

Policing: Legal Aspects

No one is compelled to choose the profession of a police officer, but having chosen it, everyone is obliged to live up to the standard of its requirements.

—Calvin Coolidge¹

CHAPTER

5

Learning Objectives

After reading this chapter, you should be able to:

1. Describe legal restraints on police action and instances of police abuse of power. **126**
2. Explain how the Bill of Rights and democratically inspired legal restraints help protect our personal freedoms. **128**
3. Describe the circumstances under which police officers may conduct searches or seize property legally. **129**
4. Describe arrest and types of searches. **140**
5. Describe the intelligence function, including the roles of police interrogation and the *Miranda* warning. **153**



▲ In 2015, Freddie Gray, an unarmed black man was arrested by Baltimore, MD, police officers and died as a result of serious injuries that he suffered while being transported in a police van. In a later settlement, the city agreed to pay \$6.4 million to Gray's survivors. Shown here is Gray's stepfather, Richard Shipley (center), surrounded by Gray's mother and family lawyer at a press conference. Some say that there are two sides to stories like this. What might those sides be?

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Lecture Note Identify legal restraints on police action, and list instances of the abuse of police power.

Lecture Note Discuss the Rodney King case, which drew the spotlight of public attention to the abuse of police power. Ask students if they remember learning about the case and, if so, what they learned. How did the media portray this event?

Lecture Note Explain how the potential for police abuse of power is anticipated by the Bill of Rights and how restraints on the police must constantly be balanced against the need for the police to be able to do their jobs.

Introduction

In 2015, six Baltimore, Maryland, police officers were indicted in the death of 25-year-old Freddie Gray.² Gray, who was black and unarmed, died a week after he was arrested and transported in a police van, apparently without proper safety restraints. Gray had reportedly asked for medical assistance a number of times while he was in the van, but prosecutors claimed that his pleas were ignored. Gray's death led to a series of protests, some of which turned violent, resulting in the looting and burning of local businesses and the injury of 15 police officers. The Maryland National Guard was deployed throughout portions of the city and a night curfew was imposed. In September 2015, a \$6.4 million settlement between Gray family members and the city of Baltimore.³

The Abuse of Police Power

Another 2015 incident—the shooting of 50-year-old Walter Scott—led to continued media attention.⁴ Scott, who was black and unarmed, was shot in the back eight times by Michael Slager, a 33-year-old Charleston, South Carolina, police officer as he ran away following a traffic stop. Much of the incident was captured on cell phone video by a bystander. The video evidence appeared to show Slager dropping his Taser by Scott's lifeless body after the shooting. Slager told his supervisors that Scott had attempted to gain control over the Taser before running away.

1

Describe legal restraints on police action and instances of police abuse of power.

One year earlier, a 400-pound asthmatic Staten Island man who was selling untaxed cigarettes on a sidewalk died after NYPD officers slammed his head against the sidewalk and held him in a chokehold—a dangerous restraint tactic that was against department policy.⁵ Like Scott, the man who died, Eric Garner, 43, was black and unarmed—and the incident was also recorded on cell phone video by others at the scene.

Organized public reaction to the police killing of unarmed black men culminated in the development of the “Black Lives Matter” movement—a social justice initiative that had its roots in the 2014 shooting death of unarmed 18-year-old Michael Brown by a white Ferguson, Missouri, police officer.⁶ The incident, which is described in more detail in Chapter 4, occurred after Brown stole cigars from a nearby convenience store and later got into a scuffle with the officer. Although details of the shooting were in dispute, a grand jury later refused to indict the officer.

Prior to the incidents described here, the most widely discussed abuse of police power was the 1991 videotaped beating of motorist Rodney King by LAPD officers. King, an unemployed 25-year-old black man, was stopped by LAPD officers for an alleged violation of motor vehicle laws.⁷ Police said King had been speeding and had refused to stop for a pursuing patrol car. Eventually King did stop, but then officers of the LAPD appeared to attack him, shocking him twice with stun guns and striking him with nightsticks and fists. Kicked in the stomach, face, and back, King was left with 11 skull fractures, missing teeth, a crushed cheekbone, and a broken ankle. A witness told reporters that she heard King begging officers to stop the beating but that they “were all laughing, like they just had a party.” In 1994, King settled a civil suit against the city of Los Angeles for a reported \$3.8 million. King's 1991 beating served for many years as a rallying point for individual-rights activists who wanted to ensure that citizens remain protected from the abuse of police power.

This chapter shows how no one is above the law—even the police. It describes the legal environment surrounding police activities, from search and seizure through arrest and the interrogation of suspects. As we shall see throughout, democratically inspired legal restraints on the police help ensure individual freedoms in our society and prevent the development of a police state in America. Like anything else, however, the rules by which the police are expected to operate are in constant flux, and their continuing development forms the meat of this chapter. For a police perspective on these issues, visit <http://www.policedefense.org>.

A Changing Legal Climate

The Constitution of the United States is designed—especially in the **Bill of Rights**—to protect citizens against abuses of police power (Table 5-1). However, the legal environment surrounding the police in modern America is much more complex than it was just 45 years ago. Up until that time, the Bill of Rights was largely given only lip service in criminal justice proceedings around the country. In practice, law enforcement, especially on the state and local levels, revolved around tried-and-true methods of search, arrest, and interrogation that sometimes left little room for recognition of individual rights. Police operations during that period were often far more informal than they are today, and investigating officers frequently assumed that they could come and go as they pleased, even to the extent of invading someone’s home without a search warrant. Interrogations could quickly turn violent, and the infamous “rubber hose,” which was reputed to leave few marks on the body, was probably more widely used during the questioning of suspects than many would like to believe. Similarly, “doing things by the book” could mean the use of thick telephone books for beating suspects, since the books spread out the force of blows and left few visible bruises. Although such abuses were not necessarily day-to-day practices in all police agencies and although they probably did not characterize more than a relatively small proportion of all officers, such conduct pointed to the need for greater control over police activities so that even the potential for abuse might be curtailed.

In the 1960s the U.S. Supreme Court, under the direction of Chief Justice Earl Warren (1891–1974), accelerated the process of guaranteeing individual rights in the face of

Bill of Rights
The popular name given to the first ten amendments to the U.S. Constitution, which are considered especially important in the processing of criminal defendants.

There is more law at the end of the policeman’s nightstick than in all the decisions of the Supreme Court.

—Alexander “Clubber” Williams, late-nineteenth-century New York police officer

Lecture Note Explain that the due process environment surrounding police action extends to three important areas: search and seizure of evidence, arrest, and interrogation. Refer to Table 5-1 to highlight the rights of criminal defendants.

Lecture Note Describe the tenuous conservatism of the U.S. Supreme Court. Begin with the liberal Warren Court era of the 1960s, and discuss the Burger, Rehnquist, and Roberts eras. Giving specific examples, describe how confirmation battles are a reflection of the ideological stances of members of Congress and of the nominees themselves.

Lecture Note Describe checks on police action by the courts. Tell how police agencies in foreign countries are often not constrained by “the rule of law,” and explain why citizens of such countries often live in fear of unbridled police action.

Lecture Note Explain that the U.S. Constitution (through the Bill of Rights) requires law enforcement personnel to seek a warrant before making an arrest or executing a search. Tell the class that warrants are generally issued by magistrates who check to see that the police have probable cause to believe that the person to be arrested is likely to be the person who committed the crime or that the place to be searched is the place where sought-after evidence is likely to be found.

TABLE 5-1
Constitutional Amendments of Special Significance to the American System of Justice

This Right Is Guaranteed	By This Amendment
The right against unreasonable searches and seizures	Fourth
The right against arrest without probable cause	Fourth
The right against self-incrimination	Fifth
The right against “double jeopardy”	Fifth
The right to due process of law	Fifth, Sixth, and Fourteenth
The right to a speedy trial	Sixth
The right to a jury trial	Sixth
The right to know the charges	Sixth
The right to cross-examine witnesses	Sixth
The right to a lawyer	Sixth
The right to compel witnesses on one’s behalf	Sixth
The right to reasonable bail	Eighth
The right against excessive fines	Eighth
The right against cruel and unusual punishments	Eighth
The applicability of constitutional rights to all citizens, regardless of state law or procedure	Fourteenth

Note: The Fourteenth Amendment is not a part of the Bill of Rights.

criminal prosecution. Warren Court rulings bound the police to strict procedural requirements in the areas of investigation, arrest, and interrogation. Later rulings scrutinized trial court procedures and enforced humanitarian standards in sentencing and punishment. The Warren Court also seized on the Fourteenth Amendment and made it a basis for judicial mandates requiring that both state and federal criminal justice agencies adhere to the Court's interpretation of the Constitution. The apex of the individual-rights emphasis in Supreme Court decisions was reached in the 1966 case of *Miranda v. Arizona*,⁸ which established the famous requirement of a police "rights advisement" of suspects. In wielding its brand of idealism, the Warren Court (which held sway from 1953 until 1969) accepted the fact that a few guilty people would go free so that the rights of the majority of Americans would be protected.

In the decades since the Warren Court, a new conservative Court philosophy has resulted in Supreme Court decisions that have brought about what some call a reversal of Warren-era advances in the area of individual rights. By creating exceptions to some of the Warren Court's rules and restraints and by allowing for the emergency questioning of suspects before they are read their rights, a changed Supreme Court has recognized the realities attending day-to-day police work and the need to ensure public safety.

Individual Rights

Checks and Balances

The Constitution of the United States provides for a system of checks and balances among the legislative, judicial, and executive (presidential) branches of government. One branch of government is always held accountable to the other branches. The system is designed to ensure that no one individual or agency can become powerful enough to usurp the rights and freedoms guaranteed under the Constitution. Without accountability, it is possible to imagine a police state in which the power of law enforcement is absolute and is related more to political considerations and personal vendettas than to objective considerations of guilt or innocence.

Under our system of government, courts become the arena for dispute resolution, not just between individuals but between citizens and the agencies of government. After handling by the justice system, people who feel they have not received the respect and dignity due to them under the law can appeal to the courts for redress. Such appeals are usually based on procedural issues and are independent of more narrow considerations of guilt or innocence.

In this chapter, we focus on cases that are important for having clarified constitutional guarantees concerning individual liberties within the criminal justice arena. They involve issues that most of us have come to call *rights*. Rights are concerned with procedure, that is, with how police and other actors in the criminal justice system handle each part of the process of dealing with suspects. Rights violations have often become the basis for the dismissal of charges, the acquittal of defendants, or the release of convicted offenders after an appeal to a higher court.

Due-Process Requirements

As you may recall from Chapter 1, the Fourth, Fifth, Sixth, and Fourteenth Amendments to the U.S. Constitution require due process, which mandates that justice system officials respect the rights of accused individuals throughout the criminal justice process. Most due-process requirements of relevance to the police pertain to three major areas: (1) evidence and investigation (often called *search* and *seizure*), (2) arrest, and (3) interrogation. Each of these areas has been addressed by a plethora of landmark U.S. Supreme Court decisions. **Landmark cases** produce substantial changes both in the understanding of the requirements of due process and in the practical day-to-day operations of the justice system. Another way to think of landmark cases is that they help significantly in clarifying the "rules of the game"—the procedural guidelines that the police and the rest of the justice system must follow.

2

Explain how the Bill of Rights and democratically inspired legal restraints help protect our personal freedoms.

Lecture Note Explain how the Bill of Rights and democratically inspired legal restraints help protect personal freedoms in our society.

[The police] are not perfect; we don't sign them up on some far-off planet and bring them into police service. They are products of society.

—Daryl Gates, former Los Angeles police chief

landmark case

A precedent-setting court decision that produces substantial changes both in the understanding of the requirements of due process and in the practical day-to-day operations of the justice system.

The three areas we will discuss have been well defined by decades of court precedent. Keep in mind, however, that judicial interpretations of the constitutional requirement of due process are constantly evolving. As new decisions are rendered and as the composition of the Court itself changes, major changes and additional refinements may occur.

Search and Seizure

The Fourth Amendment to the U.S. Constitution declares that people must be secure in their homes and in their persons against unreasonable searches and seizures. This amendment reads, “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,

3

Describe the circumstances under which police officers may conduct searches or seize property legally.

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.” The Fourth Amendment, a part of the Bill of Rights, was adopted by Congress and became effective on December 15, 1791.

The language of the Fourth Amendment is familiar to all of us. “**Warrant**,” “probable cause,” and other phrases from the amendment are frequently cited in editorials, TV news shows, and daily conversations about **illegally seized evidence**. It is the interpretation of these phrases over time by the U.S. Supreme Court, however, that has given them the impact they have on the justice system today.

The Exclusionary Rule

The first landmark case concerning search and seizure was that of *Weeks v. U.S.* (1914).⁹ Freemont Weeks was suspected of using the U.S. mail to sell lottery tickets, a federal crime. Weeks was arrested, and federal agents went to his home to conduct a search. They had no search warrant, because at the time investigators did not routinely use warrants. They confiscated many incriminating items of evidence, as well as some of the suspect’s personal possessions, including clothes, papers, books, and even candy.

Prior to trial, Weeks’s attorney asked that the personal items be returned, claiming that they had been illegally seized under Fourth Amendment guarantees. A judge agreed and ordered the materials returned. On the basis of the evidence that was retained, however, Weeks was convicted in federal court and was sentenced to prison. He appealed his conviction through other courts, and his case eventually reached the U.S. Supreme Court. There, his lawyer reasoned that if some of his client’s belongings had been illegally seized, then the remainder of them were also taken improperly. The Court agreed and overturned Weeks’s earlier conviction.

The *Weeks* case forms the basis of what is now called the **exclusionary rule**, which holds that evidence illegally seized by the police cannot be used in a trial. The rule acts as a control over police behavior and specifically focuses on the failure of officers to obtain warrants authorizing them either to conduct searches or to effect arrests, especially where arrest may lead to the acquisition of incriminating statements or to the seizure of physical evidence.

The decision of the Supreme Court in the *Weeks* case was binding, at the time, only on federal officers because only federal agents were involved in the illegal seizure. Learn more about *Weeks v. U.S.* at <http://tinyurl.com/59rsve>. See Figure 5–1 for more about the exclusionary rule and its development since *Weeks*.

Problems with Precedent

The *Weeks* case demonstrates the Supreme Court’s power in enforcing what we have called the “rules of the game.” It also lays bare the much more significant role that the Court plays in rule creation. Until the *Weeks* case was decided, federal law enforcement officers had little reason to think they were acting in violation of due process. Common practice had not required that they obtain a warrant before conducting searches. The rule that resulted from *Weeks* was new, and it would forever alter the enforcement activities of federal officers.

The *Weeks* case reveals that the present appeals system, focusing as it does on the “rules of the game,” presents a ready-made channel for the guilty to go free. There is little doubt

warrant

In criminal proceedings, a writ issued by a judicial officer directing a law enforcement officer to perform a specified act and affording the officer protection from damages if he or she performs it.

Illegally seized evidence

Any evidence seized without regard to the principles of due process as described by the Bill of Rights. Most illegally seized evidence is the result of police searches conducted without a proper warrant or of improperly conducted interrogations.

Lecture Note Describe the circumstances under which police officers may properly conduct searches or seize property.

exclusionary rule

The understanding, based on U.S. Supreme Court precedent, that incriminating information must be seized according to constitutional specifications of due process or it will not be allowed as evidence in a criminal trial.

Lecture Note Describe the exclusionary rule as a doctrine, created by the U.S. Supreme Court in the 1914 case of *Weeks v. U.S.*, that excludes illegally seized evidence from use at trial. Explain that illegally seized evidence is often evidence gathered without a warrant.

Lecture Note Discuss the fruit of the poisonous tree doctrine. Use the example of an illegally seized document that details the structure of an illegal drug operation. Tell the class that although enforcement agents may set up complex investigative strategies based on the document and may make hundreds of arrests over a period of months or years, the arrests themselves will be illegal—and the defendants will be set free—if it can be shown that the investigation was based solely on information from the illegally seized document.

THE FOURTH AMENDMENT TO THE U.S. CONSTITUTION

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.

Based upon the Fourth Amendment, **the Exclusionary Rule** holds that evidence of an offense that is collected or obtained by law enforcement officers in violation of a defendant's constitutional rights is inadmissible for use in a criminal prosecution in a court of law.

SIGNIFICANT CASES

Weeks v. U.S. (1914)

Established the exclusionary rule at the federal level, holding that evidence that is illegally obtained cannot be used in a criminal trial; and that federal officers must have a valid warrant before conducting searches or seizing evidence. Prior to *Weeks*, common practice generally allowed all relevant evidence, no matter how it was obtained, to be used in court.

Silverthorne Lumber Co. v. U.S. (1920)

Set forth the **Fruit of the Poisonous Tree Doctrine**, which says that just as illegally seized evidence cannot be used in a trial, neither can evidence that *derives* from an illegal search or seizure. Under this doctrine, complex cases developed after years of police investigative effort may be ruined if defense attorneys are able to demonstrate that the prosecution's case was originally based on a search or seizure that, at the time it occurred, violated due process.

Mapp v. Ohio (1961)

Applied the exclusionary rule to criminal prosecutions at the state level. The Court held that the due process clause of the Fourteenth Amendment to the U.S. Constitution makes Fourth Amendment provisions applicable to state proceedings.

SUBSTANTIAL SOCIAL COSTS

U.S. v. Leon (1984) and Hudson v. Michigan (2006)

Recognized that the exclusionary rule generates "substantial social costs," which may include letting the guilty go free and setting the dangerous at large.

EXCEPTIONS TO THE EXCLUSIONARY RULE

THE GOOD-FAITH EXCEPTION

U.S. v. Leon (1984)

Allowed evidence that officers had seized in "reasonable good faith" to be used in court, even though the search was later ruled illegal.

Illinois v. Krull (1987)

The *good-faith exception* applied to a warrantless search supported by state law even though the state statute was later found to violate the Fourth Amendment.

Maryland v. Garrison (1987)

The use of evidence obtained by officers with a search warrant that was inaccurate in its specifics was allowed.

THE PLAIN-VIEW DOCTRINE

Harris v. U.S. (1968)

Police officers have the opportunity to begin investigations or to confiscate evidence, without a warrant, based on what they find in plain view and open to public inspection.

CLERICAL ERRORS EXCEPTION

Arizona v. Evans (1995)

A traffic stop that led to the seizure of marijuana was legal even though officers conducted the stop based on an arrest warrant that should have been deleted from the computer database to which they had access.

Herring v. U.S. (2009)

When police mistakes leading to an unlawful search are the result of isolated negligence rather than systemic error or reckless disregard of constitutional requirements, the exclusionary rule does not apply.

EMERGENCY SEARCHES OF PROPERTY/EMERGENCY ENTRY

Brigham City v. Stuart (2006)

Certain emergencies may justify a police officer's decision to search or enter premises without a warrant.

FIGURE 5-1
The Exclusionary Rule

writ of certiorari

A writ issued from an appellate court for the purpose of obtaining from a lower court the record of its proceedings in a particular case. In some states, this writ is the mechanism for discretionary review. A request for review is made by petitioning for a writ of *certiorari*, and the granting of review is indicated by the issuance of the writ.

that Freemont Weeks had violated federal law; a jury had convicted him. Yet he escaped punishment because of the illegal behavior of the police—behavior that, until the Court ruled, had been widely regarded as legitimate. Even if the police knowingly violate the principles of due process, which they sometimes do, our sense of justice is compromised when the guilty go free. Famed Supreme Court Justice Benjamin Cardozo (1870–1938) once complained, "The criminal is to go free because the constable has blundered."

One solution to the problem would be to allow the Supreme Court to address theoretical questions involving issues of due process. Concerned supervisors and officials could ask how the Court would rule "if. . ." As things now work, however, the Court can only address real cases and does so on a **writ of certiorari**, in which the Court orders the record of a lower court case to be prepared for review.

The public
safety exception
[to the exclusionary rule]
was intended to protect the
police, as well as the public,
from danger.

—*U.S. v. Brady* (1987)

The Fruit of the Poisonous Tree Doctrine

The Court continued to build on the rules concerning evidence with its decision in *Silverthorne Lumber Co. v. U.S.* (1920).¹⁰ The case against the Silverthornes, owners of a lumberyard, was built on evidence that was illegally seized. Although the tainted evidence was itself not used in court, its “fruits” (later evidence that derived from the illegal seizure) were and the Silverthornes were convicted. The Supreme Court overturned the decision, holding that any evidence that derives from a seizure that was in itself illegal cannot be used at trial.

The *Silverthorne* case articulated a new principle of due process that today we call the **fruit of the poisonous tree doctrine**. This doctrine is potentially far reaching. Complex cases developed after years of police investigative effort may be ruined if defense attorneys are able to demonstrate that the prosecution’s case was originally based on a search or seizure that violated due process. In such cases, it is likely that all evidence will be declared “tainted” and will become useless.

Searches Incident to Arrest

One especially important Warren-era case, that of *Chimel v. California* (1969),¹¹ involved both arrest and search activities by local law enforcement officers. Ted Chimel was convicted of the burglary of a coin shop based on evidence gathered at his home, where he was arrested. Officers, armed with an arrest warrant but not a search warrant, took Chimel into custody when they arrived at his residence and then searched his entire three-bedroom house, including the attic, a small workshop, and the garage. Although officers realized that the search might be challenged in court, they justified it by claiming that it was conducted not so much to uncover evidence but as part of the arrest process. Searches that are conducted incident to arrest, they argued, are necessary for the officers’ protection and should not require a search warrant. Coins taken from the burglarized coin shop were found in various places in Chimel’s residence, including the garage, and were presented as evidence against him at trial.

Chimel’s appeal eventually reached the U.S. Supreme Court, which ruled that the search of Chimel’s residence, although incident to arrest, became invalid when it went beyond the person arrested and the area subject to that person’s “immediate control.” The thrust of the Court’s decision was that searches during arrest can be made to protect arresting officers but that without a search warrant, their scope must be strongly circumscribed. In other words, a search that is incidental to arrest is extremely limited in scope and only applies to a search of the suspect and the immediate vicinity. During such a search, officers may not move the suspect around to widen the geographic scope of the search (e.g., a suspect arrested in the kitchen can’t be walked around his house as a pretext to search each room). The legal implications of *Chimel v. California* are summarized in Table 5-2.

Since the early days of the exclusionary rule, other court decisions have highlighted the fact that “the Fourth Amendment protects people, not places.”¹² In other words, although the commonly heard claim that “a person’s home is his or her castle” has a great deal of validity within the context of constitutional law, people can have a reasonable expectation to privacy in “homes” of many descriptions. Apartments, duplex dwellings, motel rooms—even the cardboard boxes or makeshift tents of the homeless—can all become protected places under the Fourth Amendment. In *Minnesota v. Olson* (1990),¹³ for example, the U.S. Supreme Court extended the protection against warrantless searches to overnight guests residing in the home of another. The capacity to claim the protection of the Fourth Amendment, said the Court, depends on whether the *person* who makes that claim has a legitimate expectation of privacy in the place searched.

fruit of the poisonous tree doctrine

A legal principle that excludes from introduction at trial any evidence later developed as a result of an illegal search or seizure.

Thematic Question What is the exclusionary rule? What is the fruit of the poisonous tree doctrine? What would American criminal justice be like without these rules?

Thematic Question When police officers violate the “rules of fair play” that apply to criminal investigations, is it unusual for guilty people to go free? Can you think of another way of enticing officers to obey the law, without necessarily letting the guilty go free? Explain your idea.

▼ A female officer patting down a suspect. The legal environment surrounding the police helps ensure proper official conduct. In a stop like this, inappropriate behavior on the part of the officer can later become the basis for civil or criminal action against the officer and the police department. What might constitute inappropriate behavior?

Hill Street Studios/Glowimages



TABLE 5-2
Implications of *Chimel v. California* (1969)

What Arresting Officers May Search
The defendant
The physical area within easy reach of the defendant
Valid Reasons for Conducting a Search
To protect the arresting officers
To prevent evidence from being destroyed
To keep the defendant from escaping
When a Search Becomes Illegal
When it goes beyond the defendant and the area within the defendant's immediate control
When it is conducted for other than a valid reason

Lecture Note Discuss the way in which *Chimel v. California* (1969) defined what officers may search, when they may search, and why they may search. Ask students why such directives are necessary and how they help individual suspects but may hinder police activity. How else might search parameters be defined?

Lecture Note Describe the notion of good faith and good-faith exceptions to the exclusionary rule. Ask students what they think the ultimate impact of good-faith exceptions will be on American criminal justice and whether they think the Court should ever have created the good-faith exception.

Lecture Note Ask the class to list each of the Supreme Court decisions discussed in this chapter. Have students group the decisions according to the Court that rendered them (the Warren Court, the Rehnquist Court, etc.). Have class members score each decision from 0 to 10, indicating whether it would likely appeal more to individual-rights advocates (0) or public-order advocates (10). Where does each Court fall along the rights-order continuum?

► Police officers examining suspected controlled substances after a raid. The exclusionary rule means that illegally gathered evidence cannot be used later in court, requiring that police officers pay close attention to how they gather and handle evidence. How did the exclusionary rule come into being?
Chris O'Meara/AP Wide World Photos

In 1998, in the case of *Minnesota v. Carter*,¹⁴ the Court held that for a defendant to be entitled to Fourth Amendment protection, “he must demonstrate that he personally has an expectation of privacy in the place searched, and that his expectation is reasonable.” The Court noted that “the extent to which the Amendment protects people may depend upon where those people are. While an overnight guest may have a legitimate expectation of privacy in someone else’s home . . . one who is merely present with the consent of the householder may not.” Hence, an appliance repair person visiting a residence is unlikely to be accorded privacy protection while on the job.

In 2006, in the case of *Georgia v. Randolph*,¹⁵ the Court ruled that police officers may not enter a home to conduct a warrantless search if one resident gives permission but another refuses. The *Randolph* ruling was a narrow one and centered on the stated refusal by a physically present co-occupant to permit warrantless entry in the absence of evidence of physical abuse or other circumstances that might otherwise justify an immediate police entry.¹⁶ In 2014, in the case of *Fernandez v. California*, the Court clarified its ruling in *Randolph* by finding that consent to search may be given by a remaining resident after another has been removed.¹⁷

Finally, in 2013, in the case of *Bailey v. U.S.*, the Court limited the power of police to detain people who are away from their homes when police conduct a search of their residence, unless they have probable cause for an arrest.¹⁸ One expert commenting on *Bailey* noted that “if you allow this, then whenever you do a search, people associated with that home could be arrested, no matter where they are, and that just goes too far.”¹⁹



Judicial Philosophy and the U.S. Supreme Court

As you read through this chapter, you will encounter descriptions of numerous U.S. Supreme Court opinions. It is important to realize that our theme of individual rights versus the need for public safety and security has manifested itself over time in important decision made by the Court. Sometimes, for example, the Court has generally been on the side of public safety needs, while at other times, a concern for individual rights has been its guiding principle. The philosophy of the Court is often associated with the historical era during which decisions were rendered. For convenience, we can identify these eras using the names of Chief Justices, and the time periods during which they led the Court.

The Warren Court (1953–1969)

Before the 1960s, the U.S. Supreme Court intruded only infrequently on the overall operation of the criminal justice system at the state and local levels. As one author has observed, however, the 1960s were a time of youthful idealism, and “without the distraction of a depression or world war, individual liberties were examined at all levels of society.”²⁰

Although the exclusionary rule became an overriding consideration in federal law enforcement from the time that it was first defined by the Supreme Court in the *Weeks* case in 1914, it was not until 1961 that the Court, under Chief Justice Earl Warren, decided a case that was to change the face of American law enforcement forever. That case, *Mapp v. Ohio* (1961),²¹ made the exclusionary rule applicable to criminal prosecutions at the state level. Beginning with the now-famous *Mapp* case, the Warren Court (led by Chief Justice Earl Warren) charted a course that would guarantee nationwide recognition of individual rights, as it understood them, by agencies at all levels of the criminal justice system. Because of the decisions it rendered, the Warren Court became known as a liberal court (today, some would say it was “progressive”). Learn more about the case of *Mapp v. Ohio* at <http://tinyurl.com/66yotaz>.

The Burger Court (1969–1986)

Throughout the late 1970s and the early 1980s, the U.S. Supreme Court mirrored the nation’s conservative tenor by distancing itself from some earlier decisions of the Warren Court. While the Warren Court embodied the individual-rights heyday in Court jurisprudence, Court decisions beginning in the 1970s were generally supportive of a “greater good era”—one in which the justices increasingly acknowledged the importance of social order and communal safety.

Under Chief Justice Warren E. Burger, the new Court adhered to the principle that criminal defendants who claimed violations of their due-process rights needed to bear most of the responsibility of showing that police went beyond the law in the performance of their duties. This tenet is still held by the Court today, although, with the 2016 death of conservative Justice Antonin Scalia, it may soon change.

The Rehnquist Court (1986–2005)

During the 1980s and 1990s, the United States underwent a strong swing toward conservatism, giving rise to a renewed concern with protecting the interests—financial and otherwise—of those who live within the law. The Reagan–Bush years, and the popularity of the two presidents who many thought embodied “old-fashioned” values, reflected the tenor of a nation seeking a return to “simpler,” less volatile times.

During William Rehnquist’s tenure as chief justice, the Court invoked a characteristically conservative approach to many important criminal justice issues—from limiting the exclusionary rule²² and generally broadening police powers, to sharply limiting the opportunities for state prisoners to bring appeals in federal courts.²³ Preventive detention, “no-knock” police searches,²⁴ the death penalty,²⁵ and habitual offender statutes²⁶ (often known as three-strikes laws), all found decisive support under Chief Justice Rehnquist.²⁷ The particular cases in which the Court addressed these issues are discussed elsewhere in this text.

The Roberts Court (2005–Today)

Following Rehnquist’s death in 2005, John G. Roberts, Jr., became the nation’s 17th chief justice. Roberts had previously served as a judge on the U.S. Court of Appeals for the District of Columbia Circuit. The Roberts Court is known for its conservative nature, although many

good-faith exception

An exception to the exclusionary rule. Law enforcement officers who conduct a search or who seize evidence on the basis of good faith (i.e., when they believe they are operating according to the dictates of the law) and who later discover that a mistake was made (perhaps in the format of the application for a search warrant) may still use the seized evidence in court.

probable cause

A set of facts and circumstances that would induce a reasonably intelligent and prudent person to believe that a particular other person has committed a specific crime. Also, reasonable grounds to make or believe an accusation. Probable cause refers to the necessary level of belief that would allow for police seizures (arrests) of individuals and full searches of dwellings, vehicles, and possessions.

Thematic Question Given the advent of good-faith exceptions to the exclusionary rule, the plain-view doctrine, and the U.S. Supreme Court's recognition of the need for emergency searches, can we realistically argue that the exclusionary rule is still effective in contemporary American criminal justice? Has the exclusionary rule been so watered down by more recent decisions as to be little more than a paper tiger? Defend your position.

Before a warrant can be issued, police officers must demonstrate probable cause.

of the opinions it issues are closely divided, often by a 5–4 vote. Because the “swing vote”—especially in deciding issues of criminal procedure—is often cast by Associate Justice Anthony Kennedy, some commentators ruefully refer to today’s court as “the Kennedy Court.” The Court today is generally conservative in the area of crime and justice, but there have been some striking exceptions to that rule. Court observers have noted that “precedent and *stare decisis* are given little weight by the Roberts Court; it is a Court quite willing to change the law. . . .”²⁸

The Roberts Court’s erosion of the exclusionary rule is especially important. In 2009, in a 5-to-4 decision, for example, the Court significantly modified the exclusionary rule. The case, *Herring v. U.S.*, has been called “the most important change in the exclusionary rule since *Mapp v. Ohio* applied it to the states in 1961.”²⁹

In *Herring*, the issue was whether the exclusionary rule applies when police officers commit an illegal search based on good-faith reliance on erroneous information from another jurisdiction. The Court held that the exclusionary rule did not apply when officers acted in good faith, and added that the rule should be used only as a “last resort” and is to be applied only in those instances where it will have significant additional deterrent effect on police misconduct. In effect, the Court held that the exclusionary rule may be used only if there is an intentional or reckless violation of Fourth Amendment rights, or if there are systemic police department violations with regard to searches and seizures. As mentioned earlier, however, the death of Associate Justice Antonin Scalia in 2016, and the ensuing political battle over his replacement, leaves some doubt as to the bent of the Roberts Court going forward.

Good-Faith Exceptions to the Exclusionary Rule

The Burger Court, which held sway from 1969 until 1986, “chipped away” at the strict application of the exclusionary rule originally set forth in the *Weeks* and *Silverthorne* cases. In the 1984 case of *U.S. v. Leon*,³⁰ the Court recognized what has come to be called the **good-faith exception** to the exclusionary rule. In this case, the Court modified the exclusionary rule to allow evidence that officers had seized in “reasonable good faith” to be used in court, even though the search was later ruled illegal. The suspect, Alberto Leon, was placed under surveillance for drug trafficking following a tip from a confidential informant. Burbank (California) Police Department investigators applied for a search warrant based on information gleaned from the surveillance, believing they were in compliance with the Fourth Amendment requirement that “no Warrants shall issue, but upon probable cause.”

Probable cause is a tricky but important concept. Its legal criteria are based on facts and circumstances that would cause a reasonable person to believe that a particular other person has committed a specific crime. Before a warrant can be issued, police officers must satisfactorily demonstrate probable cause in a written affidavit to a magistrate³¹—a low-level judge who ensures that the police establish the probable cause needed for warrants to be obtained. Upon a demonstration of probable cause, the magistrate will issue a warrant authorizing law enforcement officers to effect an arrest or conduct a search.

In *U.S. v. Leon*, a warrant was issued, and a search of Leon’s three residences yielded a large amount of drugs and other evidence. Although Leon was convicted of drug trafficking, a later ruling in a federal district court resulted in the suppression of evidence against him on the basis that the original affidavit prepared by the police had not, in the opinion of the reviewing court, been sufficient to establish probable cause.

The federal government petitioned the U.S. Supreme Court to consider whether evidence gathered by officers acting in good faith as to the validity of a warrant should fairly be excluded at trial. The good-faith exception was presaged in the first paragraph of the Court’s written decision: “When law enforcement officers have acted in objective good faith or their transgressions have been minor, the magnitude of the benefit conferred on . . . guilty defendants offends basic concepts of the criminal justice system.” Reflecting the renewed conservatism of the Burger Court, the justices found for the government and reinstated Leon’s conviction.

In that same year, the Supreme Court case of *Massachusetts v. Sheppard* (1984)³² further reinforced the concept of good faith. In the *Sheppard* case, officers executed a search warrant that failed to describe accurately the property to be seized. Although they

were aware of the error, a magistrate had assured them that the warrant was valid. After the seizure was complete and a conviction had been obtained, the Massachusetts Supreme Judicial Court reversed the finding of the trial court. Upon appeal, the U.S. Supreme Court reiterated the good-faith exception and reinstated the original conviction.

The cases of *Leon* and *Sheppard* represented a clear reversal of the Warren Court's philosophy, and the trend continued with the 1987 case of *Illinois v. Krull*.³³ In *Krull*, the Court, now under the leadership of Chief Justice William H. Rehnquist, held that the good-faith exception applied to a warrantless search supported by state law even though the state statute was later found to violate the Fourth Amendment. Similarly, another 1987 Supreme Court case, *Maryland v. Garrison*,³⁴ supported the use of evidence obtained with a search warrant that was inaccurate in its specifics. In *Garrison*, officers had procured a warrant to search an apartment, believing it was the only dwelling on the building's third floor. After searching the entire floor, they discovered that it housed more than one apartment. Even so, evidence acquired in the search was held to be admissible based on the reasonable mistake of the officers.

The 1990 case of *Illinois v. Rodriguez*³⁴ further diminished the scope of the exclusionary rule. In *Rodriguez*, a badly beaten woman named Gail Fischer complained to police that she had been assaulted in a Chicago apartment. Fischer led police to the apartment—which she indicated she shared with the defendant—produced a key, and opened the door to the dwelling. Inside, investigators found the defendant, Edward Rodriguez, asleep on a bed, with drug paraphernalia and cocaine spread around him. Rodriguez was arrested and charged with assault and possession of a controlled substance.

Upon appeal, Rodriguez demonstrated that Fischer had not lived with him for at least a month and argued that she could no longer be said to have legal control over the apartment. Hence, the defense claimed, Fischer had no authority to provide investigators with access to the dwelling. According to arguments made by the defense, the evidence, which had been obtained without a warrant, had not been properly seized. The Supreme Court disagreed, ruling that “even if Fischer did not possess common authority over the premises, there was no Fourth Amendment violation if the police *reasonably believed* at the time of their entry that Fischer possessed the authority to consent.”

In 1995, in the case of *Arizona v. Evans*,³⁵ the U.S. Supreme Court created a “computer errors exception” to the exclusionary rule, holding that a traffic stop that led to the seizure of marijuana was legal even though officers conducted the stop based on an arrest warrant that should have been deleted from the computer database to which they had access. The arrest warrant reported to the officers by their computer had actually been quashed a few weeks earlier but, through the oversight of a court employee, had never been removed from the database.

In reaching its decision, the High Court reasoned that police officers could not be held responsible for a clerical error made by a court worker and concluded that the arresting officers had acted in good faith based on the information available to them at the time of the arrest. In addition, the majority opinion said that “the rule excluding evidence obtained without a warrant was intended to deter police misconduct, not mistakes by court employees.” In 2009, in the case of *Herring v. U.S.*,³⁶ the Court reinforced its ruling in *Evans*, holding that “when police mistakes leading to an unlawful search are the result of isolated negligence . . . rather than systemic error or reckless disregard of constitutional requirements, the exclusionary rule does not apply.” A general listing of established exceptions to the exclusionary rule, along with other investigative powers created by court precedent, is provided in Table 5-3.

The Plain-View Doctrine

Police officers have the opportunity to begin investigations or to confiscate evidence, without a warrant, based on what they find in **plain view** and open to public inspection. The plain-view doctrine was succinctly stated in the U.S. Supreme Court case of *Harris v. U.S.* (1968),³⁷ in which a police officer inventorying an impounded vehicle discovered evidence of a robbery.³⁸ In the *Harris* case, the Court ruled that “objects falling in the plain view of an

Thematic Question In your opinion, should the U.S. Supreme Court have created exceptions to the exclusionary rule? To *Miranda*? Why or why not?

The touchstone of the Fourth Amendment is reasonableness. The Fourth Amendment does not proscribe all state-initiated searches and seizures. It merely proscribes those which are unreasonable.

—*Florida v. Jimeno* (1991)

Lecture Note Describe the plain-view doctrine. Ask students what they think the ultimate impact of the plain-view doctrine will be on American criminal justice and whether they think the Court should ever have created the plain-view doctrine. Ask how hard this doctrine might be for police officers to keep in mind in their daily work.

plain view

A legal term describing the ready visibility of objects that might be seized as evidence during a search by police in the absence of a search warrant specifying the seizure of those objects. To lawfully seize evidence in plain view, officers must have a legal right to be in the viewing area and must have cause to believe that the evidence is somehow associated with criminal activity.

TABLE 5-3
Selected Investigatory Activities Supported by Court Precedent

This Police Action	Is Supported By
An anonymous and uncorroborated tip can provide a sufficient basis for an officer's reasonable suspicion to make an investigative stop.	<i>Prado Navarette v. California</i> (2014)
Where multiple occupants are involved, the search of a dwelling is permissible without a warrant if one person living there consents after officers have removed another resident who objects.	<i>Fernandez v. California</i> . (2014)
Arrest based on isolated clerical error	<i>Herring v. U.S.</i> (2009) <i>Arizona v. Evans</i> (1995)
Authority to enter and/or search an "open field" without a warrant	<i>U.S. v. Dunn</i> (1987) <i>Oliver v. U.S.</i> (1984) <i>Hester v. U.S.</i> (1924)
Authority to search incident to arrest and/or to conduct a protective sweep in conjunction with an in-home arrest	<i>Maryland v. Buie</i> (1990) <i>U.S. v. Edwards</i> (1974) <i>Chimel v. California</i> (1969)
Gathering of incriminating evidence during interrogation in noncustodial circumstances	<i>Yarborough v. Alvarado</i> (2004) <i>Thompson v. Keohane</i> (1996) <i>Stansbury v. California</i> (1994) <i>U.S. v. Mendenhall</i> (1980) <i>Beckwith v. U.S.</i> (1976)
Gathering of incriminating evidence during <i>Miranda</i> -less custodial interrogation	<i>Montejo v. Louisiana</i> (2009) <i>U.S. v. Patane</i> (2004)
Inevitable discovery of evidence	<i>Nix v. Williams</i> (1984)
"No-knock" searches or quick entry	<i>Brigham City v. Stuart</i> (2006) <i>Hudson v. Michigan</i> (2006) <i>U.S. v. Barnes</i> (2003) <i>Richards v. Wisconsin</i> (1997) <i>Wilson v. Arkansas</i> (1995)
Prompt action in the face of threat to public or personal safety or destruction of evidence	<i>U.S. v. Banks</i> (2003) <i>Borchardt v. U.S.</i> (1987) <i>New York v. Quarles</i> (1984) <i>Warden v. Hayden</i> (1967)
Seizure of evidence in good faith, even in the face of some exclusionary rule violations	<i>Illinois v. Krull</i> (1987) <i>U.S. v. Leon</i> (1984)
Seizure of evidence in plain view	<i>Horton v. California</i> (1990) <i>Coolidge v. New Hampshire</i> (1971) <i>Harris v. U.S.</i> (1968)
Stop and frisk/request personal identification	<i>Arizona v. Johnson</i> (2009) <i>Hiibel v. Sixth Judicial District Court of Nevada</i> (2004) <i>Terry v. Ohio</i> (1968)
Use of police informants in jail cells	<i>Arizona v. Fulminante</i> (1991) <i>Illinois v. Perkins</i> (1990) <i>Kuhlmann v. Wilson</i> (1986)
Warrantless naked-eye aerial observation of open areas and/or greenhouses	<i>Florida v. Riley</i> (1989) <i>California v. Ciraolo</i> (1986)
Warrantless search incident to a lawful arrest	<i>U.S. v. Rabinowitz</i> (1950)
Warrantless seizure of abandoned materials and refuse	<i>California v. Greenwood</i> (1988)
Warrantless vehicle search where probable cause exists to believe that the vehicle contains contraband and/or that the occupants have been lawfully arrested	<i>Thornton v. U.S.</i> (2004) <i>Ornelas v. U.S.</i> (1996) <i>California v. Acevedo</i> (1991) <i>California v. Carney</i> (1985) <i>U.S. v. Ross</i> (1982) <i>New York v. Belton</i> (1981) <i>Carroll v. U.S.</i> (1925)

Source: Pearson Education, Inc.

officer who has a right to be in the position to have that view are subject to seizure and may be introduced in evidence.”³⁹

The plain-view doctrine is applicable in common situations, such as crimes in progress, fires, accidents, and other emergencies. A police officer responding to a call for assistance, for example, might enter a residence intending to provide aid to an injured person and find drugs or other contraband in plain view. If so, the officer would be within his or her legitimate authority to confiscate the materials and to effect an arrest if the owner can be identified.

However, the plain-view doctrine applies only to sightings by the police under legal circumstances—that is, in places where the police have a legitimate right to be and, typically, only if the sighting was coincidental. Similarly, the incriminating nature of the evidence seized must have been “immediately apparent” to the officers making the seizure.⁴⁰ If officers conspired to avoid the necessity for a search warrant by helping to create a plain-view situation through surveillance, duplicity, or other means, the doctrine likely would not apply.

The plain-view doctrine was restricted by later federal court decisions. In the 1982 case of *U.S. v. Irizarry*,⁴¹ the First Circuit Court of Appeals held that officers could not move objects to gain a view of evidence otherwise hidden from view. In the Supreme Court case of *Arizona v. Hicks* (1987),⁴² the requirement that evidence be in plain view, without requiring officers (who did not have a warrant but who had been invited into a residence) to move or dislodge objects, was reiterated.

Most evidence seized under the plain-view doctrine is discovered “inadvertently”—that is, by accident.⁴³ However, in 1990, the U.S. Supreme Court ruled in the case of *Horton v. California*⁴⁴ that “even though inadvertence is a characteristic of most legitimate ‘plain view’ seizures, it is not a necessary condition.”⁴⁵ In the *Horton* case, a warrant was issued authorizing the search of Terry Brice Horton’s home for stolen jewelry. The affidavit, completed by the officer who requested the warrant, alluded to an Uzi submachine gun and a stun gun—weapons purportedly used in the jewelry robbery. It did not request that those weapons be listed on the search warrant. Officers searched the defendant’s home but did not find the stolen jewelry. They did, however, seize a number of weapons, among them an Uzi, two stun guns, and a .38-caliber revolver. Horton was convicted of robbery in a trial in which the seized weapons were introduced into evidence. He appealed his conviction, claiming that officers had reason to believe that the weapons were in his home at the time of the search, so they were not seized inadvertently. His appeal was rejected by the Court. As a result of the *Horton* case, inadvertence is no longer considered a condition necessary to ensure the legitimacy of a seizure that results when evidence other than that listed in a search warrant is discovered. See CJ Exhibit 5–1 for more on evidence and the plain-view doctrine.

Plain-view searches present a special problem in the area of electronic evidence (which is discussed in more detail later in this chapter). If, let’s say, a police officer obtains a warrant to seize and search a computer that he suspects was used to commit a particular crime, he then has easy access to other documents and information stored on that computer. An officer conducting a fraud investigation, for example, might obtain a warrant to seize a personal computer, but then will need to examine individual files on it in order to determine which ones (if any) are related to the investigation. If, however, he discovers pirated videos stored on the machine, he can then generally charge the owner of the computer with illegally copying the digital media because it is protected by copyright law. Consequently, some legal experts have called for limiting the range of potential types of prosecution available in such cases—and confining them to the offense specified in the original warrant.⁴⁶ That no such limitations are currently in place has prompted some commentators to propose “statutory solutions eliminating plain view for computer searches.”⁴⁷

Emergency Searches of Property and Emergency Entry

Certain emergencies may justify a police officer’s decision to search or enter premises without a warrant. In 2006, for example, in the case of *Brigham City v. Stuart*,⁴⁸ the Court recognized the need for emergency warrantless entries under certain circumstances when it ruled that police officers “may enter a home without a warrant when they have an objectively reasonable basis for believing that an occupant is seriously injured or imminently threatened with such injury.” The case involved police entry into a private home to break up a fight.

Emergencies
may justify a police
officer’s decision to
search or enter premises
without a warrant.

CJ Exhibit 5-1 Plain-View Requirements

Following the opinion of the U.S. Supreme Court in the case of *Horton v. California* (1990), items seized under the plain-view doctrine may be admissible as evidence in a court of law if *both* of the following conditions are met:

1. The officer who seized the evidence was in the viewing area lawfully.
2. The officer had probable cause to believe that the evidence was somehow associated with criminal activity.

emergency search

A search conducted by the police without a warrant, which is justified on the basis of some immediate and overriding need, such as public safety, the likely escape of a dangerous suspect, or the removal or destruction of evidence.

According to the Legal Counsel Division of the Federal Bureau of Investigation (FBI), there are three threats that “provide justification for emergency warrantless action.”⁴⁹ They are clear dangers (1) to life, (2) of escape, and (3) of the removal or destruction of evidence. Any one of these situations may create an exception to the Fourth Amendment’s requirement of a search warrant.

Emergency searches, or those conducted without a warrant when special needs arise, are legally termed *exigent circumstances searches*. When emergencies necessitate a quick search of premises, however, law enforcement officers are responsible for demonstrating that a dire situation existed that justified their actions. Failure to do so successfully in court will, of course, taint any seized evidence and make it unusable.

The U.S. Supreme Court first recognized the need for emergency searches in 1967 in the case of *Warden v. Hayden*.⁵⁰ In that case, the Court approved the warrantless search of a residence following reports that an armed robber had fled into the building, saying that “the Fourth Amendment does not require police officers to delay in the course of an investigation if to do so would gravely endanger their lives or the lives of others.”⁵¹

A 1990 decision, rendered in the case of *Maryland v. Buie*,⁵² extended the authority of police to search locations in a house where a potentially dangerous person could hide while an arrest warrant is being served. The *Buie* decision was meant primarily to protect investigators from potential danger and can apply even when officers lack a warrant, probable cause, or even reasonable suspicion.

In 1995, in the case of *Wilson v. Arkansas*,⁵³ the U.S. Supreme Court ruled that police officers generally must knock and announce their identity before entering a dwelling or other premises, even when armed with a search warrant. Under certain emergency circumstances, however, exceptions may be made, and officers may not need to knock or to identify themselves before entering.⁵⁴ In *Wilson*, the Court added that the Fourth Amendment

► Tarpon Springs, Florida, sheriff’s deputies talk to a person inside a home. How might the plain-view doctrine apply to this situation? How would you explain the concept of plain view?

Jim Damaske/ZUMA Press/Newscom



requirement that searches be reasonable “should not be read to mandate a rigid rule of announcement that ignores countervailing law enforcement interests.” Officers need not announce themselves, the Court said, when suspects may be in the process of destroying evidence, officers are pursuing a recently escaped arrestee, or officers’ lives may be endangered by such an announcement. Because the *Wilson* case involved an appeal from a drug dealer who was apprehended by police officers who entered her unlocked house while she was flushing marijuana down a toilet, some said that it establishes a “drug-law exception” to the knock-and-announce requirement.

In 1997, in *Richards v. Wisconsin*,⁵⁵ the Supreme Court clarified its position on “no-knock” exceptions, saying that individual courts have the duty in each case to “determine whether the facts and circumstances of the particular entry justified dispensing with the requirement.” The Court went on to say that “[a] ‘no knock’ entry is justified when the police have a reasonable suspicion that knocking and announcing their presence, under the particular circumstances, would be dangerous or futile, or that it would inhibit the effective investigation of the crime.” The Court noted, “This standard strikes the appropriate balance between the legitimate law enforcement concerns at issue in the execution of search warrants and the individual privacy interests affected by no knock entries.”

In 2001, in the case of *Illinois v. McArthur*,⁵⁶ the U.S. Supreme Court ruled that police officers with probable cause to believe that a home contains contraband or evidence of criminal activity may reasonably prevent a suspect found outside the home from reentering it while they apply for a search warrant. In 2003, in a case involving drug possession, the Court held that a 15- to 20-second wait after officers knocked, announced themselves, and requested entry was sufficient to satisfy the Fourth Amendment requirements.⁵⁷

In the 2006 case of *Hudson v. Michigan*,⁵⁸ the Court surprised many when it ruled that evidence found by police officers who enter a home to execute a warrant without first following the knock-and-announce requirement can be used at trial despite that constitutional violation. In the words of the Court, “The interests protected by the knock-and-announce rule include human life and limb (because an unannounced entry may provoke violence from a surprised resident), property (because citizens presumably would open the door upon an announcement, whereas a forcible entry may destroy it), and privacy and dignity of the sort that can be offended by a sudden entrance.” But, said the Court, “the rule has never protected one’s interest in preventing the government from seeing or taking evidence described in a warrant.” The justices reasoned that the social costs of strictly adhering to the knock-and-announce rule are considerable and may include “the grave adverse consequence that excluding relevant incriminating evidence always entails—the risk of releasing dangerous criminals.” In a ruling that some said signaled a new era of lessened restraints on the police, the Court’s majority opinion said that because the interests violated by ignoring the knock-and-announce rule “have nothing to do with the seizure of the evidence, the exclusionary rule is inapplicable.”

In 2011, in the case of *Kentucky v. King*, the U.S. Supreme Court overruled a Kentucky Supreme Court decision and found that Lexington, Kentucky, police officers had legally entered a suspected drug dealer’s apartment without a warrant when they smelled marijuana outside the residence.⁵⁹ After knocking loudly and announcing their presence, the officers heard noises coming from inside the apartment that they believed indicated the destruction of evidence. They then kicked in the door and saw evidence of drug use in plain view. Writing for the majority, Justice Samuel Alito said, “Occupants who choose not to stand on their constitutional rights but instead elect to attempt to destroy evidence have only themselves to blame for the warrantless exigent-circumstances search that may ensue.” Learn more about another type of exception to the exclusionary rule via <http://www.justicestudies.com/pubs/emergency.pdf>.

Anticipatory Warrants

Anticipatory warrants are search warrants issued on the basis of probable cause to believe that evidence of a crime, while not currently at the place described, will likely be there when the warrant is executed. Such warrants anticipate the presence of contraband or other evidence of criminal culpability but do not claim that the evidence is present at the time that the warrant is requested or issued.

anticipatory warrant

A search warrant issued on the basis of probable cause to believe that evidence of a crime, while not currently at the place described, will likely be there when the warrant is executed.

CJ Careers

Patrol Officer

Name: Timothy D. Radtke

Position: Patrol Officer, San Diego, California

Colleges attended: Winona State University (BS); University of Nevada, Las Vegas (MA)

Major: Criminal Justice

Year hired: 2008

Please give a brief description of your job: Within a specified area of the city, I respond to radio calls for police service and perform self-initiated activities such as traffic stops and citizen contacts.

What appealed to you most about the position when you applied for it? While pursuing my degrees, I worked closely with two police departments. The officers there inspired me to commit my life to a cause greater than myself—protecting communities. I was eager to put the knowledge I obtained through my education to practical use, to work closely with the community and apply the community-oriented policing and problem-oriented policing strategies I learned during my academic studies.

How would you describe the interview process? The testing process was strenuous. There were eight different tests: written test, preinvestigation questionnaire, physical ability test, comprehensive background investigation, polygraph, appointing authority interview, psychological screening, and medical exam. The most challenging was the appointing authority interview, which was conducted by a lieutenant and a sergeant. They asked questions about my background and what I had done to prepare to serve as a police officer. I was asked to respond to a series of scenarios that police officers often encounter in the field. This process helped them determine whether I could quickly find a logical and appropriate response when presented with an unexpected or stressful situation.



▲ Timothy D. Radtke
Courtesy of Timothy D. Radtke

What is a typical day like? Patrol officers begin with “lineup,” in which they are briefed about recent crimes and events and assigned to the specific patrol beat they will work throughout their shift. Patrol officers must be prepared to handle the unexpected. One day they may respond to a domestic disturbance, the next help to establish a DUI checkpoint to deter drunk drivers, and the next be asked to locate warrant suspects.

What qualities/characteristics are most helpful for this job? A successful officer must know how to speak with people. The people they interact with daily often need immediate help or have difficulty controlling their emotions. An officer may be faced with an individual who is attempting suicide or an individual who is angry and showing signs of assaultive behavior, or [the officer may be] called upon to interview a child who has suffered abuse. The ability to speak tactfully and quickly build rapport with others is crucial.

What is a typical starting salary? Between \$40,000 and \$50,000

What is the salary potential as you move up into higher-level jobs? An officer’s salary will increase after graduating from the academy and when promoted within the department. Those with a BA or MA will also receive percentage increases in pay.

What career advice would you give someone in college beginning studies in criminal justice? Classroom instruction in college will help students understand the basics of police work and give them the skills to interpret and appropriately apply laws. It will also increase students’ problem-solving and critical thinking skills, which are necessary for finding solutions to the complex problems officers encounter daily.

Source: Reprinted with permission of Timothy D. Radtke.

Anticipatory warrants are no different in principle from ordinary search warrants. They require an issuing magistrate to determine that it is probable that contraband, evidence of a crime, or a fugitive will be on the described premises when the warrant is executed.

The constitutionality of anticipatory warrants was affirmed in 2006, in the U.S. Supreme Court case of *U.S. v. Grubbs*. In *Grubbs*,⁶⁰ an anticipatory search warrant had been issued for Grubbs’s house based on a federal officer’s affidavit stating that the warrant would not be executed until a parcel containing a videotape of child pornography—which Grubbs had ordered from an undercover postal inspector—was received at and physically taken into Grubbs’s residence. After the package was delivered, the anticipatory search warrant was executed, the videotape seized, and Grubbs arrested.

Detention and Arrest

4

Describe arrest and types of searches.

Officers seize not only property but people as well, a process referred to as *arrest*. Most people think of arrest in terms of what they see on popular TV crime shows: The suspect is chased, subdued, and “cuffed” after committing some loathsome act in view of the camera. Some arrests do occur that way. In reality, however, most arrests are far more mundane.

In 1980, in the case of *U.S. v. Mendenhall*,⁶¹ Justice Potter Stewart set forth the “free to leave” test, and wrote that an **arrest** occurs whenever a law enforcement officer restricts a person’s freedom to leave. Under such a scenario, the officer may not yell, “You’re under arrest!” No *Miranda* warnings may be offered, and in fact, the suspect may not even consider himself or herself to be in custody. As *Mendenhall* recognized, arrests, and the decisions to enforce them, evolve as the situations between officers and suspects develop. A situation usually begins with polite conversation and a request by the officer for information. Only when the suspect tries to leave and tests the limits of the police response may the suspect discover that he or she is really in custody. Stewart wrote, “A person has been ‘seized’ within the meaning of the Fourth Amendment only if in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave.” The “free to leave” test has been repeatedly adopted by the Court as the test for a seizure. In 1994, in the case of *Stansbury v. California*,⁶² the Court once again used such a test in determining the point at which an arrest had been made. In *Stansbury*, where the focus was on the interrogation of a suspected child molester and murderer, the Court ruled, “In determining whether an individual was in custody, a court must examine all of the circumstances surrounding the interrogation, but the ultimate inquiry is simply whether there [was] a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest.” More recently, in 2012, Justice Samuel A. Alito, Jr., in the case of *Howes v. Fields*, explained that “custody is a term of art that specifies circumstances that are thought generally to present a serious danger of coercion.”⁶³

Youth and inexperience do not automatically undermine a reasonable person’s ability to assess when someone is free to leave. In the 2004 case of *Yarborough v. Alvarado*,⁶⁴ the U.S. Supreme Court found that a 17-year-old boy’s 2-hour interrogation in a police station without a *Miranda* advisement was not custodial, even though the boy confessed to his involvement in a murder and was later arrested. The boy, said the Court, had not actually been in police custody even though he was in a building used by the police for questioning, because actions taken by the interviewing officer indicated that the juvenile had been free to leave. Whether a person is actually free to leave, said the Court, can only be determined by examining the totality of the circumstances surrounding the interrogation.⁶⁵

The 2005 U.S. Supreme Court case of *Muehler v. Mena*⁶⁶ made clear that an officer’s authority to detain occupants of a dwelling incident to the execution of a valid search warrant is absolute and unqualified and does not require any justification beyond the warrant itself—even when the occupants are not suspected of any wrongdoing. In other words, officers who are conducting a lawful search under the authority of a warrant may detain individuals found occupying the premises being searched in order to prevent flights in the event incriminating evidence is found, to minimize the risk of harm to the officers, and simply to facilitate the search itself.⁶⁷

The distinction between *arrest* and *detention* is a very important one. In a refinement of the *Mendenhall* decision, the U.S. Supreme Court in the 2015 case of *Rodriguez v. U.S.* made clear that police detention is not the same as arrest. In *Rodriguez*, the Court held that police officers may detain an individual as long it “reasonably takes police to conduct the investigation.” For example, if a motorist has been stopped for speeding, then a police officer can detain him or her for the amount of time that it would take a reasonable officer to check your driver’s license, insurance, call in to the dispatcher to validate your license plate number, write the ticket, and complete any associated administrative tasks. He might also detain you while he visually examines your vehicle to see if its lights are functioning properly. Unless he or she has probable cause to detain the driver any longer (such as smelling the odor of drugs wafting from the vehicle), then the detention must end and the driver will be free to go. During the time that the person has been detained, according to the Court, he was not under arrest.

Arrests that follow the questioning of a suspect are probably the most common type of arrest. When the decision to arrest is reached, the officer has come to the conclusion that a crime has been committed and that the suspect is probably the one who committed it. The presence of these elements constitutes the probable cause needed for an arrest. Probable cause is the minimum standard necessary for an arrest under any circumstances.

arrest

The act of taking an adult or juvenile into physical custody by authority of law for the purpose of charging the person with a criminal offense, a delinquent act, or a status offense, terminating with the recording of a specific offense.

Lecture Note Define *arrest*, and describe how popular depictions of the arrest process may not be consistent with legal understandings of the term.

You can only
protect your liberties
in this world by
protecting the other
man’s freedom.

—Clarence Darrow
(1857–1938)

CJ News**Supreme Court Says Police Need Warrant for GPS Tracking**

In 2014, NYPD officers tracked a pharmacy robber using a GPS device that they had hidden in a bottle of prescription painkillers. The robber, Scott Kato, 45, had a long criminal record and was soon cornered when his car was stopped in traffic. He was shot dead after he pointed a handgun at officers who surrounded the vehicle. Because the GPS device was hidden in a decoy bottle, its innovative use as a crime-fighting technology was legal. However, until recently, law enforcement officers did not need a warrant to put a global positioning system (GPS) tracking device under a suspect's car and see where it went.

After all, police don't need a warrant to get into their cars and follow suspects through the streets and, some have argued, GPS systems are basically doing the same thing, only digitally.

The Supreme Court, however, has decided that GPS devices are far more intrusive than tailing a car. In January 2012, the justices voted 9–0 that the FBI needed a warrant when attaching a GPS device to the underside of a suspected drug dealer's vehicle.

"GPS monitoring generates a precise, comprehensive record of a person's public movement that reflects a wealth of detail about her familial, political, religious and sexual associations," wrote Justice Sonia Sotomayor.

The case, *U.S. v. Jones*, was the first time the court dealt with global positioning systems, which became a common police tool only in recent years, due to their falling cost. The Court also signaled that it won't be the last time it deals with the booming field of high-tech surveillance, which also includes using signals emitted from cell phones to track someone down.

Although all of the justices agreed that the FBI had violated the Fourth Amendment, which protects against unreasonable search and seizure, they were split on how the violation took place.

A five-member majority held that when FBI agents attached the GPS device, they were in effect trespassing. This opinion, which will be the basis for all future court decisions, holds that a car cannot be touched, in the same way that a house cannot be entered, even when that car is out on the public streets.

But Justice Samuel Alito, speaking for the four-member minority, contended that the real violation was not touching the car, but was in violating the driver's expectation of privacy. This is part of a legal theory the Court has been applying for 45 years, which holds that the Fourth Amendment "protects people, not places," he wrote.

Alito explained there would be future cases when the majority's concept of trespassing would no longer apply to high-tech tracking. For instance, when a car comes with a GPS device already in it, the police do not even have to touch the car to link into the device. He added that more than 322 million cell phones in the nation have chips in them allowing phone companies to track customers' locations. Again, without touching the cell phone, police can simply obtain tracking data from the companies.

Justice Sotomayor wrote that it could take a while for the courts to sort out all the implications of tracking technology. "In the course of carrying out mundane tasks," she wrote, Americans



▲ A Las Vegas police officer tracks a suspect vehicle using GPS tracking technology. What role did such devices play in the 2012 U.S. Supreme Court case of *U.S. v. Jones*? Following the justices' reasoning in that case, under what circumstances can the police use GPS devices to track suspects' vehicles?

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disclose which phone numbers they dial, which URLs they visit and "the books, groceries and medications they purchase."

Following *U.S. v. Jones*, the FBI was forced to turn off about 3,000 GPS tracking devices that it had in operation. In some cases, the agency had to get court orders to briefly turn the devices back on so they could be located and retrieved.

Police can still use GPS trackers if they get a search warrant; but Andrew Weissmann, the FBI's chief legal counsel, said that could be tricky. Officers would first need to justify their suspicions to a judge, showing "probable cause" and the need to use such a device.

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Arrests may also occur when an officer comes upon a crime in progress. Such situations often require apprehension of the offender to ensure the safety of the public. Most arrests made during crimes in progress, however, are for misdemeanors rather than felonies. In fact, many states do not allow arrest for a misdemeanor unless it is committed in the presence of an officer, since visible crimes in progress clearly provide the probable cause necessary for an arrest. In 2001, in a case that made headlines nationwide,⁶⁸ the U.S. Supreme Court upheld a warrantless arrest made by Lago Vista (Texas) Patrolman Bart Turek for a

seat-belt violation. In what many saw as an unreasonable exercise of discretion, Turek stopped and then arrested Gail Atwater, a young local woman whom he observed driving a pickup truck in which she and her two small children (ages three and five) were unbelted. Facts in the case showed that Turek verbally berated the woman after stopping her vehicle and that he handcuffed her, placed her in his squad car, and drove her to the local police station, where she was made to remove her shoes, jewelry, and eyeglasses and empty her pockets. Officers took her “mug shot” and placed her alone in a jail cell for about an hour, after which she was taken before a magistrate and released on \$310 bond. Atwater was charged with a misdemeanor violation of Texas seat-belt law. She later pleaded no contest and paid a \$50 fine. Soon afterward, she and her husband filed a Section 1983 lawsuit against the officer, his department, and the police chief, alleging that the actions of the officer violated Atwater’s Fourth Amendment right to be free from unreasonable seizures. The Court, however, concluded that “the Fourth Amendment does not forbid a warrantless arrest for a minor criminal offense, such as a misdemeanor seatbelt violation punishable only by a fine.”

Most jurisdictions allow arrest for a felony without a warrant when a crime is not in progress, as long as probable cause can be established; some, however, require a warrant. In those jurisdictions, arrest warrants are issued by magistrates when police officers can demonstrate probable cause. Magistrates will usually require that the officers seeking an arrest warrant submit a written affidavit outlining their reason for the arrest. In the case of *Payton v. New York* (1980),⁶⁹ the U.S. Supreme Court ruled that unless the suspect gives consent or an emergency exists, an arrest warrant is necessary if an arrest requires entry into a suspect’s private residence.⁷⁰ In *Payton*, the justices held that “[a]bsent exigent circumstances,” the “firm line at the entrance to the house . . . may not reasonably be crossed without a warrant.” The Court reiterated its *Payton* holding in the 2002 case of *Kirk v. Louisiana*.⁷¹ In *Kirk*, which involved an anonymous complaint about drug sales said to be taking place in the apartment of Kennedy Kirk, the justices reaffirmed their belief that “[t]he Fourth Amendment to the United States Constitution has drawn a firm line at the entrance to the home, and thus, the police need both probable cause to either arrest or search and exigent circumstances to justify a nonconsensual warrantless intrusion into private premises.”

Searches Incident to Arrest

The U.S. Supreme Court has established a clear rule that police officers have the right to conduct a search of a person being arrested, regardless of gender, and to search the area under the arrestee’s immediate control to protect themselves from attack.

This “rule of the game” regarding **search incident to an arrest** became firmly established in cases involving personal searches, such as the 1973 case of *U.S. v. Robinson*.⁷² In *Robinson*, the Court upheld an officer’s right to conduct a search without a warrant for purposes of personal protection and to use the fruits of the search when it turns up contraband. In the words of the Court, “A custodial arrest of a suspect based upon probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires no additional jurisdiction.”⁷³

The Court’s decision in *Robinson* reinforced an earlier ruling in *Terry v. Ohio* (1968)⁷⁴ involving a seasoned officer who conducted a pat-down search of two men whom he suspected were casing a store, about to commit a robbery. The arresting officer was a 39-year veteran of police work who testified that the men “did not look right.” When he approached them, he suspected they might be armed. Fearing for his life, he quickly spun the men around, put them up against a wall, patted down their clothing, and found a gun on one of the men. The man, Terry, was later convicted in Ohio courts of carrying a concealed weapon.

Terry’s appeal was based on the argument that the suspicious officer had no probable cause to arrest him and therefore no cause to search him. The search, he argued, was illegal, and the evidence obtained should not have been used against him. The Supreme Court disagreed, saying, “In view of these facts, we cannot blind ourselves to the need for law enforcement officers to protect themselves and other prospective victims of violence in situations where they may lack probable cause for an arrest.”

The *Terry* case set the standard for a brief stop and frisk based on reasonable suspicion. Attorneys refer to such brief encounters as *Terry-type stops*. **Reasonable suspicion** can be

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search incident to an arrest

A warrantless search of an arrested individual conducted to ensure the safety of the arresting officer. Because individuals placed under arrest may be in possession of weapons, courts have recognized the need for arresting officers to protect themselves by conducting an immediate search of arrestees without obtaining a warrant.

reasonable suspicion

The level of suspicion that would justify an officer in making further inquiry or in conducting further investigation. Reasonable suspicion may permit stopping a person for questioning or for a simple pat-down search. Also, a belief, based on a consideration of the facts at hand and on reasonable inferences drawn from those facts, that would induce an ordinarily prudent and cautious person under the same circumstances to conclude that criminal activity is taking place or that criminal activity has recently occurred. Reasonable suspicion is a *general* and reasonable belief that a crime is in progress or has occurred, whereas probable cause is a reasonable belief that a *particular* person has committed a *specific* crime.

detention

Police custody, short of arrest, that is based on reasonable suspicion. Unlike arrest, the amount of time a person may be detained depends upon how long it would reasonably take to conduct an investigation of the facts at hand or to finish police business (i.e., to issue a traffic ticket).

defined as a belief, based on a consideration of the facts at hand and on reasonable inferences drawn from those facts, that would induce an ordinarily prudent and cautious person under the same circumstances to conclude that criminal activity is taking place or that criminal activity has recently occurred. It is the level of suspicion needed to justify an officer in making further inquiry or in conducting further investigation. Reasonable suspicion, which is a *general* and reasonable belief that a crime is in progress or has occurred, should be differentiated from probable cause.

Reasonable suspicion provides the basis for the brief **detention** of a person, but is not enough for arrest. According to the courts, detention can last only for the amount of time that's reasonably sufficient for an officer to investigate the offense, question the person who was stopped, and conduct limited searches. Consequently, in 1991, 11 years after the *Mendenhall* decision, the Court accepted the common law definition of arrest, noting that "there must be either application of physical force (or the laying on of hands), or submission to the assertion of authority" for an arrest to have occurred. Probable cause, as noted earlier, is a reasonable belief that a *particular* person has committed a *specific* crime. It is important to note that the *Terry* case, for all the authority it conferred on officers, also made it clear that officers must have reasonable grounds for any stop and frisk that they conduct. Read more about the case of *Terry v. Ohio* at <http://tinyurl.com/yf2jhc2>.

In 1989, in the case of *U.S. v. Sokolow*,⁷⁵ the Supreme Court clarified the basis on which law enforcement officers, lacking probable cause to believe that a crime has occurred, may stop and briefly detain a person for investigative purposes. In *Sokolow*, the Court ruled that the legitimacy of such a stop must be evaluated according to a "totality of circumstances" criterion in which all aspects of the defendant's behavior, taken in concert, may provide the basis for a legitimate stop based on reasonable suspicion. In this case, the defendant, Andrew Sokolow, appeared suspicious to police because while traveling under an alias from Honolulu, he had paid \$2,100 in \$20 bills (from a large roll of money) for two airplane tickets after spending a surprisingly small amount of time in Miami. In addition, the defendant was obviously nervous and checked no luggage. A warrantless airport investigation by Drug Enforcement Administration (DEA) agents uncovered more than 1,000 grams of cocaine in the defendant's belongings. In upholding Sokolow's conviction, the Court ruled that although no single type of behavior was proof of illegal activity, all his actions together created circumstances under which suspicion of illegal activity was justified.

In 2002, the Court reinforced the *Sokolow* decision in *U.S. v. Arvizu* when it ruled that the "balance between the public interest and the individual's right to personal security"⁷⁶ "tilts in favor of a standard less than probable cause in brief investigatory stops of persons

► Plain-clothes police detectives searching drug suspects in Harlem, New York City. The courts have generally held that to protect themselves and the public, officers have the authority to search suspects being arrested. What are the limits of such searches?

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or vehicles . . . if the officer's action is supported by reasonable suspicion to believe that criminal activity may be afoot."⁷⁷ In the words of the Court, "This process allows officers to draw on their own experiences and specialized training to make inferences from and deductions about the cumulative information available."⁷⁸

In 1993, in the case of *Minnesota v. Dickerson*,⁷⁹ the U.S. Supreme Court placed new limits on an officer's ability to seize evidence discovered during a pat-down search conducted for protective reasons when the search itself was based merely on suspicion and failed to immediately reveal the presence of a weapon. In this case, the high court ruled that "if an officer lawfully pats down a suspect's outer clothing and feels an object whose contour or mass makes its identity immediately apparent, there has been no invasion of the suspect's privacy beyond that already authorized by the officer's search for weapons." However, in *Dickerson*, the justices ruled that "the officer never thought that the lump was a weapon, but did not immediately recognize it as cocaine." The lump was determined to be cocaine only after the officer "squeezed, slid, and otherwise manipulated the pocket's contents." Hence, the Court held, the officer's actions in this case did not qualify under what might be called a "plain-feel" exception. In any case, said the Court, the search in *Dickerson* went far beyond what is permissible under *Terry*, where officer safety was the crucial issue. The Court summed up its ruling in *Dickerson* this way: "While *Terry* entitled [the officer] to place his hands on respondent's jacket and to feel the lump in the pocket, his continued exploration of the pocket after he concluded that it contained no weapon was unrelated to the sole justification for the search under *Terry*" and was therefore illegal.

Just as arrest must be based on probable cause, officers may not stop and question an unwilling citizen whom they have no reason to suspect of a crime. In the case of *Brown v. Texas* (1979),⁸⁰ two Texas law enforcement officers stopped the defendant and asked for identification. Ed Brown, they later testified, had not been acting suspiciously, nor did they think he might have a weapon. The stop was made simply because officers wanted to know who he was. Brown was arrested under a Texas statute that required a person to identify himself properly and accurately when asked to do so by peace officers. Eventually, his appeal reached the U.S. Supreme Court, which ruled that under the circumstances of the *Brown* case, a person "may not be punished for refusing to identify himself."

In the 2004 case of *Hiibel v. Sixth Judicial District Court of Nevada*,⁸¹ however, the Court upheld Nevada's "stop-and-identify" law that requires a person to identify himself or herself to police if they encounter the person under circumstances that reasonably indicate that he or she "has committed, is committing or is about to commit a crime." The *Hiibel* case was an extension of the reasonable suspicion doctrine set forth earlier in *Terry*.

In *Smith v. Ohio* (1990),⁸² the Court held that an individual has the right to protect his or her belongings from unwarranted police inspection. In *Smith*, the defendant was approached by two officers in plain clothes who observed that he was carrying a brown paper bag. The officers asked him to "come here a minute" and, when he kept walking, identified themselves as police officers. The defendant threw the bag onto the hood of his car and attempted to protect it from the officers' intrusion. Marijuana was found inside the bag, and the defendant was arrested. Because there was little reason to stop the suspect in this case and because control over the bag was not thought necessary for the officers' protection, the Court found that the Fourth Amendment protects both "the traveler who carries a toothbrush and a few articles of clothing in a paper bag" and "the sophisticated executive with the locked attaché case."

The following year, however, in what some Court observers saw as a turnabout, the Court ruled in *California v. Hodari D.* (1991)⁸³ mentioned earlier, that suspects who flee from the police and throw away evidence as they retreat may later be arrested based on the incriminating nature of the abandoned evidence. The significance of *Hodari* for future police action was highlighted by California prosecutors who pointed out that cases like *Hodari* occur "almost every day in this nation's urban areas."⁸⁴

In 2000, the Court decided the case of William Wardlow.⁸⁵ Wardlow had fled upon seeing a caravan of police vehicles converge on an area of Chicago known for narcotics trafficking. Officers caught him, however, and conducted a pat-down search of his clothing for weapons, revealing a handgun. The officers arrested Wardlow on weapons charges, but his lawyer argued that police had acted illegally in stopping him because they did not have reasonable suspicion that he had committed an offense. The Illinois Supreme Court agreed with

Lecture Note Explain how probable cause, suspicion, and general police procedure are all important in day-to-day police decisions of whom to stop and how to proceed with search and interrogation.

Police work is
the only profession
that gives you the test
first, then the lesson.

—Anonymous

CJ News**Supreme Court Says Police Need Warrants Before Searching Cell Phones**

In 2014, in the case of *Riley v. California*, the U.S. Supreme Court ruled that under most circumstances police officers are required to obtain a warrant before accessing and searching the data stored on a suspect's cell phone. In the words of the Court:

. . . Riley was stopped for a traffic violation, which eventually led to his arrest on weapons charges. An officer searching Riley incident to the arrest seized a cell phone from Riley's pants pocket. The officer accessed information on the phone and noticed the repeated use of a term associated with a street gang. At the police station two hours later, a detective specializing in gangs further examined the phone's digital contents. Based in part on photographs and videos that the detective found, the State charged Riley in connection with a shooting that had occurred a few weeks earlier and sought an enhanced sentence based on Riley's gang membership. Riley moved to suppress all evidence that the police had obtained from his cell phone. The trial court denied the motion, and Riley was convicted. The California Court of Appeal affirmed.

Held: The police generally may not, without a warrant, search digital information on a cell phone seized from an individual who has been arrested.

Here's how the Court reasoned:

Cell phones differ in both a quantitative and a qualitative sense from other objects that might be carried on an arrestee's person. Notably, modern cell phones have an immense storage capacity. Before cell phones, a search of a person was limited by physical realities and generally constituted only a narrow intrusion on privacy. But cell phones can store millions of pages of text, thousands of pictures, or hundreds of videos. This has several interrelated privacy consequences. First, a cell phone collects in one place many distinct types of information that reveal much more in combination than any isolated record. Second, the phone's capacity allows even just one type of information to convey far more than previously

possible. Third, data on the phone can date back for years. In addition, an element of pervasiveness characterizes cell phones but not physical records. A decade ago officers might have occasionally stumbled across a highly personal item such as a diary, but today many of the more than 90% of American adults who own cell phones keep on their person a digital record of nearly every aspect of their lives.

(ii) The scope of the privacy interests at stake is further complicated by the fact that the data viewed on many modern cell phones may in fact be stored on a remote server. Thus, a search may extend well beyond papers and effects in the physical proximity of an arrestee, a concern that the United States recognizes but cannot definitively foreclose.

It is true that this decision will have some impact on the ability of law enforcement to combat crime. But the Court's holding is not that the information on a cell phone is immune from search; it is that a warrant is generally required before a search. The warrant requirement is an important component of the Court's Fourth Amendment jurisprudence, and warrants may be obtained with increasing efficiency. In addition, although the search incident to arrest exception does not apply to cell phones, the continued availability of the exigent circumstances exception may give law enforcement a justification for a warrantless search in particular cases.

Chief Justice John Roberts who wrote the decision, acknowledged that the ruling would make police work harder. But, "Privacy comes at a cost," he said. Law enforcement officials, however, expressed disappointment with the ruling. Technology "is making it easier and easier for criminals to do their trade," said one district attorney, while the court "is making it harder for law enforcement to do theirs."

References: *Riley v. California*, U.S. Supreme Court (decided June 25, 2014); and "Private Lives," The 10-Point, *Wall Street Journal*, June 26, 2014.

Wardlow's attorney, holding that "sudden flight in a high crime area does not create a reasonable suspicion justifying a *Terry* stop because flight may simply be an exercise of the right to 'go on one's way.'"⁸⁶ The case eventually reached the U.S. Supreme Court, which overturned the Illinois court, finding instead that the officers' actions did not violate the Fourth Amendment. In the words of the Court, "This case, involving a brief encounter between a citizen and a police officer on a public street, is governed by *Terry*, under which an officer who has a reasonable, articulable suspicion that criminal activity is afoot may conduct a brief, investigatory stop. While 'reasonable suspicion' is a less demanding standard than probable cause, there must be at least a minimal level of objective justification for the stop. An individual's presence in a 'high-crime area,' standing alone, is not enough to support a reasonable, particularized suspicion of criminal activity, but a location's characteristics are relevant in determining whether the circumstances are sufficiently suspicious to warrant further investigation. . . . In this case, moreover, it was also Wardlow's unprovoked flight that aroused the officers' suspicions. Nervous, evasive behavior is another pertinent factor in determining reasonable suspicion . . . and headlong flight is the consummate act of evasion."⁸⁷

Emergency Searches of Persons

It is easy to imagine emergency situations in which officers may have to search people based on quick decisions: a person who matches the description of an armed robber, a woman who is found unconscious on the floor, a man who has what appears to be blood on his shoes.

Such searches can save lives by disarming fleeing felons or by uncovering a medical reason for an emergency situation. They may also prevent criminals from escaping or destroying evidence.

Emergency searches of persons, like those of premises, fall under the exigent circumstances exception to the warrant requirement of the Fourth Amendment. In the 1979 case of *Arkansas v. Sanders*,⁸⁸ the Supreme Court recognized the need for such searches “where the societal costs of obtaining a warrant, such as danger to law officers or the risk of loss or destruction of evidence, outweigh the reasons for prior recourse to a neutral magistrate.”⁸⁹

The 1987 case of *U.S. v. Borchardt*,⁹⁰ decided by the Fifth Circuit Court of Appeals, held that Ira Eugene Borchardt could be prosecuted for heroin uncovered during medical treatment, even though the defendant had objected to the treatment.

The Legal Counsel Division of the FBI provides the following guidelines for conducting emergency warrantless searches of individuals when the possible destruction of evidence is at issue.⁹¹ (Keep in mind that there may be no probable cause to *arrest* the individual being searched.) All four conditions must apply:

1. There was probable cause at the time of the search to believe that there was evidence concealed on the person searched.
2. There was probable cause to believe an emergency threat of destruction of evidence existed at the time of the search.
3. The officer had no prior opportunity to obtain a warrant authorizing the search.
4. The action was no greater than necessary to eliminate the threat of destruction of evidence.

Vehicle Searches

Vehicles present a special law enforcement problem. They are highly mobile, and when a driver or an occupant is arrested, the need to search the vehicle may be immediate.

The first significant Supreme Court case involving an automobile was that of *Carroll v. U.S.*⁹² in 1925. In the *Carroll* case, a divided Court ruled that a warrantless search of an automobile or other vehicle is valid if it is based on a reasonable belief that contraband is present. In 1964, however, in the case of *Preston v. U.S.*,⁹³ the limits of warrantless vehicle searches were defined. Preston was arrested for vagrancy and taken to jail. His vehicle was impounded, towed to the police garage, and later searched. Two revolvers were uncovered in the glove compartment, and more incriminating evidence was found in the trunk. Preston was convicted on weapons possession and other charges and eventually appealed to the U.S. Supreme Court. The Court held that the warrantless search of Preston’s vehicle had occurred while the automobile was in secure custody and had therefore been illegal. Time and circumstances would have permitted acquisition of a warrant to conduct the search, the Court reasoned. Similarly, in 2009, the Court, in the case of *Arizona v. Gant*,⁹⁴ found that vehicle searches “incident to a recent occupant’s arrest” cannot be authorized without a warrant if there is “no possibility the arrestee could gain access to the vehicle at the time of the search.”

When the search of a vehicle occurs after it has been impounded, however, that search may be legitimate if it is undertaken for routine and reasonable purposes. In the case of *South Dakota v. Opperman* (1976),⁹⁵ for example, the Court held that a warrantless search undertaken for purposes of inventorying and safekeeping the personal possessions of the car’s owner was not illegal. The intent of the search, which had turned up marijuana, had not been to discover contraband but to secure the owner’s belongings from possible theft. Again, in *Colorado v. Bertine* (1987),⁹⁶ the Court reinforced the idea that officers may open closed containers found in a vehicle while conducting a routine search for inventorying purposes. In the words of the Court, such searches are “now a well-defined exception in the warrant requirement.” In 1990, however, in the precedent-setting case of *Florida v. Wells*,⁹⁷ the Court agreed with a lower court’s suppression of marijuana evidence discovered in a locked suitcase in the trunk of a defendant’s impounded vehicle. In *Wells*, the Court held that standardized criteria authorizing the search of a vehicle for inventorying purposes were necessary before such a discovery could be legitimate. Standardized criteria, said the Court, might take the form of department policies, written general orders, or established routines.

Lecture Note Discuss the U.S. Supreme Court’s rationale for allowing warrantless vehicle searches in cases in which the vehicle might quickly leave the jurisdiction of the investigating officers. Tell the class that because motor vehicles are highly mobile, officers may have the authority to search vehicles they have stopped without a warrant if they have reason to believe that the vehicles may harbor contraband or other evidence.

fleeing-targets exception

An exception to the exclusionary rule that permits law enforcement officers to search a motor vehicle based on probable cause but without a warrant. The fleeing-targets exception is predicated on the fact that vehicles can quickly leave the jurisdiction of a law enforcement agency.

Generally speaking, where vehicles are concerned, an investigatory stop is permissible under the Fourth Amendment if supported by reasonable suspicion,⁹⁸ and a warrantless search of a stopped car is valid if it is based on probable cause.⁹⁹ Reasonable suspicion can expand into probable cause when the facts in a given situation so warrant. In the 1996 case of *Ornelas v. U.S.*,¹⁰⁰ for example, two experienced Milwaukee police officers stopped a car with California license plates that had been spotted in a motel parking lot known for drug trafficking after the Narcotics and Dangerous Drugs Information System (NADDIS) identified the car's owner as a known or suspected drug trafficker. One of the officers noticed a loose panel above an armrest in the vehicle's backseat and then searched the car. A package of cocaine was found beneath the panel, and the driver and a passenger were arrested. Following conviction, the defendants appealed to the U.S. Supreme Court, claiming that no probable cause to search the car existed at the time of the stop. The majority opinion, however, noted that in the view of the court that originally heard the case, "the model, age, and source-State origin of the car, and the fact that two men traveling together checked into a motel at 4 o'clock in the morning without reservations, formed a drug-courier profile and . . . this profile together with the [computer] reports gave rise to a reasonable suspicion of drug-trafficking activity. . . . [I]n the court's view, reasonable suspicion became probable cause when [the deputy] found the loose panel."¹⁰¹ Probable cause permits a warrantless search of a vehicle because it is able to quickly leave a jurisdiction. This exception to the exclusionary rule is called the **fleeing-targets exception**.¹⁰²

Warrantless vehicle searches can extend to any area of the vehicle and may include sealed containers, the trunk, and the glove compartment if officers have probable cause to conduct a purposeful search or if officers have been given permission to search the vehicle. In the 1991 case of *Florida v. Jimeno*,¹⁰³ arresting officers stopped a motorist, who gave them permission to search his car. The defendant was later convicted on a drug charge when a bag on the floor of the car was found to contain cocaine. Upon appeal to the U.S. Supreme Court, however, he argued that the permission given to search his car did not extend to bags and other items within the car. In a decision that may have implications beyond vehicle searches, the Court held that "[a] criminal suspect's Fourth Amendment right to be free from unreasonable searches is not violated when, after he gives police permission to search his car, they open a closed container found within the car that might reasonably hold the object of the search. The amendment is satisfied when, under the circumstances, it is objectively reasonable for the police to believe that the scope of the suspect's consent permitted them to open the particular container."¹⁰⁴

In *U.S. v. Ross* (1982),¹⁰⁵ the Court found that officers had not exceeded their authority in opening a bag in the defendant's trunk that was found to contain heroin. The search was held to be justifiable on the basis of information developed from a search of the passenger compartment. The Court said, "If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search."¹⁰⁶ Moreover, according to the 1996 U.S. Supreme Court decision in *Whren v. U.S.*,¹⁰⁷ officers may stop a vehicle being driven suspiciously and then search it once probable cause has developed, even if their primary assignment centers on duties other than traffic enforcement or "if a reasonable officer would not have stopped the motorist absent some additional law enforcement objective" (which in the case of *Whren* was drug enforcement).

Motorists¹⁰⁸ and their passengers may be ordered out of stopped vehicles in the interest of officer safety, and any evidence developed as a result of such a procedure may be used in court. In 1997, for example, in the case of *Maryland v. Wilson*,¹⁰⁹ the U.S. Supreme Court overturned a decision by a Maryland court that held that crack cocaine found during a traffic stop was seized illegally when it fell from the lap of a passenger ordered out of a stopped vehicle by a Maryland state trooper. The Maryland court reasoned that the police should not have authority to order seemingly innocent passengers out of vehicles—even vehicles that have been stopped for legitimate reasons. The Supreme Court cited concerns for officer safety in overturning the Maryland court's ruling and held that the activities of passengers are subject to police control. Similarly, in 2007, in the case of *Brendlin v. California*,¹¹⁰ the Court ruled that passengers in stopped vehicles are necessarily detained as a result of the stop and that they should expect that, for safety reasons, officers will exercise "unquestioned police command" over them for the duration of the stop. However, any passenger in

Freedom or Safety? You Decide

Religion and Public Safety

In 2014, 20-year-old Cassandra Belin was convicted by a French court and fined 150 Euros for wearing a full-face Islamic veil (or niqab) in public in violation of a 2011 French law. The French government initiated a ban on the wearing of veils, or Islamic burkas, following a number of terrorist incidents. French police can impose fines on women who wear veils in public, although recent reports reveal that few women have actually been ticketed.



▲ A woman wearing a burqa. Can religious values, like those requiring the wearing of a burqa, be reconciled with public interests in safety and security?

The French ban was preceded by an incident in Florida in 2003, when state Judge Janet Thorpe ruled that a Muslim woman could not wear a veil while being photographed for a state driver's license. The woman, Sultaana Freeman, claimed that her religious rights were violated when the state department of motor vehicles required that she reveal her face for the photograph. She offered to show her eyes, but not the rest of her face, to the camera.

Judge Thorpe said, however, that a "compelling interest in protecting the public from criminal activities and security threats" did not place an undue burden on Freeman's ability to practice her religion.

After the hearing, Freeman's husband, Abdul-Maalik Freeman, told reporters, "This is a religious principle; this is a principle that's imbedded in us as believers. So, she's not going to do that." Howard Marks, the Freemans' attorney, supported by the ACLU, filed an appeal claiming that the ruling was counter to guarantees of religious freedom inherent in the U.S. Constitution. Two years later, however, a Florida court of appeals denied further hearings in the case.

YOU DECIDE

Do the demands of public safety justify the kinds of restrictions on religious practice described here? If so, would you go so far as the French practice of banning the wearing of veils in public? As an alternative, should photo IDs, such as driver's licenses, be replaced with other forms of identification (such as an individual's stored DNA profile) in order to accommodate the beliefs of individuals like the Freemans?

References: "French Court Upholds Controversial Burqa Ban," Al Arabiya News, <http://english.alarabiya.net/en/News/world/2014/01/08/French-court-upholds-controversial-burqa-ban-.html> (January 8, 2014); "Judge: No Veil in Driver's License Photo," Associated Press, June 6, 2003; Associated Press, "FL Appeals Court Upholds Ban of Veil in Driver's License Photo," September 7, 2005, <http://www.newsday.com/news/nationworld/nation/orl-bk-free-man090705,0,2758466.story?coll=ny-leadnationalnews-headlines> (accessed April 17, 2012); Andrew Chung, "French Ban on Islamic Veil Turns Out to Be Toothless," *Toronto Star*, March 31, 2012, <http://www.thestar.com/news/world/article/1154781-french-ban-on-islamic-veil-turns-out-to-be-toothless> (accessed May 20, 2012).

a stopped automobile may use his or her Fourth Amendment rights to challenge the stop's legality.

In 1998, however, the U.S. Supreme Court placed clear limits on warrantless vehicle searches. In the case of *Knowles v. Iowa*,¹¹¹ an Iowa policeman stopped Patrick Knowles for speeding, issued him a citation, but did not make a custodial arrest. The officer then conducted a full search of his car without Knowles's consent and without probable cause. Marijuana was found, and Knowles was arrested. At the time, Iowa state law gave officers authority to conduct full-blown automobile searches when issuing only a citation. The Supreme Court found, however, that while concern for officer safety during a routine traffic stop may justify the minimal intrusion of ordering a driver and passengers out of a car, it does not by itself justify what it called "the considerably greater intrusion attending a full field-type search." While a search incident to arrest may be justifiable in the eyes of the Court, a search incident to citation clearly is not.

In the 1999 case of *Wyoming v. Houghton*,¹¹² the Court ruled that police officers with probable cause to search a car may inspect passengers' belongings found in the car that are capable of concealing the object of the search. *Thornton v. U.S.* (2004) established the authority of arresting officers to search a car without a warrant even if the driver had previously exited the vehicle.¹¹³

150 PART II Policing

► A Mississippi state trooper searches a car. Warrantless vehicle searches, where the driver is suspected of a crime, have generally been justified by the fact that vehicles are highly mobile and can quickly leave police jurisdiction. Can passengers in the vehicle also be searched?

AP Photo/The Hattiesburg American, Matt Bush



In 2005, in the case of *Illinois v. Caballes*,¹¹⁴ the Court held that the use of a drug-sniffing dog during a routine and lawful traffic stop is permissible and may not even be a search within the meaning of the Fourth Amendment. In writing for the majority, Justice John Paul Stevens said that “the use of a well-trained narcotics-detection dog—one that does not expose noncontraband items that otherwise would remain hidden from public view—during a lawful traffic stop generally does not implicate legitimate privacy interests.”

Finally, in 2011, the Court created a good-faith exception to the exclusionary rule applicable to a search that was authorized by precedent at the time of the search but which was a type of search that was subsequently ruled unconstitutional. In that case, *Davis. v. U.S.*, Willie Gene Davis was a passenger in a car stopped for a traffic violation in 2007.¹¹⁵ He subsequently gave officers a false name, and was arrested for giving false information to a police officer. The vehicle in which he was riding was searched, and officers discovered a handgun in Davis’s jacket, which he had left on the seat. Davis was charged and convicted for possession of an illegal weapon. Later, however, the U.S. Court of Appeals for the Eleventh Circuit found that the search was illegal, based on a previous Supreme Court ruling in the 2009 case of *Arizona v. Gant*.¹¹⁶ Nonetheless, the lower court upheld Davis’s conviction because the *Gant* ruling came after Davis’s arrest. The Supreme Court agreed, saying, “Searches conducted in objectively reasonable reliance on binding appellate precedent are not subject to the exclusionary rule.”

Roadblocks and Motor Vehicle Checkpoints

The Fourth and Fourteenth Amendments to the U.S. Constitution guarantee liberty and personal security to all people residing within the United States. Courts have generally held that police officers have no legitimate authority to detain or arrest people who are going about their business in a peaceful manner, unless there is probable cause to believe that a crime has been committed. In a number of instances, however, the U.S. Supreme Court has decided that community interests may necessitate a temporary suspension of personal liberty, even when probable cause is lacking. One such case is that of *Michigan Dept. of State Police v. Sitz* (1990),¹¹⁷ which involved the legality of highway sobriety checkpoints, including those at which nonsuspicious drivers are subjected to scrutiny. In *Sitz*, the Court ruled that such stops are reasonable insofar as they are essential to the welfare of the community as a whole.

In a second case, *U.S. v. Martinez-Fuerte* (1976),¹¹⁸ the Court upheld brief suspicionless seizures at a fixed international checkpoint designed to intercept illegal aliens. The Court noted that “to require that such stops always be based on reasonable suspicion would be impractical because the flow of traffic tends to be too heavy to allow the particularized study of a given car necessary to identify it as a possible carrier of illegal aliens. Such a requirement also would largely eliminate any deterrent to the conduct of well-disguised smuggling operations, even though smugglers are known to use these highways regularly.”¹¹⁹

In fact, in 2004, in the case of *Illinois v. Lidster*,¹²⁰ the Court held that information-seeking highway roadblocks are permissible. The stop in *Lidster*, said the Court, was permissible because its intent was merely to solicit motorists' help in solving a crime. "The law," said the Court, "ordinarily permits police to seek the public's voluntary cooperation in a criminal investigation."

Watercraft and Motor Homes

The 1983 case of *U.S. v. Villamonte-Marquez*¹²¹ widened the *Carroll* decision (discussed earlier) to include watercraft. In this case, the Court reasoned that a vehicle on the water can easily leave the jurisdiction of enforcement officials, just as a car or truck can.

In *California v. Carney* (1985),¹²² the Court extended police authority to conduct warrantless searches of vehicles to include motor homes. Earlier arguments had been advanced that a motor home, because it is more like a permanent residence, should not be considered a vehicle for purposes of search and seizure. In a 6–3 decision, the Court rejected those arguments, reasoning that a vehicle's appointments and size do not alter its basic function of providing transportation.

Houseboats were brought under the automobile exception to the Fourth Amendment warrant requirement in the 1988 Tenth Circuit Court case of *U.S. v. Hill*.¹²³ Learn more about vehicle pursuits and the Fourth Amendment at http://www.justicestudies.com/pubs/veh_pursuits.pdf.

Suspicionless Searches

In two 1989 decisions, the U.S. Supreme Court ruled for the first time in its history that there may be instances when the need to ensure public safety provides a **compelling interest** that negates the rights of any individual to privacy, permitting **suspicionless searches**—those that occur when a person is not suspected of a crime. In the case of *National Treasury Employees Union v. Von Raab* (1989),¹²⁴ the Court, by a 5–4 vote, upheld a program of the U.S. Customs Service that required mandatory drug testing for all workers seeking promotions or job transfers involving drug interdiction and the carrying of firearms. The Court's majority opinion read, "We think the government's need to conduct the suspicionless searches required by the Customs program outweighs the privacy interest of employees engaged directly in drug interdiction, and of those who otherwise are required to carry firearms."

The second case, *Skinner v. Railway Labor Executives' Association* (1989),¹²⁵ was decided on the same day. In *Skinner*, the justices voted 7–2 to permit the mandatory testing of railway crews for the presence of drugs or alcohol following serious train accidents. The *Skinner* case involved evidence of drugs in a 1987 train wreck outside of Baltimore, Maryland, in which 16 people were killed and hundreds were injured.

The 1991 Supreme Court case of *Florida v. Bostick*,¹²⁶ which permitted warrantless "sweeps" of intercity buses, moved the Court deeply into conservative territory. The *Bostick* case came to the attention of the Court as a result of the Broward County (Florida) Sheriff's Department's routine practice of boarding buses at scheduled stops and asking passengers for permission to search their bags. Terrance Bostick, a passenger on one of the buses, gave police permission to search his luggage, which was found to contain cocaine. Bostick was arrested and eventually pleaded guilty to charges of drug trafficking. The Florida Supreme Court, however, found merit in Bostick's appeal, which was based on a Fourth Amendment claim that the search of his luggage had been unreasonable. The Florida court held that "a reasonable passenger in [Bostick's] situation would not have felt free to leave the bus to avoid questioning by the police," and it overturned the conviction.

The state appealed to the U.S. Supreme Court, which held that the Florida Supreme Court had erred in interpreting Bostick's *feelings* that he was not free to leave the bus. In the words of the Court, "Bostick was a passenger on a bus that was scheduled to depart. He would not have felt free to leave the bus even if the police had not been present. Bostick's movements were 'confined' in a sense, but this was the natural result of his decision to take the bus." In other words, Bostick was constrained not so much by police action as by his own feelings that he might miss the bus were he to get off. Following this line of reasoning, the Court concluded that warrantless, suspicionless "sweeps" of buses, "trains,

Lecture Note Explain the U.S. Supreme Court's rationale in allowing suspicionless searches in cases in which the need to maintain public safety may provide a compelling interest that can negate an individual's right to privacy.

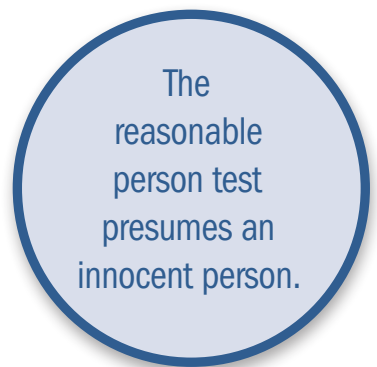
compelling interest

A legal concept that provides a basis for suspicionless searches when public safety is at issue. In two cases, the U.S. Supreme Court held that public safety may sometimes provide a sufficiently compelling interest to justify limiting an individual's right to privacy.

suspicionless search

A search conducted by law enforcement personnel without a warrant and without suspicion. Suspicionless searches are permissible only if based on an overriding concern for public safety.

The
reasonable
person test
presumes an
innocent person.



planes, and city streets” are permissible as long as officers (1) ask individual passengers for permission before searching their possessions, (2) do not coerce passengers to consent to a search, and (3) do not convey the message that citizen compliance with the search request is mandatory. Passenger compliance with police searches must be voluntary for the searches to be legal.

In contrast to the tone of Court decisions more than two decades earlier, the justices did not require officers to inform passengers that they were free to leave or that they had the right to deny officers the opportunity to search (although *Bostick* himself was so advised by Florida officers). Any reasonable person, the Court ruled, should feel free to deny the police request. In the words of the Court, “The appropriate test is whether, taking into account all of the circumstances surrounding the encounter, a reasonable passenger would feel free to decline the officers’ requests or otherwise terminate the encounter.” The Court continued, “Rejected, however, is *Bostick*’s argument that he must have been seized because no reasonable person would freely consent to a search of luggage containing drugs, since the ‘reasonable person’ test presumes an innocent person.”

Critics of the decision saw it as creating new “gestapo-like” police powers in the face of which citizens on public transportation will feel compelled to comply with police searches. Dissenting Justices Harry Blackmun, John Paul Stevens, and Thurgood Marshall held that “the bus sweep at issue in this case violates the core values of the Fourth Amendment.” The Court’s majority, however, defended its ruling by writing, “[T]he Fourth Amendment proscribes unreasonable searches and seizures; it does not proscribe voluntary cooperation.” In 2000, however, in the case of *Bond v. U.S.*,¹²⁷ the Court ruled that physical manipulation of a carry-on bag in the possession of a bus passenger without the owner’s consent does violate the Fourth Amendment’s proscription against unreasonable searches.

In the case of *U.S. v. Drayton* (2002),¹²⁸ the U.S. Supreme Court reiterated its position that police officers are not required to advise bus passengers of their right to refuse to cooperate with officers conducting searches or to refuse to be searched.

In 2004, the U.S. Supreme Court made it clear that suspicionless searches of vehicles at our nation’s borders are permitted, even when the searches are extensive. In the case of *U.S. v. Flores-Montano*,¹²⁹ customs officials disassembled the gas tank of a car belonging to a man entering the country from Mexico and found that it contained 37 kilograms of marijuana. Although the officers admitted that their actions were not motivated by any particular belief that the search would reveal contraband, the Court held that Congress has always granted “plenary authority to conduct routine searches and seizures at the border without probable cause or a warrant.” The Court stated that “the Government’s authority to conduct suspicionless inspections at the border includes the authority to remove, disassemble, and reassemble a vehicle’s fuel tank.” Learn more about public-safety exceptions to *Miranda* at <http://www.justicestudies.com/pubs/psafety.pdf>.

High-Technology Searches

The burgeoning use of high technology to investigate crime and to uncover violations of the criminal law is forcing courts throughout the nation to evaluate the applicability of constitutional guarantees in light of high-tech searches and seizures. In 1996, the California appellate court decision in *People v. Deutsch*¹³⁰ presaged the kinds of issues that are being encountered as American law enforcement expands its use of cutting-edge technology. In *Deutsch*, judges faced the question of whether a warrantless scan of a private dwelling with a thermal-imaging device constitutes an unreasonable search within the meaning of the Fourth Amendment. Such devices (also called *forward-looking infrared [FLIR] systems*) measure radiant energy in the radiant heat portion of the electromagnetic spectrum¹³¹ and display their readings as thermographs. The “heat picture” that a thermal imager produces can be used, as it was in the case of Dorian Deutsch, to reveal unusually warm areas or rooms that might be associated with the cultivation of drug-bearing plants, such as marijuana. Two hundred cannabis plants, which were being grown hydroponically under high-wattage lights in two walled-off portions of Deutsch’s home, were seized following an exterior thermal scan of her home by a police officer who drove by at 1:30 in the morning. Because no entry of the house was anticipated during the search, the officer had acted

without a search warrant. The California court ruled that the scan was an illegal search because “society accepts a reasonable expectation of privacy” surrounding “nondisclosed activities within the home.”¹³²

In the similar case of *Kyllo v. U.S.* (2001),¹³³ the U.S. Supreme Court reached much the same conclusion. Based on the results of a warrantless search conducted by officers using a thermal-imaging device, investigators applied for a search warrant of Kyllo’s home. The subsequent search uncovered more than 100 marijuana plants that were being grown under bright lights. In overturning Kyllo’s conviction on drug-manufacturing charges, the Court held (with regard to the original warrantless search with the thermal-imaging device), “Where, as here, the Government uses a device that is not in general public use, to explore details of a private home that would previously have been unknowable without physical intrusion, the surveillance is a Fourth Amendment ‘search,’ and is presumptively unreasonable without a warrant.”¹³⁴ Learn more about the issues surrounding search and seizure at <http://caselaw.lp.findlaw.com/data/constitution/amendment04>.

The Intelligence Function

The need for information leads police investigators to question both suspects and informants and, even more often, potentially knowledgeable citizens who may have been witnesses or victims. Data gathering is a crucial form of intelligence; without it, enforcement agencies would be virtually powerless to plan and effect arrests.

The importance of gathering information in police work cannot be overstressed. Studies have found that the one factor most likely to lead to arrest in serious crimes is the presence of a witness who can provide information to the police. Undercover operations, Neighborhood Watch programs, Crime Stoppers groups, and organized detective work all contribute this vital information.

5

Describe the intelligence function, including the roles of police interrogation and the *Miranda* warning.

Lecture Note Explain the intelligence function, including police interrogations, and discuss the role of *Miranda* warnings.

Informants

Information gathering is a complex process, and many ethical questions have been raised about the techniques police use to gather information. The use of paid informants, for example, is an area of concern to ethicists who believe that informants are often paid to get away with crimes. The police practice (endorsed by some prosecutors) of agreeing not to charge one offender out of a group if he or she will talk and testify against others is another concern.

As we have seen, probable cause is an important aspect of both police searches and legal arrests. The Fourth Amendment specifies that “no Warrants shall issue, but upon probable cause.” As a consequence, the successful use of informants in supporting requests for a warrant depends on the demonstrable reliability of their information. The case of *Aguilar v. Texas* (1964)¹³⁵ clarified the use of informants and established a two-pronged test. The U.S. Supreme Court ruled that informant information could establish probable cause if both of the following criteria are met:

1. The source of the informant’s information is made clear.
2. The police officer has a reasonable belief that the informant is reliable.

The two-pronged test of *Aguilar v. Texas* was intended to prevent the issuance of warrants on the basis of false or fabricated information. The case of *U.S. v. Harris* (1971)¹³⁶ provided an exception to the two-pronged *Aguilar* test. The *Harris* Court recognized the fact that when an informant provides information that is damaging to him or her, it is probably true. In *Harris*, an informant told police that he had purchased non-tax-paid whiskey from another person. Because the information also implicated the informant in a crime, it was held to be accurate, even though it could not meet

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.

—Fourth Amendment to the U.S. Constitution

the second prong of the *Aguilar* test. “Admissions of crime,” said the Court, “carry their own indicia of credibility—sufficient at least to support a finding of probable cause to search.”¹³⁷

In 1983, in the case of *Illinois v. Gates*,¹³⁸ the Court adopted a totality-of-circumstances approach, which held that sufficient probable cause for issuing a warrant exists where an informant can be reasonably believed on the basis of everything that the police know. The *Gates* case involved an anonymous informant who provided incriminating information about another person through a letter to the police. Although the source of the information was not stated and the police were unable to say whether the informant was reliable, the overall sense of things, given what was already known to police, was that the information supplied was probably valid. In *Gates*, the Court held that probable cause exists when “there is a fair probability that contraband or evidence of a crime will be found in a particular place.”

In the 1990 case of *Alabama v. White*,¹³⁹ the Supreme Court ruled that an anonymous tip, even in the absence of other corroborating information about a suspect, could form the basis for an investigatory stop if the informant accurately predicted the *future* behavior of the suspect. The Court reasoned that the ability to predict a suspect’s behavior demonstrates a significant degree of familiarity with the suspect’s affairs. In the words of the Court, “Because only a small number of people are generally privy to an individual’s itinerary, it is reasonable for the police to believe that a person with access to such information is likely to also have access to reliable information about that individual’s illegal activities.”¹⁴⁰

In 2000, in the case of *Florida v. J.L.*,¹⁴¹ the Court held that an anonymous tip that a person is carrying a gun does not, without more, justify a police officer’s stop and frisk of that person. Ruling that such a search is invalid under the Fourth Amendment, the Court rejected the suggestion of a firearm exception to the general stop-and-frisk rule.

The identity of informants may be kept secret only if sources have been explicitly assured of confidentiality by investigating officers or if a reasonably implied assurance of confidentiality has been made. In *U.S. Dept. of Justice v. Landano* (1993),¹⁴² the U.S. Supreme Court required that an informant’s identity be revealed through a request made under the federal Freedom of Information Act. In that case, the FBI had not specifically assured the informant of confidentiality, and the Court ruled that “the government is not entitled to a presumption that all sources supplying information to the FBI in the course of a criminal investigation are confidential sources.”

The mandatory recording of police interrogations offers overwhelming benefits at minimal cost.

interrogation

The information-gathering activity of police officers that involves the direct questioning of suspects.

Lecture Note Begin a discussion of police interrogation with the 1936 U.S. Supreme Court case of *Brown v. Mississippi*, which outlawed the use of physical force in interrogative settings. Discuss how some forms of coercion are inherent rather than obvious and how psychological manipulation can be a form of unfair interrogation.

Police Interrogation

In 2003, Illinois became the first state in the nation to require the electronic recording of police interrogations and confessions in homicide cases.¹⁴³ State lawmakers hoped that the use of recordings would reduce the incidence of false confessions as well as the likelihood of convictions based on such confessions. Under the law, police interrogators must create video- or audiotape recordings of any questioning involving suspects. The law prohibits the introduction in court of statements and confessions that have not been taped. Proponents of the law say that it will prevent police intimidation of murder suspects and will put an end to coerced confessions.

Some argue that the mandatory recording of police interrogations offers overwhelming benefits at minimal cost. “By creating an objective and reviewable record,” says University of San Francisco Law School’s Richard A. Leo, “electronic recording promotes truth-finding in the criminal process, relegates ‘swearing contests’ to the past, and saves scarce resources at multiple levels of the criminal justice system.”¹⁴⁴ According to Leo, requiring that all interrogations be recorded will benefit police and prosecutors by increasing the accuracy of confessions and convictions and “will also reduce the number of police-induced false confessions and the wrongful convictions they cause.”

The U.S. Supreme Court has defined **interrogation** as any behaviors by the police “that the police should know are reasonably likely to elicit an incriminating response from the suspect.”¹⁴⁵ Interrogation may involve activities that go well beyond mere verbal questioning, and the Court has held that interrogation may include “staged lineups, reverse lineups, positing guilt, minimizing the moral seriousness of crime, and casting blame on the victim or society.” It is noteworthy that the Court has also held that “police words or actions normally attendant to arrest and custody do not constitute interrogation” unless they involve pointed

or directed questions. An arresting officer may instruct a suspect on what to do and may chitchat with him or her without engaging in interrogation within the meaning of the law. Once police officers make inquiries intended to elicit information about the crime in question, however, interrogation has begun. The interrogation of suspects, like other areas of police activity, is subject to constitutional limits as interpreted by the courts. A series of landmark decisions by the U.S. Supreme Court has focused on police interrogation (Figure 5–2).

Physical Abuse

The first in a series of significant cases was that of *Brown v. Mississippi*,¹⁴⁶ decided in 1936. The *Brown* case began with the robbery of a white store owner in Mississippi in 1934. During the robbery, the victim was killed. A posse formed and went to the home of a local African-American man rumored to have been one of the perpetrators. They dragged the suspect from his home, put a rope around his neck, and hoisted him into a tree. They repeated this process a number of times, hoping to get a confession from the man but failing to do so. The posse was headed by a deputy sheriff who then arrested other suspects in the case and laid them over chairs in the local jail and whipped them with belts and buckles until they “confessed.” These confessions were used in the trial that followed, and all three defendants were convicted of murder. Their convictions were upheld by the Mississippi Supreme Court. In 1936, however, the case was reviewed by the U.S. Supreme Court, which overturned all of the convictions, saying that it was difficult to imagine techniques of interrogation more “revolting” to the sense of justice than those used in this case.

Inherent Coercion

Interrogation need not involve physical abuse for it to be contrary to constitutional principles. In the case of *Ashcraft v. Tennessee* (1944),¹⁴⁷ the U.S. Supreme Court found that interrogation involving **inherent coercion** was not acceptable. Ashcraft had been charged

inherent coercion

The tactics used by police interviewers that fall short of physical abuse but that nonetheless pressure suspects to divulge information.

INTERROGATION

The U.S. Supreme Court has defined interrogation as any behaviors by the police “that the police should know are reasonably likely to elicit an incriminating response from the suspect.” The Court also noted that “police words or actions normally attendant to arrest and custody do not constitute interrogation” unless they

involve pointed or directed questions. The interrogation of suspects, like other areas of police activity, is subject to constitutional limits as interpreted by the courts, and a series of landmark decisions by the U.S. Supreme Court has focused on police interrogations.

Physical Abuse:

The first in a series of significant cases was *Brown v. Mississippi*. In 1936, the court determined that physical abuse cannot be used to obtain a confession or elicit information from a suspect.

Inherent Coercion:

In the case of *Ashcraft v. Tennessee* (1944), the U.S. Supreme Court found that interrogation involving inherent coercion was not acceptable. Inherent coercion refers to any form of non-physical coercion, hostility, or pressure to try to force a confession from a suspect.



Psychological Manipulation:

Interrogation should not involve sophisticated trickery or manipulation. In the case of *Arizona v. Fulminante* (1991), the U.S. Supreme Court determined that it was not legal to allow an FBI informant posing as a fellow inmate to trick the suspect into a confession. Interrogators do not have to be scrupulously honest in confronting suspects, but there must be limits to the lengths that can be pursued in questioning a suspect.

Right to Lawyer at Interrogation:

Escobedo v. Illinois (1964) and *Minnick v. Mississippi* (1990).

FIGURE 5–2
Police Interrogation

Lecture Note Discuss the implications of the 1991 case of *Arizona v. Fulminante*, in which the U.S. Supreme Court held that, under limited circumstances, the admission of a coerced confession in a criminal trial might be nothing more than a “trial error”—one that does not require the automatic reversal of a lower court’s conviction.

Lecture Note Explain that as a result of the 1964 U.S. Supreme Court case of *Escobedo v. Illinois*, suspects have the right to have a lawyer present during police interrogations.

psychological manipulation

The manipulative actions by police interviewers, designed to pressure suspects to divulge information, that are based on subtle forms of intimidation and control.

with the murder of his wife, Zelma. He was arrested on a Saturday night and interrogated by relays of skilled interrogators until Monday morning, when he purportedly made a statement implicating himself in the murder. During questioning, he had faced a blinding light but was not physically mistreated. Investigators later testified that when the suspect requested cigarettes, food, or water, they “kindly” provided them. The Court’s ruling, which reversed Ashcraft’s conviction, made it plain that the Fifth Amendment guarantee against self-incrimination prohibits any form of official coercion or pressure during interrogation.

A similar case, *Chambers v. Florida*, was decided in 1940.¹⁴⁸ In that case, four black men were arrested without warrants as suspects in the robbery and murder of an elderly white man. After several days of questioning in a hostile atmosphere, the men confessed to the murder. The confessions were used as the primary evidence against them at their trial, and all four were sentenced to die. Upon appeal, the U.S. Supreme Court held that “the very circumstances surrounding their confinement and their questioning, without any formal charges having been brought, were such as to fill petitioners with terror and frightful misgivings.”¹⁴⁹ Learn more about the case of *Chambers v. Florida* at <http://tinyurl.com/4uy3c2w>.

Psychological Manipulation

Not only must interrogation be free of coercion and hostility, but it also cannot involve sophisticated trickery designed to ferret out a confession. Interrogators do not necessarily have to be scrupulously honest in confronting suspects, and the expert opinions of medical and psychiatric practitioners may be sought in investigations. However, the use of professionals skilled in **psychological manipulation** to gain confessions was banned by the Court in the case of *Leyra v. Denno*¹⁵⁰ in 1954, during the heyday of psychiatric perspectives on criminal behavior.

In 1991, in the case of *Arizona v. Fulminante*,¹⁵¹ the U.S. Supreme Court threw an even more dampening blanket of uncertainty over the use of sophisticated techniques to gain a confession. Oreste Fulminante was an inmate in a federal prison when he was approached secretly by a fellow inmate who was an FBI informant. The informant told Fulminante that other inmates were plotting to kill him because of a rumor that he had killed a child. He offered to protect Fulminante if he was told the details of the crime. Fulminante then described his role in the murder of his 11-year-old stepdaughter. Fulminante was arrested for that murder, tried, and convicted.

On appeal to the U.S. Supreme Court, Fulminante’s lawyers argued that his confession had been coerced because of the threat of violence communicated by the informant. The Court agreed that the confession had been coerced and ordered a new trial at which the confession could not be admitted into evidence. Simultaneously, however, the Court found that the admission of a coerced confession should be considered a harmless “trial error” that need not necessarily result in reversal of a conviction if other evidence still proves guilt. The decision was especially significant because it partially reversed the Court’s earlier ruling, in *Chapman v. California* (1967),¹⁵² where it was held that forced confessions were such a basic form of constitutional error that they automatically invalidated any conviction to which they related. At a second trial, where his confession was not entered into evidence, Fulminante was convicted again and sentenced to die. The Arizona Supreme Court overturned his conviction, however, ruling that testimony describing statements the victim had made about fearing for her life prior to her murder, and which had been entered into evidence, were hearsay and had prejudiced the jury.¹⁵³ Finally, the area of eyewitness identification bears discussion. In 2011, in the case of *State v. Henderson*,¹⁵⁴ the New Jersey Supreme Court held that the current legal standard for assessing eyewitness identifications must be revised because it did not offer adequate measures for reliability; did not sufficiently deter inappropriate police conduct; and overstated the jury’s ability to evaluate identification evidence.

In 2012, in the case of *Perry v. New Hampshire*,¹⁵⁵ the U.S. Supreme Court recognized problems with eyewitness identification, especially when such identification is obtained by skilled law enforcement interrogators. Still, the court denied that the Due Process Clause of the U.S. Constitution requires a preliminary judicial inquiry into the reliability of an eyewitness identification when the identification was not procured under unnecessarily suggestive circumstances arranged by law enforcement. Learn more about detecting deception from the FBI at http://www.justicestudies.com/pdf/truth_deception.pdf.

The Right to a Lawyer at Interrogation

In 1964, in the case of *Escobedo v. Illinois*,¹⁵⁶ the right to have legal counsel present during police interrogation was formally recognized. In 1981, the case of *Edwards v. Arizona*¹⁵⁷ established a “bright-line rule” (i.e., it specified a criterion that cannot be violated) for investigators to use in interpreting a suspect’s right to counsel. In *Edwards*, the U.S. Supreme Court reiterated its *Miranda* concern that once a suspect who is in custody and is being questioned has requested the assistance of counsel, all questioning must cease until an attorney is present.

The 1986 case of *Michigan v. Jackson*¹⁵⁸ provided further support for *Edwards*. In *Jackson*, the Court forbade police from initiating the interrogation of criminal defendants who had invoked their right to counsel at an arraignment or similar proceeding. In 1990, the Court refined the rule in *Minnick v. Mississippi*,¹⁵⁹ when it held that after the suspect has had an opportunity to consult his or her lawyer, interrogation may *not* resume unless the lawyer is present. Similarly, according to *Arizona v. Roberson* (1988),¹⁶⁰ the police may not avoid the suspect’s request for a lawyer by beginning a new line of questioning, even if it is about an unrelated offense.

In 1994, in the case of *Davis v. U.S.*,¹⁶¹ the Court “put the burden on custodial suspects to make unequivocal invocations of the right to counsel.” In the *Davis* case, a man being interrogated in the death of a sailor waived his *Miranda* rights but later said, “Maybe I should talk to a lawyer.” Investigators asked the suspect clarifying questions, and he responded, “No, I don’t want a lawyer.” Upon conviction he appealed, claiming that interrogation should have ceased when he mentioned a lawyer. The Court, in affirming the conviction, stated that “it will often be good police practice for the interviewing officers to clarify whether or not [the suspect] actually wants an attorney.”

In 2009, in something of an about-face, the U.S. Supreme Court held that “*Michigan v. Jackson* should be and now is overruled.” In the case of *Montejo v. Louisiana*,¹⁶² the Court found that strict interpretations of *Jackson* could lead to practical problems. Montejo had been charged with first-degree murder, and appointment of counsel was ordered at his arraignment. He did not, however, ask to see his attorney. Later that same day, the police read Montejo his *Miranda* rights, and he agreed to accompany them on a trip to locate the murder weapon. During the trip, he wrote an incriminating letter of apology to the victim’s widow. Upon returning, he met with his court-appointed attorney for the first time. At trial, his letter was admitted over defense objection, and he was convicted and sentenced to death. In the words of the Court, “Both *Edwards* and *Jackson* are meant to prevent police from badgering defendants into changing their minds about the right to counsel once they have invoked it, but a defendant who never asked for counsel has not yet made up his mind.” In effect, although an attorney had been appointed to represent Montejo, he had never actually invoked his right to counsel.

Finally, in 2010, in the case of *Maryland v. Shatzer*,¹⁶³ the Court held that police could reopen the interrogation of a suspect who has invoked his right to counsel following a 14-day or longer break in questioning. Even though the defendant (Shatzer) had been in state prison during the break, the justices said, he had been free “from the coercive power of an interrogator” during that time.

Suspect Rights: The *Miranda* Decision

In the area of suspect rights, no case is as famous as that of *Miranda v. Arizona* (1966),¹⁶⁴ which established the well-known **Miranda warnings**. Many people regard *Miranda* as the centerpiece of the Warren Court due-process rulings.

The case involved Ernesto Miranda, who was arrested in Phoenix, Arizona, and was accused of having kidnapped and raped a young woman. At police headquarters, he was identified by the victim. After being interrogated for 2 hours, Miranda signed a confession that formed the basis of his later conviction on the charges.

On appeal, the U.S. Supreme Court rendered what some regard as the most far-reaching opinion to have affected criminal justice in the last half century. The Court ruled that Miranda’s conviction was unconstitutional because “[t]he entire aura and atmosphere of police interrogation without notification of rights and an offer of assistance of counsel [tend] to subjugate the individual to the will of his examiner.”



▲ Ernesto Miranda, shown here after a jury convicted him for a second time. Miranda was convicted on rape and kidnapping charges. Arresting officers did not advise him of his rights. His case led to the now-famous *Miranda* warnings. How do the *Miranda* warnings read?
AP Wide World Photos

Miranda warnings

The advisement of rights due criminal suspects by the police before questioning begins. *Miranda* warnings were first set forth by the U.S. Supreme Court in the 1966 case of *Miranda v. Arizona*.

CJ Exhibit 5-2 The *Miranda* Warnings

ADULT RIGHTS WARNING

Suspects 18 years old or older who are in custody must be advised of the following rights before any questioning begins:

1. You have the right to remain silent.
2. Anything you say can be used against you in a court of law.
3. You have the right to talk to a lawyer and to have a lawyer present while you are being questioned.
4. If you want a lawyer before or during questioning but cannot afford to hire a lawyer, one will be appointed to represent you at no cost before any questioning.
5. If you answer questions now without a lawyer here, you still have the right to stop answering questions at any time.

WAIVER OF RIGHTS

After reading and explaining the rights of a person in custody, an officer must also ask for a waiver of those rights before any ques-

tioning. The following waiver questions must be answered affirmatively, either by express answer or by clear implication. Silence alone is not a waiver.

1. Do you understand each of these rights I have explained to you? (Answer must be YES.)
2. Having these rights in mind, do you now wish to answer questions? (Answer must be YES.)
3. Do you now wish to answer questions without a lawyer present? (Answer must be YES.)

The following question must be asked of juveniles ages under the age of 18:

1. Do you now wish to answer questions without your parents, guardians, or custodians present? (Answer must be YES.)

Source: North Carolina Justice Academy. Reprinted with permission.

Lecture Note Discuss the U.S. Supreme Court case of *Miranda v. Arizona* (1966). Explain that this case, the hallmark of the 1960s liberal Court's concern with individual rights, requires that a criminal defendant be offered a rights advisement following arrest and before questioning. Use CJ Exhibit 5-2 to review each of the five warnings that law enforcement officers are required to give to defendants.

Lecture Note Ask the class to consider each of the rights statements that make up the *Miranda* decision. Have students debate the wisdom of having law enforcement officers provide such rights statements to criminal suspects.

Thematic Question Examine the impact of each *Miranda* warning on American criminal justice. How might the justice system have functioned differently before 1966 (the date of the *Miranda* decision) than it does now as a result of this decision?

Thematic Question Are there any "rights" that you would add to, or remove from, the *Miranda* rights listed in CJ Exhibit 5-2? If so, which ones?

The Court continued, saying that the suspect "must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires. Opportunity to exercise these rights must be afforded to him throughout the interrogation. After such warnings have been given, and such opportunity afforded him, the individual may knowingly and intelligently waive these rights and agree to answer the questions or make a statement. But unless and until such warnings and waiver are demonstrated by the prosecution at the trial, no evidence obtained as a result of interrogation can be used against him."

To ensure that proper advice is given to suspects at the time of their arrest, the now-famous *Miranda* rights are read before any questioning begins. These rights, as they appear on a *Miranda* warning card commonly used by police agencies, are shown in CJ Exhibit 5-2.

Once suspects have been advised of their *Miranda* rights, they are commonly asked to sign a paper that lists each right in order to confirm that they were advised of their rights and that they understand each right. Questioning may then begin, but only if suspects waive the right not to talk or to have a lawyer present during interrogation.

In 1992, *Miranda* rights were effectively extended to illegal immigrants living in the United States. In a settlement of a class-action lawsuit reached in Los Angeles with the Immigration and Naturalization Service, U.S. District Court Judge William Byrne, Jr., approved the printing of millions of notices in several languages to be given to arrestees. The approximately 1.5 million illegal aliens arrested each year must be told they may (1) talk with a lawyer, (2) make a phone call, (3) request a list of available legal services, (4) seek a hearing before an immigration judge, (5) possibly obtain release on bond, and (6) contact a diplomatic officer representing their country. Notice of this type was "long overdue," said Roberto Martinez of the American Friends Service Committee's Mexico—U.S. border program. "Up to now, we've had total mistreatment of civil rights of undocumented people."¹⁶⁵

When the *Miranda* decision was originally handed down, some hailed it as ensuring the protection of individual rights guaranteed under the Constitution. To guarantee those rights, they suggested, no better agency is available than the police themselves, as the police are present at the initial stages of the criminal justice process. Critics of *Miranda*, however, argued that the decision put police agencies in the uncomfortable and contradictory position not only of enforcing the law but also of having to offer defendants advice on how they might circumvent conviction and punishment. Under *Miranda*, the police partially assume the role of legal adviser to the accused.

In 1999, however, in the case of *U.S. v. Dickerson*,¹⁶⁶ the Fourth Circuit U.S. Court of Appeals upheld an almost-forgotten law that Congress had passed in 1968 with the intention

of overturning *Miranda*. That law, Section 3501 of Chapter 223, Part II of Title 18 of the U.S. Code, says that “a confession . . . shall be admissible in evidence if it is voluntarily given.” Upon appeal in 2000, the U.S. Supreme Court upheld its original *Miranda* ruling by a 7–2 vote and found that *Miranda* is a constitutional rule (i.e., a fundamental right inherent in the U.S. Constitution) that cannot be dismissed by an act of Congress. “*Miranda* and its progeny,” the majority wrote in *Dickerson v. U.S.*, will continue to “govern the admissibility of statements made during custodial interrogation in both state and federal courts.”¹⁶⁷

In 2004, in the case of *U.S. v. Patane*,¹⁶⁸ the U.S. Supreme Court continued to refine its original 1966 *Miranda* ruling. *Patane* surprised some Court watchers because in it the Court held that “a mere failure to give *Miranda* warnings does not, by itself, violate a suspect’s constitutional rights or even the *Miranda* rule.”

The *Patane* case began with the arrest of a convicted felon after a federal agent told officers that the man owned a handgun illegally. At the time of arrest, the officers tried to advise the defendant of his rights, but he interrupted them, saying that he already knew his rights. The officers then asked him about the pistol, and he told them where it was. After the weapon was recovered, the defendant was charged with illegal possession of a firearm by a convicted felon.

At first glance, *Patane* appears to contradict the fruit of the poisonous tree doctrine that the Court established in the 1920 case of *Silverthorne Lumber Co. v. U.S.*¹⁶⁹ and that *Wong Sun v. U.S.* (1963)¹⁷⁰ made applicable to verbal evidence derived immediately from an illegal search and seizure. An understanding of *Patane*, however, requires recognition of the fact that the *Miranda* rule is based on the self-incrimination clause of the Fifth Amendment to the U.S. Constitution. According to the Court in *Patane*, “that Clause’s core protection is a prohibition on compelling a criminal defendant to testify against himself at trial.” It cannot be violated, the Court said, “by the introduction of nontestimonial evidence obtained as a result of voluntary statements.” In other words, according to the Court, only (1) coerced statements and (2) those voluntary statements made by a defendant that might directly incriminate him or her at a later trial are precluded by a failure to read a suspect his or her *Miranda* rights. Such voluntary statements would, of course, include such things as an outright confession.

Significantly, however, oral statements must be distinguished, the Court said, from the “physical fruits of the suspect’s unwarned but voluntary statements.” In other words, if an unwarned suspect is questioned by police officers and tells the officers where they can find an illegal weapon or a weapon that has been used in a crime, the weapon can be recovered and later introduced as evidence at the suspect’s trial. If the same unwarned suspect, however, tells police that he committed a murder, then his confession will not be allowed into evidence at trial. The line drawn by the Court is against the admissibility of *oral statements* made by an unwarned defendant, not the *nontestimonial physical evidence* resulting from continued police investigation of such statements. Under *Patane*, the oral statements themselves cannot be admitted, but the physical evidence derived from them can be. “Thus,” wrote the justices in *Patane*, “admission of nontestimonial physical fruits (the pistol here) does not run the risk of admitting into trial an accused’s coerced incriminating statements against himself.”

Waiver of *Miranda* Rights by Suspects

Suspects in police custody may legally waive their *Miranda* rights through a voluntary “knowing and intelligent” waiver. A knowing waiver can only be made if a suspect has been advised of his or her rights and was in a condition to understand the advisement. A rights advisement made in English to a Spanish-speaking suspect, for example, cannot produce a knowing waiver. Likewise, an intelligent waiver of rights requires that the defendant be able to understand the consequences of not invoking the *Miranda* rights. In the case of *Moran v. Burbine* (1986),¹⁷¹ the U.S. Supreme Court defined an intelligent and knowing waiver as one “made with a full awareness both of the nature of the right being abandoned and the consequences of the decision to abandon it.” In *Colorado v. Spring* (1987),¹⁷² the Court held that an intelligent and knowing waiver can be made even though a suspect has not been informed of all the alleged offenses about which he or she is about to be questioned.

Inevitable-Discovery Exception to *Miranda*

The case of Robert Anthony Williams provides a good example of the change in the U.S. Supreme Court philosophy, alluded to earlier in this chapter, from an individual-rights

Lecture Note Ask the class to use the Web to summarize the arguments made by Dickerson’s attorneys in the case of *Dickerson v. U.S.* (2000). Might these arguments have any merit? If so, why did the U.S. Supreme Court reject them?



▲ A suspect being read his *Miranda* rights immediately after arrest. Officers often read *Miranda* rights from a card or digital device to preclude the possibility of making a mistake. What might the consequences of a mistake be?

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Suspects may legally waive their *Miranda* rights through a voluntary “knowing and intelligent” waiver.

Thematic Question Examine the various court cases involved in developing the public-safety exception to *Miranda*. Does this exception seem to be a reasonable one? What other exceptions to *Miranda* can you imagine?

Thematic Question Explain why each of the *Miranda* warnings is important. What abuses does each prevent, and what police actions does each hamper?

Lecture Note Point out to students that interrogation can be a subtle and complex process, wherein respect for individual rights and police mandates must be carefully balanced to ensure fairness and ultimately just trials and outcomes.

perspective toward a public-order perspective. The case epitomizes what some have called a “nibbling away” at the advances in defendant rights, which reached their apex in *Miranda*. The case began in 1969, at the close of the Warren Court era, when Williams was convicted of murdering a 10-year-old girl, Pamela Powers, around Christmastime. Although Williams had been advised of his rights, detectives searching for the girl’s body were riding in a car with the defendant when one of them made what has since come to be known as the “Christian burial speech.” The detective told Williams that since Christmas was almost upon them, it would be “the Christian thing to do” to see to it that Pamela could have a decent burial rather than having to lay in a field somewhere. Williams relented and led detectives to the body. However, because Williams had not been reminded of his right to have a lawyer present during his conversation with the detective, the Supreme Court in *Brewer v. Williams* (1977)¹⁷³ overturned Williams’s conviction, saying that the detective’s remarks were “a deliberate eliciting of incriminating evidence from an accused in the absence of his lawyer.”

In 1977, Williams was retried for the murder, but his remarks in leading detectives to the body were not entered into evidence. The discovery of the body was itself used, however, prompting another appeal to the Supreme Court based on the argument that the body should not have been used as evidence because it was discovered as a result of the illegally gathered statements. This time, in *Nix v. Williams* (1984),¹⁷⁴ the Supreme Court affirmed Williams’s second conviction, holding that the body would have been found anyway, as detectives were searching in the direction where it lay when Williams revealed its location. That ruling came during the heyday of the Burger Court and clearly demonstrates a tilt by the Court away from suspects’ rights and an accommodation with the imperfect world of police procedure. The *Williams* case, as it was finally resolved, is said to have created the *inevitable-discovery exception* to the *Miranda* requirements. The inevitable-discovery exception means that evidence, even if it was otherwise gathered inappropriately, can be used in a court of law if it would have invariably turned up in the normal course of events.

Public-Safety Exception to *Miranda*

In 2013, U.S. officials announced that they would question 19-year-old Dzhokhar Tsarnaev, the surviving Boston Marathon bomber, before reading him his *Miranda* rights. Tsarnaev had been wounded and was captured after his brother had been killed in a police shootout. Law enforcement officials said that they would question the hospitalized Tsarnaev under the well-established *public-safety exception* to the *Miranda* rule. The public-safety exception was created in 1984, when the U.S. Supreme Court decided the case of *New York v. Quarles*¹⁷⁵ centered on a rape in which the victim told police her assailant had fled, with a gun, into a nearby A&P supermarket. Two police officers entered the store and apprehended the suspect. One officer immediately noticed that the man was wearing an empty shoulder holster and, apparently fearing that a child might find the discarded weapon, quickly asked, “Where’s the gun?” Quarles was convicted of rape but appealed his conviction, requesting that the weapon be suppressed as evidence because officers had not advised him of his *Miranda* rights before asking him about it. The Supreme Court disagreed, stating that considerations of public safety were overriding and negated the need for rights advisement before limited questioning that focused on the need to prevent further harm.

The U.S. Supreme Court has also held that in cases when the police issue *Miranda* warnings, a later demonstration that a person may have been suffering from mental problems does not necessarily negate a confession. *Colorado v. Connelly* (1986)¹⁷⁶ involved a man who approached a Denver police officer and said he wanted to confess to the murder of a young girl. The officer immediately informed him of his *Miranda* rights, but the man waived them and continued to talk. When a detective arrived, the man was again advised of his rights and again waived them. After being taken to the local jail, the man began to hear “voices” and later claimed that it was these voices that had made him confess. At the trial, the defense moved to have the earlier confession negated on the basis that it was not voluntarily or freely given because of the defendant’s mental condition. Upon appeal, the U.S. Supreme Court disagreed, saying that “no coercive government conduct occurred in this case.” Hence, “self-coercion,” be it through the agency of a guilty conscience or faulty thought processes, does not appear to bar prosecution based on information revealed willingly by a suspect.

In another refinement of *Miranda*, the lawful ability of a police informant placed in a jail cell along with a defendant to gather information for later use at trial was upheld in the 1986 case of *Kuhlmann v. Wilson*.¹⁷⁷ The passive gathering of information was judged to be acceptable, provided that the informant did not make attempts to elicit information.

In the case of *Illinois v. Perkins* (1990),¹⁷⁸ the Court expanded its position to say that under appropriate circumstances, even the active questioning of a suspect by an undercover officer posing as a fellow inmate does not require *Miranda* warnings. In *Perkins*, the Court found that, lacking other forms of coercion, the fact that the suspect was not aware of the questioner's identity as a law enforcement officer ensured that his statements were freely given. In the words of the Court, "The essential ingredients of a 'police-dominated atmosphere' and compulsion are not present when an incarcerated person speaks freely to someone that he believes to be a fellow inmate." Learn more about the public-safety exception directly from the FBI at http://www.justicestudies.com/pubs/public_safety.pdf.

Miranda and the Meaning of Interrogation

Modern interpretations of the applicability of *Miranda* warnings turn on an understanding of interrogation. The *Miranda* decision, as originally rendered, specifically recognized the need for police investigators to make inquiries at crime scenes to determine facts or to establish identities. As long as the individual questioned is not yet in custody and as long as probable cause is lacking in the investigator's mind, such questioning can proceed without *Miranda* warnings. In such cases, interrogation, within the meaning of *Miranda*, has not yet begun.

The case of *Rock v. Zimmerman* (1982)¹⁷⁹ provides a different sort of example—one in which a suspect willingly made statements to the police before interrogation began. The suspect had burned his own house and shot and killed a neighbor. When the fire department arrived, he began shooting again and killed the fire chief. Cornered later in a field, the defendant, gun in hand, spontaneously shouted at police, "How many people did I kill? How many people are dead?"¹⁸⁰ These spontaneous questions were held to be admissible evidence at the suspect's trial.

It is also important to recognize that the Supreme Court, in the *Miranda* decision, required that officers provide warnings only in those situations involving *both* arrest and custodial interrogation—what some call the ***Miranda* triggers**. In other words, it is generally permissible for officers to take a suspect into custody and listen without asking questions while he or she tells a story. Similarly, they may ask questions without providing a *Miranda* warning, even within the confines of a police station house, as long as the person questioned is not a suspect and is not under arrest.¹⁸¹ Warnings are required only when officers begin to actively and deliberately elicit responses from a suspect who they know has been indicted or who is in custody.

A third-party conversation recorded by the police after a suspect has invoked the *Miranda* right to remain silent may be used as evidence, according to a 1987 ruling in *Arizona v. Mauro*.¹⁸² In *Mauro*, a man who willingly conversed with his wife in the presence of a police tape recorder, even after invoking his right to keep silent, was held to have effectively abandoned that right.

When a waiver is not made, however, in-court references to a defendant's silence following the issuing of *Miranda* warnings are unconstitutional. In the 1976 case of *Doyle v. Ohio*,¹⁸³ the U.S. Supreme Court definitively ruled that "a suspect's [post-*Miranda*] silence will not be used against him." Even so, according to the Court in *Brecht v. Abrahamson* (1993),¹⁸⁴ prosecution efforts to use such silence against a defendant may not invalidate a finding of guilt by a jury unless the "error had substantial and injurious effect or influence in determining the jury's verdict."¹⁸⁵

The 2004 case of *Missouri v. Seibert*¹⁸⁶ addressed the legality of a two-step police interrogation technique in which suspects were questioned and—if they made incriminating statements—were then advised of their *Miranda* rights and questioned again. The justices found that such a technique could not meet constitutional muster, writing, "When the [*Miranda*] warnings are inserted in the midst of coordinated and continuing interrogation,



▲ The aftermath of a terrorist explosion at the finish line of the 2013 Boston Marathon. Dzhokhar Tsarnaev, one of two brothers who planted the explosive devices among the crowd, survived a citywide man-hunt, but authorities invoked the public-safety exception to the *Miranda* requirement in not advising him of his rights for a couple of days following his arrest. Why did they do that, and what information were they hoping to uncover by questioning Tsarnaev?

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In-court references to a defendant's silence following *Miranda* warnings are unconstitutional.

***Miranda* triggers**

The dual principles of custody and interrogation, both of which are necessary before an advisement of rights is required.

Thematic Question What are the *Miranda* triggers? Why is it necessary for both triggers to be present before a rights advisement is required? How would the meaning of *Miranda* change if the Court required only the first trigger?

they are likely to mislead and deprive a defendant of knowledge essential to his ability to understand the nature of his rights and the consequences of abandoning them. . . . And it would be unrealistic to treat two spates of integrated and proximately conducted questioning as independent interrogations . . . simply because *Miranda* warnings formally punctuate them in the middle.”

In the 2010 case of *Florida v. Powell*, the U.S. Supreme Court held that although *Miranda* warnings are generally required prior to police interrogation, the wording of those warnings is not set in stone. The Court ruled that “in determining whether police warnings were satisfactory, reviewing courts are not required to examine them as if construing a will or defining the terms of an easement. The inquiry is simply whether the warnings reasonably convey to a suspect his rights as required by *Miranda*.”¹⁸⁷

Also, in 2010, in the case of *Berghuis v. Thompson*, the Court held that a Michigan suspect did not invoke his right to remain silent by simply not answering questions that interrogators put to him.¹⁸⁸ Instead, the justices ruled, a suspect must unambiguously assert his right to remain silent before the police are required to end their questioning. In this case, the defendant, Van Chester Thompson, was properly advised of his rights prior to questioning, and, although he was largely silent during a 3-hour interrogation, he never said that he wanted to remain silent, that he did not want to talk with the police, or that he wanted an attorney. Near the end of the interrogation, however, he answered “yes” when asked whether he prayed to God to forgive him for the shooting death of a murder victim.

Finally, in 2013, in the case of *Salinas v. Texas*, the Supreme Court found that an offender must expressly invoke his *Miranda* privileges, and that failure to do so can later result in use at trial of the offender’s silence as evidence of his guilt.¹⁸⁹ According to the Court, “A defendant normally does not invoke the privilege (against self-incrimination) by remaining silent.”

Gathering of Special Kinds of Nontestimonial Evidence

The role of law enforcement is complicated by the fact that suspects are often privy to special evidence of a nontestimonial sort. Nontestimonial evidence is generally physical evidence, and most physical evidence is subject to normal procedures of search and seizure. A special category of nontestimonial evidence, however, includes very personal items that may be within or part of a person’s body, such as ingested drugs, blood cells, foreign objects, medical implants, and human DNA. Also included in this category might be fingerprints and other kinds of biological residue. The gathering of such special kinds of nontestimonial evidence is a complex area rich in precedent. The Fourth Amendment guarantees that people be secure in their homes and in their persons has generally been interpreted by the courts to mean that the improper seizure of physical evidence of any kind is illegal and will result in exclusion of that evidence at trial. When very personal kinds of nontestimonial evidence are considered, however, the issue becomes more complicated.

The Right to Privacy

Two 1985 cases, *Hayes v. Florida*¹⁹⁰ and *Winston v. Lee*,¹⁹¹ are examples of limits the courts have placed on the seizure of very personal forms of nontestimonial evidence. The *Hayes* case established the right of suspects to refuse to be fingerprinted when probable cause necessary to effect an arrest does not exist. *Winston* demonstrated the inviolability of the body against surgical and other substantially invasive techniques that might be ordered by authorities against a suspect’s will.

In the *Winston* case, Rudolph Lee, Jr., was found a few blocks from the scene of a robbery with a gunshot wound in his chest. The robbery had involved an exchange of gunshots by a store owner and the robber, with the owner noting that the robber had apparently been hit by a bullet. At the hospital, the store owner identified Lee as the robber. The prosecution sought to have Lee submit to surgery to remove the bullet in his chest, arguing that the bullet would provide physical evidence linking him to the crime. Lee refused the surgery, and in *Winston v. Lee*, the U.S. Supreme Court ruled that Lee could not be ordered to undergo surgery because such a magnitude of intrusion into his body was unacceptable under the right to privacy guaranteed by the Fourth Amendment. The *Winston* case was based on precedent established in *Schmerber v. California* (1966).¹⁹² The *Schmerber* case

Freedom or Safety? You Decide

Policing in the Age of Social Media

In October of 2015, FBI director, James B. Comey, spoke at the University of Chicago Law School and addressed what some have called “depolicing” (aka the “Ferguson effect”). Comey noted that depolicing, or the less aggressive enforcement of the law following widespread unfavorable media reports about the police, may embolden criminals and contribute to increased crime. National media coverage of the police was intense following a number of police shootings of unarmed black men across the country in 2014 and 2015. Civil protests against the unnecessary use of deadly force by law enforcement officers took place in many American cities, and frequent news reports condemned the actions of officers who were involved in the incidents.

Comey noted that violent crime rates were trending up in major cities across the country. He offered various reasons as to why that’s happening, but then he added: “Nobody says it on the record, nobody says it in public, but police and elected officials are quietly saying it to themselves. And they’re saying it to me, and I’m going to say it to you. And it is the one explanation that does explain the calendar and the map and that makes the most sense to me. Maybe something in policing has changed.”

Comey went on to ask: “In today’s YouTube world, are officers reluctant to get out of their cars and do the work that controls violent crime? Are officers answering 911 calls but avoiding the informal contact that keeps bad guys from standing around,

especially with guns?” He continued, “I spoke to officers privately in one big city precinct who described being surrounded by young people with mobile phone cameras held high, taunting them the moment they get out of their cars. They told me, ‘We feel like we’re under siege and we don’t feel much like getting out of our cars.’”

The question, Comey said, “is whether these kinds of things are changing police behavior all over the country.” His answer? “I do have a strong sense that . . . a chill wind that has blown through American law enforcement . . .”

We need to be careful, the FBI director said, that good policing “doesn’t drift away from us in the age of viral videos, or there will be profound consequences.”

YOU DECIDE

Some say that close scrutiny of law enforcement activities are a positive force for change, and that they will produce better enforcement efforts—ones that are in close keeping with the civil rights of all citizens. Do you agree?

References: James B. Comey, “Remarks Delivered at the University of Chicago Law School, Chicago, IL, October 23, 2015,” FBI press release, <https://www.fbi.gov/news/speeches/law-enforcement-and-the-communities-we-serve-bending-the-lines-toward-safety-and-justice> (accessed March 3, 2016).

turned on the extraction against the defendant’s will of a blood sample to be measured for alcohol content. In *Schmerber*, the Court ruled that warrants must be obtained for bodily intrusions unless fast action is necessary to prevent the destruction of evidence by natural physiological processes.

Body-Cavity Searches

In early 2005, officers of the Suffolk County (New York) Police Department arrested 36-year-old Terrance Haynes and charged him with marijuana possession.¹⁹³ After placing him in the back of a patrol car, Haynes appeared to choke and had difficulty breathing. Soon his breathing stopped, prompting officers to use the Heimlich maneuver, which dislodged a plastic bag from Haynes’s windpipe. The bag contained 11 packets of cocaine. Although Haynes survived the ordeal, he faced up to 25 years in prison.

Some suspects might literally “cough up” evidence, some are more successful at hiding it *in* their bodies. Body-cavity searches are among the most problematic types of searches for police today. “Strip” searches of convicts in prison, including the search of body cavities, have generally been held to be permissible.

The 1985 Supreme Court case of *U.S. v. Montoya de Hernandez*¹⁹⁴ focused on the issue of “alimentary canal smuggling,” in which the offender typically swallows condoms filled with cocaine or heroin and waits for nature to take its course to recover the substance. In the *Montoya* case, a woman known to be a “balloon swallower” arrived in the United States on a flight from Colombia. She was detained by customs officials and given a pat-down search by a female agent. The agent reported that the woman’s abdomen was firm and suggested that X-rays be taken. The suspect refused and was given the choice of submitting to further tests or taking the next flight back to Colombia. No flight was immediately available, however, and the suspect was placed in a room for 16 hours, where she refused all food and drink. Finally, a court order for an X-ray was obtained. The procedure revealed “balloons,” and the woman was detained another 4 days, during which time she passed numerous cocaine-filled plastic condoms. The Court ruled that the woman’s confinement was not unreasonable, based as it was on the supportable suspicion that she was “body-packing” cocaine. Any discomfort she experienced, the Court ruled, “resulted solely from the method that she chose to smuggle illicit drugs.”¹⁹⁵

Lecture Note Explain that “body packing” involves the swallowing or insertion into body cavities of drug-filled containers for the purpose of drug smuggling.

Thematic Question Read what the text has to say about the case of *U.S. v. Montoya de Hernandez* (1985). In your opinion, did investigating officers have sufficient reason to detain the suspect in this case? Explain.

Lecture Note Explain that much information in contemporary society exists in electronic form (such as computer files, fax messages, and telecommunications) and can be the target of both criminal offenders and criminal investigators seeking to build cases.

Recording devices carried on the body of an undercover agent produce admissible evidence.

Electronic Eavesdropping

Modern technology makes possible increasingly complex forms of communication. One of the first and best known of the U.S. Supreme Court decisions involving electronic communications was the 1928 case of *Olmstead v. U.S.*¹⁹⁶ In *Olmstead*, bootleggers used their home telephones to discuss and transact business. Agents tapped the lines and based their investigation and ensuing arrests on conversations they overheard. The defendants were convicted and eventually appealed to the high court, arguing that the agents had in effect seized information illegally without a search warrant in violation of the defendants' Fourth Amendment right to be secure in their homes. The Court ruled, however, that telephone lines were not an extension of the defendants' home and therefore were not protected by the constitutional guarantee of security. Subsequent federal statutes (discussed shortly) have substantially modified the significance of *Olmstead*.

Recording devices carried on the body of an undercover agent or an informant were ruled to produce admissible evidence in *On Lee v. U.S.* (1952)¹⁹⁷ and *Lopez v. U.S.* (1963).¹⁹⁸ The 1967 case of *Berger v. New York*¹⁹⁹ permitted wiretaps and "bugs" in instances where state law provided for the use of such devices and where officers obtained a warrant based on probable cause.

The Court appeared to undertake a significant change of direction in the area of electronic eavesdropping when it decided the case of *Katz v. U.S.* in 1967.²⁰⁰ Federal agents had monitored a number of Katz's telephone calls from a public phone using a device separate from the phone lines and attached to the glass of the phone booth. The Court, in this case, stated that what a person makes an effort to keep private, even in a public place, requires a judicial decision, in the form of a warrant issued upon probable cause, to unveil. In the words of the Court, "The government's activities in electronically listening to and recording the petitioner's words violated the privacy upon which he justifiably relied while using the telephone booth and thus constituted a 'search and seizure' within the meaning of the Fourth Amendment."

In 1968, with the case of *Lee v. Florida*,²⁰¹ the Court applied the Federal Communications Act²⁰² to telephone conversations that may be the object of police investigation and held that evidence obtained without a warrant could not be used in state proceedings if it resulted from a wiretap. The only person who has the authority to permit eavesdropping, according to that act, is the sender of the message.

The Federal Communications Act, originally passed in 1934, does not specifically mention the potential interest of law enforcement agencies in monitoring communications. Title III of the Omnibus Crime Control and Safe Streets Act of 1968, however, mostly prohibits wiretaps but does allow officers to listen to electronic communications when (1) an officer is one of the parties involved in the communication, (2) one of the parties is not the officer but willingly decides to share the communication with the officer, or (3) officers obtain a warrant based on probable cause. In the 1971 case of *U.S. v. White*,²⁰³ the Court held that law enforcement officers may intercept electronic information when one of the parties involved in the communication gives his or her consent, even without a warrant.

In 1984, the Supreme Court decided the case of *U.S. v. Karo*,²⁰⁴ in which Drug Enforcement Agency (DEA) agents had arrested James Karo for cocaine importation. Officers had placed a radio transmitter inside a 50-gallon drum of ether purchased by Karo for use in processing the cocaine. The transmitter was placed inside the drum with the consent of the seller of the ether but without a search warrant. The shipment of ether was followed to the Karo house, and Karo was arrested and convicted of cocaine-trafficking charges. Karo appealed to the U.S. Supreme Court, claiming that the radio beeper had violated his reasonable expectation of privacy inside his premises and that, without a warrant, the evidence it produced was tainted. The Court agreed and overturned his conviction.

Minimization Requirement for Electronic Surveillance

The Supreme Court established a minimization requirement pertinent to electronic surveillance in the 1978 case of *U.S. v. Scott*.²⁰⁵ *Minimization* means that officers must make every reasonable effort to monitor only those conversations, through the use of phone taps, body bugs, and the like, that are specifically related to the criminal activity under investigation.

Thematic Question What types of electronic information that the typical person generates in an average day might form the basis for the criminal prosecution of those involved in illegal activities?

Lecture Note Assign students the task of keeping a daily log of the kinds of electronic signals and forms of electronic information they generate during one week. Ask them to decide how each item of information (and each type of media involved) might be explored by criminal investigators were the students to be accused of criminal activity.

Lecture Note Describe how the Electronic Communications Privacy Act, passed by Congress in 1986, limits the wiretapping and eavesdropping activities of law enforcement officers.

As soon as it becomes obvious that a conversation is innocent, then the monitoring personnel are required to cease their invasion of privacy. Problems arise if the conversation occurs in a foreign language, if it is “coded,” or if it is ambiguous. It has been suggested that investigators involved in electronic surveillance maintain logbooks of their activities that specifically show monitored conversations, as well as efforts made at minimization.²⁰⁶

The Electronic Communications Privacy Act of 1986

Passed by Congress in 1986, the **Electronic Communications Privacy Act (ECPA)**²⁰⁷ brought major changes in the requirements law enforcement officers must meet to intercept wire communications (those involving the human voice). The ECPA deals specifically with three areas of communication: (1) wiretaps and bugs, (2) pen registers that record the numbers dialed from a telephone, and (3) tracing devices that determine the number from which a call emanates. The act also addresses the procedures to be followed by officers in obtaining records relating to communications services, and it establishes requirements for gaining access to stored electronic communications and records of those communications. The ECPA basically requires that investigating officers must obtain wiretap-type court orders to eavesdrop on *ongoing communications*. The use of pen registers and recording devices, however, is specifically excluded by the law from court order requirements.²⁰⁸

A related measure, the Communications Assistance for Law Enforcement Act of 1994,²⁰⁹ appropriated \$500 million to modify the U.S. phone system to allow for continued wiretapping by law enforcement agencies. The law also specifies a standard-setting process for the redesign of existing equipment that would permit effective wiretapping in the face of coming technological advances. In the words of the FBI’s Telecommunications Industry Liaison Unit, “This law requires telecommunications carriers, as defined in the Act, to ensure law enforcement’s ability, pursuant to court order or other lawful authorization, to intercept communications notwithstanding advanced telecommunications technologies.”²¹⁰ In 2010, 3,194 wiretap requests were approved by federal and state judges, and approximately 5 million conversations were intercepted by law enforcement agencies throughout the country.²¹¹

The Telecommunications Act of 1996

Title V of the Telecommunications Act of 1996²¹² made it a federal offense for anyone engaged in interstate or international communications to knowingly use a telecommunications device “to create, solicit, or initiate the transmission of any comment, request, suggestion, proposal, image, or other communication which is obscene, lewd, lascivious, filthy, or indecent, with intent to annoy, abuse, threaten, or harass another person.” The law also provided special penalties for anyone who “makes a telephone call . . . without disclosing his identity and with intent to annoy, abuse, threaten, or harass any person at the called number or who receives the communication” or who “makes or causes the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number; or makes repeated telephone calls” for the purpose of harassing a person at the called number.

A section of the law, known as the Communications Decency Act (CDA),²¹³ criminalized the transmission to minors of “patently offensive” obscene materials over the Internet or other computer telecommunications services. Portions of the CDA, however, were invalidated by the U.S. Supreme Court in the case of *Reno v. ACLU* (1997).²¹⁴

The USA PATRIOT Act of 2001

The **USA PATRIOT Act** of 2001, which is also discussed in CJ Exhibit 5–3, made it easier for police investigators to intercept many forms of electronic communications. Under previous federal law, for example, investigators could not obtain a wiretap order to intercept *wire* communications for violations of the Computer Fraud and Abuse Act.²¹⁵ In several well-known investigations, however, hackers had stolen teleconferencing services from telephone companies and then used those services to plan and execute hacking attacks.

The act²¹⁶ added felony violations of the Computer Fraud and Abuse Act to Section 2516(1) of Title 18 of the U.S. Code—the portion of federal law that lists specific types of crimes for which investigators may obtain a wiretap order for wire communications.

The USA PATRIOT Act also modified that portion of the ECPA that governs law enforcement access to stored electronic communications (such as e-mail) to include stored wire

Electronic Communications Privacy Act (ECPA)

A law passed by Congress in 1986 establishing the due-process requirements that law enforcement officers must meet in order to legally intercept wire communications.

USA PATRIOT Act

A federal law (Public Law 107–56) enacted in response to terrorist attacks on the World Trade Center and the Pentagon on September 11, 2001. The law, officially titled the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act, substantially broadened the investigative authority of law enforcement agencies throughout America and is applicable to many crimes other than terrorism. The law was slightly revised and reauthorized by Congress in 2006.

The PATRIOT Act has not diminished our liberty. It has defended our liberty and made America more secure.

—George W. Bush, 43rd president of the United States

communications (such as voice mail). Before the modification, law enforcement officers needed to obtain a wiretap order (rather than a search warrant) to obtain unopened voice communications. Because today's e-mail messages may contain digitized voice "attachments," investigators were sometimes required to obtain both a search warrant and a wiretap order to learn the contents of a specific message. Under the act, the same rules now apply to both stored wire communications and stored electronic communications. Wiretap orders, which are often much more difficult to obtain than search warrants, are now only required to intercept real-time telephone conversations.

Before passage of the USA PATRIOT Act, federal law allowed investigators to use an administrative subpoena (i.e., a subpoena authorized by a federal or state statute or by a federal or state grand jury or trial court) to compel Internet service providers to provide a limited class of information, such as a customer's name, address, length of service, and means of payment. Also, under previous law, investigators could not subpoena certain records, including credit card numbers or details about other forms of payment for Internet service. Such information, however, can be highly relevant in determining a suspect's true identity because, in many cases, users register with Internet service providers using false names.

Previous federal law²¹⁷ was also technology specific, relating primarily to telephone communications. Local and long-distance telephone billing records, for example, could be subpoenaed but not billing information for Internet communications or records of Internet session times and durations. Similarly, previous law allowed the government to use a subpoena to obtain the customer's "telephone number or other subscriber number or identity" but did not define what that phrase meant in the context of Internet communications.

The USA PATRIOT Act amended portions of this federal law²¹⁸ to update and expand the types of records that law enforcement authorities may obtain with a subpoena. "Records of session times and durations," as well as "any temporarily assigned network address," may now be gathered. Such changes should make the process of identifying computer criminals and tracing their Internet communications faster and easier.

Finally, the USA PATRIOT Act facilitates the use of roving, or multipoint, wiretaps. Roving wiretaps, issued with court approval, target a specific individual and not a particular telephone number or communications device. Hence, law enforcement agents armed with an order for a multipoint wiretap can follow the flow of communications engaged in by a person as he or she switches from one cellular phone to another or to a wired telephone.

In 2006, President George W. Bush signed the USA PATRIOT Improvement and Reauthorization Act of 2005²¹⁹ into law. The act, also referred to as PATRIOT II, made permanent 14 provisions of the original 2001 legislation that had been slated to expire and extended others for another 4 years (including the roving wiretap provision and a provision that allows authorities to seize business records). It also addressed some of the concerns of civil libertarians who had criticized the earlier law as too restrictive. Finally, the new law provided additional protections for mass transportation systems and seaports, closed some legal loopholes in laws aimed at preventing terrorist financing, and included a subsection called the Combat Methamphetamine Epidemic Act (CMEA). The CMEA contains significant provisions intended to strengthen federal, state, and local efforts designed at curtailing the spread of methamphetamine use.

In May 2011, President Barack Obama signed into law legislation extending a number of provisions of the PATRIOT Act that would have otherwise expired. The president's signature gave new life to the roving wiretap and business records provisions of the act, as well as some others.²²⁰

Cybersecurity Information Sharing Act (CISA)

In 2015, President Obama signed the Cybersecurity Information Sharing Act (CISA) into law.²²¹ That law, which was passed as part of the U.S. government's annual omnibus spending bill, is designed to improve cybersecurity in the United States by facilitating the sharing of information about cybersecurity threats. It allows for the easy sharing of Internet traffic information between the U.S. government and technology and manufacturing companies.

The purpose of the law is to make it easier for private companies to quickly and directly share personal information with the government, especially in cases involving specific

Thematic Question What is digital (or electronic) evidence? How does it differ from other types of evidence, if at all? How should police investigators secure and handle digital evidence to protect its integrity?

Lecture Note Explain the concept of digital (or electronic) evidence. Explain that digital evidence is similar in many ways to other forms of evidence and that crime scenes involving digital evidence should be secured as soon as possible to avoid contamination or destruction of the evidence.

CJ Exhibit 5-3**The USA PATRIOT Act of 2001 and the USA PATRIOT Improvement and Reauthorization Act of 2005**

On October 26, 2001, President George W. Bush signed into law the USA PATRIOT Act, also known as the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act. The law, which was drafted in response to the September 11, 2001, terrorist attacks on American targets, substantially increased the investigatory authority of federal, state, and local police agencies.

The act permits longer jail terms for certain suspects arrested without a warrant, broadens authority for **“sneak and peek” searches** (searches conducted without prior notice and in the absence of the suspect), and enhances the power of prosecutors. The law also increases the ability of federal authorities to tap phones (including wireless devices), share intelligence information, track Internet usage, crack down on money laundering, and protect U.S. borders. Many of the crime-fighting powers created under the legislation are not limited to acts of terrorism but apply to many different kinds of criminal offenses.

The 2001 law led individual-rights advocates to question whether the government unfairly expanded police powers at the expense of civil liberties. Although many aspects of the USA PATRIOT Act have been criticized as potentially unconstitutional, Section 213, which authorizes delayed notice of the execution of a warrant, may be most vulnerable to court challenge. The American Civil Liberties Union (ACLU) maintains that under this section, law enforcement agents could enter a house, apartment, or office with a search warrant while the occupant is away, search through his or her property, and take photographs without having to tell the suspect about the search until later.^a The ACLU also believes that this provision is illegal because

the Fourth Amendment to the Constitution protects against unreasonable searches and seizures and requires the government to obtain a warrant and to give notice to the person whose property will be searched before conducting the search. The notice requirement enables the suspect to assert his or her Fourth Amendment rights.

In 2005, the U.S. Congress reauthorized most provisions of the USA PATRIOT Act, and in May, 2011, President Barack Obama signed legislation providing for an extension of several terrorist surveillance provisions included in the USA PATRIOT Act and in the Intelligence Reform and Terrorism Prevention Act of 2004.

Read the original USA PATRIOT Act of 2001 in its entirety at <http://www.justicestudies.com/pubs/patriot.pdf>. Title 18 of the U.S. Code is available at <http://uscode.house.gov/browse/prelim@title18&edition>.

^a Much of the information in this paragraph is taken from American Civil Liberties Union, “How the Anti-Terrorism Bill Expands Law Enforcement ‘Sneak and Peek’ Warrants,” <http://www.aclu.org/congress/1102301b.html> (accessed February 12, 2010).

References: “Congressional Committee Votes to Reauthorize PATRIOT Act Provisions,” Examiner.com, May 20, 2011, <http://www.examiner.com/public-safety-in-national/congressional-committee-votes-to-reauthorize-patriot-act-provisions#ixzz1N65VSX33> (accessed May 22, 2011); USA PATRIOT Improvement and Reauthorization Act of 2005 (Public Law 109-177); U.S. Department of Justice, *Field Guidance on Authorities (Redacted) Enacted in the 2001 Anti-Terrorism Legislation* (Washington, DC: U.S. Dept. of Justice, no date), <http://www.epic.org/terrorism/DOJguidance.pdf> (accessed August 28, 2010); USA PATRIOT Act, 2001 (Public Law 107-56).

cybersecurity threats. Easier information sharing facilitates faster law enforcement and security responses than were possible under previous law.

The law also creates a portal for a variety of federal agencies including the FBI and the National Security Agency, to receive threat information directly from private companies, without the need for the involvement of the Department of Homeland Security. Critics of the legislation say that it facilitates mass surveillance of private communications via the sharing of information between companies and the government, most notably the National Security Agency.

Electronic and Latent Evidence

The Internet, computer networks, and automated data systems present many new opportunities for committing criminal activity.²²² Computers and other electronic devices are increasingly being used to commit, enable, or support crimes perpetrated against people, organizations, and property. Whether the crime involves attacks against computer systems or the information they contain or more traditional offenses such as murder, money laundering, trafficking, or fraud, the proper seizure of **electronic evidence** that is specifically described in a valid search warrant has become increasingly important.

Electronic evidence is “information and data of investigative value that are stored in or transmitted by an electronic device.”²²³ Such evidence is often acquired when physical items, such as computers, removable disks, CDs, DVDs, SSDs, flash drives, smart phones, SIM cards, iPads, iPods, Blackberrys, and other electronic devices, are collected from a crime scene or are obtained from a suspect.

Electronic evidence has special characteristics: (1) It is latent; (2) it can be sent across national and state borders quickly and easily; (3) it is fragile and can easily be altered, damaged, compromised, or destroyed by improper handling or improper examination; (4) it may be time sensitive. Like DNA or fingerprints, electronic evidence is **latent evidence** because it is not readily visible to the human eye under normal conditions. Special equipment and

“sneak and peek” search

A search that occurs in the suspect's absence and without his or her prior knowledge. Also known as a *delayed-notification search*.

electronic evidence

Information and data of investigative value that are stored in or transmitted by an electronic device.ⁱ

latent evidence

Evidence of relevance to a criminal investigation that is not readily seen by the unaided eye.

digital criminal forensics

The lawful seizure, acquisition, analysis, reporting, and safeguarding of data from digital devices that may contain information of evidentiary value to the trier of fact in criminal events.ⁱⁱ

software are required to “see” and evaluate electronic evidence. In the courtroom, expert testimony may be needed to explain the acquisition of electronic evidence and the examination process used to interpret it.

In 2002, in recognition of the special challenges posed by electronic evidence, the Computer Crime and Intellectual Property Section (CCIPS) of the Criminal Division of the U.S. Department of Justice released a how-to manual for law enforcement officers called *Searching and Seizing Computers and Obtaining Electronic Evidence in Criminal Investigations*.²²⁴ The manual, which is a how-to in **digital criminal forensics**, can be accessed via <http://www.justicestudies.com/pubs/electronic.pdf>.

About the same time, the Technical Working Group for Electronic Crime Scene Investigation (TWGECSI) released a much more detailed guide for law enforcement officers to use in gathering electronic evidence. The manual, *Electronic Crime Scene Investigation: A Guide for First Responders*,²²⁵ grew out of a partnership formed in 1998 between the National Cybercrime Training Partnership, the Office of Law Enforcement Standards, and the National Institute of Justice. The working group was asked to identify, define, and establish basic criteria to assist federal and state agencies in handling electronic investigations and related prosecutions.

TWGECSI guidelines say that law enforcement must take special precautions when documenting, collecting, and preserving electronic evidence to maintain its integrity. The guidelines also note that the first law enforcement officer on the scene (commonly called the *first responder*) should take steps to ensure the safety of everyone at the scene and to protect the integrity of all evidence, both traditional and electronic. The entire TWGECSI guide, which includes many practical instructions for investigators working with electronic evidence, is available at <http://www.justicestudies.com/pubs/ecsi.pdf>.

Once digital evidence has been gathered, it must be analyzed. Consequently, a few years ago, the government-sponsored Technical Working Group for the Examination of Digital Evidence (TWGEDE) published *Forensic Examination of Digital Evidence: A Guide for Law Enforcement*.²²⁶ Among the guide’s recommendations are that digital evidence should be acquired in a manner that protects and preserves the integrity of the original evidence and that examination should only be conducted on a *copy* of the original evidence. The entire guide, which is nearly 100 pages long, can be accessed via <http://www.justicestudies.com/pubs/forensicexam.pdf>. A more recent and even more detailed guide, titled *Investigations Involving the Internet and Computer Networks*, published by the National Institute of Justice, is available at <http://www.justicestudies.com/pubs/internetinvest.pdf>.

Recently, the National Institute of Justice established the Electronic Crime Technology Center of Excellence (ECTCoE) to assist in building the electronic crime prevention and investigation and digital evidence collection and examination capacity of state and local law enforcement. The Center works to identify electronic crime and digital evidence tools, technologies and training gaps. In 2013, it developed a manual that outlines policies and procedures for gathering and analyzing digital evidence, which is available in Microsoft Word format through the National Law Enforcement and Corrections Technology Center (NLECTC) website at <http://www.justnet.org>.

Warrantless searches bear special mention in any discussion of electronic evidence. In the 1999 case of *U.S. v. Carey*,²²⁷ a federal appellate court held that the consent a defendant had given to police for his apartment to be searched did not extend to the search of his computer once it was taken to a police station. Similarly, in *U.S. v. Turner* (1999),²²⁸ the First Circuit Court of Appeals held that the warrantless police search of a defendant’s personal computer while in his apartment exceeded the scope of the defendant’s consent. Finally, in 2014, the U.S. Supreme Court found that “the police generally may not, without a warrant, search digital information on a cell phone seized from an individual who has been arrested.”²²⁹ The case, *Riley v. California*, involved a defendant who had been stopped for a traffic violation, which led to his arrest on weapons charges. Officers confiscated the defendant’s cell phone and accessed the information on it, learning that he was associated with a street gang. Eventually, he was charged in connection with a shooting, and prosecutors sought an enhanced sentence based on the evidence of gang activity found on the cell phone. The Court concluded that the search of a cell phone “implicates substantially greater individual privacy interests than a brief physical search.” Learn more about gathering digital evidence from the FBI at http://www.justicestudies.com/digital_evidence.pdf.

Summary

POLICING: LEGAL ASPECTS

- Legal restraints on police action stem primarily from the U.S. Constitution's Bill of Rights, especially the Fourth, Fifth, and Sixth Amendments, which (along with the Fourteenth Amendment) require due process of law. Most due-process requirements of relevance to police work concern three major areas: (1) evidence and investigation (often called *search* and *seizure*), (2) arrest, and (3) interrogation. Each of these areas has been addressed by a number of important U.S. Supreme Court decisions, and this chapter discusses those decisions and their significance for police work.
- The Bill of Rights was designed to protect citizens against abuses of police power. It does so by guaranteeing due process of law for everyone suspected of having committed a crime and by ensuring the availability of constitutional rights to all citizens, regardless of state or local law or procedure. Within the context of criminal case processing, due-process requirements mandate that all justice system officials, not only the police, respect the rights of accused individuals throughout the criminal justice process.
- The Fourth Amendment to the Constitution declares that people must be secure in their homes and in their persons against unreasonable searches and seizures. Consequently, law enforcement officers are generally required to demonstrate probable cause in order to obtain a search warrant if they are to conduct searches and seize the property of criminal suspects legally. The Supreme Court has established that police officers, in order to protect themselves from attack, have the right to search a person being arrested and to search the area under the arrestee's immediate control.
- An arrest takes place whenever a law enforcement officer restricts a person's freedom to leave. Arrests may occur when an officer comes upon a crime in progress, but most jurisdictions also allow warrantless arrests for felonies when a crime is not in progress, as long as probable cause can later be demonstrated.
- Information that is useful for law enforcement purposes is called *intelligence*, and as this chapter has shown, intelligence gathering is vital to police work. The need for useful information often leads police investigators to question suspects, informants, and potentially knowledgeable citizens. When suspects who are in custody become subject to interrogation, they must be advised of their *Miranda* rights before questioning begins. The *Miranda* warnings, which were mandated by the Supreme Court in the 1966 case of *Miranda v. Arizona*, are listed in this chapter. They ensure that suspects know their rights—including the right to remain silent—in the face of police interrogation.

QUESTIONS FOR REVIEW

1. Name some of the legal restraints on police action, and list some types of behavior that might be considered abuse of police authority.
2. How do the Bill of Rights and democratically inspired legal restraints on the police help ensure personal freedoms in our society?
3. Describe the legal standards for assessing searches and seizures conducted by law enforcement agents.
4. What is arrest, and when does it occur? How do legal understandings of the term differ from popular depictions of the arrest process?
5. What is the role of interrogation in intelligence gathering? List each of the *Miranda* warnings. Which recent U.S. Supreme Court cases have affected *Miranda* warning requirements?