



BOARD ON POLICE STANDARDS AND TRAINING

158 12th ST., N.E. • SALEM, OREGON • 97310 • Ph. 364-2171 Ext. 1250 and 1257

TOM McCALL
GOVERNOR

RUPERT L. GILLMOUTHE
Sheriff
Hood River County
Chairman

HAROLD A. ELLSWORTH
Chief of Police
Eugene
Vice Chairman

MEMBERS

JAMES J. DUNLEVY
Mayor
Medford

DON EVA
Attorney
Portland

BYRON W. HAZELTON
Major
Oregon State Police
Salem

BERNARD L. HUELSKAMP
Asst. Special Agent in Charge
Federal Bureau of Investigation
Portland

JAMES H. JONES
Chief of Police
Astoria

THE LAW ON SEARCH AND SEIZURE

Outline prepared by

ROBERT A. LUCAS, Deputy District Attorney

Multnomah County, Oregon

992

000992

Published by:
BOARD ON POLICE STANDARDS AND TRAINING
ENFORCEMENT ASSISTANCE GRANT
Salem, Oregon - January, 1968

Reprint November - 1968

Reprint January - 1969

THE LAW ON SEARCH & SEIZURE

INDEX

1. Introduction
2. Early History of the Law on Search and Seizure
3. Exclusionary Rule, Effect and Exceptions
 - a. In General
 - b. Effect of Exclusionary Rule
 - c. Exceptions to Exclusionary Rule
 - (1) Searches by Private Persons
 - (2) Searches Unreasonable as to Third Persons
 - (3) Impeaching the Defendant's Credibility
4. The Law of Search and Seizure
 - a. 4th Amendment and Art. 1, Section 9 of the Oregon Const.
 - b. Premises Protected by Fourth Amendment
 - c. What Is Not a Search
 - d. What Is Not a Seizure
 - e. Results of an Illegal Search by Police
5. Search With a Search Warrant
 - a. In General
 - b. Search Warrants May Be Obtained For Searches of:
 - (1) Persons
 - (2) Premises
 - (3) Vehicles
 - c. Things For Which a Search Warrant May Be Issued
 - d. Obtaining the Search Warrant
 - (1) Who May Issue Search Warrants
 - (2) Affidavit of Probable Cause
 - (3) Form of Search Warrant

INDEX CONTINUED

- (4) Description of Premises to be Searched
- (5) Description of Property Sought
- (6) To Whom Issued
- e. Executing the Search Warrant
 - (1) By Whom Executed
 - (2) Time of Execution
 - (3) Physical Extent of the Search
 - (4) Time Consumed by the Search
 - (5) Extent of Seizure
 - (6) Use of Force
 - (7) Arrest of Persons on the Premises
 - (8) Search of Persons on the Premises
 - (9) Reading Warrant to Occupant
- f. Receipt for Property Taken
- g. Return of the Search Warrant
- h. Practical Tips in Serving Search Warrants
- 6. Search of the Person
 - a. Search with a Search Warrant
 - b. Search by Consent
 - c. Search of Person Incidental to Arrest
 - (1) In General
 - (2) Purpose of the Search
 - (3) Arrest Must Be Lawful and Bona Fide
 - (4) Who May Search
 - (5) Time and Place of Search
 - (6) Extent of the Search
 - (a) In General

INDEX CONTINUED

- (b) Packages, Suitcases and Other Containers
 - (c) Body Cavities
 - (d) Blood Samples
 - (7) Extent of Seizure
7. Search of Premises
- a. Search of Premises With a Warrant
 - b. Search of Premises With Consent
 - (1) In General
 - (2) Elements of a Voluntary Consent
 - (a) Specific Consent to Search
 - (b) Unequivocal Language
 - (c) Absence of Fraud
 - (d) Miscellaneous
 - (3) Extent of Search
 - (4) Who May Consent
 - (a) Landlord or Hotel Clerk
 - (b) Spouse
 - (c) Employer-Employee
 - (d) Guest or Visitor
 - (e) Common Occupants and Joint Tenants
 - c. Search of Premises Incidental to Arrest
 - (1) In General
 - (2) Probable Cause for Search of Premises
 - (3) Arrest Must Be Lawful and Bona Fide
 - (4) Search Must Be Contemporaneous With Arrest
 - (5) Arrest Inside and Outside the Premises
 - (6) Elements of a Reasonable Search
 - (a) Not Exploratory

INDEX CONTINUED

- (b) Area of Search
- (c) Objects of Search and Seizure
- (d) Scope of Search
- d. Search of Premises Under "Exceptional Circumstances"
- 8. Search of Vehicles
 - a. In General
 - b. Search by a Search Warrant
 - c. Search With Consent
 - d. What Is Not a Search or Seizure
 - e. Search of Mobile Vehicle on Probable Cause
 - f. Search of Vehicle Incidental to Arrest
 - (1) Arrest Must Be Lawful and Bona Fide
 - (2) Arrest Must Be At Vehicle
 - (3) Search Must Be Contemporaneous With the Arrest
 - (4) Extent of Search
 - (5) Extent of Seizure
 - g. Search After Lawful Impoundment
 - h. Traffic Arrests, Motor Vehicle Safety Inspections and Other Detentions

LAW ON SEARCH & SEIZURE

1. Introduction

The law of search and seizure is an area that all police officers, both recruit and experienced, must learn thoroughly and keep current on in order to adequately do their job. The constitutional provisions in this regard are of great importance to law enforcement officers not only because they set out general standards in protecting personal liberties, but also because a misunderstanding thereof will result in frustration to the officer in many instances at the conclusion of the case when it is presented in court. It is imperative that all persons concerned with law enforcement keep abreast of recent decisions and developments regarding search and seizure so as to deny the criminal element the opportunity to evade conviction because of a technical mistake. The purpose of this course is to educate you in the law of search and seizure and to aid in plugging any technical gaps that might allow the criminal element to escape.

2. Early History of the Law on Search and Seizure

a. The common law rule followed in the American colonies was the English rule that evidence obtained by illegal search and seizure was nevertheless admissible in a criminal trial if it tended to prove an issue in the case. This rule is still followed in England, Canada and other common law nations.

b. Later the Colonies began to protest the "Writs of Assistance" which actually were general warrants issued by the Crown. These writs were issued on suspicion only -- no probable cause was required.

3. Exclusionary Rule, Effect and Exceptions

a. In General - In 1914, the United States Supreme Court in Weeks v. U.S., 232 US 383, rejected the common law rule and held that evidence obtained by

an unreasonable search and seizure will be excluded from court. So the "Exclusionary Rule" was born. The rule then applied only to federal officers in federal courts. The court reasoned that this was the only way to enforce the provisions of the Fourth Amendment relating to unreasonable searches and seizures.

This "Exclusionary Rule" was broadened in scope until finally in Mapp v. Ohio, 367 US 643, decided in 1961, the court held that thereafter evidence obtained by procedures that violate Fourth Amendment standards would not be admissible in state courts either.

b. Effect of Exclusionary Rule - The effect of the "Exclusionary Rule" is to cause all evidence that is obtained as a result of an unreasonable search or seizure by police officers to be excluded from court. The minimum standard today in deciding what is an "unreasonable search or seizure" is the Fourth Amendment and cases interpreting it.

c. Exceptions to Exclusionary Rule -

(1) Searches by Private Persons - The 4th Amendment is a restriction against government action only. Evidence obtained by the prosecution through an unlawful search and seizure made by a private person is outside the scope of the rule. Such evidence is admissible.¹ If the court finds that the police participated in the search in any manner whatsoever, it will be tainted and the exclusionary rule will apply.²

(2) Searches Unreasonable as to Third Persons - Another exception relates to evidence obtained by unreasonable searches and seizures by police officers in violation of the constitutional rights of individuals other than the defendant. If the defendant cannot complain or has no standing to complain that the search was unreasonable as to him, then the exclusionary rule does not apply. Beware, however, as the courts have been very liberal in construing that the defendant has standing to complain and holding that his rights were violated.³

(3) Impeaching the Defendant's Credibility - This exception is of little practical significance. It deals with the right of the prosecution to produce the illegally seized evidence to impeach the defendant with after the defendant has denied ever possessing it on direct examination. The unlawful search cannot be used by the defendant as " . . . a shield against contradiction of his own untruths."⁴

4. The Law of Search and Seizure

a. Fourth Amendment and Article 1, Section 9 of the Ore. Constitution

(1) Fourth Amendment -

"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."

(2) Article 1, Section 9 of the Oregon Constitution

"No law shall violate the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search, or seizure; and no warrant shall issue but upon probable cause, supported by oath, or affirmation, and particularly describing the place to be searched, and the person or thing to be seized."

(3) As can be readily seen, the federal and state constitutional guarantees relating to search and seizure are almost identical. The key words therein are probably "unreasonable" and "probable cause". Most cases involve interpretations of those terms.

The only searches and seizures made illegal are those which are unreasonable. Neither constitution defines the word "unreasonable". There is no ready made test or fixed formula for use in all situations. The question of reasonableness must find resolution in the facts and circumstances of each case. Following are some of the factors considered in determining whether or not the search was reasonable:

(a) How the search was commenced, ie, with search warrant, by consent, or incidental to arrest?

(b) Gravity of the offense, ie, kidnapping case or minor in possession of liquor?

(c) Type of premises searched, ie, business or private residence?

(d) Size of object sought?

(e) Nature of thing sought, ie, fruits of crime or mere evidence?

(f) Extent of arrested person's control over premises?

(g) Nature of search, ie, exploratory search?

A discussion of probable cause follows under section dealing with search warrants.

b. Premises protected by Fourth Amendment

(1) Houses - interpreted broadly to include any dwelling,⁵ business, office or store.⁶

(2) Curtilage - generally the yard surrounding a dwelling enjoys the same protection as the dwelling. There are federal district court decisions that have gone both ways on this issue.

(3) Miscellaneous - protection applies towards one's persons, papers and effects. This includes vehicles, safe deposit boxes and mail.

c. What Is Not a Search - It is not a search for an officer to see what is open and visible to the eye when seen from any place where he is lawfully entitled to be. Therefore, an officer observing things while in the following places is not making a search:

(1) Open fields.⁷

(2) Public places.⁸

(3) In private premises while there on lawful business.⁹

d. What Is Not a Seizure

- (1) Abandoned property.¹⁰
- (2) Voluntarily surrendered property.¹¹
- (3) Contraband, known instrumentalities or fruits of crime in plain view while on premises lawfully.¹²

e. Results of an Illegal Search by Police

- (1) Return of property seized unless contraband or stolen property.
- (2) Exclusionary rule applies and evidence cannot be used at trial.

This excludes not only the physical evidence but also testimony by the police that they observed the evidence and seized it.

5. Search With a Search Warrant

a. In General - The first rule to remember involving searches is to ALWAYS OBTAIN A SEARCH WARRANT PRIOR TO MAKING A SEARCH WHEN TIME AND OTHER FACTORS WILL PERMIT THIS! The courts today are encouraging the use of search warrants and are being somewhat liberal in upholding cases involving search warrants.¹³

A search warrant is a written order by a court, based on a judicial determination that probable cause exists for its issuance, requiring a police officer to go to a particular place and look for specified property.

It is incumbent upon all police officers to thoroughly know what is required to obtain a search warrant, how to obtain a search warrant and the proper procedure in executing and making a return on a search warrant. Oregon law enforcement officers should be familiar with the provisions of Oregon Revised Statutes Chapter 141 from ORS 141.010 through 141.200 dealing with search warrants.

b. Search Warrants May Be Obtained For Searches of:

- (1) Persons
- (2) Premises, to include portions thereof such as safe deposit

boxes or lockers

- (3) Vehicles

c. Things For Which A Search Warrant May Be Issued

- (1) ORS 141.010 provides

"A search warrant may be issued upon any of the following grounds:

- (1) When the property was stolen or embezzled.
- (2) When the property was used in the commission of, or which would constitute evidence of, the crime.
- (3) When the property is either in the possession of a person who intends to use it as a means of committing a crime or in the possession of another to whom such person delivered it for the purpose of concealing it or preventing its being discovered."

- (2) This means that a search warrant may be issued to search for:¹⁴
 - (a) Stolen or embezzled property or other "fruits of the crime."
 - (b) Contraband
 - (c) Instrumentalities or property used in the commission of the crime.
 - (d) Evidence of the crime.

(3) A gun used in a robbery, a crowbar used to pry open a window during a burglary and the clothing and mask worn during a bank robbery are instrumentalities of crime.¹⁵ Stolen property and a marked \$5.00 bill received by the defendant in a sale of illegal narcotics are fruits of crime.¹⁶ A handkerchief found in defendant's home, pointed out by the child victim of a sex offense and allegedly bearing some tangible evidence of the offense, was held to be evidentiary only, not an instrumentality by which the crime was committed.¹⁷ In Oregon, by statute since 1963, a warrant can issue to search for evidence only. This differs from the federal rules which do not allow searches for evidence alone.¹⁸

d. Obtaining the Search Warrant

(1) Who may issue search warrants - ORS 141.040 provides

"A magistrate authorized to issue a warrant of arrest may issue a search warrant."

As a matter of practice in Oregon, search warrants should be issued by a judge in the county in which the search is to take place. If a felony is involved the better practice is to have a judge of a state court (municipal judge sitting as an ex-officio justice of the peace, justice of the peace, district court or circuit court judge) issue the search warrant.

(2) Affidavit of probable cause - ORS 141.030 provides

"A search warrant cannot be issued but upon probable cause, shown by affidavit, naming or describing the person, and describing the property and the place to be searched."

The Fourth Amendment and Article 1, Section 9 of the Oregon Constitution also require "probable cause" for the issuance of a search warrant.

"Probable cause" exists for issuance of a search warrant where facts and circumstances within the officer's knowledge and of which he has reasonable trustworthy information are sufficient in themselves to warrant a belief by a man of reasonable caution that a crime has been or is being committed.¹⁹ This is more than mere suspicion, but it can be less than the evidence needed to prove guilt at trial. Hearsay information from a confidential informant may be used.²⁰

The name of the informer need not be disclosed unless necessary to show his reliability or necessary to defendant's case.²¹

ORS 141.050 provides

"Before issuing the warrant, the magistrate shall examine on oath the complainant and any witnesses he may produce, take their depositions in writing and cause the depositions to be subscribed by the parties making them."

The Oregon Supreme Court has held that this procedure is the same procedure as that referred to in ORS 141.030 regarding the affidavit.²² In some instances an affidavit by more than one person might be necessary in order to obtain "probable cause".

"If the magistrate is satisfied that there is probable cause to believe that the grounds of the application exist, he shall issue the search warrant." ORS 141.060

(3) Form of search warrant - ORS 141.080 provides that a search warrant shall be in substantially the form set out therein. A sample search warrant and affidavit are attached herewith as Enclosure #1.

(4) Description of premises to be searched - The search warrant must particularly describe the place to be searched. This description is sufficient if it is such that the officer executing the warrant can with reasonable effort identify the exact place, to the distinction of all others.²³

If a search is to be directed at a specified apartment in a building occupied by a certain individual, then those facts should be set out in the affidavit and the search warrant. Multiple unit buildings seem to cause the most problems regarding "particularly describing the place to be searched." It is not sufficient to include the entire building when "probable cause" exists only to search one apartment therein. The best rule is to couple the name of the occupant with the description of the apartment, ie, "Apt. #7, 1020 Main Street, Portland, Multnomah County, Oregon, occupied by Jonathan Jones."²⁴

(5) Description of property sought - The search warrant must "particularly describe" the things to be seized. If the warrant fails to adequately describe the property, any seizure made under it is illegal.²⁵ Obviously, the officer must obtain the most specific description of the

goods that is reasonably possible under the circumstances. For instance, if it is stolen property that is being sought, include the serial number, if known, and the name, size and color of the item.

(6) To whom issued - The search warrant will normally be directed to a certain class of law enforcement officer, such as, "to the sheriff or his deputies" or "to any peace officer of the County of Multnomah".²⁶

e. Executing the Search Warrant

(1) By whom executed - A search warrant must be executed by the officer of the name or title to which issued or within the class specified, assisted by other officers as needed.

(2) Time of execution - ORS 141.100 provides

"A search warrant must be executed and returned to the magistrate by whom it was issued within 10 days from its date, unless such magistrate, before the expiration of such time, by indorsement thereon, extends the time for 5 days. After the expiration of the time prescribed by this section, the warrant, unless executed, is void."

The warrant should, as a general rule, be executed as early as possible within the period of time set out by statute.

(3) Physical extent of the search - The search should include all parts of the building which come within the description in the warrant and which, judged by construction and usage, are reasonably and logically a part of it.²⁷ The size of the object sought will govern the intensiveness of the search. In other words if you are looking for a stolen refrigerator, you are not entitled to search drawers or other small places where the refrigerator could not possibly be concealed. A search for a stolen diamond ring, however, would authorize a search of drawers and other small places. "Reasonableness" is the key. Common sense must be used by the searchers.

Once the articles described in the search warrant are located, identified and seized, the search must end, assuming no intervening legal basis for additional search such as an arrest made on the premises.

(4) Time consumed by the search - Whatever is reasonable under the circumstances is allowed to make the search. No more time than is needed should be utilized. Too much time could turn an otherwise lawful search into an "unreasonable search" so as to make the "Exclusionary Rule" applicable. The courts have upheld a 6½ hour search by nine Federal officers executing a search warrant in a gambling case,²⁸ and a 3½ hour search of a two-story building.²⁹

(5) Extent of Seizure - Only the things particularly described in the warrant, contraband and instrumentalities and fruits of other crimes (such as stolen property) found while conducting the search for the things "particularly described" may be seized.³⁰

(6) Use of force - The following statutes apply:

(a) "In the execution or service of a search warrant, the officer has the same power and authority, in all respects, to break open any door or window, to use all necessary and proper means to overcome any forcible resistance made to him or to call any other person to his aid that he has in the execution or service of a warrant of arrest." ORS 141.110

(b) "The officer may break open any outer or inner door or window of a dwelling house, or otherwise, to execute the warrant, if, after notice of his authority and purpose, he is refused admittance." ORS 133.290

The general rule is that the police officer must identify himself as a police officer, state that his purpose is to serve a search warrant and be denied admittance prior to forceably breaking into the premises.

There is a growing line of authority, however, justifying noncompliance with statutes requiring advance notice when exigent circumstances exist,

as, for example, when the officers in good faith believe that they or someone within are in peril of bodily harm or that the person to be arrested is fleeing or attempting to destroy evidence.³¹

In cases involving narcotics, it is very commonplace for the defendants to attempt to destroy or get rid of the evidence by flushing it down the toilet once they receive knowledge that the police are on the scene. Common sense indicates that police efforts to serve a search warrant in cases involving narcotics would be frustrated most of the time if they are going to be required to give notice of their authority and purpose and then wait until they have been refused entrance before they can force their way into the premises.

Once inside the premises, officers may use all necessary force required to defend themselves in serving the search warrant.³²

(7) Arrest of persons on the premises - A search warrant alone is no authority for an arrest. If the lawful execution of the search warrant leads to discovery of a crime being committed on the premises at the moment, the persons committing the crime may be immediately arrested under the usual rules of arrest.³³

(8) Search of persons on the premises - A search warrant for premises is not authority for searching persons found on the premises.³⁴

(9) Reading warrant to occupant - It is a good practice to read the search warrant to the occupant of the premises after entering but prior to making the search. The federal court rules require that a copy of the search warrant be left with the occupant. This is a good procedure to follow regarding state search warrants, also. However, there are no Oregon statutes requiring reading or leaving a copy of the warrant.

f. Receipt For Property Taken - ORS 141.120 provides

"When an officer takes property under a search warrant, he shall give a receipt for the property taken, specifying it in detail, to the person from whom he takes it or in whose possession it is found. In the absence of any such person, he shall leave the receipt in the place where he found the property."

If a copy of the search warrant is left with the occupant, the receipt for property taken can be made on the reverse thereof, if it is property listed on the warrant. If property is taken other than property listed on the search warrant, such as contraband or other stolen property, the better practice is to list this property on a separate receipt. This aids the prosecution of these matters later in court.

g. Return of the Search Warrant - ORS 141.130 provides

"The officer who executes the warrant shall forthwith return the warrant to the magistrate and deliver to him a written inventory of the property taken, made publicly or in the presence of the person from whose possession it was taken and of the applicant for the warrant, if they are present, verified by the oath of the officer, to the following effect: "I, A.B., the officer by whom this warrant was executed, swear that the above inventory contains a true and detailed account of all the property taken by me on the warrant."

Again the better practice is to list separately property found that was described on the warrant from other property that was taken. If the search warrant form includes a place for the return and inventory, include only those items found that were described in the warrant. A separate inventory list should be made for all other property taken into custody.³⁵

The officer who executed the warrant must swear that the inventory is accurate in the language stated above in the statute before a magistrate or some other person authorized to take an oath. Where more than one police officer takes part in serving the warrant, the officer in charge should

make the return.

As has already been noted, ORS 141.100 requires that the warrant be returned to the magistrate within 10 days from its issuance unless an extension has been granted.

h. Practical Tips In Serving Search Warrants

(1) Only use as many officers as is needed to do the job thoroughly within a reasonable time.

(2) One officer within the class specified on the face of the warrant should be in charge of executing the warrant. He should be the individual who reads the warrant to the occupant, controls the search, leaves the receipt and makes the return on the warrant.

(3) Searchers should point out to the officer in charge or another officer all property that they find and are going to seize prior to removing it from the location they found it. Photographs should be taken of the property, especially narcotics, prior to removing it from its original location.

(4) One officer should be designated as the person who will take custody of all property found and transport it to the property room of the police station where it will be kept as evidence or to the police laboratory for examination, whichever is appropriate. Both this officer and the officer who originally found the property should mark it as a minimum with their initials and the date of discovery. This procedure facilitates the prosecution of these matters later.

(5) Each officer engaging in the search should make his own individual report or at least notes shortly thereafter including information as to his part in the search, what he found if anything, who he turned property over to and any other relevant information that he might be called on to testify to later in court.

6. Search of the Person

a. Search with a Search Warrant - As has already been pointed out a search warrant may be issued by a magistrate for a search of a person although this method is seldom used. The search warrant may be issued alone, without an accompanying arrest warrant, and the arrest without a warrant -- if one is to be made -- may immediately follow the search by search warrant which discloses the presence on the person of the things for which the search warrant was issued. ³⁶ A good practice in cases involving narcotics where "probable cause" exists, is to obtain a search warrant for both the premises and the occupant, as many times the narcotics will be hidden on the person of the occupant.

b. Search by Consent - Searches of the person are rarely made by consent. When such searches are undertaken, the procedure must conform to the law of consent searches generally, which is discussed subsequently and at greater length under "Searches of Premises by Consent." There must be a truly voluntary consent given unequivocally, and without duress, as an understanding waiver of constitutional right not to be searched without a warrant. The burden of showing that such consent was obtained is upon the prosecution. Any person of mature age and in full possession of his facilities normally is qualified to lawfully consent to a search of himself, but a serious question is apparent in the case of children and persons of subnormal or questioned mentality.

c. Search of Person Incidental to Arrest

(1) In General - The police have a right to search a person without a warrant after a valid arrest. This principle is so well settled in our law today that it has become undisputed.³⁷ This right applies to arrest for misdemeanors as well as for felonies. This right does not apply to a situation where a traffic citation with a summons was issued, but rather, only where a full custody arrest is made.

(2) Purpose of the Search - The law gives the arresting officer the right to search the person of the individual arrested for three reasons:³⁸

- (a) To protect the arresting officer.
- (b) To deprive the prisoner of potential means of escape.
- (c) To avoid destruction of evidence by the arrested person.

(3) Arrest Must Be Lawful and Bona Fide - Search of the person incidental to arrest requires an arrest that is lawful. If the arrest is unlawful for any reason, any search of the person made incidental thereto is automatically unreasonable.³⁹ The arrest must be bona fide. No matter how valid the arrest may be in a technical sense, if the court finds that it was used by the officers simply as a pretext to make a search of the person, the search is unreasonable. An arrest may not be used as a pretext to search for evidence.⁴⁰

(4) Who May Search - The search of the person, incidental to arrest (distinguished from confinement in jail), should be made by one or more of the arresting officers. As

pointed out earlier, the law gives the arresting officer a right to search for three important reasons, the first of which is to protect himself.

(5) Time and Place of Search - The rule is that a search made incidental to arrest is not reasonable unless it is made contemporaneous with the arrest. The search must follow so closely upon arrest as to be a part of one continuous transaction.⁴¹ As the search is predicated upon the arrest, the general rule is the search must follow the arrest, not precede it.⁴² A few Oregon cases have upheld a search that immediately preceded the arrest where probable cause existed to believe that a crime was being committed.⁴³ The general rule is that a search of a person incidental to arrest must be made contemporaneous in time and place to the arrest. Courts have allowed small deviations from this rule where there was a short delay due to one of the following reasons: absence of proper facilities for a proper search at the place of arrest such as on a crowded highway; where the arrest was of a woman and no matron was present; and an arrest of an insane or dangerous person by manpower so limited that a safe search could not be accomplished.

Statutes of several States authorize the police to stop, frisk and question persons whom they "reasonably suspect" are committing, have committed, or are about to commit a felony or a serious misdemeanor. These are referred to as "Stop and Frisk" statutes. Oregon, however, does not have a statute such as this.

(6) Extent of the Search

(a) In General - The rule is that officers may search and seize not only the things physically on the person, but those within his immediate physical control to include those immediate physical surroundings which may fairly be deemed to be an extension of his person.⁴⁴ This takes in everything within reach of the defendant and anything else so close that he might reach it by taking a step or two.

Within the authorized area mentioned above, the police may search the person completely. They may examine all items in his actual possession, things in his body cavities under certain limitations mentioned later, and anything in open view.

(b) Packages, Suitcases and Other Containers - Clearly the right to make a search of a person carries with it the right to search packages, suitcases, purses and other objects carried by the arrested person or within his immediate control.⁴⁵

(c) Body Cavities - Body cavities, including the anal canal, are within the permissible area of search providing certain conditions exist:

1 There is probable cause to believe that contraband or some other object of search has been concealed in the body cavity.

2 The actual search was made by a doctor using medically acceptable methods.

3 The physical force used on the person was only such force as was necessary to make the person submit to the examination, and no more.⁴⁶

Contraband and instruments of attack, suicide and escape can be hidden in body cavities. In some cases there is an immediate need to prevent the destruction of evidence. In one case a narcotics officer, after placing the defendant under arrest, saw him put a white glassine envelope containing a white powder in his mouth. This officer closed his arms around the defendant's neck to prevent him from swallowing it while a second officer grabbed the defendant's nose to force his mouth open after unsuccessfully trying to stick his finger into the defendant's mouth. The envelope dropped out of the defendant's mouth and was recovered by the officers. The court held this was a reasonable search.⁴⁷

In another case officers unexpectedly encountered a narcotics suspect in a building and saw him inserting glassine envelopes of the type commonly used in the narcotics trade into his mouth after he apparently recognized one of the officers. They arrested him and a fight ensued. One officer was badly bitten when he put his hand into the defendant's mouth to retrieve the contraband. Later, another officer struck the defendant a blow to the solar plexus and the narcotics popped out. This apparently happened during the fight before the defendant was subdued. The court allowed this evidence to be admitted.⁴⁸

A search of body cavities made in a brutal and offensive manner, using improper methods and more force than necessary, offends due process and is unreasonable.⁴⁹ Except in emergency situations, these searches should always be made by a search warrant for search of the person. The power of search of body cavities is an extraordinary one. It should not be used routinely.

(d) Blood Samples - The U.S. Supreme Court has held that the state's use in evidence against the defendant of a blood sample (showing intoxication) taken from his body, against his will, by a physician acting

on the request of a police officer was proper.⁵⁰ In a similar case a blood sample taken while the defendant was unconscious was held to be proper.⁵¹

The same requirements that must be met for a search of body cavities must be met here, also. Qualified medical personnel using accepted medical methods must always be used.

(7) Extent of Seizure - An arresting officer who has made a valid arrest may search his prisoner and seize all instrumentalities and fruits of the crime for which the arrest was made, contraband and weapons of attack or escape. In addition, the officer may seize items that are purely evidentiary in nature,⁵² things pertaining to another crime and clothing. The police may seize all the personal property of the arrested for safekeeping at the time he is being incarcerated in jail. The latter is a custodial duty which devolve upon the arresting authorities.⁵³

One recent Oregon case,⁵⁴ has held that the seizure by the arresting officer of pills that were later determined to be narcotics, was an unreasonable seizure because the officer had no reasonable grounds to believe that they were contraband. In this case the officer made the arrest for being drunk in violation of a city ordinance and made a search incidental to arrest and seized the pills at that time. Had the officer reasonable grounds or "probable cause" to believe the pills were contraband, the seizure would have been lawful.

7. Search of Premises

a. Search of Premises With a Warrant - This topic has been covered above under "Search with a Search Warrant."

b. Search of Premises With Consent

(1) In General - In order for a consent search to be valid, the

consent must be given voluntarily, as an understanding and intentional waiver of the constitutional right to refuse consent.⁵⁵ The prosecution bears the burden of proof that the consent was truly voluntary.⁵⁶ The courts generally look with disfavor on this type of a waiver of a constitutional right.

(2) Elements of a Voluntary Consent

(a) Specific Consent To Search - The person must consent to the specific act of search and what specific premises may be searched.⁵⁷

(b) No Duress - The consent must be given without force, duress or compulsion of any kind, either express or implied from the circumstances of the case.⁵⁸

(c) Unequivocal Language - Consent must be given in words that are unequivocal. They must show a clear and unmistakable intent to waive the constitutional right to refuse a search.⁵⁹

(d) Absence of Fraud - The consent to search will be held void if shown to have been obtained by subterfuge or misrepresentation.⁶⁰

(e) Miscellaneous - Any person of mature age and in full possession of his faculties normally is qualified to lawfully consent to a search, but a serious question is raised in the case of children, the very old and persons of subnormal or questioned mentality. Each case will rise or fall on its own circumstances.⁶¹

It is a good police practice to obtain a written waiver of the constitutional right to forbid a search, specifically stating that voluntary consent was given to search certain premises, signed by the person giving consent.

(3) Extent of Search - The search can be no more extensive than that for which the consent was given. The search must be limited to the area for which consent was obtained.⁶²

Should the defendant revoke his consent during the progress of the search, the right to search is ended.⁶³

(4) Who May Consent - The general rule is that a valid consent to search premises can be given only by a person who has an immediate and present right to possess those premises, and that if he consents the search is valid as to any person against whom evidence is found. The problem arises when consent is given by a person other than the individual being investigated.⁶⁴ A few of the more common situations follow.

(a) Landlord or Hotel Clerk - A landlord or hotel clerk cannot give consent to the search of a tenant's or guest's apartment or room.⁶⁵

(b) Spouse - The general rule is that one spouse may consent to a search of the premises.⁶⁶ Consent does not extend to the other spouse's personal effects, such as a desk or suitcase, which is exclusively reserved for the other spouse's use and control only.⁶⁷ Consent is probably not valid if other spouse is present and objects.

(c) Employer-Employee - An employee has no authority to authorize a consent search of his employer's premises that is valid against the employer.⁶⁸ An employer can consent to a search of his premises, except for a search of the employee's personal things or areas that he enjoys exclusive possession, such as his desk or locker.⁶⁹

(d) Guest or Visitor - A householder may give consent to a search of his dwelling that is valid against a temporary guest or visitor.⁷⁰ A temporary guest or visitor, however, cannot give consent to search the premises that would be valid as to the possessor.

(e) Common Occupants and Joint Tenants - One co-tenant or roommate may consent to a search of the apartment that is valid as to the other common occupants.⁷¹

c. Search of Premises Incidental to Arrest

(1) In General - A search of premises made incident to a valid arrest is a recognized exception to the general rule that searches of premises protected by the Fourth Amendment must be made by authority of a search warrant.⁷² These searches are the most difficult for the police officer as he must rely on his own judgment alone in applying the standard of reasonableness.

(2) Probable Cause for Search of Premises - We have seen under "Search of the Person" that a valid arrest gives the arresting officers a right to search the person of the one arrested, to include that portion of the premises within his immediate physical control. An arrest does not automatically give the officers a right to search any more of the premises than that. In order for the search to extend further into the premises where the arrest was made the officer must have reasonable grounds to believe in the existence of objects, such as evidence, instrumentalities, fruits and contraband, subject to seizure in the crime for which the arrest was made, susceptible of being hidden on these premises, and as yet undiscovered by the investigation.⁷³

If there is no reason at all to suspect the existence of one or more things subject to seizure in the case for which the arrest was made, a search of the premises made incidental to arrest is exploratory and unreasonable.

(3) Arrest Must Be Lawful and Bona Fide - The arrest must be lawful and not used as a pretext for a search for evidence. See same topic and authorities under "Search of Person" above.⁷⁴

(4) Search Must Be Contemporaneous With Arrest - The general rule is the search must follow the arrest, not precede it, as the arrest confers the power to make a subsequent search.⁷⁵

A few Oregon cases have upheld a search that immediately preceded the arrest where probable cause existed to believe that a crime was being committed.⁷⁶ Practically, the search should begin as soon as the person has been placed under arrest and should conclude within a time reasonable under the circumstances.

(5) Arrest Inside and Outside the Premises - The general rule is that the person must be arrested inside the premises in order to justify a search of them incidental to the arrest. Thus, a person arrested outside the premises cannot be taken to the premises in an attempt to justify searching the premises. The courts have upheld a few exceptions where the arrested party had just left the premises and was arrested by the police as soon thereafter as was possible. Subsequent searches of the premises were allowed on the theory that the arrested person was "constructively" on the premises.⁷⁷

An arrest cannot be deliberately delayed in order to allow the person to return to his dwelling or other premise in order to make a search of those premises. Where this happens, the court will call it an unreasonable search.⁷⁸

(6) Elements of a Reasonable Search -⁷⁹

(a) Not Exploratory - An exploratory search is one which is made for anything which might be turned up but for nothing in particular. All exploratory searches are unreasonable. The fact that it was successful in turning up incriminating evidence does not make it legal. The search is good or bad at the start and does not change character from its success.⁸⁰

(b) Area of Search - The area searched must not exceed the limits of the arrested person's control over the premises. The courts generally agree that these limits include the person's entire habitation or office in which the arrest occurs.⁸¹

(c) Objects of Search and Seizure - The search must be only for evidence, instrumentalities and fruits of the crime for which the arrest was made, contraband and for weapons of injury or escape. Generally, anything may be sought that would be the proper object of a search warrant. Seizure may be made of the above things, plus the instrumentalities, fruits and contraband of other crimes which were discovered while making a reasonable search for the things subject to seizure in the case for which the arrest was made.⁸²

(d) Scope of Search - The search must be reasonable both as to length of time and degree of penetration(intensiveness). The size of the object sought is a yardstick of reasonableness. Searching for a small object permits more intensive penetration just as less penetration is allowed in a search for large objects. What is a reasonable time for completing a search is closely related to the size of the object sought. More time is required to make a meticulous search for small things subject to easy concealment than to find large objects whose presence can be determined very quickly.⁸³

d. Search of Premises Under "Exceptional Circumstances."

The U.S. Supreme Court has said in several decisions that a search would be justified in "exceptional circumstances" where human life is threatened or some other grave emergency exists.⁸⁴ An example would be where officers, passing by on the street, hear a shot and a cry for help. These facts would justify an immediate search of the premises in question without a warrant, consent or incident to arrest. The only justification is the "exceptional circumstances." Cases purporting to involve this exception will be looked at very thoroughly by the courts, however. The burden is on those seeking the exception to show the need for it.

8. Search of Vehicles

a. In General - An officer's authority to search vehicles is broader than that to search persons and places. The fact that a vehicle is highly mobile has made this necessary.

b. Search By A Search Warrant - A search warrant may be obtained to search a vehicle. The same rules and requirements apply here as have already been stated under the topic "Search With A Search Warrant."

c. Search With Consent - This topic was covered earlier under "Search of Premises With Consent."

d. What Is Not A Search Or Seizure - it is not a search for the officer to see what is open and visible to the eye in or on the vehicle either by daylight or by artificial light.⁸⁵

It is not a seizure for the officers to take into custody property that has been abandoned by the occupants of a vehicle. One example of this is when objects are thrown out of the vehicle.⁸⁶

e. Search of Mobile Vehicle On Probable Cause - The general rule is that a vehicle in a mobile condition may be searched on probable cause to believe that it contains something subject to seizure.⁸⁷ The right to search a vehicle on probable cause does not include the right to search an occupant.⁸⁸

Probable cause may be obtained by the officer in many ways. It may be received in part from fellow officers or other persons, by telephone, radio or other means of communication.⁸⁹ Flight from police officers has often been mentioned as one element of probable cause justifying the stopping and searching of a vehicle.⁹⁰ Throwing an article from the vehicle, in an apparent attempt to dispose of it, is an element of probable cause.⁹¹

ORS 475.120 provides

"(1) Any district attorney, sheriff, deputy sherrif, constable or police officer charged with the enforcement of this chapter, having personal knowledge or reasonable information that narcotic drugs are being unlawfully carried or transported or possessed by any boat, vehicle or other conveyance, shall search the same without warrant and without any affidavit being filed. If he finds upon or in such conveyance, narcotic drugs unlawfully carried, transported or possessed, He shall seize them, arrest any person in charge of such conveyance and as soon as possible take the arrested person and the seized drugs before any court in the county in which the seizure is made. He shall also, without delay, make and file a complaint for such violation as the evidence justifies.

(2) Any such conveyance used by or with the knowledge of the owner or the person operating or in charge thereof in the unlawful transportation, or unlawful possession or concealment, of narcotic drugs within this state shall be forfeited to the state in the same manner, by the same procedure and with like effect as provided in ORS 471.660 and 471.665 for the forfeiture of conveyances used in unlawfully handling liquor."

The language above in the statute, ie, "having personal knowledge or reasonable information," should be equated with "probable cause" and the same standard applied to determine whether or not a search should be made.

f. Search of Vehicle Incidental to Arrest

It often occurs that the same factors that give the officer "probable cause" to search the vehicle without a warrant give the officer "probable cause" to arrest the occupant and then search the vehicle incidental to arrest. In such a case it is of no concern to the law which of the two actions the officer takes first.

A vehicle may be searched incidental to a lawful arrest made therein if a search reasonably appears necessary to protect the officer, prevent escape, or the officer has reasonable grounds to believe that the vehicle contains some object which is evidence and subject to seizure pertaining to the offense for which the arrest was made, or that the vehicle is being used in the commission of a crime.⁹³

(1) Arrest Must Be Lawful and Bona Fide - As has been stated earlier, if the arrest is illegal so also is the search of the vehicle made incidental to arrest.⁹⁴ If the arrest was a subterfuge or pretext to accomplish a search, the search is illegal.⁹⁵

(2) Arrest Must Be At Vehicle - Generally, the arrested person must be in the vehicle in order to justify a search of the vehicle incidental to arrest. However, searches incidental to arrest were held proper where the person was arrested in a tavern after having just parked the vehicle outside⁹⁶ and where the person was 100 yards from the vehicle with the car keys in his pocket after having just previously removed some distilling supplies from the car.⁹⁷

(3) Search Must Be Contemporaneous With The Arrest - The search of the vehicle should be made as soon as reasonably possible after the officer finds himself in possession of sufficient authority to make the search.

Unless the vehicle is evidence of the crime itself or subject to forfeiture,⁹⁸ generally, searching the vehicle incident to arrest after the defendant has been taken into custody and the vehicle towed to the police station is an unreasonable search.⁹⁹ The general rule is that the search of the vehicle must be made at the scene of the arrest within a short time thereafter.

(4) Extent of Search - Where the officer has authority to search a vehicle, he may search the entire vehicle for those things it is believed to contain in connection with the crime for which the arrest was made.¹⁰⁰ This includes getting into locked places such as the glove compartment and the trunk. The same rules previously stated relating to the size of the object sought apply here, too, hence, a search too intensive would be deemed unreasonable.

Arresting a person within a vehicle would allow the arresting officer the right to search the area therein within the arrested person's "immediate physical control" under the authority to search a person incidental to arrest as was discussed under that topic earlier. This right exists even though there might not be in existence any instrumentalities or fruits of the crime for which the person was arrested.

Discovering contraband or fruits of another crime during a reasonable vehicle search would give additional grounds to continue to search further and perhaps more intensive.¹⁰¹

(5) Extent of Seizure - Evidence, instrumentalities and fruits of the crime for which the arrest was made; weapons of injury or escape; and instrumentalities, fruits and contraband of other crimes which were discovered while searching for the things subject to seizure in the case for which the arrest was made are all objects which may properly be seized.¹⁰²

g. Search After Lawful Impoundment

If the vehicle is impounded and being held as evidence in a criminal case, a recent decision of the U.S. Supreme Court indicates that a search and seizure made one week after arrest was reasonable.¹⁰³ This case involved narcotics and a state statute authorized such vehicle "to be held as evidence until a forfeiture had been declared or a release ordered." The general rule is that a search of a vehicle in police custody is not

authorized just because the vehicle has been impounded. Illegally parked vehicles and vehicles operated by persons arrested for minor traffic violations, such as no operator's license, are many times towed by the police and impounded. Subsequent searches of these vehicles would be unreasonable as no ground exists to authorize the search.¹⁰⁴

The best rule and the rule to use when in doubt is to obtain a search warrant when the vehicle is in police custody after being impounded when it is too late to make a valid, contemporaneous search of the vehicle incident to a lawful arrest.

h. Traffic Arrests, Motor Vehicle Safety Inspections and Other Detentions

Arrests in vehicles authorizing a search incidental thereto are predicated upon the fact that the arrested person is taken into custody, ie, a "full custody arrest."

A minor traffic violation where a citation and summons is issued and vehicle safety inspections do not meet this criteria, therefore, no search of the vehicle incidental to arrest is authorized(no arrest!). However, if the officer, after stopping the vehicle, obtains probable cause to search from proper acts of conversation or observation, he may do so under the authorities already cited. Perhaps the driver was a minor with the smell of liquor on his breath and a bottle of liquor in view on the seat beside him. This would allow the officer to make a thorough search of the vehicle for more liquor.¹⁰⁵

APPENDIX
TABLE OF FOOT NOTES

- 1 Burdeau v. McDowell, 256 US 465 (1921); State v. Barrett, 121 OR 57, 62 (1927)
- 2 Lustig v. US, 338 US 74 (1949)
- 3 Jones v. US, 262 US 257 (1960); US v. Jeffers, 342 US 48 (1951); State v. Hilton, 119 OR 441 (1926); State v. Laundry, 103 OR 443, 449 (1922)
- 4 Walder v. US, 347 US 62 (1954)
- 5 McDonald v. US, 335 US 451 (1948); US v. Jeffers, 342 US 48 (1951); State v. Lee, 120 OR 643 (1927)
- 6 Lanza v. New York, 370 US 139 (1962); US v. Lefkowitz, 285 US 452 (1932)
- 7 Hester v. US, 265 US 57 (1924); State v. Evans, 143 Or 603 (1933)
- 8 Ramsey v. US, 278 F2d 368 (1960)
- 9 US v. McDaniel, 154 FSupp 1 (1957); Marron v. US, 275 US 192 (1927); State v. Chinn, 231 Or 259 (1962)
- 10 Abel v. US, 362 US 267 (1960); Murgia v. US, 285 F2d 14 (1960)
- 11 US v. DuPont, 169 FSupp 572 (1959)
- 12 Joines v. US, 258 F2d 471 (1958); Ellison v. US, 206 F2d 476 (1953); US v. McDaniel, 154 FSupp 1 (1957)
- 13 US v. Ventresca, 380 US 102 (1965); State v. Tacker, 241 Or 597 (1965)

- 14
Harris v. US, 331 US 145 (1947); State v. Bisaccia, 212 A2d ____
(NJ-1965); State v. Cook, 242 Or 509, 516 (1966)
- 15
US v. Guide, 251 F2d 1 (1958)
- 16
US v. Dornblut, 261 F2d 949 (1958)
- 17
Morrison v. US, 262 F2d 449 (1958); State v. Bisaccia, supra.
- 18
US v. Lefkowitz, 285 US 452 (1932)
- 19
Jones v. US, 362 US 257 (1960); State v. Hoover, 219 Or 288, 298 (1960)
- 20
Jones v. US, supra; US v. Ventresca, supra; State v. Tacker, 241 Or 597
(1965)
- 21
McCray v. Illinois, 18 L.Ed 2d 62 (1967); Rugendorf v. US, 376 US 528
(1964); State v. Penny, 242 Or 470 (1966)
- 22
State v. Quartier, 114 Or 657 (1925)
- 23
Steel v. US, 267 US 498 (1925)
- 24
People v. Johnson, 267 NTS2d 301 (1966); See 11 ALR3d 1330 for summary
of law in this area.
- 25
Giles v. US, 284 F 208 (1922); Rice v. US 24 F2d 479 (1928)
- 26
US v. Nestori, 10 F2d 570 (1925)
- 27
Steele v. US, 267 US 498 (1925)
- 28
US v. Joseph, 174 FSupp 539 (1959), affirmed 278 F2d 504, cert. den.
364 US 823
- 29
US v. Lester, 21 FRD 376 (1957), affirmed 282 F2d 750
- 30
Abel v. US, 362 US 217 (1960); State v. Muetzel, 121 Or 561 (1927)

- 31 Ker v. Calif., 374 US 23 (1962); People v. Maddox, 46 Cal2d 306
- 32 Costner v. US, 252 US 496 (1958)
- 33 Marron v. US, 275 US 192 (1927); Jones v. US, 362 US 257 (1960)
- 34 US v. Festa, 192 FSupp 160 (1960)
- 35 US v. Troop, 235 F2d 123 (1956)
- 36 US v. Stoffey, 279 F2d 924 (1960)
- 37 Abel v. US, 362 US 217 (1960)
- 38 US v. Rabinowitz, 339 US 56, 72 (1950); Abel v. US, supra; Preston v. US, 376 US 364 (1964); State v. Chinn, 231 Or 259 (1962); State v. Elkins, ___ Or ___, 83 OAS 725 (1966)
- 39 Wong Sun v. US, 371 US 471 (1963); US v. DiRe, 332 US 581 (1948)
- 40 Taglavore v. US, 291 F2d 262 (1961); US v. Lefkowitz, 285 US 452 (1932)
- 41 Preston v. US, 376 US 364 (1964)
- 42 White v. US, 271 F2d 829 (1959); Johnson v. US, 333 US 10 (1948)
- 43 State v. Hoover, 219 Or 288, 302-303 (1959); State v. Duffy, 135 Or 290, 307 (1931); State v. McDaniel, 115 Or 187, 241 (1925)
- 44 Rabinowitz v. US, 339 US 56, (1950)
- 45 US v. Boston, 330 F2d 937 (1964); Abel v. US, supra; US v. Smith, 308 F2d 657 (1962)
- 46 Blackford v. US, 247 F2d 745 (1957); US v. Michel, et al, 158 FSupp 34 (1957)
- 47 Espinoza v. US, 278 F2d 802 (1960), cert. den 364 US 827

- 48
Mont v. US, 306 F2d 412 (1962), cert. den. 371 US 935; See also People v. Tahtinen, 210 C.A.2d 755 (Calif-1962); People v. Bass, 214 CA2d 742 (Calif-1963)
- 49
Rochin v. Calif., 342 US 165 (1952)
- 50
Schmerber v. Calif., 384 US 757 (1965)
- 51
Breithaupt v. Abram, 352 US 432 (1957)
- 52
US v. Kirschenblatt, 16 F2d 202 (1926); US v. Alvarado, 321 F2d 336 (1963)
- 53
Charles v. US, 278 F2d 386 (1960); 32 ALR 685
- 54
State v. Elkins ___ Or ___, 83 OAS 725 (1966)
- 55
Johnson v. US, 333 US 10, 13 (1948)
- 56
Rigby v. US, 247 F2d 584 (1957); State v. Marshall, 234 Or 183, 184 (1963); State v. Little, ___ Or ___, 85 OAS 205, 208 (1967); State v. Evans, 241 Or 567 (1965)
- 57
Williams v. US, 263 F2d 487 (1959)
- 58
US v. Fowler, 17 FRD 499 (1955); Amos v. US, 255 US 313 (1921)
- 59
US v. Fowler, supra; Ray v. US, 84 F2d 654 (1936)
- 60
US v. Ong Goon Sing, 149 FSupp 267 (1957); Bolger v. US, 189 FSupp 237 (1960)
- 61
Amos v. US, 255 US 313 (1921); Johnson v. US, 333 US 10, (1948)
- 62
Karwicki v. US, 55 F2d 225 (1932)
- 63
Strong v. US, 46 F2d 257 (1931)
- 64
State v. Frazier, ___ Or ___, 83 OAS 217 (1966)

- 65
Chapman v. US, 365 US 610 (1961); Stoner v. Calif., 376 US 483 (1964)
- 66
Stein v. US, 166 F2d 851 (1948); 31 ALR2d 1091; Smith v. McDuffee,
72 Or 276 (1914)
- 67
Holzhey v. US, 223 F2d 823 (1955); People v. Gonzalez, 270 NYS2d 727
(1966)
- 68
US v. Lagow, 66 FSupp 738 (1946)
- 69
US v. Blok, 188 F2d 1019 (1951)
- 70
Calhoun v. US, 172 F2d 457 (1949); State v. Broadhurst, 184 Or 178, 251
(1948)
- 71
Stein v. US, 166 F2d 851 (1948)
- 72
Harris v. US, 331 US 145 (1947)
- 73
US v. Lerner, 100 FSupp 765 (1951); Pampinella v. US, 131 FSupp 595 (1955)
- 74
Pampinella v. US, supra
- 75
Lee v. US, 232 F2d 354 (1956); US v. Hamm, 163 FSupp 4 (1958)
- 76
State v. Hoover, 219 Or 288, 302-303 (1959); State v. Duffy, 135 Or 290,
307 (1931); State v. McDaniel, 115 Or 187, 241 (1925)
- 77
Clifton v. US, 224 F2d 329 (1955); US v. Jackson, 149 FSupp 937 (1957)
- 78
McKnight v. US, 183 F2d 977 (1950)
- 79
Harris v. US, 331 US 145 (1947)
- 80
US v. Lefkowitz, 285 US 452 (1932)
- 81
Harris v. US, supra; Jones v. US, 362 US 257 (1960); Abel v. US, 362 US
217 (1960); State v. Laundry, 103 Or 443, 497 (1962)

82.

Abel v. US, supra; Harris v. US, supra; State v. Chinn 231 Or 259 (1962); State v. Cook, 242 Or 509 (1966); State v. Johnson, 232 Or 118 (1962)

83

Harris v. US, supra; State v. Chinn, supra

84

Johnson v. US, 333 US 10 (1948); US v. Jeffers, 342 US 48, 51 (1951); State v. Hoyt, 124 NW2d 47 (Wisc-1963); State v. Chinn, supra at 270

85

US v. Lee, 274 US 559 (1927); US v. O'Brien, 174 F2d 341 (1949); Smith v. US, 2F2d 705 (1924); Bell v. US, 254 F2d 82 (1958); State v. Riley, 240 Or 521 (1965); State v. Hilton, 119 Or 441, 444

86

Mason v. US, 257 F2d 359 (1958); Murgia v. US, 285 F2d 14 (1960); Lee v. US, 221 F2d 29 (1954)

87

Carroll v. US, 267 US 132 (1925); Brinegar v. US, 338 US 160 (1949); State v. Hill, ___ Or ___, 84 OAS 31 (1967)

88

US v. DiRe, 332 US 581 (1948)

89

Weise v. US, 251 F2d 867 (1958); State v. Penny, 242 Or 470, 82 OAS 121 (1966)

90

Husty v. US, 282 US 691 (1931); Price v. US, 262 F2d 684 (1959); Taglavore v. US, 291 F2d 262 (1961); State v. Boykins, ___ NJ ___ (NJ-1967)

91

Mason v. US, 257 F2d 359 (1958); Haerr v. US, 240 F2d 533 (1957)

92

Husty v. US, supra

93

State v. Randolph, 222 Or 389 (1960)

94

Collins v. US, 289 F2d 129 (1961)

95

Clay v. US, 239 F2d 196 (1956); US v. Lefkowitz, supra

96

Brubaker v. US, 183 F2d 894 (1950)

97

Rhodes v. US, 224 F2d 348 (1955)

- 98 Cooper v. Calif., _____ US _____, 35 LW 4209 (1967); State v. Ramon,
_____ Or _____ (1967), 85 OAS 375
- 99 Preston v. US, 376 US 364 (1964)
- 100 State v. Krogness, 238 Or 135, 144 (1964)
- 101 Petteway v. US, 261 F2d 53 (1958); US v. Gregg, 25 FRD 177 (1960)
- 102 US v. Braggs, 189 F2d 367 (1957); Robinson v. US 283 F2d 508 (1960)
- 103 Cooper v. Calif, supra; State v. Ramon, _____ Or _____, 85 OAS 375 (1967)
- 104 Preston v. US, supra
- 105 Smith v. US, 264 F2d 469 (1959); Jankowski v. US, 28 F2d 800 (1928)

IN THE DISTRICT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

SEARCH WARRANT

No. _____

IN THE NAME OF THE STATE OF OREGON,

TO ANY PEACE OFFICER IN THE STATE OF OREGON, GREETING:

INFORMATION on oath, having this day been laid before me, that certain personal property, hereinafter described, is concealed in the premises located at Room 381, Rossia Hotel, 123 N. Skid Road, Portland, Multnomah County, Oregon, occupied by Edward X. Con, and that said personal property is stolen property,

You are therefore hereby commanded at any time in the day or night to make immediate search of the premises located at Room 381, Rossia Hotel, 123 N. Skid Road, Portland, Multnomah County, Oregon, occupied by Edward X. Con, for the following property:

1. One (1) .45 caliber automatic pistol, metal grey with walnut wood grips, serial # 654321, with "U.S. Army" stamped on the pistol slide.

2. One (1) Winchester 30-30 lever-action carbine rifle, gun blue with walnut wood stock, serial # 642135.

3. One (1) 7.62 caliber German mauser bolt action rifle, metal grey with cherrywood stock, serial # obliterated with initials "JKH" carved into base of stock.

and if you find the same, or any part thereof, to bring it forthwith to me at the above-entitled court.

Dated at Portland, Oregon, this 18th day of October, 1967.

Enclosure #1

37.

/s/ GOOD N. SMART
J U D G E

IN THE DISTRICT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

STATE OF OREGON)
) ss.
County of Multnomah)

AFFIDAVIT FOR SEARCH WARRANT

I, John A. Honest, being first duly sworn, on oath, depose and say that:

I am a police officer for the City of Portland Police Bureau assigned to the Burglary Detail of the Detective Division;

The records of the Portland Police Bureau indicate that the dwelling of Jack K. Stupid located at 1111 S. Klamath St., Portland, Multnomah County, Oregon, was burglarized on October 17, 1967, and the following property stolen:

1. One (1) Smith & Wesson .38 caliber revolver pistol, model "K-38", gun blue with walnut wood grips, serial # 123456;
2. One (1) Colt .45 caliber automatic pistol, metal grey with walnut wood grips, serial # 654321, with "U.S. Army" stamped on the pistol slide;
3. One (1) Winchester 30-30 lever-action carbine rifle, gun blue with walnut wood stock, serial # 642135;
4. One (1) 7.62 caliber German mauser bolt action rifle, metal grey with cherrywood stock, serial number obliterated with initials "JKH" carved into base of stock;

I. M. Crooked, owner and operator of Crooked Loan & Pawn Company, 212 SW Pine, Portland, Oregon, told me on October 18, 1967, that he had purchased that same day the S & W .38 caliber revolver, serial # 123456, described above from an individual who identified himself as Edward X. Con residing in Room 381, Rossia Hotel, 123 N. Skid Road, Portland, Oregon, for \$15.00. Mr. Crooked also told me that this individual stated he would be back later with some other guns to sell.

An informant who has given me reliable information on several occasions in the past told me that on October 18, 1967, he was in Room 381 at the Rossia Hotel in Portland, Oregon, occupied by Edward X. Con and observed the following guns therein:

1. One (1) bolt action German mauser rifle, metal grey with a wood stock and some unknown initials carved thereon;
2. One (1) Winchester 30-30 lever-action carbine rifle, gun blue with a wood stock;
3. One (1) .45 caliber automatic pistol, metal grey with wood grips, Army issue type;

Said informant stated that the person known to him as Edward X. Con offered to sell the above guns to him for a total of \$25.00 and that the guns were placed underneath the mattress in Room 381 just before he left the room.

Based on this information, it is my believe that the above-described stolen property is concealed within the premises of Edward X. Con, located at Room 381, Rossia Hotel, 123 N. Skid Road, Portland, Multnomah County, Oregon.

/s/ JOHN A. HONEST

Subscribed and sworn to before me this 18th day of October, 1967.

(NOTORIAL
SEAL)

/s/ GOOD N. SMART
J U D G E