



What Rights do You Give Up When You consent to a Search?

By Noah

First let me qualify a few things; while I served in Law Enforcement for many years, I am not an attorney and have been retired for over 20 years. Even though I try to keep up on the law, I am not an expert and you may want to check the validity of the things that I am saying with your own attorney before you refuse to consent to a Search.

Remember there are only five ways in which the police can legally enter your home.

1. A search warrant. If they come to your home with a search warrant, they are coming in, do not attempt to block their entry, all you will do is pick up charges of interfering and resisting. Even if they have a search warrant, you can politely state preferably in front of witnesses that you do not consent to a search. Offices will sometimes try to get you to consent to a search even if they have a warrant. This is backup in case your attorney gets the warrant thrown out.
2. Plain View. If a police officer already has the right to be on your property and sees contraband or evidence of a crime that is clearly visible, that object may be lawfully seized and used as evidence. For example, if the officer comes to your front door and you answer and he sees contraband inside your home through the doorway, he can enter and seize it.
3. Search Incident to Arrest. If you are being arrested in your house, police officers may make a limited search for weapons or other accomplices. The purpose of this search is for the protection of the officers and to prevent the destruction of evidence.
4. Exigent Circumstances. This refers to emergency situations where the time lost getting a valid search warrant could compromise public safety or could lead to the destruction of evidence. This includes "hot pursuit" in which a suspect is about to escape. It would also include a situation in which there may be hazardous

materials or explosives that have to be dealt with for public safety. A recent California Supreme Court decision ruled that police could enter a DUI suspect's home without a warrant, based on the theory that important evidence, namely the suspect's blood alcohol level, may be lost otherwise.

5. Consent. This is where you invite or let the officers into your home. They will often ask to enter and talk to you. When they have entered your home, you have given up some of your rights. First, they can seize any evidence that they see in plain sight. Second, if they intent to arrest you, they are now inside your home and can conduct a search incident to arrest. Third if you have given a consent to search instead of just the right to enter, you have given them the right to search your home without a warrant and to use any evidence they gather against you.

If the police come to your home, go outside to speak with the cops. Close the door behind you. Do not give them consent to enter.

Be polite do not be belligerent, ask what they want. If it's something like the neighbors complaining about your dog barking, assure the officers you will take care of the problem and do so.

If the police ask to enter your home, state, "I do not consent to any searches. If the officer insists or starts to ask you questions, do not resist, just ask for your attorney. Do not answer questions, do not lie to the officer, this can often give them evidence against you or lead to interfering charges. With Federal Agents, it can be a felony to lie to them.

Ask if you are free to leave, if the officer states yes. Walk away and go back inside.

Remember at no time answer any questions that may incriminate you and do not consent to a search of any type. But use your common sense, if the officer is asking about a traffic accident down the street and you are not involved, be helpful if you can.

Comments

Here's a question. You said it is illegal to lie to an officer. I'm not sure it is. I think you have to be lying about an investigation. If there is no investigation and you lie there is no crime. My question is what do you say if an officer (or anyone) asks if you own guns. My

answer would be “no”. I don’t want to give out that information and to a direct question like that replying that you don’t have to answer is the same as saying you do own guns.

It is just not any officers, but it is a felony to lie to some Federal officers such as FBI and ATF and maybe others. Another reason not to lie is that officers will get you to lie about something that seems to be of no consequence. Then if you have to take the stand, they will use that lie to attack your credibility.

I hear you but My question is serious. The thing that makes lying to the FBI or some police is that you are then interfering in an investigation. So, my point is if a cop asks if it’s raining and it is but you tell him know they can’t arrest you for it. And more to the point if a cop asks if you own guns but he isn’t investigating you and you lie to him then so what! Think about the court the cop testifies that he asked if you owned guns and you lied so the next thing that happens is your lawyer asks why he wanted to know. Right? What’s he going to say? If he says he was conducted an investigation then he perjured himself. If he tries to tie it into anything connected with his job, he is perjuring himself. So the lawyer comes back with “so you were just nosy?” “You think your badge gives you the right to be nosy? There’s a reason for the question because as I said I have no intention of telling anyone my business.

A second question: The constitution gives us all the same rights. If someone is thought to have committed a crime and is being investigated, they must comply within the rights the constitution affirms. However, anyone being investigated has the absolute right to also investigate in defense. Your lawyer can see and get copies of all the evidence etc. So, if a policeman lies to you as part of their investigation AND it in any way interferes with your own “investigation” then I am suggesting that they denied you your constitutional rights. In fact, I would go one step further and say that an individual’s constitutional rights trump a police investigation. That is it is at a higher level of authority not equal.

On the first question, you are right in that the lying needs to involve their investigation. But lying to a Federal Officer is a straight felony and is a different charge than interfering. Anytime you are confronted by an officer in the course of his duties don’t lie to them.

On the second question, the courts have affirmed that the officer has a right to lie to you during the investigation. You are right in that you have the right of discovery and should be given all the evidence and that the officer cannot legally lie on his reports. but you will not be permitted to interview or question the officer other than when he is on the stand. The system is not fair

I agree that as it stands today it is illegal to lie to the FBI. Ask Martha Stewart. However, I still believe that it has to pertain to their official duty. That is Joe Blow FBI agent can't come to your house on his off-duty time and ask a question and arrest you for lying. If he did he would himself have broken a law using his badge under the color of the law for his own reasons.

On the second I agree with what you said as well but you are describing how it is not the constitutional situation. For example, a policeman can beat you or shoot you for no good reason and get away with it. That's how it is, the DA's won't prosecute and the police close ranks and will say and do whatever they need to to protect the officer. BUT it still isn't legal. I do believe that if it was tested properly in court if a officer lied to you in his investigation and it prevented you from having a proper legal defense then he himself would be guilty of a coverup or failing to uphold his duties. A civilian has no responsibility to tell the truth to a "victim" or suspect because they haven't taken an oath to uphold the law, but the policeman has and if his lying to trick the accused interferes with justice then he has broken his oath and broken a law. So, as I said the ONLY reason a policeman can lie is because the courts are failing to uphold the constitution.

"I'm sorry, officer, but I'm really nervous / upset / in shock right now and I really don't feel comfortable answering any questions right now in my condition. I will get in touch with my attorney and will be happy to answer any questions as soon as he arrives / when we go to the station tomorrow."

At this point they will either leave, or they will arrest you. They will tell you of your right to remain silent and it would behoove you to exercise that right fully.

The 5th amendment states any person shall not be compelled in any criminal case to be a witness against himself. The police are not your friends, they are there to convict you, say nothing except identifying yourself, it is up to them to gain any proof of a crime, do not make it easier for them.

Here's the federal statute: 18 USC 1001

- a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully—

(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;

(2) makes any materially false, fictitious, or fraudulent statement or representation; or

(3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both. If the matter relates to an offense under chapter 109A, 109B, 110, or 117, or section 1591, then the term of imprisonment imposed under this section shall be not more than 8 years.

(b) Subsection (a) does not apply to a party to a judicial proceeding, or that party's counsel, for statements, representations, writings or documents submitted by such party or counsel to a judge or magistrate in that proceeding.

(c) With respect to any matter within the jurisdiction of the legislative branch, subsection (a) shall apply only to—

(1) administrative matters, including a claim for payment, a matter related to the procurement of property or services, personnel or employment practices, or support services, or a document required by law, rule, or regulation to be submitted to the Congress or any office or officer within the legislative branch; or

(2) any investigation or review, conducted pursuant to the authority of any committee, subcommittee, commission or office of the Congress, consistent with applicable rules of the House or Senate.

What it boils down to is making a false statement. Generally, this would have to do with an investigation (why else would an agent be questioning you) however under that statute it is not confined to investigations. Does that mean if you tell an off-duty agent that you dated a super-model once but you didn't, you're not going to prison? There is something called common sense and even where the government is involved it does come into play.

Interfering with an investigation (or obstructing) is a different statute as that pertains to different criteria. Also, with all respect, trying to suggest that an officer is "breaking his oath" by lying to you in the course of an investigation is incorrect. As already mentioned, the courts have ruled on this and it is permitted. BTW, nowhere in any LEO oath does it say that I will always tell the truth to everyone all the time. In court is one thing, dealing with subjects of an investigation is another (not to mention officers operating undercover). You may not like it, but that's the way it goes.

A MUST-READ book for anyone concerned about this. "You and the Law" by Boston T Party.

Best advice is to not answer the door. there is no law that states i must answer. if they have a good reason to be at your house, they can always get a warrant. you are under no obligation to talk to them. absolutely never ever answer any of their questions before talking to an attorney. remember, they even tell you, whatever you say can and will be used against you in a court of law. remember that and keep quiet. cops are never your friend. they are instruments of the state. their job is to make arrests. they have full authority to make your life a living hell if you let them.

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