

CHAPTER 12

Criminal Justice Process: The Investigation

“For my part I think it a less evil that some criminal should escape than that the government should play an ignoble part.”

— Oliver Wendell
Holmes



Street Law
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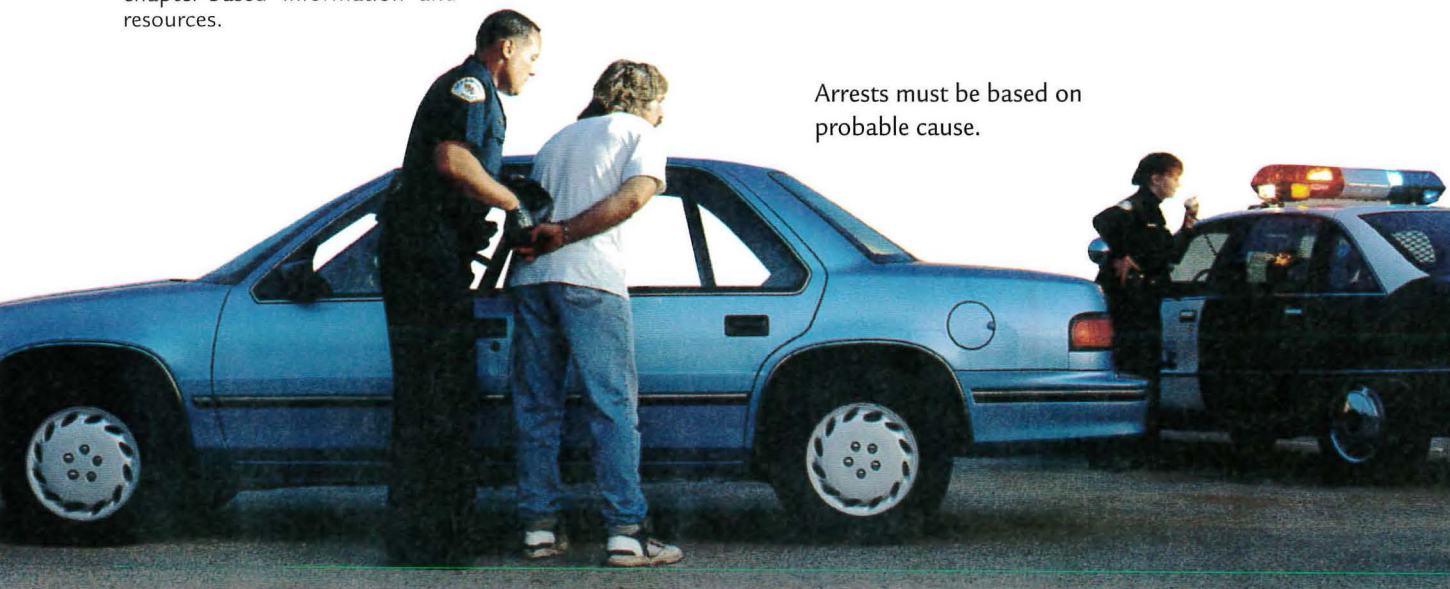
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The criminal justice process includes everything that happens to a person from arrest through prosecution and conviction to release from the control of the state. The vast majority of crimes that occur are investigated and are adjudicated, or judged, under state laws. There are, however, many federal crimes that are handled in the federal criminal justice system. The federal and state systems are similar in many ways. However, the significant differences that do exist between these systems are noted throughout this chapter.

Freedom is sometimes gained almost immediately at the police station or after time has been served in a correctional institution. Freedom may also come at any stage in between. At various points in the process, the prosecutor may drop a case for lack of evidence. A judge can also declare a mistrial if the jury is unable to reach a verdict. The criminal justice process is illustrated in Figure 12.1.

This chapter deals with the investigation phase of this process, including how the U.S. Constitution limits what police can do. The

Arrests must be based on
probable cause.



next three chapters cover proceedings before trial, the trial itself, and sentencing and corrections. The juvenile justice process is somewhat different from the adult criminal justice system and is discussed in Chapter 16. The final chapter of this unit examines some of the legal issues that have arisen in the criminal justice system as the United States tries to protect itself against terrorism.

Arrest

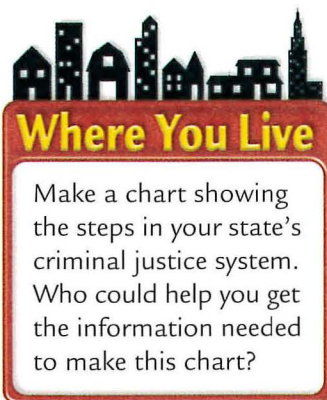
An **arrest** takes place when a person suspected of a crime is taken into custody. An arrest is considered a seizure under the Fourth Amendment, which requires that seizures be reasonable. A person can be taken into custody by a police officer in one of two ways: with an arrest warrant issued by a judge or without a warrant if there is probable cause. Someone who is taken into custody under circumstances in which a reasonable person would not feel free to leave is considered to be under arrest, whether or not he or she is told that.

An **arrest warrant** is a court order commanding that the person named in it be taken into custody. A warrant is obtained by filing a complaint before a judge or magistrate. The person filing the complaint is generally a police officer but may be a victim or a witness. The person making the complaint must also describe and swear to the facts and circumstances of the alleged crime. If, on the basis of the information provided, the judge finds probable cause to believe that an offense has been committed and that the accused committed it, a warrant will be issued. On many occasions, police do not have time to get a warrant. In certain felony cases and in misdemeanor cases, they may make a warrantless arrest in public based on probable cause.

Probable cause to arrest means having a reasonable belief that a specific person has committed a crime. This reasonable belief may be based on much less evidence than is necessary to prove a person guilty at trial. For example, suppose the police receive a radio report of a bank robbery. An officer sees a man matching the description of the bank robber waving a gun and running away from the bank. The officer would have probable cause to stop and arrest the man, but that evidence alone would likely not be enough to convict him of the crime.

There is no exact formula for determining probable cause. When arresting without a warrant, police must use their own judgment as to what is reasonable under the circumstances of each case. In all cases, probable cause requires more than mere suspicion or a hunch. Some facts must be present that indicate that the person arrested has committed a crime.

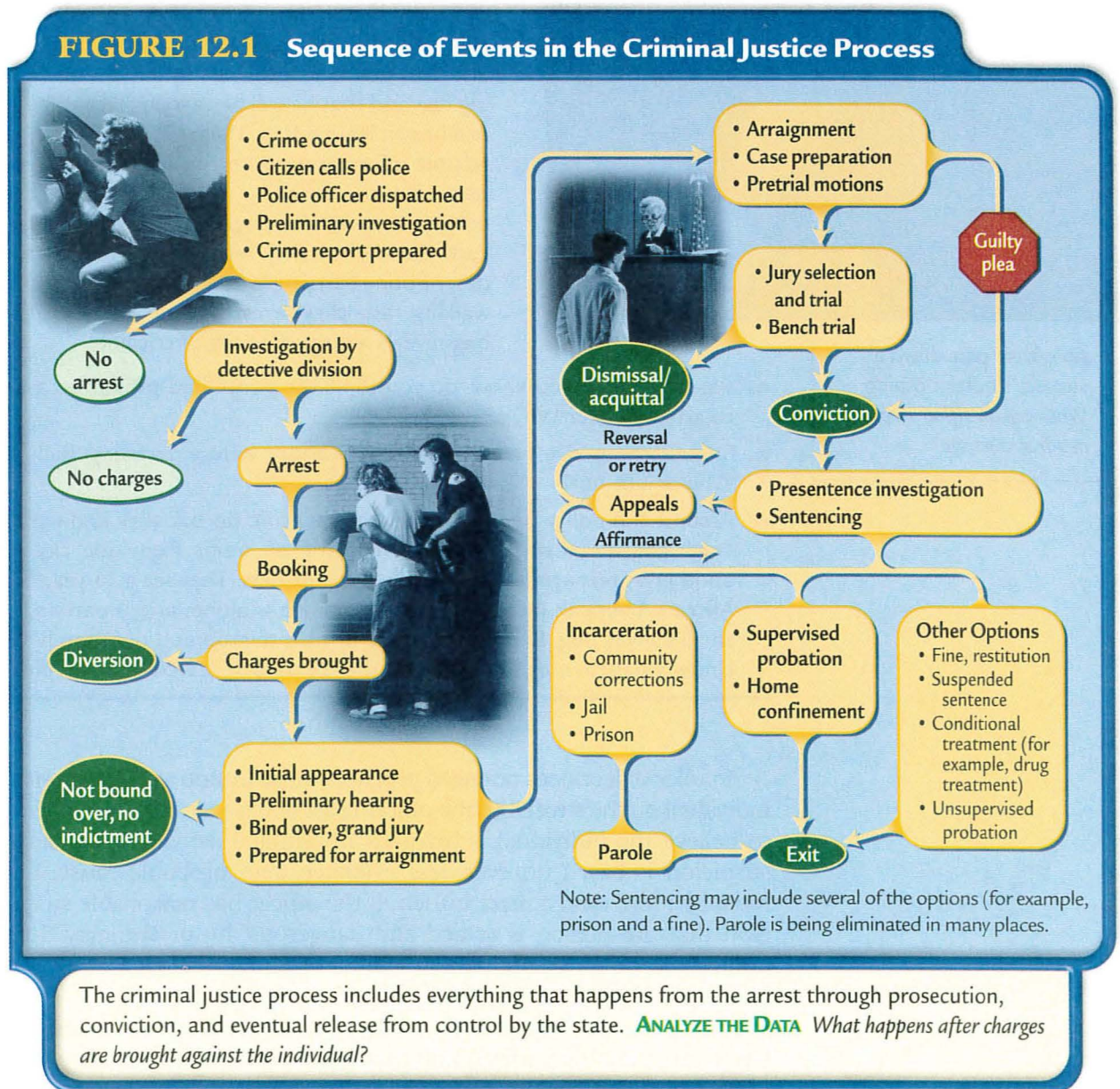
In recent years, the courts have allowed drug enforcement officials to use what is known as a **drug courier profile**. This profile is used to provide a basis to stop and question a person or to help establish probable cause for arrest. Drug courier profiles are often based on commonly held notions concerning the typical age, race, personal appearance, behavior, and mannerisms of drug couriers.



Some argue that it is unfair to use such factors in determining probable cause. These critics argue that individualized suspicion—as opposed to the generalized characteristics of drug couriers—should be required to establish probable cause. Others believe that drug interdiction presents unique law enforcement problems and that the use of the profiles is necessary in order to stop drug trafficking.

Police may establish probable cause from information provided by citizens in the community. Information from victims or witnesses can be used to obtain an arrest warrant. Police also use information from informants to establish probable cause if they can convince a judge that the information is reliable. In determining the reliability of an

FIGURE 12.1 Sequence of Events in the Criminal Justice Process





An officer pats down a suspect's outer clothing. *When can an officer stop and frisk a person?*

informant's tip, a judge will consider all the circumstances. These include whether the informant has provided accurate information in the past, how the informant obtained the information, and whether the police can **corroborate**, or confirm, the informant's tip with other information.

Problem 12.1

The police receive a tip that a drug pusher named Richie will be flying from New York City to Washington, D.C., sometime on the morning of September 8. The informant describes Richie as a tall man with reddish hair and a beard. He also tells police that Richie has a habit of walking fast and that he will be carrying illegal drugs in a brown leather bag. The police have received reliable information from this informant in the past. On the morning of September 8, the police watch all passengers arriving from New York City. When they see a man who fits the description—carrying a brown leather bag and walking fast—they arrest him. A search of the bag reveals a large quantity of cocaine.

- a. Based on what you know, do you think the police had probable cause to arrest Richie? Why or why not?
- b. Should the police have obtained a warrant before arresting Richie? Why or why not?
- c. Assume the police have not received a specific tip but they know that crack cocaine is being brought regularly on trains from one city to another by teenagers hired by older drug dealers. They see a 16-year-old African American male arriving by train. He is alone, and is carrying a small canvas bag. Should the police be able to stop and question him? Under what circumstances should they be able to search or arrest him?

A police officer does not need probable cause to stop and question an individual on the street, but the officer must have **reasonable suspicion** to believe the individual is involved in criminal activity. Reasonable suspicion is based on even less evidence than probable cause, but must be more than a mere hunch. If the officer has reasonable suspicion that the person is armed and dangerous, he or she may do a limited pat-down of the person's outer clothing—called a **stop and frisk**—to remove any weapons the person may be carrying.

Even if a police officer does not have probable cause or reasonable suspicion, the officer may go up to any individual and ask to speak to him or her. The person may decline and continue his or her activity,

and the officer is not legally permitted to take the person's silence or departure into account in determining probable cause or reasonable suspicion. In all states, however, if the person runs from the police upon being asked for identification, that flight may give the officer reasonable suspicion to stop the person again, at which point the person is not free to walk away. This is especially true with stops in high crime areas.

The most common kind of arrest occurs when people do not realize they are being arrested at all. When a police officer stops a person driving a car for violating traffic laws, the driver is technically under arrest because the driver is not free to leave, but must stay until the officer releases him or her. Further, in 1997, the U.S. Supreme Court ruled that police can order all passengers out of a car when making a lawful traffic stop. The detention in this common situation is brief, usually lasting only as long as it takes the officer to check identification and registration, and typically ends when a citation (ticket) is issued for the violation.

The Case of . . .

The Unlucky Couple

After an evening at the movies, Lonnie Howard and his girlfriend, Melissa, decide to park in the empty lot behind Briarwood Elementary School. They begin talking and start drinking the beer they brought with them. After several beers, the couple is startled by the sound of breaking glass and voices from the rear of the school.

Unnoticed in their darkened car, Lonnie and Melissa observe two men loading office furniture and electronics equipment from the school into the back of a van. Quickly concluding that the men must be burglars, Lonnie decides he should leave the parking lot. He revs up his engine and roars out of the parking lot onto Main Street.

Meanwhile, unknown to Lonnie and Melissa, a silent security alarm has also alerted the local police to the break-in at the school. Responding to the alarm, Officer Vicki Ramos heads for the school. She turns onto Main Street just in time to see one vehicle—Lonnie's car—speeding away from the school.

Problem 12.2

- a.** If you were Officer Ramos, what would you do in this situation? If you were Lonnie, what would you do?
- b.** If Officer Ramos chases Lonnie, will she have probable cause to stop and arrest him?
- c.** How do you think Officer Ramos would act after stopping Lonnie? How do you think Lonnie and Melissa would act?
- d.** Role-play this situation. As Officer Ramos, decide what you would say and how you would act toward the occupants of the car. As Lonnie and Melissa, decide what you would say and how you would act toward the police officer.
- e.** What could Lonnie and Melissa do if they were mistakenly arrested for the burglary? What could they do if they were abused or mistreated by Officer Ramos?
- f.** Assume Lonnie takes a baseball bat from the back of the car and begins to wave it after being stopped by Officer Ramos. Would it be legal for Officer Ramos to use deadly force?

Steps to Take

What To Do If You Are Arrested

- **Do not struggle with the police.** Be polite. Avoid fighting or swearing, even if you think the police have made a mistake. Resisting arrest and assaulting a police officer are usually separate crimes that you can be charged with even if you have done nothing else wrong. If you believe you have been assaulted by the police, be sure to write down the officer's name and badge number. If possible, also write down the names and phone numbers of any witnesses.

Give your name, address, and phone number to the police. Otherwise, keep quiet until you have spoken to a lawyer. Do not discuss your case with anyone at this point, and don't sign any statements about your case.

You may be searched, photographed, and fingerprinted. Notice carefully what is done but do not resist. If any personal property is taken from you, ask for a written receipt.

As soon as possible after you get to the police station, call a trusted relative or friend. Tell this person where you are, what you have been charged with, and what your bail or bond is. See Chapter 13 for information about bail.

Please note that this information applies to adults who are arrested. When juveniles are taken into custody, parents must be notified and there is no right to bail. There may also be other differences between juvenile and adult arrest procedures and the steps you should take. See Chapter 16 for information about the juvenile justice system.



Cooperating with the police

- **When you are arrested for a minor offense, you may, in some places, be released without having to put up any money.** This is called an unsecured bond or citation release. If you do not qualify for a citation release, you may have to put up some money before release. This is called posting a cash bond or collateral. Ask for a receipt for the money.
- **When you are arrested for a serious misdemeanor or felony, you will not be released immediately.** Ask the friend or relative you have called to get a lawyer for you. If you cannot afford a lawyer, one will be appointed by the judge when you are first brought to court.

Before you leave the police station, be sure to find out when you are due in court. *Never be late or miss a court appearance.* If you do not show up in court at the assigned time, a warrant will be issued for your rearrest.
- **Do not talk about your case with anyone except your lawyer.** Be honest with your lawyer, or he or she will have trouble helping you. Ask that your lawyer be present at all lineups and interrogation sessions. Most criminal defense lawyers recommend that you not talk to police about the crime until you speak with a lawyer.

A police officer may use as much physical force as is reasonably necessary to make an arrest. However, most police departments limit the use of deadly force to incidents involving dangerous or threatening suspects. In 1985, the U.S. Supreme Court was asked to decide whether it was lawful for police to shoot an “unarmed fleeing felony suspect.” In deciding the case, the Court ruled that deadly force “may not be used unless it is necessary to prevent escape, and the officer has probable cause to believe the suspect poses a significant threat of death or serious physical harm to the officer or others.”

If a police officer uses too much force or makes an unlawful arrest, the accused may bring a civil action for a violation of the federal *Civil Rights Act*. The government could also file a criminal action against the police. In addition, many local governments have processes for handling citizen complaints about police misconduct. You should know, however, that a police officer is never liable for false arrest simply because the person arrested did not commit the crime. Rather, it must be shown that the officer acted maliciously or had no

The Case of . . .

The Arrest for Seat Belt Violations

Gail Atwater was driving through the streets of her small town in Texas when Officer Turek stopped her. Her three-year-old son and five-year-old daughter were with her in the front seat of her pickup truck. None of them were wearing seat belts. Texas law allows police to make a warrantless arrest for seat belt violations or allows them to give out a citation (ticket) to the offender. The penalty under Texas law for this offense is a fine of no less than \$25 and no more than \$50.

The officer asked Ms. Atwater for her license and registration. She was unable to produce them, telling Officer Turek they had been stolen the day before. Turek told her she was “going to jail.” Her two small children began to cry. Fortunately, a neighbor saw the incident and took the children into her home. Once the children left, Officer Turek handcuffed Ms. Atwater and took her to the police station. After an hour in jail she was taken to

a magistrate who released her on bond. She eventually paid a small fine but brought a lawsuit against the town and the police department for violating her rights.

The lower federal courts found for the town. The U.S. Supreme Court agreed to review the case to determine whether or not a warrantless arrest could be made by police for a misdemeanor that did not involve a breach of the peace and that is punishable only by a fine.

Problem 12.3

- a. Did Officer Turek have probable cause to believe that Gail Atwater had violated the Texas seat belt laws?
- b. Do you agree or disagree with the way the officer handled the case? Would it make a difference to you if he had stopped her for a seat belt violation with her children in the past? Explain.
- c. Given the circumstances of the case, was the seizure reasonable?
- d. How should the Court decide this case? Give your reasons.

reasonable grounds for suspicion of guilt. Also, if an arrest is later ruled unlawful, the evidence obtained as a result of the arrest may not be used against the accused. (See Pretrial Motions: The Exclusionary Rule, on pages 161–163 in Chapter 13.)

Search and Seizure

Americans have always valued their privacy. They expect to be left alone, to be free from unwarranted snooping or spying, and to be secure in their own homes. While there is no explicit right to privacy in the U.S. Constitution, the Fourth Amendment sets out the right to be free from “unreasonable searches and seizures” and establishes conditions under which search warrants may be issued. This right, like others in the Bill of Rights, limits the power of government; it does not apply to limit actions by private citizens. If an individual violates your privacy, however, you may be able to make a claim under tort law, discussed in Unit 3.

Balanced against the individual’s reasonable expectation of privacy is the government’s need to gather information. In the case of the police, this is the need to collect evidence against criminals and to protect society against crime.

The Fourth Amendment does not give citizens an absolute right to privacy, and it does not prohibit all searches—only those that are unreasonable. In deciding if a search is reasonable, the courts consider the facts and circumstances of each case. Traditionally, courts have found searches and seizures of private homes to be reasonable when authorized by a valid warrant. In practice today, warrantless

searches are very common (except for searches of homes) because courts have carved out many exceptions to the warrant requirement as long as the search is reasonable. These exceptions to the warrant requirement are discussed on pages 144–146.

The U.S. Supreme Court has considered many cases involving the reasonableness of warrantless searches. For example, it used the concept of “reasonable expectation of privacy” to help determine whether a search was reasonable or unreasonable. In one such case, the Court found that a person did not have a reasonable expectation of privacy in garbage left in a plastic bag for pickup on his front curb. The police were allowed to search this person’s garbage without first obtaining a warrant.

Police officers search a house to collect evidence against criminals. *What is the exclusionary rule?*



Although the language of the Fourth Amendment is relatively simple, search and seizure law is complex. There are many exceptions to the basic rules. Once an individual is arrested, it may be up to the courts to decide whether any evidence found in a search was legally obtained. If a court finds that the search was unreasonable, then evidence found in the search cannot be used at the trial against the defendant. This principle—the **exclusionary rule**—does not mean that the defendant cannot be tried or convicted, but it does mean that evidence seized in an unlawful search cannot be used at trial.

Problem 12.4

Examine each of the following situations. Decide whether the search violates the Fourth Amendment and whether the evidence seized can be used in court. Explain your decisions.

- a. The police see Dell standing at a bus stop on a downtown street, in an area where there is extensive drug dealing. They stop and search him and find drugs in his pocket.
 - b. After Brandon checks out of a hotel, the police ask the hotel manager to turn over the contents of the wastebasket, where they find notes planning a murder.
 - c. Jill's former boyfriend breaks into her apartment and looks through her desk for love letters. Instead he finds drugs, which he turns over to the police.
 - d. Terry is on a bus traveling from Miami to New York City. Three police officers board the bus wearing "RAID" jackets, and Terry can see that at least one is carrying a gun. One officer stands in the front of the bus partially blocking the aisle, while the other two officers eye the passengers, pick out Terry, and ask him for identification and his ticket. After returning both to him without comment, they then ask Terry for permission to search his luggage. He gives his permission. The officers open his bag and find cocaine.
 - e. Pamela is observed shoplifting items in a store. Police chase Pamela into her apartment building and arrest her outside the closed door of her apartment. A search of the apartment reveals a large quantity of stolen merchandise.
 - f. Sandi is suspected of receiving stolen goods. The police go to her apartment and ask Claire, her roommate, if they can search the apartment. Claire gives the police permission, and they find stolen items in Sandi's dresser.
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Searches With a Warrant

A **search warrant** is a court order. It is obtained from a judge who is convinced that there is a **bona fide** need to search a person or place. Before a judge issues a warrant, someone, usually a police officer, must file an **affidavit**—a sworn statement of facts and circumstances—that

Law in Action

Police and the Problem of Excessive Force

While most well-trained police officers respect the rights of the citizens they protect, there is a persistent issue of police abuse in the United States. In 2001, more than 12,000 civil rights complaints were filed with the U.S. Department of Justice. The majority of these alleged abuses involved law enforcement officers. The problem appears to be more serious in urban areas. In 1998, the group Human Rights Watch issued a report based on a two-year study conducted in 14 cities. The report noted that police brutality exists because of a failure to establish effective accountability systems.

Where data are available, members of minority groups report cases of police brutality far in excess of their representation in the population. According to the report, civilian review boards in these cities—established to deal with complaints about police—lack the funding needed to monitor police adequately. The report also found that police department internal affairs units tend to operate under a cloak of secrecy, seldom releasing results of investigations to the public. In addition, the report criticizes the U.S. Department of Justice’s Civil Rights Division for its lack of zeal in prosecuting police misconduct cases.

In 2000, a bill designed to curb law enforcement and police abuses was introduced in Congress. The *Law Enforcement Trust and Integrity Act* garnered strong support from police organizations and civil rights organizations, but failed to become law. It provided for many of the same recommendations made by Human Rights Watch in its 1998 report, including:

- creating national standards for training, management, and oversight of officers;



Using excessive force

- mandatory data collection on racial, ethnic, and gender profiling in law enforcement;
- protections for due process rights of all those accused of abuses;
- new protections from abuses by the Immigration and Naturalization Service and the U.S. Customs Service; and
- whistleblower protection for officers who break the “blue code of silence” covering abuses.

Problem 12.5

- a. How are citizen complaints about the police handled in your community?
- b. Do you have a problem with police brutality in your community?
- c. What do you think about the recommendations made in the 2000 congressional bill? What steps would work best to improve local police-citizen relations?

provides the probable cause to believe that a search is justified. If a judge issues a search warrant, the warrant must specifically describe the person or place to be searched and the particular things to be seized.

Once the search warrant is issued, the search must be conducted within a certain number of days specified in the warrant. Also, in many states the search must be conducted only in the daytime, unless the warrant expressly states otherwise. Finally, a search warrant does not usually authorize a general search of everything in the specified place. For example, if the police have a warrant to search a house for stolen 20-inch televisions, it would be unreasonable for the police to look in desk drawers, envelopes, or other small places where such televisions could not possibly be hidden. However, the police can seize evidence related to the case and any other illegal items that are in their plain view when they are properly searching the house for the televisions.

When the police have a warrant to search a house, the Fourth Amendment's reasonableness requirement usually means that they must knock, announce their purpose and authority (i.e., that they are police officers), and request admission. Police generally cannot enter a house forcibly—even with a warrant—unless they have met this “knock and announce” test. However, the U.S. Supreme Court has allowed for “no-knock” entries when circumstances present a threat to the officers or where evidence would likely be destroyed if advance notice were given (e.g., in drug cases). But the Court also ruled that a state law authorizing no-knock warrants in all felony drug dealing cases violates the Fourth Amendment, reiterating the requirement to consider the circumstances of each particular case.

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**



Search warrants must state the specific place to be searched and the particular items to be seized. *What other requirements must police follow with a search warrant?*

Searches Without a Warrant

According to the law, searches of private homes usually require a warrant. However, because of the number of exceptions to the Fourth Amendment warrant requirement, most searches are warrantless. These searches, however, must still be reasonable. The courts have recognized a number of situations in which searches are reasonable and may be legally conducted without a warrant.

- **Search incident to a lawful arrest.** A search that is part of, or incident to, a lawful arrest is the most common exception to the warrant requirement. This exception allows the police to search a lawfully arrested person and the area immediately around that person for hidden weapons or for evidence that might be destroyed. This is called a “grab area” search. If the arrest occurs next to the accused’s car, police may also search the passenger compartment of the car, but usually not the trunk. The Supreme Court also allowed a “protective sweep” through an arrested person’s home in search of other potentially armed persons.
- **Stop and frisk.** A police officer who reasonably thinks a person is behaving suspiciously and is likely to be armed may stop and frisk the suspect for weapons. This exception to the warrant requirement was created to protect the safety of officers and bystanders who might be injured by a person carrying a concealed weapon. Such a search may only be for weapons. In 1993, however, the Supreme Court said that seizing an illegal substance (such as drugs) during a valid frisk is reasonable if the officer’s sense of touch makes it immediately clear that the object felt is an illegal one. This is known as the “plain feel” exception.

These agents are authorized to search without a warrant. *Is it reasonable to search all airline passengers using a metal detector even when there is no probable cause?*



- **Consent.** When a person voluntarily agrees, the police may conduct a search without a warrant and without probable cause. Normally, a person may grant permission to search only his or her own belongings or property. In some situations, however, one person may legally allow the police to conduct a search of another person’s property. For example, a parent may usually allow officers to search a child’s property.
- **Plain view.** If an object connected with a crime is in plain view and can be seen from a place where an officer has a right to be, it can be seized without a warrant. For example, if an officer legally stops a car for a traffic violation and sees

Fingers McGee

While on duty, Officer Michelle Yomoto and Officer Liam Jones received a radio report of a robbery at the Dixie Liquor Store. The report indicates only that the suspect is male, about six feet tall, and wearing old clothes. Meanwhile, Fingers McGee is finishing up some shopping at a nearby store and has just seen the owner of the Dixie Liquor Store chasing a man. The man was carrying a paper sack and what appeared to be a knife as he ran down the street. Fingers McGee thinks the man looks like Mark Johnson, a drug addict, and he thinks the man was running toward Johnson's house located at 22 Elm Street. Officers Yomoto and Jones encounter Fingers McGee on a street corner and begin to ask him questions.

Problem 12.6

- a. Role-play this encounter. As the officers, decide what questions to ask McGee. As McGee, decide what to tell the officers.
- b. Assume McGee tells the police what he knows. What should the police do then?
- c. Should the police get a search warrant before going to Johnson's house? If they go without a warrant, do they have probable cause to arrest him? Why or why not?
- d. If the police decide to enter Johnson's house, what should they do? Should they knock and announce themselves, or should they break in unannounced?
- e. If the police enter the house, can they arrest Johnson? Where can they search, and what, if anything, can be seized? Role-play the scene at the house.

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a gun lying on the car seat next to the driver, he may seize it without a warrant. Likewise, if an officer has gained legal entrance into a suspect's house and sees drug paraphernalia on a coffee table, the officer does not need a warrant to seize the **contraband** (illegal items).

- **Hot pursuit.** Police in hot pursuit of a suspect are not required to get a search warrant before entering a building that they have seen the suspect enter. It is also lawful to seize evidence found in plain view during hot pursuit of a suspected felon.
- **Vehicle searches.** A police officer who has probable cause to believe that a vehicle contains contraband may conduct a search of the entire vehicle, as well as any containers in the vehicle that might contain the contraband, without a warrant. This does not mean that the police have a right to stop and search any vehicle on the streets. The right to stop and search must be based on probable cause.
- **Emergency situations.** In certain emergencies, the police are not required to get a search warrant. These situations include searching a building after a telephoned bomb threat, entering a house after smelling smoke or hearing screams, and other situations in which the police do not have time to get a warrant. The

U.S. Supreme Court has also allowed warrantless entries of a person's home where the police have probable cause to believe that failure to enter immediately (i.e., before getting a warrant) will result in destruction of evidence, escape of the suspect, or harm to the police or another individual inside or outside the building. This exception has been limited by the Supreme Court to serious crimes.

- **Border and airport searches.** Customs agents are authorized to search without warrants and without probable cause. They may examine the baggage, vehicles, purses, wallets, and similar belongings of people entering the country. Body searches or searches conducted away from the border by customs agents are allowed only where there is reasonable suspicion of criminal activity. In view of the danger of terrorist activities, security personnel and airlines are permitted to search all carry-on luggage and to search all passengers by means of fixed and hand-held metal detectors. Since the September 11, 2001 terrorist attacks, these searches can take place several times from the time a passenger enters the airport until he or she boards the flight.

Although the Fourth Amendment protects students at school, the Supreme Court has given school administrators broader power than the police to search students and their possessions. *How has the Court helped schools combat the issue of drugs?*

Public School Searches

As you have learned, the Fourth Amendment does not protect citizens against all government searches and seizures, but only *unreasonable* searches and seizures. In its consideration of the extent to which students at public schools enjoy Fourth Amendment rights while they are at school, the U.S. Supreme Court has granted school authorities broad discretion to search students and their possessions in several situations.

The touchstone of the Court's analysis under the Fourth Amendment in criminal searches is the reasonableness, considering all the circumstances, of the particular government invasion of an individual's personal security. In the context of public schools, however, the main concern is whether a search is reasonable in the context of the school's legitimate interests. In *New Jersey v. TLO* (1985), an assistant principal suspected a student of violating the public high school's rule against smoking. The principal searched the student's purse, and found evidence of marijuana use. Although the Court recognized that a



Student Drug Testing

Tecumseh High School offers a variety of extracurricular activities for its students. These activities include choir, band, color guard, Future Farmers of America (FFA), Future Homemakers of America (FHA), and the academic team, as well as athletics and the cheerleading squad. The majority of the school's 500 students participate in one or more of these activities.

At the start of the 1998 school year, the school district adopted the Student Activities Drug Testing Policy. While the school acknowledged only a minimal problem with drugs, they adopted this policy to prevent a bigger problem from developing. The policy required drug testing of all students who participated in any school-sanctioned extracurricular activity. Specifically, in order to participate in an activity, each student had to sign a written consent agreeing to be tested for drug use on several occasions: prior to participating in the activity, randomly during the year while participating in the activity, and at any time while participating in the activity upon reasonable suspicion.

According to the policy, students to be tested at random are called out of class in groups of two or three. The students are directed to a restroom, where a faculty member serves as a monitor. The monitor waits outside the closed restroom stall for the student to produce the sample. The monitor pours the contents of the vial into two bottles. Together the faculty monitor and the student seal the bottles. The student signs a form, which the monitor places with the filled bottles into a mailing pouch in the presence of the student. The bottles are then sent to be tested at a designated laboratory. Random drug testing was conducted in this manner on approximately eight occasions during the 1998 and 1999 school years.

There are no academic penalties for refusing to take the test or for a negative result, and results of the tests are not shared with law enforcement authorities. Students who refuse to submit to the policy simply cannot participate in the extracurricular activity. In two school years, a total of 484 students were tested as part of this policy. Four students tested positive.

Two students—neither a student athlete—challenged this policy in federal court as a violation of their right to privacy. The trial court sided with the school, but the federal court of appeals reversed the decision. The school board has appealed to the U.S. Supreme Court, which has agreed to hear the case.

Several years earlier, the U.S. Supreme Court upheld the policy of an Oregon high school to conduct random, suspicionless searches of student athletes at a high school with a serious drug problem. In that case, school officials had determined that the student athletes were among the leaders of the “drug culture” at the school.

Problem 12.7

- a. How is this case like the Oregon case? How is it different? How is this case similar to and different from the *New Jersey v. TLO* case discussed on page 146?
- b. What are the most convincing arguments for the students?
- c. What are the most convincing arguments for the school?
- d. How should this case be decided? Explain.
- e. Assume the case is decided in favor of the school. Will this mean that schools can test all students? Faculty and staff? Should schools be able to test everyone for drugs? Explain.



student does have a reasonable expectation of privacy while at school, it nevertheless upheld the search. Instead of requiring that the school have probable cause to suspect a student of criminal activity (as in a traditional criminal search), the school authority only needs to have reasonable suspicion to believe that a search will turn up evidence that the student is violating either school rules or the law.

Because drug use is a serious issue in schools today, courts have given schools great discretion in devising ways to combat the problem. For example, the courts allow schools to search student lockers on the theory that lockers belong to the school and that students do not have a reasonable expectation of privacy in property owned by the school. Most courts have also allowed drug-sniffing dogs to enter schools to search for drugs. However, the courts have usually been reluctant to allow strip searches of students suspected of drug use, finding such searches to be unreasonable.

Suspicionless Searches

Searches and seizures are usually unreasonable if there is no individual suspicion of wrongdoing. For example, the police could not search all the people gathered at a street corner if they suspected that only one of the individuals possessed evidence of a crime. They could search only the person upon whom their individual suspicion is focused so that the privacy rights of the others are protected.

However, the U.S. Supreme Court has recognized some limited circumstances in which this requirement of individualized suspicion need not be met. For example, the court has upheld suspicionless searches conducted in the context of a program designed to meet special needs beyond the goals of routine law enforcement. These special circumstances include fixed-point searches at or near borders to detect illegal aliens, and mandatory drug and alcohol tests for railroad employees who have been involved in accidents. The Court found these searches to be reasonable and in support of a special need beyond ordinary law enforcement. These searches continue to be controversial because they seem to depart from the Fourth Amendment's explicit requirement that searches be based on probable cause.

Racial Profiling in Police Investigations

Racial profiling, sometimes called racially biased policing, can be defined as the inappropriate use of race as a factor in identifying people who may break or have broken the law. Racial profiling occurs when, for example, a police officer stops a car solely because an African American is driving it, or an airport security guard selects an "Arab-looking" person to be searched because of his or her appearance. Critics of racial profiling, including civil rights advocates and some police professional organizations, say that it

"Race relations between police and the community is one of the fundamental things that we must work through and 'get right' if we are to have any hope of significant and lasting progress on stopping illegal drugs, reducing youth crime and improving public safety."

— Chief Charles Ramsey,
Metropolitan Police
Department,
Washington, D.C.



YOU BE THE JUDGE

Police Searches Without Individualized Suspicion

Each of the cases below deals with the policy of allowing the government to conduct searches that are not based on individualized suspicion of criminal wrongdoing. Analyze the facts carefully. Balance the individual's interest in privacy against the government's justification for conducting the searches. Then decide whether or not the U.S. Supreme Court should allow each search.

- a. In early 1986, the Michigan Department of State Police established a sobriety checkpoint pilot program. All vehicles passing through a checkpoint would be stopped and their drivers briefly examined for signs of intoxication. If an officer detected any signs of intoxication, the driver would have his or her driver's license and car registration checked. If warranted, the officer could decide to conduct further sobriety tests. Should the field tests and the officer's observations suggest that the driver was intoxicated, an arrest would be made. All other drivers would be permitted to resume their journey immediately. The program was carried out on only one night. During the hour-and-fifteen-minute duration of the checkpoint's operation, 126 vehicles passed through the checkpoint, with an average delay of approximately 25 seconds per vehicle. Two drivers were detained for field sobriety testing, and one of the two was arrested for driving under the influence of alcohol. A third driver who drove through without stopping was pulled over by an officer in an observation vehicle and arrested for driving under the influence. Before any further checkpoints could be carried out, several drivers filed a lawsuit claiming that the checkpoints created an unreasonable seizure



A sobriety checkpoint

of their vehicles in violation of their Fourth Amendment rights.

- b. In August 1998, Indianapolis began to operate checkpoints in an effort to catch drug traffickers. Between August and November, the city conducted six checkpoints and stopped a total of 1,161 vehicles. At the checkpoint, police would stop a group of cars at random and inform the drivers that they were being detained briefly. One officer would ask the driver for license and registration information and check for evidence of the driver's impairment. Another officer would conduct a plain view search of the inside of the vehicle from outside, while a trained dog would sniff around the outside of the car for drugs. Unless this procedure produced evidence of probable cause, the drivers were able to leave, typically within five minutes. These stops resulted in 104 arrests, about half of which were for drug offenses. Several drivers who were detained sued the city for violation of their Fourth Amendment rights.

Racial profiling is a controversial issue. *When is it appropriate for a police officer to use race in deciding whom to stop?*



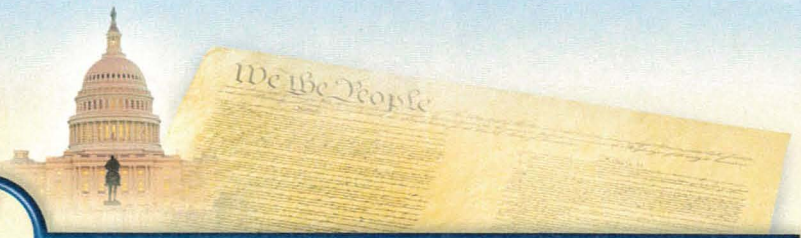
violates people's constitutional right to equal protection before the law and presumption of innocence. They also say it is an ineffective law enforcement tactic, it reinforces racial stereotypes in society, and it creates negative relations between police and citizens.

The general rule is that it is inappropriate for an officer to stop a person solely because of his or her race. However, in some situations officers may appropriately use race as one factor among others in deciding whom to stop. For example, if an eyewitness to a robbery describes the robber as an African American man, a police officer may use race as a factor in deciding to stop an African American man that she sees running from the immediate vicinity.

Problem 12.8

Determine if race was appropriately or inappropriately used as a factor in making each of the following decisions. Give your reasons.

- a.** After a terrorist attack, the government decides to use more telephone wiretaps to gather information in communities that have mosques.
- b.** In a neighborhood where several African Americans have been arrested for recent burglaries, a police officer searches an African American youth who is walking down the street.
- c.** A man reports overhearing two Spanish-speaking men in a coffee shop planning to rob a specific jewelry store the next day. The witness could not see the men's faces and does not know their names. The next day the police go to the store and question two "Latino-looking" men who are sitting in a car outside.
- d.** A woman entering the United States holds a passport from a country with which the United States was recently at war. A customs agent detains her for questioning.



What Should Be Done About Racial Profiling?

A committee of state legislators is meeting to discuss solutions to the problem of racial profiling. A study by the state government shows that African American drivers are 35 percent more likely to be stopped and searched by police than drivers of other races. A survey of people who have been pulled over in the state shows that an overall majority of people felt that they were stopped for legitimate reasons. However, one in three African Americans and one in four Latinos felt they had been unfairly stopped. Many complained of abusive treatment by police.

Assume you are a state legislator on the committee trying to solve these problems. Read the following excerpts from proposals offered by committee members.

Gomez: The problem is that police are not used to dealing with people from other cultures and have stereotypes of people from other races. All police should receive training on diversity and how to be culturally sensitive.

Wu: This practice has gone on so long because people are not aware of their rights. When people are stopped, they should immediately be told why and be given a card that lists their rights and a business card listing the name and contact information for the officer.

Letaliano: Police officers are not being disciplined for their inappropriate behavior because the police chiefs are unaware of what is going on. We need to collect data regularly to make police officers more aware of why they are really stopping people and to keep them accountable to the public. Each time a driver is stopped, the officer should be required to fill out a form detailing the time and date,

driver's age, probable race, gender, and the reason for stopping the person.

Reynolds: The U.S. Constitution and state laws already prohibit searches not based on probable cause. The police department already has internal complaint procedures people can follow if they feel they were stopped because of their race. This is enough to protect citizens. To do more may make the police reluctant to stop people who may be criminals.

Al-Aziz: It's too hard for citizens to prove that they were stopped illegally. All stops by police should be videotaped so we can see how the police treat the suspect and then take disciplinary action against officers who act improperly.

Debouche: We can't rely only on laws or the police department to solve the problem. The answer is to have a board made up of citizens that hears complaints and has the power to require disciplinary action against officers who act inappropriately.

Problem 12.9

- a. Which of these proposals seems most likely to help address the problem as you see it? Give your reasons.
- b. Invite members of your community to participate in this activity. Be sure that representatives from both law enforcement and a group concerned about racial profiling are invited. Is there evidence that racial profiling is a problem in your community? If so, what is the evidence? What can be done to deal with the problem? If it is not a problem where you live, are there measures that can be taken to keep it from becoming a problem?

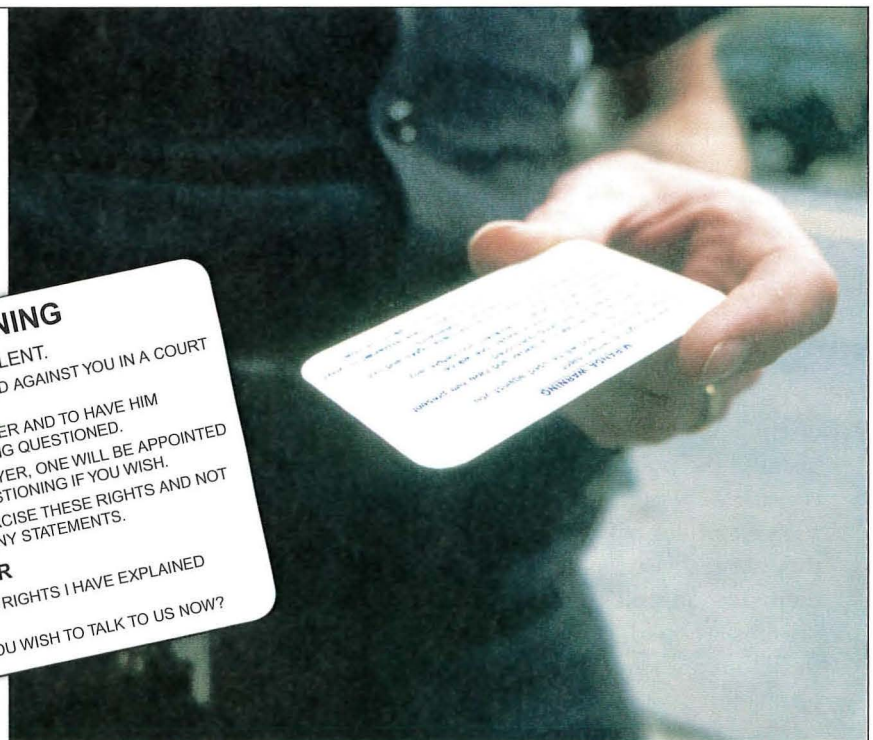
Interrogations and Confessions

After an arrest is made, it is standard police practice to question, or **interrogate**, the accused. These interrogations often result in confessions or admissions. The accused's confessions or admissions are later used as evidence at trial.

Balanced against the police's need to question suspects are the constitutional rights of people accused of a crime. The Fifth Amendment to the U.S. Constitution provides citizens with a privilege against **self-incrimination**. This means that a suspect has a right to remain silent and cannot be forced to testify against himself or herself. This protection rests on a basic legal principle: the government bears the burden of proof. Suspects are not obliged to help the government prove they committed a crime or to testify at their own trial. Under the Sixth Amendment, a person accused of a crime has the right to the assistance of an attorney.

The U.S. Supreme Court has held that a confession is not admissible as evidence if it is not voluntary and trustworthy. This means that using physical force, torture, threats, or other techniques that could force an innocent person to confess is prohibited. In the case of *Escobedo v. Illinois*, the Supreme Court said that even a voluntary confession is inadmissible as evidence if it is obtained after the defendant's request to talk with an attorney has been denied. The Court reasoned that the presence of Escobedo's attorney could have helped him avoid self-incrimination.

Miranda warnings are read to suspects in custody if the police want to interrogate them. How has the Miranda rule changed in recent years?



MIRANDA WARNING

1. YOU HAVE THE RIGHT TO REMAIN SILENT.
2. ANYTHING YOU SAY CAN AND WILL BE USED AGAINST YOU IN A COURT OF LAW.
3. YOU HAVE THE RIGHT TO TALK TO A LAWYER AND TO HAVE HIM PRESENT WITH YOU WHILE YOU ARE BEING QUESTIONED.
4. IF YOU CANNOT AFFORD TO HIRE A LAWYER, ONE WILL BE APPOINTED TO REPRESENT YOU BEFORE ANY QUESTIONING IF YOU WISH.
5. YOU CAN DECIDE AT ANY TIME TO EXERCISE THESE RIGHTS AND NOT ANSWER ANY QUESTIONS OR MAKE ANY STATEMENTS.

WAIVER

DO YOU UNDERSTAND EACH OF THESE RIGHTS I HAVE EXPLAINED TO YOU?
HAVING THESE RIGHTS IN MIND, DO YOU WISH TO TALK TO US NOW?

The Case of . . .

Miranda v. Arizona

Ernesto Miranda was accused of kidnapping and raping an 18-year-old girl near Phoenix, Arizona. The girl claimed she was on her way home from work when a man grabbed her, threw her into the back seat of a car, and raped her. Ten days later, Miranda was arrested, placed in a lineup, and identified by the girl as her attacker. The police then took Miranda into an interrogation room and questioned him for two hours. At the end of the two hours, the officers emerged with a written and signed confession. This confession was used as evidence at trial, and Miranda was found guilty.

Miranda later appealed his case to the U.S. Supreme Court, arguing that he had not been told of his right to remain silent or of his right to counsel. Miranda did not suggest that his confession was false or brought about by coercion but rather that he would not have confessed if he had been advised of these rights.

Problem 12.10

- Summarize the facts in the *Miranda* case. On what grounds did Miranda appeal his conviction?
- Do you think Miranda's confession should have been used as evidence against him at trial? Why or why not?
- Do you think police should be required to tell suspects their rights before questioning them?
- Do you think suspects would confess after being warned of their rights?

Landmark Supreme Court Cases



Visit the Landmark Supreme Court Cases Web site at landmarkcases.org for information and activities about *Miranda v. Arizona*.

Although some defendants might ask for an attorney, others might not be aware of or understand their right to remain silent or their right to have a lawyer present during questioning. In 1966, the Supreme Court was presented with such a situation in the case of *Miranda v. Arizona*. In its decision, the Supreme Court ruled that Ernesto Miranda's confession could not be used at trial because officers had obtained it without informing Miranda of his right to a lawyer and his right to remain silent. As a result of this case, police are now required to inform people taken into custody of the so-called *Miranda* rights before questioning begins.

Suspects sometimes complain that they were not read their *Miranda* rights and that the entire case should therefore be dropped and charges dismissed. Failure to give *Miranda* warnings, however, does not affect the validity of an arrest. The police have to give *Miranda* warnings only if they want to use statements from the accused at the trial. In fact, in his second trial, even though the court could not use his confession as evidence against him, Miranda was convicted based on other evidence.



Where You Live

What is the practice regarding *Miranda* warnings in your area? How do the police provide warnings to people who are deaf, are mentally impaired, or speak a language other than English?

The Parolee and the Detective

Local police were investigating a burglary in a large city. They believed that the burglary had been committed by Blaine, a person who had served a prison term but was now out on parole. A detective went to Blaine's home and left him a note asking him to come down to the police station. Blaine read the note and went to the station to speak to the detective. Upon entering the detective's office, he was told that he was not under arrest. Then he was told that police were investigating a burglary at a specific address and that his fingerprints had been found at this location. At this point, Blaine confessed to the crime. The detective never read him his *Miranda* warnings, and the

detective knew that Blaine's fingerprints had not been found at the scene. Before Blaine's trial on the burglary charge, he and his attorney asked the court to throw out the confession because he had not been given his *Miranda* warnings. The judge refused and, after a trial, Blaine was convicted.

Problem 12.11

- State the issue the appeals court will have to decide.
- What arguments can be made for Blaine? For the state?
- Was Blaine in custodial interrogation at the time of his confession?
- What is the purpose of *Miranda* warnings?
- How should this case be decided?

No person . . . shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law.

— Fifth Amendment to the U.S. Constitution

In all criminal prosecutions, the accused shall . . . have the Assistance of Counsel for his defence.

— Sixth Amendment to the U.S. Constitution

The *Miranda* case has been controversial. It illustrates the delicate balance between the protection guaranteed to the accused and the protection from crime provided to society. This balance is constantly changing, and the effect of the *Miranda* case has been somewhat altered by more recent cases. In one case, the Supreme Court created a public safety exception to the *Miranda* rule. In this case, a police officer who was arresting a rape suspect in a grocery store asked the suspect where his gun was before advising him of his rights. The suspect then pointed to a nearby grocery counter, where the gun was found. The Court held that police may ask questions related to public safety before advising suspects of their rights. The Court has also limited the impact of the *Miranda* rule by strictly requiring that the person be in a condition of *custodial interrogation* before the warnings are needed. Custodial interrogation means that the person is in custody (not free to leave) and is being interrogated (questioned) by the police.

Remember that defense counsel will ask the judge before trial to exclude the results of an illegal search. Similarly, defense counsel will ask the judge at a pretrial hearing to exclude any statement given by the defendant in violation of the *Miranda* rule.