

HOW DOES A CRIMINAL CASE GET DISMISSED WITHOUT A TRIAL?

Many criminal cases are resolved without a trial. Some with straight forward dismissals.

- In some cases the prosecution can be misinformed by the arresting officer(s). The arresting officer does not always get the facts right.
- Crime reports are often times full of bad information. Officers make mistakes that place citizens in jeopardy.

WHAT CAN YOU DO WHEN THE OFFICER VIOLATES THE LAW & YOUR CONSTITUTIONAL RIGHTS?

Peace Officers are not above the law themselves. An officer with the power of arrest must also follow the law. The United States Constitution sets forth certain safe guards that protect all of us from unreasonable and unlawful government intrusions into our private lives. What do I mean?

- **Your home** is a special place where law enforcement (the government) shall not enter without a warrant to collect evidence of a crime. There are very limited exceptions to this rule. Obviously if you give an officer consent to search your home without a warrant you may not thereafter complain. So why would you invite an officer into your home to search for evidence of your own criminal conduct?
- **Your automobile** is a place of lesser constitutional protection, but even your automobile is protected against unlawful government intrusions. So in order for an officer to lawfully search your car, he must at least have “probable cause”. That is, he must be able to justify the search of your car based upon a “reasonable suspicion” of some criminal activity. So without a warrant, an officer must be able to spell out for a court of law, some facts that he relied upon to justify his searching of your car or truck. An officer must first of all have a “reasonable suspicion” of criminal activity before he can even stop your car. It is unlawful for an officer to simply order you out of your car and search it for no reason during a traffic stop.

WHAT SHOULD YOU DO WHEN YOU BELIEVE YOU ARE THE VICTIM OF AN UNLAWFUL SEARCH AND SEIZURE?

- First of all, physical resistance is not the answer.
- Do not give the officer consent to search. Just say no.
- Get out of the way and let the officer search.
- Your best approach is to challenge the unlawful search with a “motion to suppress” the evidence later in court.
- Don’t talk to the officer. Don’t answer questions. Simply advise the officer you will remain silent, and you will need an attorney before answering any questions. ***You are not required to talk with or answer the officer’s questions.***

A criminal defense attorney will be able to advise you on the appropriate actions to take in court, and whether a “motion to suppress” is an appropriate option. When your attorney files a “motion to suppress” in court, he or she is telling the judge that the officer violated your 4th Amendment right to be free from unlawful searches and seizures. ***It is not a technicality.*** It is a way to force law enforcement to follow the law. Remember, law enforcement officers are not above the law.

ARE YOU REQUIRED TO ANSWER AN OFFICER’S QUESTIONS?

The answer is no. When does “Miranda” apply, and when do you have the “right to remain silent”? This is a 5th Amendment right that applies to you when:

- **You are in custody.** That means you have been arrested, or you have been detained by law enforcement and you are not free to simply walk away. When you find yourself in handcuffs, the conclusion is obvious. You have been arrested.
- **And you are interrogated.** When an officer is asking you questions about your involvement in a crime, you are being interrogated. When an officer has arrested you and now is asking you questions, he is gathering evidence to be used against you.

What should you do when you are arrested and questioned? The simple answer is to **SHUT UP!** You are not going to talk yourself out of the precarious position you are in, so don’t even try. Advise the officer that:

- I am going to remain silent.
- And, I want to have an attorney present before I answer any questions.

Even if you are not in custody, arrested or detained, you may still invoke your right to remain silent and to demand an attorney be present before answering any questions.

An officer may say, “you are not a suspect, you are not under arrest, and you are free to go at any time”. If there is some question that you may be a suspect or a target of the officer’s investigation, then you walk away, AND you **SHUT UP!**

DO COPS SCREW UP INTERROGATIONS?

Yes they do. How could the cop get your statement wrong?

- The cop fails to advise you of your Miranda Rights when you are in custody.
- Officers will often question you without recording the interrogation.
- The officer may or may not even take notes while you are responding to his questions.
- This same officer may wait days or even weeks to complete his crime report. And often times the officer will, many days after your interrogation, write down your alleged statement in his report based upon his memory of that interrogation days or weeks previously.

Mistakes are inevitable under these circumstances. The question is how will you protect yourself from these types of mistakes? **SHUT UP!**

HOW CAN AN ATTORNEY HELP YOU?

An attorney can look at the facts of your case, and advise you whether or not your Miranda Rights were violated. If it appears that your Miranda Rights were violated, then a pre-trial motion should be filed in court on your behalf.

**DO PROBATIONERS
AND PAROLEES HAVE
ANY RIGHTS REGARDING
SEARCHES BY LAW ENFORCEMENT?**

People on Probation or Parole often are required to provide a 4th Amendment waiver as a result of their conditional release back into society. That is, when a person is placed on Probation or Parole they agree to give up certain protections they might otherwise have regarding search and seizure. But even a Probation or Parole search condition is not a blank check for law enforcement to search indiscriminately those with search conditions on their conditional release from jail or prison. The basic rule is still the same, *without a warrant, the police and prosecution must justify their search.*

**WHEN IS A PROBATION
OR PAROLE SEARCH UNLAWFUL?**

It is unlawful when:

- The officer only discovered the Probation or Parole search condition after the unlawful search was done.
- There was no justification for the original detention.

**ARE COPS REQUIRED
TO ALWAYS SPEAK THE TRUTH?**

Police officers don't always tell you the truth. And the courts don't require them to tell you the truth. So clear your mind of the notion that you can believe everything an officer tells you. They will lie to you if it suits their purpose.

Examples of when cops lie to you:

- When a cop says to you, he knows all there is to know about your case. He says that he has talked to a number of witnesses and they all say they saw you commit a crime.
- He also says this is your opportunity to tell your side of the story.
- Things will go better for you if you cooperate and answer his questions.

- He may even tell you he will talk to the District Attorney and let him know of your cooperation.
- He may also tell you that your cooperation will have an effect on the judge and will determine what will happen to you, and that the judge will take into account your cooperation.

If an officer truly knows all about your case, and has all these great witnesses at his disposal, he probably wouldn't tell you how strong his case was. And he would likely just take you to jail, and spend little time trying to talk to you. The more promises or threats an officer makes to you in order to get you to answer his questions, the more likely it means he doesn't know much about your case at all and is hoping you will confess and make his job a lot easier.

When an officer tells you that your friend has already copped out, admitted the crime and said that you were also involved; what that really means is – the officer has no evidence at all that you have done anything wrong, and that your friend has already invoked his “right to remain silent”. So, **SHUT UP!**

HOW GOOD IS OUR LEGAL SYSTEM?

Our legal system will surely fail if we tolerate our own government agents' (cops) willful violation of our nation's laws. The founders of this great country knew of the dangers ever present with a government that placed itself above the law. No one can be truly free if our government is not accountable for its actions. The following statement from a landmark case suggests the importance of these practical safeguards in our legal system.

Justice Brandeis said it best:

“Decency, security, and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen... Crime is contagious. **If the government becomes a lawbreaker, it breeds contempt for law;**... *Olmstead v. United States* (1928) 277 U.S. 438, 485 [Brandeis, J. dissenting] [emphasis added], cited app. *Mapp v. Ohio* (1961) 367 U.S. 643, 659.

Police officers who violate the law and your constitutional rights are not a new phenomena. But you don't have to accept these unlawful acts when perpetrated against you by police officers. These cases should get dismissed.

Only a fool would assume that law enforcement personnel are always objective in their investigations. You need to look no further than the reported opinions our own California

and United States Courts to find reference to the well documented facts of police malfeasance.

It has been understood that **cops have a personal interest in the outcome** of cases which cannot invite a presumption of their truthfulness in these sorts of frays. See *People v. Dickerson* (1969) 273 Cal.App.2d 645, 650 and fn. 4, cited app. without contradiction, as evidence of the “prevalence of police perjury [in criminal investigations/testimony]...” *Briscoe v. LaHue* (1983) 460 U.S. 325, 365 and fn. 36 [Brennan, J. dissenting]. Justice Brennan notes, @*Id.*, **that prosecutors are reluctant to prosecute their malefacting police** because they have to work closely with them.

“Power is a heady thing,” noted our insightful prosecutor from Nuremberg, “and history shows that the police acting on their own cannot be trusted. And so the Constitution requires a magistrate to pass on the desires of the police before they violate the privacy of the home.” *McDonald v. United States* (1948) 335 U.S. 451, 456. (A *neutral* magistrate!)

And so it has become a First Principle of criminal advocacy that the People (The District Attorney) have the burden to justify a warrantless search and seizure, *Coolidge v. New Hampshire* (1971) **WARRANTLESS** searches and seizures are **PRESUMPTIVELY ILLEGAL**. *Katz v. United States* (1967) 389 U.S. 347, 357, *People v. Laiwa* (1983) 34 Cal.3d 711, 725.

That especially applies to residential searches, because the **PHYSICAL ENTRY OF THE HOME IS THE CHIEF “EVIL” AGAINST WHICH THE WORDING OF THE FOURTH AMENDMENT IS DIRECTED**. *Payton v. New York* (1980) 445 U.S. 573, 585. (Yep, at least the Supreme Court recognizes that the cops can be “evil” in their work, imagine that!)

And don’t forget, prosecutors are not looking for police misconduct when they are reviewing police reports. **They are looking to see if they have enough evidence to convict you of a crime.**

WHAT ROLE WILL YOUR ATTORNEY PLAY?

You need an attorney to point out unlawful police conduct to the court. This is not a search for technicalities that will allow you to escape punishment. This is first and foremost a search for the TRUTH, all of the truth. This type of search for the TRUTH will hold the police accountable for their work as well. And your rights as a citizen will be protected.