

## Theme B Searches and Seizures

#12

### Summary

Many controversial civil liberties cases occur in the area of criminal procedure, especially the Fourth Amendment's guarantee against "unreasonable searches and seizures." The wording is important. The Fourth Amendment does not forbid all searches by the government but only those that are unreasonable. Thus a reasonable search is permitted. What makes a search reasonable? A warrant. To obtain a warrant, a police officer must appear before a judge and establish *probable cause*. This means that the officer must present enough evidence to convince a reasonable person that an illegal good is located at a particular place. If convinced, the judge will issue the warrant.

The warrant must be "reasonably specific." That is, it must clearly indicate the location to be searched and the item sought. Warrants can be executed in the absence of the occupant. However, officers do not always require a warrant to conduct a search. The text outlines the major exceptions to the warrant requirement, but the Supreme Court has recognized at least six exceptions: (1) searches conducted after an arrest; (2) plain view searches; (3) consent searches; (4) vehicle searches; (5) stop-and-frisk searches; and (6) searches pursuant to exigent circumstances.

When a person is arrested, the officer has the right to search the suspect's body for safety purposes since the criminal could either possess a weapon or destroy evidence. Aside from the body itself, the Supreme Court allows the officer to search any area within the person's "immediate control." In addition, the police can make an "inventory search" of articles in the possession of the person, including his or her car and items in the car (*Colorado v. Bertine*, 1987) if impounding the vehicle.

The second exception to the warrant requirement is known as plain view searches. Under this doctrine, an officer is permitted to seize evidence so long as two conditions are met. First, the officer must have the legal right to be at the location. Thus an officer in a person's home under a warrant has the right to seize any other evidence discovered during the search. Second, the police must have probable cause that the items observed are evidence of a crime or are contraband (*Arizona v. Hicks*, 1987). It is important to note that the plain view doctrine applies only to vision, on the assumption that no other sense has a similar degree of reliability.

The third exception to the warrant requirement occurs when a person voluntarily agrees to a search. While the police cannot coerce or trick a person into providing consent (such as lying about the possession of a warrant), an officer is under no obligation to inform the individual of the right to refuse the search. Once consent is given, nonetheless, the search can be terminated at any time and the officer must leave the premises.

The fourth exception to the warrant requirement involves searches of mobile vehicles (*Carroll v. U.S.*, 1925) because, unlike a house, they can escape with evidence before an officer can obtain a warrant. This exception applies to all vehicles, like boats, automobiles, and planes. Two factors must be satisfied to conduct such searches without a warrant. First, the officer must have probable cause to believe illegal evidence or contraband is contained in the vehicle before making the search. And second, the officer must have probable cause that the vehicle was mobile. The scope of the search is defined by the object being sought; the police may inspect any place the evidence could reasonably be located (*United States v. Ross*, 1982). Consider the following example. A sheriff in Florida decided to combat the use of Interstate 95 for the transportation of drugs by posting a sign stating that a drug search of vehicles would occur immediately ahead. Any car which made a U-turn after the sign would be stopped for probable cause of drug possession. Is this acceptable? Yes, since the U-turn created a reasonable belief of drug possession and the vehicle was moving. Nonetheless, the sign was removed after national media attention made it ineffective.

The fifth exception to the warrant requirement is known as stop-and-frisk and applies only in circumstances where reason exists to believe public safety is imperiled. The stop-and-frisk exception requires the following conditions to be met: (1) the officer must have "reasonable suspicion" that a crime is about to be committed; (2) the officer may pat down the outer clothing of the suspect in seeking a weapon; and (3) the officer may invade the suspect's clothing only upon feeling something that "reasonably" could be a weapon. If the officer finds criminal evidence that might justify an arrest, the officer may make a full search. This is true even though the mere possession of a weapon is not a crime.

The sixth—and final—exception to the warrant requirement involves exigent (emergency) circumstances. These are situations in which police do not have the time to

secure a warrant before evidence is destroyed, a criminal is about to escape, or preservation of life or serious injury are at stake. A common exigent circumstance entails "hot pursuit." When a crime has been committed, the police may pursue a suspect immediately upon the commission of a crime without a warrant in hand. However, the pursuit must be "continuous and uninterrupted" in which the police are following an unbroken chain of evidence. The scope of the search is limited to places where the suspect or weapons might reasonably be found.

What if the police make an unreasonable search and seizure, violating one of the exceptions? The *exclusionary rule* forbids such evidence from being used against the suspect in obtaining a conviction (*Mapp v. Ohio*, 1961). The goal of the rule is to deter police from conducting illegal searches, knowing that they face no penalty for violating the law. Critics of the exclusionary rule argue that society should not be punished simply because the police erred. Most countries, in contrast, permit illegally seized evidence to be used in court, but allow criminals to sue police officers in a civil suit for transgressing their rights.

The Supreme Court has diluted the exclusionary rule in two ways. First, unconstitutionally obtained evidence can be used to impeach a defendant's testimony and will merely be excluded as evidence demonstrating guilt (*New York v. Harris*, 1971). Second, if an officer secures a warrant and believes it valid in good faith, the evidence will be allowed in court even if the warrant is later found defective (*Massachusetts v. Sheppard*, 1984). The Fourth Amendment, despite some erosion from the standards imposed by the Warren Court, remains a vibrant constitutional safeguard.

### Discussion Questions

1. Which of the six exceptions to the requirement of a search warrant do students find most acceptable? Least acceptable? In making these judgments, what are their standards for evaluating compliance with the Fourth Amendment?
2. If a person voluntarily consents to a search, then officers may proceed without a warrant. Reviewing Supreme Court standards for this voluntary consent, Robert V. Ward argues that the Court has falsely presumed that (a) police officers routinely act in good faith, and (b) innocent persons do not typically perceive police officers as threatening. Ward recommends that the Court also consider the race or ethnicity of the individual searched and the climate of police-community relations in determining whether consent was voluntary ("Consenting to a Search and Seizure in Poor and Minority Neighborhoods: No Place for a 'Reasonable Person'," *Howard Law Journal* 36 [1993]: 239-258). What response do students make to Ward's argument? To his conclusion? What are the possibilities and the limitations of Ward's views?
3. How does the exclusionary rule uphold the Fourth Amendment? Critics often argue that cases are dismissed on technicalities, and the exclusionary rule would seem to fit such a description. Is the exclusionary rule about technicalities or constitutionalities? Answering this question obliges one to consider, among other factors, the rights of the accused and the concerns of law enforcement officials. Note that various exceptions have been made to the exclusionary rule.