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Thin Line Between Fighting Crime, Respecting Rights

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If our only value was to catch as many criminals as possible, we'd let the police search whatever and whenever they wanted. If they had a hunch someone was up to no good, they could break into the person's home, rifle through the closets, tap the phones, copy the hard drive and take DNA samples from the dirty dishes.

But we don't allow police to do this. Instead, we say that our interest in catching criminals must be balanced with our interest in privacy. So even though it makes crime-solving more difficult, we insist that police cannot intrude upon our homes, telephone calls or bodies unless they have a good reason for doing so.

The Framers enshrined this principle in the 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 invaded, and no Warrants shall issue, but upon probable cause." This sounds great. But it gets complicated when courts have to define what constitutes a "search" or what makes a search "unreasonable."

Is it a search, for example, if the police peak inside the car you parked on the street or look through the trash you left for pickup? Is it a search when the police view your backyard from a helicopter or see the contours of your body when you walk through an airport scanner?

Even if something is clearly a "search," what would make it "unreasonable"? We could say that any warrantless search is unreasonable, and that judges should only issue warrants if police show probable cause that a search will uncover criminal activity.

But do we really want to say that police always need a warrant? What if police are in hot pursuit of a criminal who flees into a house? What if police know a serious crime is being committed inside a home or evidence is being destroyed causing a "hunch." What if police manufacture an "emergency" to enter a home?

The Supreme Court has written a small library of decisions trying to answer these questions. Some decisions were written while the court was more liberal; some while it was more conservative. So the result, to put it mildly, is messy. (How would you like to be the police officer expected to follow these rules?)

And this doesn't even address what the remedy should be when police conduct an unreasonable search. The usual remedy -- the "exclusionary rule" -- prohibits prosecutors from using any evidence discovered during an unconstitutional search.

This rule seems maddening when a defendant escapes conviction even though police found incriminating evidence. But it's not clear that any other remedy would adequately discourage police from infringing people's privacy rights.

We do allow individuals to recover damages when police violate clearly established Fourth Amendment rights, but juries are unlikely to be sympathetic when a convicted criminal sues the police for unlawfully finding incriminating evidence.

Fortunately, public concern over the exclusionary rule is disproportionate to the rule's impact. The percentage of defendants who escape conviction because of suppressed evidence is tiny and most are nonviolent drug offenders.

Still, the world goes on. Police keep searching; defendants keep challenging searches; and courts keep ruling on whether searches were unreasonable.

On Wednesday the Supreme Court continued this tradition with a new case. The facts resemble a game show: was the felon behind door No. 1, or door No. 2?

An individual sold crack cocaine to an undercover informant and then left for his apartment building. Officers followed the suspect into a breezeway when they heard a door slam at the end of the passageway.

There were two doors at the end of the breezeway and the officer didn't know which apartment the suspect had entered. They smelled marijuana by the left door so they assumed that door had just been opened. They knocked loudly, announced their presence, but got no response.

Instead, the officers heard noises inside and suspected that evidence was being destroyed. So they broke into the apartment where they quickly discovered stashes of marijuana and cocaine.

Ironically, the suspect the police had been following had actually gone into the apartment on the right (he was subsequently apprehended). The defendant in the left apartment had nothing to do with this suspect. But he ended up being prosecuted for his own drug possession and trafficking.

The police say they didn't need a warrant to enter the defendant's home because they reasonably suspected evidence was being destroyed. The defendant says the police manufactured this emergency by loudly knocking on his door. He says the police should have respected the sanctity of his home by first obtaining a search warrant.

Was this search reasonable or not? The justices will give us their answer before the end of June.

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