

Attorney advises citizens to know their rights

Our criminal justice system is designed to control the manner in which police investigate a crime and the way in which they gather evidence against a suspect. Police agencies must conduct their criminal investigations in a manner consistent with governmental intrusions. This means that a police search of someone's residence must be reasonable as defined by the law, which in turn means that a search warrant will usually be required.

Law enforcement also must be carried out in a way that assures innocent persons are not convicted—even if this means allowing some guilty to go free.

Guest opinion

Thus, the law provides that people have the right to be free from unreasonable searches and seizures, the right to be free from being forced into self-incrimination and the right to counsel. To insure that these principles are adhered to, evidence police obtain as a result of violating these principles cannot be used against an accused in a trial.

Following is a general summary of information as to your rights and responsibilities in an investigative situation, along with some specific advice on how to exercise those rights:

If the police call on you at your residence:

- (1) Step out of the room or house to talk and close the door behind you.
- (2) Ask if you are under arrest. If the answer is no, you can ask if you can proceed with your private business.
- (3) If you are under arrest or are taken to the police station, you can tell the police that you have nothing to say until you talk with an attorney. You have the right to remain silent and you should remain silent in the vast majority of circumstances.

(4) If the police ask you to enter the room or house you can ask them to produce a search warrant.

(5) If you voluntarily consent to a search, the police are not required to have a search warrant. Although you have the right to withhold your consent, the police do not have to inform you that you have this right.

(6) The police have no power or authority to promise you that it will be easier on you if you cooperate by allowing them to search. You do not have to sign anything allowing them to search.

(7) If you feel that you may be the subject of an illegal police search, summon a friend or bystander to the scene.

(8) The police do not need a search warrant to seize evidence that is in plain view. Eg: police are in dormitory hallway and see marijuana in the room through an open door.

(9) Under certain circumstances the police can search without a warrant or without your consent, therefore if the police persist in entering you must not physically resist. Voice your objection so that it is clear that you have not consented to the search.

If the police stop you:

(1) Do not try to get away and do not resist arrest. Resisting arrest is often a more serious offense than what you were originally stopped for and assaulting a police officer is a serious offense.

(2) Do not lie to the police. It is better to remain silent. The police are proficient at interrogation and will know when you are lying.

(3) Again, ask the police if you are under arrest. If you are not under arrest you can ask to leave. If you are arrest-

ed the police have the right to search your person. You should state your true name and age and ask what you are charged with. You can tell the police that you do not want to answer any questions until you talk with an attorney.

(4) Under certain circumstances the police have the right to stop and frisk a suspect even though an arrest has not been made, therefore you should not physically resist the police.

(5) The requirement that the police obtain a search warrant is relaxed where a vehicle with occupants is the object of the search. In most situations the police will not need a search warrant to search the passenger area of a vehicle that is occupied. However, the police will still need legally sufficient cause to conduct such a search. Eg: officer stops driver who is speeding and smells the odor of burnt marijuana coming from the car or drug paraphernalia is in plain view.

(6) If you are arrested you have the right to remain silent. You do not have to answer questions and you do not have to sign any statements. You have the right to have an attorney present during questioning. The police

have no power or authority to promise that you will not be charged with an offense or that it will be easier on you if you confess.

If you choose to follow any of these suggestions you should do so in a polite and respectful manner. Exercising your constitutional rights and responsibilities does not mean you need to be rude or disrespectful to the police.

As noted previously, evidence that the police obtain illegally cannot be used against an accused. The determination of whether evidence has been obtained illegally is often complicated and highly contested. Thus, it is legal determination that you should see an attorney about.

The above information should not be considered a substitute for legal advice. The solution for any one problem necessarily depends upon the exact facts and circumstances. Students are encouraged to seek legal advice at the Student Legal Office at 237 Nebraska Union, 472-3350.

Robert Lange
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