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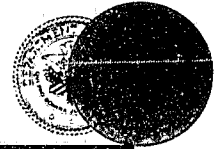
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National Institute of Justice

Research in Action

James K. Stewart, Director

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The effects of U.S. v. Leon on police search warrant practices

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In *United States v. Leon* and the companion *Sheppard* case, the Supreme Court ruled in 1984 that the exclusionary rule need not apply to evidence obtained by law enforcement officers who acted in good faith on a search warrant properly issued but later found to be defective.¹

The Court's decisions raised important questions about the search warrant process and fourth amendment guarantees. The National Institute of Justice commissioned a study by the Police Executive Research Forum (PERF) about *Leon's* effects on search warrant practices and the policies of police, prosecutors, and the courts.

Researchers reviewed all search warrant applications made in seven jurisdictions during a 3-month period prior to the *Leon* ruling (January through March 1984) and 5 months after the ruling (Jan-

1. *United States v. Leon*, 468 U.S. 897, 104 S. Ct. 3405 (1984). *Massachusetts v. Sheppard*, 468 U.S. 981, 104 S. Ct. 3424 (1984).

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Table 1.

Characteristics of project sites

Site	Population (1984 est.)	Index crime rate/1,000	Sworn officers (1984 est.)
Border City	750,000-1,000,000	65 to 75	1,000-1,500
Harbor City	750,000-1,000,000	75 to 85	2,500-3,000
River City	500,000-750,000	75 to 85	1,000-1,500
Plains City	500,000-750,000	95 to 105	1,000-1,500
Forest City	250,000-500,000	105 to 115	500-1,000
Hill City	250,000-500,000	110 to 120	500-1,000
Mountain City	100,000-250,000	100 to 110	250-500

Source: *Crime in the United States, 1984*; Van Duizend et al.

uary through March 1985)—a total of 2,115 applications.

The study found:

- The search warrant processes did not change.
- The number and content of warrants did not change.
- The impact on judicial suppression of evidence was virtually nonexistent.

The seven principal sites profiled in Table 1 were those used in an earlier National Institute of Justice research project on the search warrant process (Van Duizend et al.).² Supplementing

2. Richard Van Duizend, L. Paul Sutton, and Charlotte A. Carter, *The Search Warrant Process: Preconceptions, Perceptions, Practices*, Williamsburg, Virginia, National Center for State Courts, 1984 and 1985 (NCJ 102174).

this study were telephone interviews with police and prosecution officials in 30 randomly selected sites across the country, two-thirds of them cities over 100,000 population.

Implications of Leon

Ruling on *United States v. Leon* and *Massachusetts v. Sheppard*, the Court allowed the inclusion of evidence at trial even though the search warrants obtained were faulty. The Court ruled that the officers who obtained the warrants had done so in "good faith" and thus the exclusionary rule should not apply.

The Court rejected as speculative the argument that continued application of the exclusionary rule to cases like *Leon* was necessary to discourage "magistrate shopping" and to encourage police officers to scrutinize warrants to avoid inadequate affidavits.

The Court's determination was based on premises about the behavior of police

ACQUISITIONS

The effects of U.S. v. Leon on police search warrant practices

officers and magistrates that had not been established in evidence. As Mr. Justice Blackmun wrote in a separate concurrence:

If it should emerge from experience that, contrary to our expectations, the good faith exception to the exclusionary rule results in a material change of police compliance with the fourth amendment, we shall have to reconsider what we have undertaken here. The logic of a decision that rests on untested predictions about police conduct demands no less.³

The findings of this research indicate that law enforcement performance to date has confirmed the Court's prediction that police would continue to behave in a constitutionally correct and professional manner.

Impact on warrant activity

The *Leon* decision gives the police added incentive to secure warrants because it adds protection from subsequent motions to suppress evidence. Did it, then, result in an increase in warrant activity?

Although the exclusionary rule is binding on the States, the *Leon* exception is not. Most State supreme courts have not resolved the questions regarding good faith and its applicability to search warrant procedures.

Overall, warrant activity increased in three sites, one of which (Border City) has adopted *Leon*. However, that 50-percent increase is attributable not to *Leon* but to establishment of "street teams" in narcotics that decentralized detective divisions and investigations and thus led to more warrant activity. The other site adopting *Leon* (Hill City) saw no change in warrant activity.

Police at all seven sites use confidential informants (CI's) in seeking warrants, primarily in drug and theft cases. The quality of such warrants may be measured in terms of whether their service resulted in corroboration of the confidential information as to the crime alleged, its location, and through seizure of the material sought, arrests, or filing of criminal charges.

Warrant outcomes changed significantly in one site whose courts have adopted *Leon*—Border City, where both arrests and cases filed declined. This occurred, however, because Border City adopted a policy of delaying execution of warrant to near the end of the 10-day period allowed. As a result, contraband sought may be moved or sold by the suspect, but the Border City police believe the policy helps protect the identity of their informants.

Forum shopping

Mr. Justice Brennan in his dissent in *Leon* feared that "forum shopping" might increase. That is, law enforcement officers may be inclined to secure more warrants from sympathetic magistrates, or wait until a sympathetic magistrate is on duty before applying for a warrant.

Police admitted to various levels of "judge shopping" at all seven sites, but this research could not determine that it occurred in a systematic fashion at any site, nor that it had increased or decreased under *Leon*.

For both the pre- and post-*Leon* periods studied, one or two judges approved more warrants than others, but researchers could not determine whether this occurred because of assignment rotation systems or as a result of forum shopping.

Police interviews indicated that the "ideal" judge varied with the case at hand and also personal preference.

Some detectives explained that their choice of judges depends on the type of investigation, the seriousness of the offense, and the time devoted to the warrant. If quick review was sought, one judge might be sought; if a difficult case required thorough review, the officers might look for another judge.

Some detectives said they routinely avoided the "tough" judges; others said they sought out the tough judges deliberately. Whatever the selection process might be, it seemed unlikely that it had been affected by *Leon*.

Patrol officers and warrants

Consistent with earlier National Institute findings on search warrants, researchers found that patrol officers are not heavily involved in warrant activity. In six of the seven sites, a patrol officer usually refers a case requiring a search warrant to a detective. In Plains City, the chief insists that all officers conduct warrant-based searches whenever possible. Even there, where the chief encourages warrant activity by patrol officers, their sergeants discourage it because it ties up officers' time.

It is therefore not surprising that *Leon* has had no effect on patrol involvement in the warrant process. Where warrant activity for patrol is high, it can be attributed to the use of specialized drug enforcement units that are assigned to patrol but use tactics similar to detective squads. After *Leon*, in fact, patrol officers in four sites drafted fewer warrants.

Conclusions

The Supreme Court's decision in *Leon* has brought no change in police and prosecutor practices with regard to seeking search warrants based on this review of police practices in the limited period studied.

Police administrators and investigators see the decision as a positive one. Similarly, prosecutors applaud, judges take note of, and defense attorneys deplore the decision's withdrawal of avenues for challenges to warrants and suppression of evidence. But they agree the decision has had little practical day-to-day impact on the processing of criminal cases.

The executive summary of the study on which this paper is based, Effects of United States v. Leon on Police Search Warrant Policies and Practices, can be purchased from the Police Executive Research Forum, 2300 M Street NW., Washington, DC 20037. The full text of the report will soon be available on loan or in microfiche from the National Institute of Justice/NCJRS. Specify NCJ 106632 and telephone 800-851-3420 (from Alaska, Maryland, or the Metropolitan Washington, D.C., area, dial 301-251-5500).

3. *Leon*, cited above, Blackmun, J., concurring.