controversy surrounding racial profiling. While stopping people because of their race is clearly discriminatory, the totality of circumstances standard for establishing probable cause is sufficient to allow officers to make investigative stops if there is sufficient evidence that a crime is being or has been committed.
Fourth Amendment Issues

FOURTH AMENDMENT ISSUES

Fourth Amendment issues make up the bulk of court decisions involving police actions. This is because of the variety of situations governed by the Fourth Amendment. Those that will be discussed here include searches in general, searches with consent, plain view searches, vehicle searches, the crossover between searches and seizures—stop and frisk, searches after an arrest, arrests, and other types of seizures.

Searches in General

There are many different categories of searches. These include searches with consent, plain view searches, and vehicle searches, which will be discussed below. There are also cases involving searches that do not fit into predefined categories. Some of these cases are discussed in this section. Some of these issues are also covered in more detail in the chapters dealing with the use of canines in policing (Chapter 6) and the progression of Supreme Court cases concerning search and seizure (Chapter 7).

One of the more interesting cases concerning searches is Maryland v. Garrison (1987). In this case, police officers obtained a warrant to search "the premises known as 2036 Park Avenue third floor apartment," for drugs belonging to a person named McWebb. The police believed that there was only one apartment at the location; in fact, there were two apartments on the third floor, one belonging to McWebb and one belonging to Garrison. Before the officers became aware that they were in Garrison's apartment instead of McWebb's, they discovered contraband that provided the basis for Garrison's conviction on drug charges.

One of the elements of a valid search warrant is that it must specifically describe the "places to be searched and the things to be seized." The warrant in this case was overbroad (it only described one upstairs apartment, when in fact there were two). The Supreme Court held, however, that this mistake by the officers was reasonable, and therefore the search was valid. Furthermore, the evidence seized in the mistaken search was also admissible in court.

Another issue for police officers is the requirement to knock and announce their presence and intentions before executing a search warrant. This issue has reached the Supreme Court in several cases. The first case is Wilson v. Arkansas (1995), in which the Court held that the Fourth Amendment requires officers to knock and announce before entering a dwelling unless there are exigent circumstances. The Supreme Court strengthened this ruling in Richards v. Wisconsin (1997), when it held that the state could not create these exigent circumstances by allowing a blanket exception to the knock and announce rule when executing felony drug warrants. Instead, the Court held that exceptions to this rule must be decided by a judge on a case-by-case basis. The Court did side with police, however, in United States v. Ramirez (1988), when it held that the fact that officers must destroy property (breaking a window or door) does not require a higher standard than the no-knock requirement outlined in Wilson.

There are other cases addressing important legal aspects for police. For example, in California v. Greenwood (1988), the Supreme Court authorized the search and seizure of trash left for collection in an area accessible to the public. Also, the Court held in Minnesota v. Carter (1998) that persons who are overnight guests in a home may claim a sep-
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There are also persons who cannot give consent to search. These include landlords [Stoner v. California (1964)], owners of homes where an overnight guest is staying [Minnesota v. Olson (1989)], college or university administrators [Piazzola v. Watkins (1971)], and hotel clerks [Stoner v. California (1964)]. It should be noted, however, that hotel clerks can provide access with a key for valid arrests or searches without making the activities inadmissible.

Voluntariness, as with other aspects of searches, is based on the totality of the circumstances. This standard was decided in Schneckloth v. Bustamonte (1973). The Supreme Court held in this case that while the suspect's knowledge of the right to refuse consent is one element of valid consent, such knowledge is not a prerequisite.

On the other hand, officers cannot gain consent by claiming to have a valid search warrant when none exists. In Bumper v. North Carolina (1968), during a rape investigation, but before his arrest, officers went to Bumper's home where he lived with his grandmother. When the officer announced that he had a warrant to search the house, the grandmother responded, "Go ahead," and opened the door. The officers found a rifle in the kitchen, which was seized and entered as evidence. The Supreme Court held that the search was inadmissible because the consent was not valid. This was because the consent was only based on the belief that the officers possessed a search warrant. The Court also held in this case that a search conducted with a warrant could not later be justified based on consent if it was determined that the warrant was invalid.

Plain View Searches

Police officers also heavily rely on plain view searches, especially when conducting vehicle stops. The plain view doctrine states that items within the sight of an officer may be seized as long as the officer is legally in the place from where the contraband is viewed and the material is immediately recognizable as subject to seizure.

In addition to plain view searches, officers are allowed to view items in a car while it is moving but only if the officer is lawfully stopped for a reason related to the discovery of the items. The officer must have probable cause to believe that the items are being transported and are subject to seizure. If an officer stops a vehicle for a traffic violation and then observes drug paraphernalia inside the vehicle, the officer may seize the paraphernalia without a warrant.

In the case of Arizona v. Hicks (1987), officers stopped a car for speeding and found a gun in the car. They then searched the car and found a stereo system. They seized the stereo system because they believed it was used to transport drugs.

The Supreme Court held in this case that probable cause to believe that items being searched are evidence of criminal activity is required for a plain view search; and that the
officer’s action of moving the stereo to obtain the serial numbers to be checked against records of stolen items constituted an illegal search. The reason the Court gave is that the reason for the officer to be in the apartment, therefore, did not allow him to move the stereo.

Although material must be “immediately recognizable” as subject to seizure, more certainty by the officer is not required. In Texas v. Brown (1983), an officer stopped license and shined his flashlight into the automobile. When Brown withdrew his hand based on his experience, the officer knew that such balloons frequently contained narcotics. Brown then reached across and opened the glove compartment. The officer shifted plastic vials, a quantity of a white powdery substance, and an open package of party balloons. The officer picked up the balloon, which had a white powdery substance in the possibly containing narcotics. The officer placed Brown under arrest. A search of Brown’s vehicle incident to the arrest revealed marijuana. The Supreme Court held in that view exception, so the officer’s actions were reasonable. The Court also held that officers may use a flashlight to aid them in their search without breaking the boundaries allowed in plain view searches.

Vehicle Searches

Vehicle searches represent one of the longest and most complicated lines of search and seizure cases. This is primarily because of the many different situations that can occur in the stop of a vehicle.

One seminal case governing vehicle searches is Carroll v. United States (1925). In this case, officers observed the automobile of Carroll and dove chase but failed to apprehend the car. No liquor was visible in the front seat of the automobile. Officers then searched the car, turned the “layback” of the seat, tore open the seat cushion, and discovered sixty-eight bottles of gin and whiskey. Carroll was arrested and convicted of transporting liquor.

The issue in this case was whether the officers could search the vehicle without a search warrant but with probable cause that it contained evidence of a crime. The Supreme Court held that the risk of the vehicle being moved or the evidence destroyed or the vehicle containing items subject to seizure. This case was extended in Chambers v. Maroney (1969) to allow officers to search a vehicle after it had been impounded if the circumstances would have allowed a search at the place of contact with the vehicle.

One place where officers are prevented from stopping and searching a vehicle is where there is no probable cause for the stop. In Delaware v. Prouse (1979), without observing traffic or equipment violations or suspicious activity, a police officer stopped Prouse’s vehicle to check the driver’s license and registration. Upon approaching the vehicle, the officer smelled marijuana. He then seized a quantity of marijuana in plain view on the floor of the vehicle. The Supreme Court held in this case that stopping a vehicle and detaining the driver simply to check the license and registration are unreasonable under the Fourth Amendment. The only way a stop of a vehicle is legal is through probable cause that some law has been or is being broken.

Like other searches and seizures, vehicle searches are based on the standard of totality of the circumstances. This was established in United States v. Cortez (1981). In this case, officers determined, based on an extensive investigation, that the transportation of illegal aliens was occurring in a particular area. Based on these deductions, they set up surveillance. Of the fifteen to twenty vehicles that passed the officers during their surveillance, only two matched the type they were looking for. As one truck passed, the officers got a partial license plate number. When the same vehicle passed them again, they pursued and stopped it. In the back of the truck were six illegal immigrants. The Supreme Court held in this case that the totality of circumstances is to be used in determining probable cause to make an investigatory stop. The Court also held, however, that officers must have a “particularized, objective basis for suspecting that the individual stopped is engaged in criminal activity.” The officers in this case met that standard.

Once a vehicle is stopped, there are several situations where police are authorized to search different parts of the vehicle and its contents. Most of these situations relate to whether an arrest of the occupants is made and the amount of probable cause the officers can articulate.

First, after a valid stop, officers may make a limited search of the passenger compartment looking for weapons. In Michigan v. Long (1983), officers observed an automobile swerve into a ditch and they stopped to investigate. They were met at the rear of the car by Long, who “appeared to be under the influence of something” and did not respond to a request to produce his license. After a second request to see his registration, Long began walking toward the open door of the vehicle. The officers followed him and noticed a large hunting knife on the floorboard of the vehicle. They then stopped Long and frisked him. No weapons were found. One of the officers shined his flashlight into the car and discovered marijuana. The Supreme Court held in this case that officers can make a search of the passenger compartment of a vehicle if they have a reasonable belief that the suspect is dangerous and might gain immediate access to a weapon. This search is limited, however, to places where a weapon might be placed or hidden. If, however, the officer finds other contraband during this protective sweep, then he or she may seize the contraband under the plain view doctrine.

Once a vehicle has been impounded, there are certain guidelines that govern inventory searches. First, police can only conduct inventory searches pursuant to departmental policy. If the department does not have a policy governing inventory searches, officers only have the same probable cause that they had on first contact with the vehicle to support a search, which is typically much more limited than inventory searches. On the other hand, if the department has a policy for inventorying vehicles, then officers have wide discretion to do so within the policy.

In Colorado v. Bertine (1987), Bertine was arrested for driving under the influence of alcohol. After he was taken into custody, and prior to the arrival of a tow truck to impound the vehicle, Bertine was searched.
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dures. During the inventory search, the officer opened a backpack and found various con-

warrant are permissible. Furthermore, containers in the vehicle may be opened even if

In California v. Acevedo (1991), a case allowing the greatest latitude to police officers
to get a warrant to search a container in a vehicle if there is no probable cause to search the

d that he had intercepted a package containing marijuana that was to have been delivered to
contents as marijuana and took it to the Federal Express office for a controlled delivery. A
later, Acevedo left the apartment and dropped the box and the paper that had contained the mar-
tain a search warrant. A short time later, other officers observed another man leave the
he was driving off, searched the knapsack, and found 1% pounds of marijuana. Later,

bag that appeared to be the size of the one that contained the marijuana packages. Acevedo

stopped him, opened the trunk and the bag, and found marijuana. The Court held that prob-

container, even if there is not probable cause to search the vehicle.

In this case, Knowles was stopped for speeding and issued a citation (although the officer
where he found marijuana. At trial, the officer conceded that he had neither consent nor
d the citation. The Supreme Court held in this case that while it is permissible to search

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vehicle pursuant to an arrest, it is not permissible to search a vehicle pursuant to issuing

traffic citation absent consent or specific probable cause.

Other decisions important to vehicle stops include California v. Carney (1985),
which held that motor homes used on public highways are automobiles for the purposes
of the Fourth Amendment, so the same search and seizure rules apply. In addition, the
cause to search a vehicle, they may also inspect the belongings of passengers that would
be capable of concealing the object of the search.

Based on these cases and others, police officers may do the following pursuant to a
valid stop of a vehicle:

1. Search the entire vehicle, open the trunk, and open any containers found in the

vehicle that might reasonably contain the items for which the officer is search-
ing, United States v. Ross (1982).

2. Search a container in the vehicle if there is probable cause to believe that it con-
tains items subject to seizure, even if there is not probable cause to search the car

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3. Search the passenger compartment of the vehicle and its contents incident to a


4. Make a warrantless search of the vehicle even if there is time to obtain a warrant,

5. If there is probable cause to search the vehicle, officers may also inspect the be-
longings of passengers in the vehicle as long as the belongings are capable of

6. Officers are not required to tell motorists that they are free to go before obtaining

consent to search the vehicle, Ohio v. Robinette (1996).

In recent years, the Supreme Court has supported most efforts by the police to increase
their ability to make stops of vehicles (see Chapter 2). This has led to some problems,
however, in terms of police officers being accused of racial profiling and making stops for
less than probable cause. This area will continue to be a source of court cases requiring
officers and others to remain abreast of changes issued by the courts.

Stop and Frisk

Stop and frisk is a fairly well defined area of law for police officers. The concept of stop
and frisk was introduced in the case of Terry v. Ohio (1968). The Supreme Court held in
that case that the police have the authority under the Fourth Amendment to detain a per-
son for questioning even without probable cause to believe that the person has committed
a crime. The only thing required for this stop is that the officer be able to articulate a rea-
sonable suspicion that criminal activity may be taking place. An officer may then frisk the
person for weapons if the officer reasonably suspects that he or she is in danger. None of
these actions constitutes an arrest.

Four years later, the Court extended the Terry decision, stating that a stop and frisk
is authorized based on information provided by an informant [Adams v. Williams (1972)].
Stop and frisk was further extended in United States v. Hensley (1985) to allow police of-
ficers to stop persons who are the subject of a wanted flyer.

The Court took up the issue of the length of time that it is reasonable to detain a per-
son during a Terry stop in United States v. Sharpe (1985). In this case, a DEA agent was pat-
trolling in an area suspected of drug trafficking when he observed Sharpe’s car driving in

tandem with an apparently overloaded truck. After following the two vehicles for 20 miles,
the agent radioed for a marked car to assist him in making an investigatory stop. The two of-
ficers followed the vehicles several more miles at speeds in excess of the speed limit. The
DEA agent stopped the car driven by Sharpe, but the officer was forced to chase the truck,
which he stopped a half-mile later. The DEA agent radioed for additional uniformed officers
to detain Sharpe while the situation was investigated. These officers arrived ten minutes
later. The DEA agent arrived at the location of the truck approximately fifteen minutes after
it had been stopped. The agent’s requests to search the truck were denied, but after he
smelled marijuana, he took the keys from the ignition, opened the back of the truck, and
found marijuana. The driver was then placed under arrest, and the officers returned to arrest
Sharpe approximately twenty minutes after his car had been stopped.

The Supreme Court held in this case that the twenty minutes taken by the officers
was not unreasonable. The Court stated that there was no specific time limit to be estab-
lished in a Terry stop, and that the time taken is dependent upon the actions necessary to carry out the stop. Furthermore, the Court stated that judges should defer to police officers concerning how much time it takes to carry out a stop; but officers must be able to justify the amount of time taken.

In Minnesota v. Dickerson (1993), the Supreme Court took up the issue of what actions are authorized by officers in Terry stops. In this case, two police officers observed Dickerson leaving an apartment building that one of the officers knew was a crack house. Dickerson began walking toward the police, but, upon making eye contact with them, decided to stop Dickerson and investigate further. They pulled into the alley and ordered Dickerson to stop and submit to a pat-down search. The search revealed no weapons, but the officer found a small lump in Dickerson’s pocket, which he said he examined with his fingers and determined that it felt like a lump of cocaine in cellulose. The officer reached into the pocket and retrieved a small plastic bag of crack cocaine. The Court held in this case that any Terry pat-down must be “limited to that which is necessary for the discovery of weapons which might be used to harm the officer or others nearby.”

Searches After an Arrest

The final area of searches involves those that occur after a person is taken into custody. As a general rule, officers may search the person and the area immediately surrounding the person for contraband following a legal arrest.

The case that established police authority to search following an arrest was Chimel v. California (1969). The Supreme Court held in this case that when an arrest is made, it is reasonable to search the person arrested for weapons and for evidence. In addition, officers may search “the area into which an arrestee might reach in order to grab a weapon or evidentiary item.” The authorization to search the body of a person following an arrest, even when there is no suspicion of a weapon, was granted by the Court in United States v. Robinson (1973). The Court further held that there is no time limit to when a search following an arrest could occur. In United States v. Edwards (1974), the clothes of an arrestee were searched after he was taken into custody. The Court held that a search that would have been valid at the time of the arrest may be conducted at a later time (after being placed in custody), even if a substantial period of time has elapsed.

The Court limited the area that could be searched following an arrest in Vale v. Louisiana (1970). In this case, Vale was arrested on the front steps of his house. The officers then searched the house without a search warrant. The Court held that for a search to take place inside a house, the arrestee must also take place inside the house.

Arrests

The principal issue in the law of arrest pertains to when an arrest occurs. The Supreme Court cases in this section show that an arrest occurs when a person is taken into custody against his or her will for the purposes of criminal prosecution [Dunaway v. New York (1979)]. When this occurs, however, is often a matter of legal contention.

The Court held that the test to determine when a seizure occurs is whether a reasonable person would conclude that he or she is not free to leave. In Michigan v. Chesternut (1988), Chesternut began to run after observing the approach of a police car. Officers followed him to “see where he was going.” As the officers drove alongside Chesternut, they observed him pull a number of packets from his pocket and throw them down. The officers stopped and seized the packets which contained narcotics. Chesternut was then arrested. A subsequent search revealed more narcotics. The Court held in this case that Chesternut was not seized when he threw down the drugs, so there was no illegal search or seizure of the drugs. This case was strengthened in Florida v. Bostick (1991), which held that “a seizure does not occur simply because a police officer approaches an individual and asks a few questions. As long as a reasonable person would feel free to disregard the police and go about his business, the encounter is consensual.”

These rulings were strengthened in California v. Hodari D. (1991). In this case, two police officers were patrolling a high-crime area when they saw four or five youths huddled around a car. When the youths saw the police car approaching, they fled. One officer gave chase. The officer did not follow one of the youths directly; instead, the officer took another route that brought them face-to-face on a parallel street. Hodari was looking behind as he ran and did not turn to see the officer until they were upon each other; whereupon he tossed away a small rock. The officer tackled Hodari and recovered the rock, which turned out to be crack cocaine. The Court held in this case that a seizure only occurs under the Fourth Amendment when there is the use of physical force by an officer or submission by the suspect to the authority of the officer. As in this case, no seizure occurs when the officer attempts to make an arrest through a show of authority, but applies no physical force and the suspect does not willingly submit.

A seizure can occur, however, if the government’s actions are such as to constitute a seizure. In Brower v. County of Inyo (1989), in an effort to stop Brower, who had stolen a car and eluded the police in a chase of over twenty miles, police placed an eighteen-wheeled truck across both lanes of a highway, behind a curve, with a police car’s headlights pointed in a manner that would blind Brower. Brower was killed in the crash as a result of the roadblock. The Court held in this case that a seizure occurs when there is a “governmental termination of the freedom of movement through intentionally applied.” In this case, the roadblock set up to stop Brower was intentional and it did stop him, so a seizure did occur.

There are restrictions concerning where an arrest without a warrant can take place. The general rule is that officers cannot arrest a person in a private dwelling without a warrant or exigent circumstances [Payton v. New York (1980)]. The Supreme Court held in United States v. Watson (1976) that officers could arrest a person in a public place without a warrant; and the Court held that an arrest would be valid if it began in a public place but the arrestee fled to a private place before being arrested [United States v. Santana (1975)].

Other Seizures

A few issues of the Fourth Amendment do not fit into the other categories discussed. These are included here in the interest of providing additional information that might be important to a police officer’s function.

One of the more interesting cases concerning the Fourth Amendment is Winston v. Lee (1985). In this case, a storeowner was wounded in the legs and the assailant appeared to be wounded in the left side of the body in a shoot-out resulting from a robbery. Some
time later, officers responding to another call saw the suspect eight blocks from the store. He told the officers that he had been wounded when he himself was robbed. The suspect was taken to the same hospital as the storeowner. While at the hospital, Lee was identified by the storeowner as the man who had shot him. The state asked a court for an order directing Lee to undergo surgery to have the bullet removed. The doctors first said that there was some danger involved in the operation, but later stated that the bullet was lodged near the surface of the skin and could be easily removed with no danger. While Lee was being prepared for surgery, it was discovered that the bullet was deeper than originally thought and would require surgery under general anesthesia. Lee then moved for a rehearing in the state court that was denied. The case eventually went to the United States Supreme Court.

The Supreme Court had held previously, in Schmerber v. California (1966), that the drawing of blood from a suspect without his or her consent is not a violation of the Fourth Amendment as long as it is done by medical personnel using accepted medical practices. Wrishton took the issue further. In this case, there was an issue about how extensive the wound was and what it would take to remove the bullet. The Court held that if it was a simple operation, then seizing the bullet would not violate the Fourth Amendment. A major procedure using a general anesthetic, however, was beyond what would be reasonable under the Fourth Amendment—regardless of whether it would produce evidence of a crime.

In Capp v. Murphy (1973), the Court dealt with the issue of making a warrantless seizure of evidence that was likely to disappear before a warrant could be obtained. In this case, Murphy voluntarily went to the police station for questioning following his wife’s death. While at the station, police noticed a dark spot on Murphy’s finger that appeared to be dried blood. Murphy refused an officer’s request to take a sample from his fingernail, placed his hands behind his back and in his pockets, and appeared to be rubbing his hands to remove the spot. The officers then forcibly and without a warrant took scrapings from Murphy’s fingernails. The scrapings were found to contain traces of skin and blood from the victim. The Court held that, given the facts of this case—the existence of probable cause, the limited detention of the suspect, and the destructibility of the evidence—the seizure was valid.

Finally, in City of West Covina v. Perkins (1999), the Court dealt with the issue of what actions are required by police when seizing evidence. In this case, pursuant to a valid search warrant, police officers searched Perkins’s home and seized a number of items. The suspect in the crime was a boarder in the Perkins house. Items seized by the police included the boarder, but some belonged to Perkins. Upon completing the seizure, officers left notice of the search and other information, such as the name of the judge who had issued the warrant, officers to contact for information, and an itemized list of property seized. The officers did not leave the warrant because, as was ongoing and the information was sealed; however, that information was maintained by the court clerk in a file indexed by the address of the home searched. After attempts to secure the return of the property, Perkins filed suit. The Court held that the police are not required to provide the owner of property seized with detailed notice of the procedures for the return of the property.

FIFTH AMENDMENT ISSUES

The Fifth Amendment provides two sets of rights: the privilege against self-incrimination and the right to due process under the law. The Fourteenth Amendment also contains a provision for due process rights that was typically used to incorporate the Bill of Rights to the states. As such, the Fifth and Fourteenth Amendments are intimately linked, with the Fourteenth Amendment actually being the first application of self-incrimination protections. The key case in this section is Miranda v. Arizona (1966). Other cases in this section will be discussed as they support Miranda or are exceptions to it.

Miranda and Cases That Support It

The protection against self-incrimination was first incorporated to the states in Brown v. Mississippi (1936). In that case, the Supreme Court held that confessions obtained as a result of coercion or brutality were inadmissible. This case was actually decided under the Fourth Amendment rather than the Fifth Amendment; but the result was the same—police officers could no longer coerce confessions and have them admitted in court. This decision was eventually extended under the Fifth Amendment; culminating in the decision in Miranda and the many cases after it.

Some of the most easily recognized words of the Supreme Court are from Miranda v. Arizona (1966). In that case, the Court had to decide whether the police must inform a suspect who is subjected to a custodial interrogation of his or her constitutional rights involving self-incrimination right to counsel. Of course, the Court held in favor of Miranda, and penned the rule now so well known:

1. that a suspect has the right to remain silent
2. that anything the suspect says may be used in a court of law
3. that the suspect has the right to have an attorney present during questioning
4. that if the suspect cannot afford an attorney, one will be appointed prior to questioning

It is this standard upon which all other cases of this type are based.

Once Miranda was decided, it became necessary to determine what conditions represented an interrogation. Two cases are instructive on this issue. In Brewer v. Williams (1977), after police arrested Williams in another jurisdiction on suspicion of murder, Williams’s counsel was assured that Williams would be transported back to the original jurisdiction without being interrogated. During transport, and without advising Williams of his Miranda rights, an officer began a conversation with him concerning the whereabouts of the girl he was alleged to have murdered. This conversation came to be known as the “Christian burial speech,” where the officer told Williams that he should tell the officer where the body was so it could receive a Christian burial before a snowstorm came that could prevent the body from being found. Ultimately, Williams agreed to take the officer to the child’s body. The Court held in this case that what the officer did was equivalent to an interrogation without counsel. Since Williams was entitled to right to counsel at that time, the evidence had to be suppressed.

In a similar case, Rhode Island v. Innis (1980), the Supreme Court ruled that a conversation between two officers not directly speaking to the suspect that elicited the same kind of information as in Williams was not an interrogation; thus, the evidence did not have to be suppressed. The key here was that the officers were not talking directly to the
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The extent to which the Miranda warnings apply was decided in Edwards v. Arizona (1981). In this case, Edwards was arrested pursuant to a warrant. At the police station, he was read his Miranda warnings and indicated that he understood them and would answer questions, but he later changed his mind and said that he wanted to speak to an attorney before answering further questions. At that point questioning ceased. The next day, two different officers asked to see Edwards. He told the detention officer that he was not giving Miranda warnings. He had no choice in the matter. Edwards was again informed of his Miranda rights. Ultimately, Edwards made a statement that could have been the basis of a Miranda rights violation. The Court held in this case that once a suspect invokes his rights, the interrogation must cease. This standard exists regardless of whether the suspect actually speaks to an attorney or not. The rule is that once a suspect invokes his or her right to an attorney, one must be may not later interrogate the suspect, even with another reading of the Miranda warnings or police. The one exception to this rule is if the suspect initiates the communication.

When Miranda warnings become necessary was the issue in Berkemer v. McCarty (1984). In this case, after following McCarty’s car for two miles and observing it weave in and out of a lane, an officer stopped the car and asked McCarty to get out. McCarty had a traffic offense, but the officer decided to charge McCarty with a traffic offense, which McCarty was not convicted. After being taken to the station, McCarty was asked if he had consumed any marijuana and was formally arrested and taken to jail. At point was McCarty.

This case addressed two different issues in the continuum of whether Miranda warnings are necessary. These were whether the roadside questioning of a motorist and whether suspects charged with misdemeanor traffic offenses (or greater) require Miranda warnings. The Supreme Court held that single questioning Miranda warnings be given. If the questioning (or anything else) leads to an arrest, how- before interrogation is required. Berkemer was further clarified years later in Pennsylvania v. Muniz (1990). In this case, an officer stopped Muniz’s vehicle and directed him to perform three standard field sobriety tests, which he failed. The officer then arrested Muniz and took him into custody. At the police station, Muniz was processed through procedures for receiving persons suspected of driving while intoxicated. Without being given his Miranda warnings, he was asked seven questions regarding his name, address, height, weight, eye color, date of birth, and age. He was also asked, and was unable to give, the date of his sixth birthday.

Fifth Amendment Issues

After Muniz refused to submit to a breathalyzer test, he was read his Miranda warnings. He then waived his rights and admitted in further questioning that he had been driving while intoxicated. The Court held in this case that the police may ask routine questions of persons suspected of driving while intoxicated without giving Miranda warnings. This is not self-incriminating because it is not the answers to the questions (testimonial evidence) that are of interest to the police, it is the way the responses are made (physical evidence). Questions that are not routine, however (such as the date of Muniz’s sixth birthday), and to which the correct answer would be used as testimonial evidence, require Miranda warnings.

Cases That Weakened Miranda

It took almost eighteen years before the Supreme Court decided a case that was a substantial blow to the protections provided by Miranda. That case was New York v. Quarles (1984). In this case, a woman claiming that an armed man had just raped her approached officers. She described him, and said that he had entered a nearby supermarket. The officers drove the woman to the supermarket and one officer went in while the other radioed for assistance. The officer in the supermarket quickly spotted Quarles, who matched the description provided by the woman, and a chase ensued. While the officer apprehended Quarles, he frisked him and discovered an empty shoulder holster. After handcuffing Quarles, the officer asked him where the gun was. Quarles nodded in the direction of some empty cartons and responded, “The gun is over there.” The gun was retrieved from the cartons and Quarles was placed under arrest and read his Miranda warnings.

The issue in this case was whether a question asked by a police officer that was prompted by concern for public safety could be admissible in court even if the officer did not read the suspect his Miranda warnings. The court ruled that there should be a “public safety exception” to Miranda where concern for public safety outweighs the rights of the suspect. Furthermore, the motivations of the officer are not called into question here. Regardless of why the officer might ask questions of concern to public safety, no Miranda warnings are necessary for that narrow line of questioning.

Another exception to Miranda is that responses to questioning made after the Miranda warnings are given are admissible in court regardless of any previous communication between the police and a suspect. In Oregon v. Elstad (1985), officers went to a burglary suspect’s home with a warrant for his arrest. One officer waited with Elstad while the other explained his arrest to his mother. The officer told Elstad that he was implicated in the burglary, to which he responded, “Yes, I was there.” Elstad was taken to the police station, where he was advised of his Miranda rights for the first time. Elstad indicated that he understood his rights and wanted to talk to the officers. He then made a full statement, which was typed, reviewed, and read back to him for corrections, then signed by him and the officer. At trial, Elstad stated that his first confession should have been suppressed because it was prior to being given Miranda warnings, and the second confession should have been suppressed because there was no reason to not confess after being given Miranda warnings because he had already “let the cat out of the bag.” The court held in this case that the confession made after the Miranda warnings were given and the rights waived was admissible. The Court noted that if the police had not taken the second confession, the previous, unwarned admission would not have been admissible.
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In Colorado v. Spring (1987), the Supreme Court dealt with the issue of what could be discussed in an interrogation that results from a proper waiver of Miranda warnings. In this case, Spring and a companion shot a man during a hunting trip in Denver. After arresting Spring in Kansas City for interstate trafficking in stolen firearms, officers advised him of his Miranda rights. Spring signed a statement that he understood and waived his rights. Officers then asked Spring about his involvement in the firearms transactions leading to his arrest. He was also asked if he had ever shot a man, to which he responded affirmatively, but denied the shooting in question. Thereafter, Colorado officials questioned Spring. He was again read his Miranda warnings and again signed a statement asserting that he understood and waived his rights. This time, Spring confessed to the Colorado murder.

The Court held in this case that a suspect’s waiver of Miranda rights is valid, regardless of what crimes are to be discussed. If the suspect believes that a set of minor crimes will be discussed, but the interrogation ultimately leads to questioning about a different and more serious set of crimes, the waiver is still valid (unless the suspect revokes the waiver) and the confession is admissible in court.

Related to this case is what actions the police are required to take after a valid waiver of Miranda protections. In Davis v. United States (1994), Davis and Shackleford were playing pool; Shackleford lost a game and a $30 wager but refused to pay. Shackleford was later found with a pool cue. An investigation into the murder revealed Davis’s involvement in the crime. Davis was interviewed by agents who advised him of his Miranda rights. Davis waived his rights to remain silent and to counsel both orally and in writing. An hour and a half into the interview, Davis said, “Maybe I should talk to a lawyer.” When the agents asked Davis whether he was asking for an attorney, he replied that he was not. After a short break, agents reminded Davis of his rights and the interview continued. After another hour, Davis said, “I think I want a lawyer before I say anything else.” At that time, questioning ceased.

The issue in this case was when the officers had to cease questioning. The Court ruled that a request for an attorney subsequent to waiving Miranda rights must be unambiguous enough that the officers know that such a request is being made. This case is perfect for examining the issue. When Davis said, “Maybe I should talk to a lawyer,” the officers asked directly if he was asking for an attorney. When Davis stated that he was not, the interrogation continued. When Davis finally stated, “I think I want a lawyer before I say anything else,” the questioning ceased.

In Arizona v. Mauro (1987), the Supreme Court decided in favor of the police on what constituted an interrogation. In this case, Mauro admitted to killing his son. He was then arrested and advised of his Miranda rights, and stated that he did not wish to make any more statements until a lawyer was present. At that time all questioning ceased. Following questioning in another room, Mauro’s wife insisted on speaking with him. Police allowed the meeting on the condition that an officer was present and tape the conversation. The tape was used to impeach Mauro’s contention that he was insane at the time of the murder. The Court ruled in this case that the recorded conversation between Mauro and his spouse did not constitute an interrogation; thus, the evidence would be admissible in court.

The Court addressed the issue of whether a confession must be written to be admitted, in Connecticut v. Barrett (1987). In this case, Barrett was arrested and advised of his Miranda rights. Barrett stated that he would not give a written statement in the absence of counsel, but would talk to the police about the incident. In two subsequent interrogations, Barrett was again advised of his rights and signed a statement of understanding. On both occasions, he gave an oral statement admitting his involvement in the assault but refused to make a written statement. Because of a malfunction in the tape recorder, an officer reduced the confession to writing based on his recollection of the conversation.

The Court held in this case that oral statements made by a suspect are admissible even if the suspect tells police that he or she will not make any written statements without a lawyer present. In this case, the suspect was very specific about what he would and would not do after being read his Miranda warnings. Most suspects simply invoke their right to remain silent and/or request an attorney, which must be absolutely honored by police. This case was different, however, in that the suspect himself set the terms of the interrogation.

For over twenty years following Miranda, the police read almost verbatim those special words that the Supreme Court put into history and which were popularized in police movies and TV shows. In fact, several lower court opinions following Miranda required that the words be used verbatim, that police officers read the words off a card rather than cite them from memory, and that the warnings be in a written form that the suspect could read and sign. The issue of whether the warnings given a suspect must be exactly as stated in the Miranda case was finally addressed by the Supreme Court in Duckworth v. Egan (1989).

In this case, Duckworth, when questioned by police in connection with a stabbing, made incriminating statements after having signed a waiver form that provided, among other things, that if he could not afford a lawyer, one would be appointed for him “if and when you go to court.” He challenged his confession as inadmissible, arguing that the waiver form did not comply with the requirements of Miranda. The Court held that the Miranda warnings need not be given in the exact form as stated in the decision. The only requirement is that they convey to a suspect his or her rights as stated in Miranda.

The issue of what is and is not waived in Miranda warnings was addressed in Patterson v. Illinois (1988). In this case, after being informed by the police that he had been charged with murder, Patterson twice indicated his willingness to discuss the crime. He was interviewed twice, and on both occasions was read a form waiving his Miranda rights. He initialed each of the five specific warnings on the form and then signed it. He then gave incriminating statements to the police about his participation in the crime. The question before the court was whether Patterson’s waiver of his Miranda rights was a waiver of both his Fifth Amendment right to silence (discussed in this section) and his Sixth Amendment right to counsel (discussed in the next section). The Court held that a waiver of Miranda rights was a waiver of both Fifth and Sixth Amendment rights.

The invocation of the right to counsel, however (as addressed below), without actually invoking the Miranda rights does not also invoke Fifth Amendment rights. In McNeil v. Wisconsin (1991), McNeil asked for and received counsel at his bail hearing, a procedural request not associated with a reading of his Miranda warnings. Later, McNeil was approached by police and read his Miranda rights. He waived his rights and ultimately gave a confession to the police. At trial, McNeil sought to have the confession suppressed as a violation of his Miranda rights. The court in this case held that the request for a lawyer can be independent of Miranda if the request is not made pursuant to the reading of Miranda warnings.
SIXTH AMENDMENT ISSUES

The right of assistance of counsel protected by the Sixth Amendment has followed a historical track very similar to that of the Fifth Amendment. Like the Fifth Amendment, defendants in state proceedings were not guaranteed this protection until the 1930s. For the Sixth Amendment, this came in the case of Powell v. Alabama (1932). In this case, like many others of its type, the protection was aimed at the trial stage of criminal proceedings rather than at the police. The case did hold, however, that defendants on trial for a capital offense must be provided assistance of counsel. This ruling was eventually extended in Gideon v. Wainwright (1963) to apply at trial to all defendants charged with a felony.

The first case where the Sixth Amendment right to counsel affected the police was Escobedo v. Illinois (1964). In this case, Escobedo was arrested without a warrant and interrogated in connection with a murder. Escobedo stated that he wished to speak to an attorney. Shortly after Escobedo arrived at the police station, his retained lawyer arrived and asked permission from several officers to speak with his client. His requests were repeatedly denied. Escobedo also asked several times during an interrogation to speak to his attorney and was told that the attorney did not want to see him. Escobedo subsequently implicated himself as the murderer. The Court held in this case that a suspect who has been taken into police custody is entitled to a lawyer during interrogation. The problem with Escobedo, however, was that it raised as many questions as it answered. To correct this, the Supreme Court handed down the ruling in Miranda a few years later. As a result, much of the right to counsel law affecting the police as opposed to right to counsel at the trial stages of the process has been shifted to Miranda cases rather than Sixth Amendment cases.

The Court, however, did have to address whether statements obtained through means other than an interrogation would be a violation of the right to counsel. The primary case here is Massiah v. United States (1964). In this case, Customs officials received information that Massiah was transporting narcotics aboard a ship. Officers searched the ship and found 300 pounds of cocaine. Massiah was indicted for possession of narcotics. While out on bail, officers enlisted the aid of one of Massiah’s friends. The friend allowed officers to install a transmitter under the front seat of his automobile, then engaged Massiah in a conversation that could be overheard by officers. These incriminating statements were admitted over Massiah’s objection at trial and he was convicted. The Court ruled in this case that statements were not admissible if obtained in any manner after the suspect was formally charged and had obtained an attorney.

The final case that is pertinent to the police concerning right to counsel extends the decision in Massiah. This is United States v. Henry (1980). In this case, Henry was indicted for armed robbery and incarcerated. While Henry was in jail, officers contacted an informant who was a cellmate of his and instructed him to be alert to any statements made by Henry but not to initiate any conversations regarding the robbery. After the informant was released from jail, he met with officers who paid him for information concerning incriminating statements made by Henry. There was no indication that the informant would have been paid had he not provided such information. The issue here was whether the officers created a situation likely to elicit incriminating statement without Henry having his attorney present. Based on the ruling in Massiah, the Court ruled that it did violate Henry’s right to counsel.

CONCLUSION

As this chapter has shown, a lot has changed in policing since the beginning of the twentieth century, in terms of both restrictions on police officers as well as restrictions lifted from them. Probable cause is a good example of this give-and-take of the law. Until the Boyd decision in 1914, there were very few restrictions on what the police could do in terms of searches. Over the years, however, the exclusionary rule placed more and more restrictions on the police in terms of what kind of evidence could be excluded if not properly seized. At the same time, however, the level of scrutiny that police officers needed to establish probable cause was reduced, and the number of instances when reduced probable cause was required for a search steadily increased. Restrictions on the police in establishing probable cause has reached a point now where there is very little that officers cannot do if evidence is located in an automobile (as will be discussed in Chapter 2). On other issues, however, such as protections during custodial interrogations, the police are quite restricted. All an offender must do is to announce that he or she does not wish to speak to officers without a lawyer present and the police are nearly powerless in speaking to the offender.

This chapter provides a foundation for the legal issues that will be addressed in this text. Some of the topics discussed in this chapter will be addressed in more detail in the chapters that follow. In Chapter 2, Hemmens addresses the issue of search and seizure and other investigation issues of the Fourth Amendment as they relate to the war on drugs. Golden and VanHouten will then address Fourth Amendment issues concerning roadblocks. In Chapter 4, Stevens addresses legal issues that apply in policing community environment, and examines some differences in legal issues between community policing and more traditional, order-maintenance policing. Golden and Walker then discuss Fourth Amendment issues in more detail as they relate to the use of narcotics detection dogs in police investigations. In the final chapter covering police operational issues, Chapter 6, Taylor and Morgan discuss legal and constitutional issues inherent in policing the Internet.

The text then turns to issues that were not directly addressed in this chapter. These are related to administrative functions of the police, but are no less important than the operational issues discussed in the first six chapters. In Chapter 7, Buerger establishes the transition between operational and administrative issues with a discussion of police agency responses to legal changes. Bissell then discusses legal issues from the police officer’s perspective in an examination of the privacy rights of officers. In Chapter 9, Gaines and Schram discuss the legal issues and ramifications of affirmative action in policing. Pascarella follows on this discussion in Chapter 10 with an examination of the continuing debate over age limitations and discrimination in policing. In the final chapter of the text, Dantzer provides an integration and concluding discussion of the legal aspects of policing.

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