

POLICE HANDBOOK ON SEARCHES, SEIZURES, AND ARRESTS

**A Law Enforcement
Reference Guide
Summarizing
Supreme Court
Jurisprudence on:**

- The *Miranda* rights
- The exclusionary rule
- Arrests and probable cause
- Searches, seizures, & warrants
- Constitutional criminal procedure



Carol J. Palmore, Esq.

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ABBREVIATIONS

CIF.....	Cause-in-fact
Cl.	Clause
CLEO.....	State Chief Law Enforcement Officer
Court (cap.).....	United States Supreme Court
CSI.....	Compelling state interest
Ct.....	Court
Ct. App.....	Court of Appeals
Ct. Chan.	Court of Chancery (England)
ED.....	Emotional distress
FI	false imprisonment
FLSA.....	Fair Labor Standards Act
FMLA	Family and Medical Leave Act
FQJ.....	Federal question jurisdiction
FRAP	Federal Rules of Appellate Procedure
FRCP.....	Federal Rules of Civil Procedure
FRCrP.....	Federal Rules of Criminal Procedure
FRE	Federal Rules of Evidence
IIED.....	Intentional infliction of emotional distress
JMOL	Judgment as a matter of law
JNOV	Judgment non obstante veredicto
J/SL	Joint and several liability, or jointly and severally liable
K.....	Knowledge (criminal law) or Contract (all other law)
K.B.....	King's Bench (UK)
KSC	Knowledge to a substantial certainty
L	Loss in value
Lat.....	Latin
LLC.....	Limited liability company
LLP	Limited liability partnership
LRM	Least restrictive means
MPC.....	Model Penal Code
MSAJ.....	Motion to set aside the judgment
N.B.....	Nota bene
NIED	Negligent infliction of emotional distress
O.....	Original owner, or grantor (in present estates and future interests)

PJ	Personal jurisdiction
PJI	Pattern Criminal Jury Instruction
R.....	Recklessness
RAP	Rule against perpetuities
RC	Real Covenant
Restatement.....	Restatement (of Contracts, Torts, Judgments, etc.)
RFRA.....	Religious Freedom Restoration Act of 1993
RIL.....	Res ipsa loquitur
Rule	Federal Rule of Evidence or Federal Rule of Civil Procedure
§	Section
S.Ct.	Supreme Court or U.S. Supreme Court Reporter
SJ	Summary judgment
SL.....	Strict liability
SMJ	Subject matter jurisdiction
T1	First tenant
TO	True owner
UCC.....	Uniform Commercial Code
US	United States of America or United States Reports (compilation of U.S. Supreme Court opinions)
USC.....	United States Code

Chapter 1. The Exclusionary Rule in Searches and Seizures

1.1 Individual Rights under the Constitution

Many of the founders did not support enumerating individual rights in the Constitution. Many of them, including James Madison, the Constitution's principal author, instead supported enumerating rights in state constitutions.

The Bill of Rights was nonetheless included for political reasons. However, it originally applied only to the federal government—*not* to the states. This was changed under the Fourteenth Amendment, which has in large part incorporated the Bill of Rights. Today, the following criminal procedural provisions have been incorporated:

- (a) **Fourth Amendment:** protection against illegal searches and seizures;
- (b) **Fifth Amendment:** right against self-incrimination; due process under the law; protection against double jeopardy;
- (c) **Sixth Amendment:** the right to a trial by an impartial jury; confrontation of witnesses; the right to counsel;
- (d) **Eighth Amendment:** right to be free of cruel or unusual punishment.

However, certain constitutional guarantees in federal court do not apply to the states, including:

- (a) The right to a grand jury indictment for felonies (Fifth Amendment);
- (b) The right to a jury trial in all criminal cases (Seventh Amendment).

1.2 The Exclusionary Rule and Other Remedies

1.2.1 The exclusionary rule requires a court to exclude evidence obtained in violation of the Constitution. *Boyd v. United States* (U.S. 1886) (the landmark exclusionary rule case).

1.2.2 The courts have long struggled with what to do with the excluded evidence. One potential solution was to return it to the defendant.

See *Weeks v. United States* (U.S. 1914) (William Day, J.), where letters were seized unlawfully without a warrant. Held: in order to prevent the government from using the evidence on retrial, it should be returned.

N.B.: this court's overbroad holding failed to take into account situations when the government seized drugs and other contraband.

1.2.3 Parties have tried to get around *Weeks* in various ways.

See *Silverthorn Lumber Co. v. United States* (U.S. 1920) (Holmes, J.), where the plaintiff seized the defendant Silverthorn Lumber Co.'s originals, photocopied them, and returned them. Held: this act violates the intent of *Weeks*. The exclusionary rule applies not only to the original evidence, but also to the fruits (or in this case, copies) of the evidence.

1.2.4 Twenty nine years later, the Fourth Amendment was incorporated against the states in *Wolf v. People of the State of Colorado* (U.S. 1949) (Frankfurter, J.), since it was comprised of rights "implicit in the concept of ordered liberty."

However, the **exclusionary rule** was not incorporated against the states until *Mapp v. Ohio* (U.S. 1961) (Clark, J.), where police entered the defendant's home without a search warrant and found obscene materials that they used to convict her. Thus, in 1961 there came a bright line rule: the Fourth Amendment applied to the states through the Fourteenth Amendment. From that moment onward, if state law enforcement violated the defendant's constitutional rights, the judicially created exclusionary applied as

a sanction, just as it would had the violation been at the hands of federal law enforcement.

1.3 Limitations on the Exclusionary Rule

1.3.1 The exclusionary rule does *not* exclude all illegally obtained evidence for all purposes.

Such illegally obtained evidence may be used, for example, to impeach the defendant if he testifies contrary to the excluded evidence.

The exclusionary rule applies to the person on trial, but if someone else's constitutional rights have been violated, the person on trial has no standing to exclude it.

In recent years, the Court has been limiting the scope of the exclusionary rule, holding that it acts to exclude evidence obtained *through police misconduct only*, not through the errors of others (e.g., a magistrate who erroneously grants a warrant). *U.S. v. Leon* (U.S. 1984) (White, J.).

Rationale: excluding evidence *when another party errs* will not have a deterrent effect on the police. *U.S. v. Leon* (U.S. 1984) (White, J.).

The “*good faith*” exception to the exclusionary rule allows evidence to be admitted when police, acting with good faith, reasonably rely on the validity of a warrant, even if the warrant is invalid.

1.3.2 The Fourth Amendment is designed to protect citizens from illegal government searches. Thus, information obtained by a **search conducted by a private or corporate person is admissible** and does not need to be excluded when used by the government for prosecution (unless the person conducting the search is an agent of the government).

See *Jacobsen*, where the Drug Enforcement Agency was permitted to use evidence obtained from FedEx, which broke open packages to be mailed, discovered cocaine, and turned them over to the government.

- 1.3.3 Traditionally, grand juries have been able to function without all of the same limits as those placed in trials.

In *United States v. Calandra* (U.S. 1974) (Powell, J.), the Court limited the application of the exclusionary rule so as not to “seriously impede the grand jury.”

Illegally obtained evidence is thus admissible in grand jury proceedings.

- 1.3.4 The exclusionary rule applies only to criminal cases. In civil cases, the exclusionary rule does not apply because no liberty interest is jeopardized.

1.4 Technological Surveillance

- 1.4.1 Searches from the outside of a person’s home using ***technological devices that are outside of ordinary public use*** are presumed to be unreasonable searches requiring a warrant under the Fourth Amendment.

See *Kyllo v. United States* (U.S. 2001) (Scalia, J.), where the Court excluded evidence obtained with a thermal imaging device from a helicopter that showed that the defendant had been using heat lamps for growing marijuana plants in his home. Because the apparatus was not within the ordinary public use, the defendant had a reasonable expectation of privacy that was violated.

- 1.4.2 This rule does not extend to drug-sniffing canines.

See *Illinois v. Caballes* (U.S. 2005) (Stevens, J.), where a narcotics dog sniffed drugs in the trunk of the defendant, who was stopped by a trooper. The defendant argued that just as evidence obtained with the heat imaging device was excluded, so too should the drugs be excluded. Held: the analogy cannot be drawn. Here, the only information that could be obtained is incriminating. A heat imaging device could, on the other hand, invade legitimate privacy rights, such as the hour that a resident enters her sauna.

1.5 “Fruit of the Poisonous Tree” and Purging the Taint

- 1.5.1 When police effect an illegal search or seizure, both illegally obtained primary evidence as well as all derivative evidence, including verbal statements, is to be excluded at trial as “*tainted fruit of the poisonous tree.*” *Wong Sun v. United States* (U.S. 1963) (Brennan, J.).

However, the taint may be ***purged*** through the following:

(a) Inevitable Discovery

If police can show that the evidence was to be inevitably discovered, it is admissible in trial.

See Nix v. Williams (U.S. 1984) (Warren Burger, C.J.), where a suspect was arrested by police when a ten year old girl went missing. In order to elicit an incriminating response from the defendant, a police officer said to another officer in the presence of the defendant that the least he could do is offer the girl’s family a “Christian burial.” The defendant then led the officers to the body of the victim, thus incriminating himself. However, although the defendant’s constitutional rights were violated, the evidence was not excluded, since it was going to be inevitably discovered by independent sources in a matter of time.

(b) Intervening Voluntary Conduct

Intervening voluntary conduct, such as a voluntary, subsequent confession by the defendant, purges the tainted fruit of the poisonous tree.

See Wong Sun v. United States (U.S. 1963) (Brennan, J.), where an unlawful arrest resulted in both a confession (primary evidence) and a witness lead (derivative evidence). The Court excluded both. Held: since the heroin would not have been seized but for the unlawful questioning of Toy, it is excluded. However, Sun’s

testimony is admissible because it has no connection to the arrest. Rather, it was voluntarily made.

1.6 The Exclusionary Rule Applied to Fifth Amendment Violations

- 1.6.1 If a party is unlawfully arrested or detained, the testimony obtained is ***automatically inadmissible*** if the party's *Miranda* rights are not read.

Yet reading the *Miranda* rights on its own is not sufficient to make the confession admissible. Under *Brown v. Illinois* (U.S. 1975) (Blackmun, J.), the following factors are to be considered when determining whether the confession is admissible:

- (a) The *presence of intervening events*;
- (b) The *flagrancy of the police misconduct*; and
- (c) The *amount of time elapsed* between the illegal act and the confession.

Six hours is too little time to purge the taint of the confession. *Taylor v. Alabama* (U.S. 1982) (Marshall, J.).

- 1.6.2 The Court affirmed *Brown v. Illinois* in *Dunaway v. New York* (U.S. 1979) (Brennan, J.). Because the confession could not be separated from the initial illegality, it was excluded.

1.7 Standing and Scope of the Fourth Amendment

- 1.7.1 Traditional Rule: Standing Requires a Possessory Interest

- (a) In *Olmstead v. United States* (U.S. 1928) (Taft, C.J.), the Court held that the Fourth Amendment did not apply to a *wiretap* on a telephone pole outside of the defendant's home, since the defendant ***did not have a possessory interest*** in the pole and conversations were not protected by the Fourth Amendment.

- (b) Under the law as it existed shortly after WWII, the only way to make a motion to exclude evidence would be to admit ownership.
- (c) This led to problems when the evidence was contraband. If the defendant admitted ownership, he would incriminate himself; but if he did not admit ownership, he would lack standing to challenge admission of the evidence.
- (d) Thus, in *Jones v. United States* (U.S. 1960) (Frankfurter, J.), the Court resolved this problem by granting defendants **automatic standing**. Without needing to admit ownership of contraband, defendants could challenge the admission of such contraband into evidence.

1.7.2 Modern Rule: Standing Requires a Reasonable Expectation of Privacy

- (a) *Olmstead* (U.S. 1928) was later overruled, with a new rule pronounced in *Katz v. United States* (U.S. 1967) (Stewart, J.). Even if a defendant lacks a proprietary interest in a telephone booth, a wiretap infringes on a **reasonable expectation of privacy** that therefore requires that police obtain a search warrant.
- (b) The reasonable expectation of privacy standard involves a two-prong test:
 - (i) Does the defendant assert a **subjective interest** in privacy?
 - (ii) If so, is **society prepared to accept** that subjective privacy expectation as an area that is private?
- (c) *Rakas v. Illinois* (U.S. 1978) (Rehnquist, J.) modified *Jones*, holding that the *Jones* “legitimately on premises” test was overbroad. Just because the defendant is legitimately on the premises does not mean that he has standing to challenge the search or seizure.

The new test is whether the defendant has a **reasonable expectation of privacy** based on *Katz v. United States* (U.S. 1967). The defendant **has the burden of establishing both prongs**.

The defendant has standing to challenge evidence if he owns or has a right to possess the place or thing searched. A car passenger therefore has no standing to challenge a search of that car.

- (d) Because Fourth Amendment rights are personal, a party may not demand that evidence be excluded when that party was not the direct victim of a constitutional violation. *United States v. Payner* (U.S. 1980).
- (e) Ownership of items on its own does not give rise to standing to challenge a Fourth Amendment search or seizure.

See *Rawlings v. Kentucky* (U.S. 1980) (Rehnquist), where the court did not apply the exclusionary rule against drugs seized from the defendant's companion's purse, because the defendant did not have a **reasonable expectation of privacy in the purse**.

1.8 Curtilage

Individuals have a reasonable expectation of privacy in their homes. This privacy expectation encompasses the curtilage—the *dwelling and all buildings and property immediately surrounding it*. *Oliver v. United States* (U.S. 1984).

The privacy expectation does *not extend to distant fields* on the property. *Hester v. United States* (U.S. 1924). The government must therefore have a warrant to search the dwelling and the curtilage, but not to the distant property outside of the curtilage. *Oliver v. United States* (U.S. 1984).

1.9 Arrest

1.9.1 Defining an Arrest

- (a) An arrest occurs when a person is taken into custody for the purpose of a criminal action. *Dunaway v. New York* (U.S. 1979).

Under *Henry v. United States* (U.S. 1959) (Douglas, J.), it is more precisely the **restriction of movement** of citizens by the police.

In *California v. Hodari D.* (U.S. 1991) (Scalia, J.), the Court modified the definition pronounced in *Henry*: one is arrested if his movement is restricted when he: (i) is *touched*; (ii) is taken into the *physical custody* of the officer; or (iii) *submits to the authority* of the officer. In this case, a youth took note of police officers, panicked, and fled and the officers chased after him. While he was fleeing, the youth threw down a rock of crack cocaine, which was later seized by an officer. The defendant moved to suppress the crack cocaine as an illegal seizure. Held on *certiorari*: the defendant was not arrested at the time he fled and by extension, at the time the officer found the crack cocaine. Therefore, there was no illegal seizure. Judgment reversed.

1.9.2 Constitutional Requirements

- (a) The Fourth Amendment requires that searches and seizures must be reasonable. An arrest, which is a “seizure” of a person, must fall into one of the following categories to be reasonable:

- (i) Made with an **arrest warrant** (which is based on probable cause); or
- (ii) Based on **probable cause to arrest**.

This is determined based on an **objective standard**.

See *Maryland v. Pringle* (U.S. 2003) (Rehnquist), where police stopped a car for speeding and received consent to search it and found cocaine.

The lower court ruled that the defendant's being a front seat passenger of the car that held the cocaine was *insufficient probable cause to warrant an arrest*. On appeal, the Supreme Court (Rehnquist, J.) held that probable cause equates ***reasonable grounds to believe someone is guilty***. In this case, there is sufficient probable cause that *someone* committed a crime.

1.9.3 Arrest Warrants

- (a) Absent *exigent circumstances*, police must have a warrant to enter a defendant's home to arrest him. *Payton v. New York* (U.S. 1980) (Stevens, J.).
- (b) Once an arrest warrant is issued, police have the implicit right to enter into the defendant's home to search for him.
- (c) However, police with an arrest warrant do not have the implicit right to enter into the home of ***third parties*** to search for the defendant identified on the warrant. *Steagald v. United States* (U.S. 1981) (Marshall).
- (d) Arrest warrants are *not required for felonies*.