

Fourth Amendment Search and Seizure Law

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Presentation Outline

- Review Search and Seizure Law
 1. Fourth Amendment Principles
 - Terms, Exclusionary Rule, Truth-in-Evidence
 2. Seizures
 - Consensual Encounters, Detentions & Arrests
 3. Searches
 - Exceptions to the Search Warrant Requirement
 - Special Rules for Parolees & Probationers
- Sources for Further Information

FOURTH AMENDMENT PRINCIPLES

The Bill of Rights

Ratified December 15, 1791

Article I

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

Article II

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Article III

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Article IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Article V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any Criminal Case to be a witness against himself, nor be

deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Article VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defence.

Article VII

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

Article VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

Article IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Article X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

*A reminder to be ever vigilant in the protection of these rights
Presented in loving memory of Corliss Lamont 1902-1995*

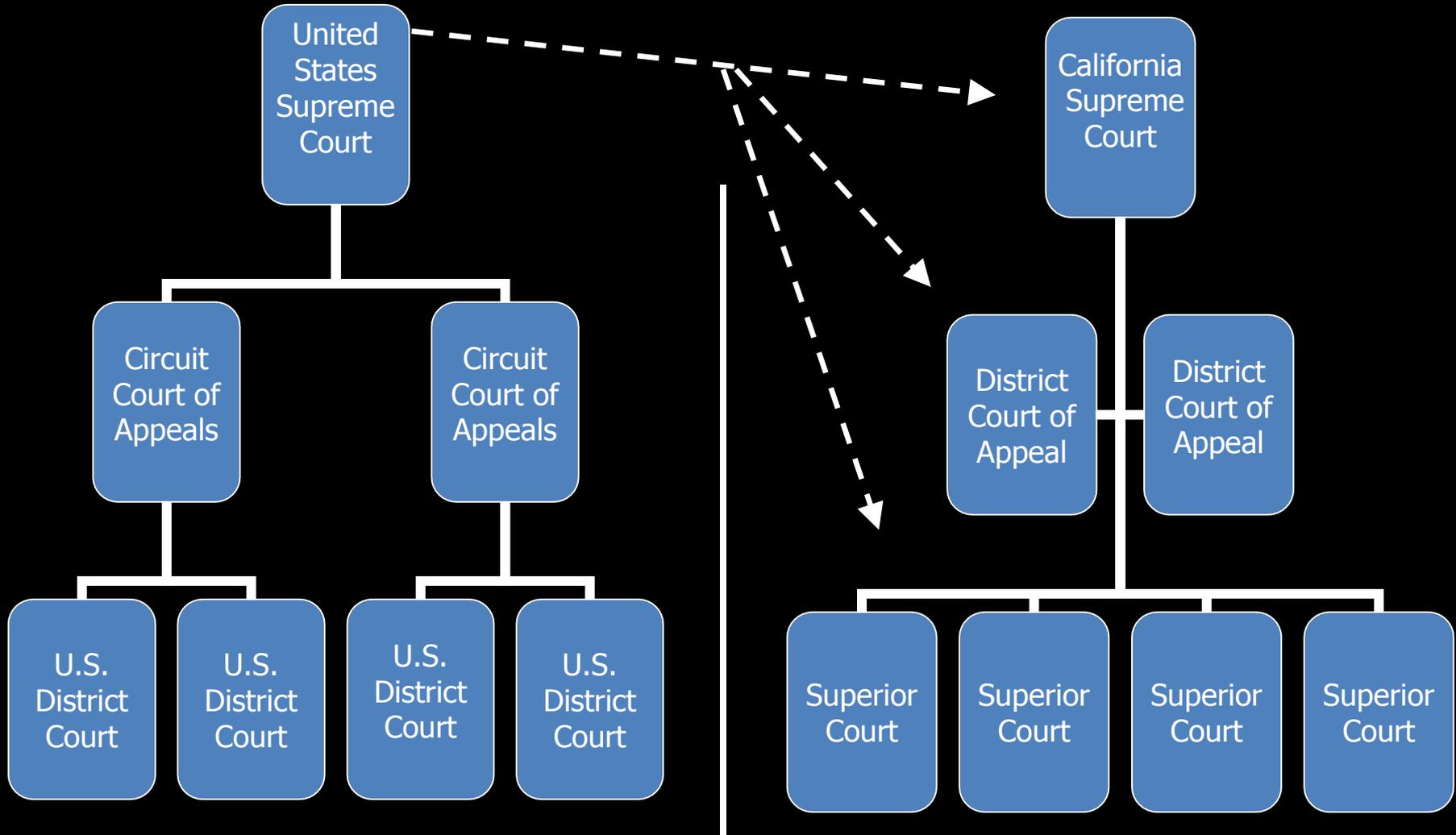
National Emergency Civil Liberties Committee
New York, NY 10010

The Fourth Amendment

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

- Search - a governmental intrusion into an area where a person has a reasonable expectation of privacy
- Seizure – when a reasonable person would believe he or she is not free to leave (liberty interest) or a meaningful interference with a person's property (possessory interest)

Interpreting the Constitution



Reasonable Expectation of Privacy

Two questions:

- 1) Did the person have an expectation of privacy?
- 2) Is the person's expectation one society recognizes as reasonable?

If not, there is no “search” under the Fourth Amendment

Questions/Comments

- *Was there a “search”?*
 - *Police dig up suspect's drugs buried in common area of his apt. complex?*
 - *Police look through trash can left out at curb and find marijuana clippings?*
 - *Body cavity search of prisoner's entering jail?*
- *Courts compare the privacy interest against the level of intrusion*
 - *Home v. Car*

Exclusionary Rule

- Exclusionary Rule
 - Primary purpose is to deter unlawful police conduct
 - Evidence obtained as a direct result of an illegal search and seizure may be excluded
 - Both tangible and intangible evidence

Questions/Comments

- *Where is it in the Constitution?*
- *Who did the search/seizure?*
- *Is there a good faith exception?*

Exclusionary Rule

- Unlawful Police Conduct?
 - An off-duty sheriff is trespassing on rural private property
 - He sees a large grove of marijuana
 - He phones a detective and eventually the DA files felony cultivation charges against the property owner
 - Deputies are under a duty to promptly report felonies whether they are on or off duty
 - Were the deputy's observations obtained in violation of the Fourth Amendment?

Exclusionary Rule

- Does evidence get excluded?
 - Police officer learns that a suspect is at impound lot
 - Officer asks agency's warrant clerk to see if suspect has any outstanding warrants
 - Clerk checks with neighboring county, the officer is told there suspect has a felony arrest warrant
 - The officer arrests the suspect
 - The officer finds meth in suspect's pocket
 - Mistake (no arrest warrant)
- *Herring v. United States* (2009) 555 U.S. 135

Truth-in-Evidence Provision

- Passed as a ballot initiative
- Now in the California Constitution
- Generally, a CA trial court may exclude evidence only if it is mandated by the United States Supreme Court

Questions/Comments

- *Is there a Fourth Amendment violation or is it just a violation of a state law?*

Truth-in-Evidence Provision

- Does the evidence get excluded?
 - The suspect was arrested for DUI
 - The suspect's blood was drawn by a phlebotomist
 - California law requires that a phlebotomist be certified
 - The phlebotomist was not properly certified
 - In all other aspects, the blood draw was routine

3-Point Checklist

Warrantless Searches

1. Did the person have a reasonable expectation of privacy?
2. Is there an exception to the warrant requirement?
3. Does the exclusionary rule apply?

SEIZURES



Seizures

- Three kinds of police contacts
 - Consensual Encounters
 - Detentions
 - Arrests

Questions/Comments

- What is needed to justify each type of encounter?

Consensual Encounters

- When there is no restraint on liberty
- Police officers do not violate the Fourth Amendment by asking a person to answer some questions
- However, a person's refusal to answer questions does not provide grounds for a detention

Questions/Comments

- *What is the justification needed for a consensual encounter?*
- *Can an officer ask for ID during a consensual encounter?*
- *Can an officer ask for consent to search during a consensual encounter?*

Temporary Detentions

- A less serious restraint on a person's freedom than an arrest
- Generally requires
 - An objectively reasonable suspicion that person is involved in criminal activity
 - Cannot be a “hunch”
- Must be limited in duration, scope, and purpose

Questions/Comments

- *What is the level of justification needed for a temporary detention?*
- *Key Issue*
 - *Would a reasonable person believe that he was not free to leave*
- *Types of Detentions*
 - *Terry Stops, Traffic Stops*
 - *Vehicle Roadblocks, Etc.*

Temporary Detentions

- Traffic stops are justified when there are facts supporting a reasonable suspicion of a Vehicle Code violation; proof of an actual violation not required

Questions/Comments

- *What if the traffic stop is a “pretext” stop?*
 - *The officer really wanted to stop the driver for some other reason*
- *What about an air-tree freshener hanging from the rear-view mirror?*

Temporary Detentions

- Traffic stop okay?
 - Officer received anonymous tip by radio that drunk driver was veering all over the highway and was approaching a specific exit
 - Officer saw van matching description approaching the identified exit
 - Officer immediately pulled over defendant before seeing any bad driving whatsoever
 - *People v. Wells* (2006) 38 Cal.4th 1078
 - A drunk driver is like a “bomb” and a mobile one at that.

Temporary Detentions

- Traffic stop okay?
 - Officer hears broadcast about nearby robbery
 - Suspect is described as a black male, late teens, dark sweatshirt
 - Five to ten minutes later, officer sees a black male, late teens, white t-shirt, driving car with tinted front windows
 - Officer makes traffic stop
 - Officer discovers outstanding arrest warrant
 - Officer takes suspect to robbery for in-field ID
 - *People v. Carter* (2010) 182 Cal.App.4th 522

Temporary Detention

Pat-Down Searches

- Having reasonable suspicion to detain does not automatically justify a pat-down search
- This search, limited to a frisk of the outer clothing for the discovery of weapons, requires independent suspicion that the detainee may be armed and dangerous

Questions/Comments

- *What is a “Stop and Frisk”*
 - *A seizure?*
 - *A search?*

Temporary Detention

Pat-Down Searches

- May police search passengers for weapons during duration of traffic stop if reasonable suspicion they may be armed and dangerous?
 - Police pulled over a vehicle for traffic citation
 - One officer talks to driver, another to passenger
 - Passenger appeared to be wearing gang attire
 - Passenger said he had been in prison
 - Officer ordered him out of car
 - Officer conducted pat-down search and found illegal weapon.

Arizona v. Johnson (2009) 129 S.Ct. 781

Arrests

- Includes formal arrests and restraints that are comparable to a formal arrest (de facto)
- Only permissible if supported by *probable cause* to arrest the individual for a crime
 - *When the facts and circumstances known to the arresting officer at the time justify a prudent person in believing that the suspect committed or was committing an offense*

Questions/Comments

- *What is the difference between probable cause and reasonable suspicion?*
- *What about the Miranda rule?*

SEARCHES



Searches

- Generally, police need a search warrant
- If not, then there must be an exception to the warrant requirement to justify the search

Warrant Exceptions

- *Search Incident to Arrest*
- *Fleeting Targets (Automobile)*
- *Inventory Search*
- *Consent*
- *Exigency*
- *Special Needs*
- *Lawful Pat Down Search*
- *Etc.*

Search Incident to Arrest

- Officer can conduct search incident to arrest
- May search the person, and the area immediately surrounding the suspect, within his immediate control

Questions/Comments

- *What about searching the vehicle incident to an arrest?*

Vehicle Search Incident to Arrest

- Lawful search?
 - Officers at def's home when he pulls into driveway
 - Defendant had warrant for driving without a license
 - Police arrested, handcuffed, placed defendant in patrol car
 - Police then searched vehicle and found a bag of cocaine
 - *Arizona v. Gant* (2009) ___ U.S. __; 129 S.Ct. 1710

Search Incident to Arrest

- Lawful search incident to arrest?
 - Police arrested defendant in controlled buy
 - Police took him to the station
 - Police seized his cell phone, which was on his person
 - Ninety minutes later, police looked at text msgs
 - Police found evidence of drug sales
- *People v. Diaz* (2010) __ Cal.4th __; 2011 WL 1658

Vehicle (Fleeting Target) Exception

- Officer can conduct warrantless search of a vehicle if they have:
 - Lawful access to the vehicle
 - Probable cause to believe that it contains contraband, evidence, fruits, or instrumentalities of a crime

Questions/Comments

- *What if the police arrest someone and the person's vehicle has been in an impound lot for several days?*

Vehicle Search Exception

- Did search fall under the fleeting targets exception?
 - Defendants picked up teenage girls in Phoenix
 - Defendants drove them to San Diego where they worked as prostitutes for several days
 - Defendants drove the teenagers back to Phoenix
 - One of the girls was arrested and described the vehicle
 - Police arrested defendants in described vehicle and later searched it, finding motel receipts and other evidence
- *United States v. Brooks* (9th Cir. 2010) 610 F.3d 1186

Inventory Search Exception

- Warrantless inventory searches are lawful if all of the following conditions are met:
 - 1) The vehicle was lawfully impounded for reasons other than a criminal investigation
 - 2) The inventory search was not for contraband or evidence of a crime
 - 3) The inventory is conducted under standardized procedures

Questions/Comments

- *Do the police have a standardized checklist for searching impounded vehicles?*

Inventory Search Exception

- Was the traffic stop reasonable?
- Did the search fall under the inventory exception?
 - Narcotics officers asked a patrol deputy to make a traffic stop of a suspect vehicle
 - The deputy made the stop after def made an illegal lane change
 - The def had no driver's license
 - The deputy impounded the vehicle as a pretext to search for narcotics evidence
 - No testimony that vehicle was isolated, at risk for vandalism, or that it was blocking a driveway

• *People v. Torres* (2010) 188 Cal.App.4th 775

Consent Exception

- Principles of consent apply to
 - Consent to search
 - Consent to seize
 - Consent to enter
- Person granting it can limit its scope and can withdraw
- No duty to inform suspect of right to withdraw

Questions/Comments

- *How should police officers phrase the question when they are asking for consent?*
- *Does the consent have to be in writing?*

Consent Exception

- Did police exceed the scope of the consent?
 - Defendant allowed officers to enter her home to look for a probationer
 - During the search an officer heard a very loud banging noise coming from the dryer
 - The noise prohibited the officer from communicating with people in the home
 - The officer opened the dryer and saw a package of marijuana wrapped in cellophane
- *People v. Smith* (2010) 190 Cal.App.4th 572

Emergency/Exigency Exception

- Immediate danger to life or property is an exigent circumstance
- Danger of destruction or disappearance of evidence
- Community caretaker

Factors

- *Gravity of the offense*
- *Reasonable belief that suspect is armed*
- *Strength of PC to arrest*
- *Likelihood that suspect is on the premises*
- *Risk of imminent escape*

Emergency/Exigency Exception

- Warrantless entry justified by exigency?
 - Three illegal aliens escaped from home near border
 - Agents went to the home
 - Agents saw another person trying to escape
 - Agents entered home without a warrant
- What if the real reason for agents entering the home was for the purpose of seizing evidence?
 - *United States v. Reyes-Bosque* (9th Cir. 2010) 596 F.3d 1017

Emergency/Exigency Exception

- Was officer's look in the window a search?
 - Police find infant child wandering in neighborhood
 - Child pointing at home
 - Officer gets no response to knocks, yells at front door
 - Approaches side window, closed with blinds, but 5-6 inch gap in the slats
 - Looks through window and sees unattended infant playing with plastic bag near face
 - Police enter home and see over 550 grams of mj, methamphetamine, paraphernalia
- Valid exception to warrant requirement?
 - *People v. Gemmill* (2008) 162 Cal.App.4th 958

Parole & Probation Searches

Requirements

- 1) Notice
 - Officer must know suspect is on parole/or probation w/search terms
- 2) Legitimate law enforcement or rehabilitative objective
 - Must not be arbitrary, capricious, or harassing
- 3) Search must be reasonable in scope and intensity
 - Parolee, his residence, property under his control

Questions/Comments

- *What if officer does not have pc or reasonable suspicion?*
- *What if officers conduct search because the parolee was driving down the street and they were not busy?*

Additional Resources

- Riverside County DA's Office
 - Send mareilly@rivcoda.org request for daily e-mail distribution of CaseALERTS
- Alameda County DA's Office
 - Website has additional materials
- Commission on Police Officer's Standards and Training (P.O.S.T.)
 - Website has additional materials

Thank-You!

For Additional Questions or Comments

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