



Want to Know More?

Visit [www.bankruptcyattorneys.com](#) for more information about bankruptcy defenses. Discuss your case with one of our dedicated bankruptcy attorneys today.

Search and Seizure Issues in Your Case

A police search in violation of the 4th Amendment may lead to suppression of the evidence seized in that search, which can make the prosecution's case very difficult to prove.



Warrantless Searches

In many instances law enforcement lacks a warrant. If your criminal defense attorney challenges the evidence seized, the prosecution has the burden of proving the search was nonetheless legal. In so doing, some of the evidence against you will likely be revealed, which can assist you in preparing a proper case strategy.

Types of Cases Where Search and Seizure is at Issue

Each case needs to be evaluated on its own facts, but typically search and seizure is involved in cases where:

1. The vehicle you were in was searched
2. Your home or office was searched
3. Your telephone conversations or mail or email was intercepted
4. You were subject to a personal examination where the police took hair, blood or urine samples

Challenging the Validity of a Search Warrant

The fundamental requirements for an affidavit to obtain a search warrant require probable cause of a crime and specificity of the place to be searched. Courts often do not exclude evidence seized even if the warrant is defective if the police were acting in "good faith." There are, however, some warrants that are so defective as to be held invalid.



Warrants that are overbroad

To prevent general searches, there must be a probable cause connection between the item searched for and the crime that is the subject of the investigation. For example, a search of a computer's files may be permissible for a Medicare fraud case, but it would likely be deemed overly broad if the crime was murder; violent crimes are seldom planned on a computer.

Boilerplate Language

Often the affidavit will cite the “experience of the police investigator” to establish the requisite probable cause; courts are becoming skeptical of such tactics and are looking more for facts specific to the case.

The Issue of “Standing” in Challenging Evidence Seized

A motion to suppress evidence seized as the result of a warrantless search can be a powerful weapon for a criminal defense lawyer. If successful the prosecution’s case can be substantially weakened. However, the legal issue of who can move to suppress, that is, who has standing, can be tricky.



Ownership does not necessarily confer standing

For you to have standing to challenge evidence seized, you must have an expectation of privacy in the thing seized or the place searched. Yes, ownership may be one way to prove that expectation, but it may not be wise to assert an ownership interest in something that was seized as evidence of illegal activity.

A Strategic Approach

It is best if evidence of your expectation of privacy is asserted through testimony other than your own, such as:

1. The arresting officer’s report indicating you were in possession of the item
2. A witness other than a co-defendant can explain your standing

Your case is important to us. If we can't help you, we'll do our best to refer you to someone who can.

This email is part of our ongoing campaign to provide quality educational materials to current and former clients, and the larger community that may benefit from this information. Please unsubscribe below if you do not wish to receive these emails.

Wishing you success,