

Unsupported Allegations

Informers 'Word' Insufficient for Search Warrant

The Fourth Amendment to the United State Constitution prohibits government agents from making "unreasonable" searches and seizures. In determining whether a search has been lawful the central question is usually whether the search was "reasonable." Reasonableness, of course, is a rather fluid

concept but, through the years, it has usually meant this: that a policeman could not enter one's house for the purposes of searching for contraband on the basis of nothing more than an allegation by someone else that contraband was to be found there.

Private Citizen

Paul Legard, Jr., however, was found guilty in Napa County Superior Court of possessing marijuana on evidence that was the product of just such a search. The Superior Court upheld the validity of a search warrant that was supported by an affidavit that merely recited that a "private citizen" had informed the police that Legard possessed marijuana in his home. The affidavit did not give any reasons for believing that the informer's word was reliable, but the Superior Court ruled that the police affidavit need not show that the informer was "reliable" as long as it contained a recitation that he was a "private citizen."

Basis for Rule

The "private citizen" rule is an exception to the "reliable informer" rule that usually governs the law of search and seizure. Under the "reliable informer rule" some objective facts must be established to demonstrate that there is reason to believe the informer's word. The informer himself is usually an "underworld" figure. The "citizen informer" exception has developed in cases of hot pursuit where a victim of a crime, or a neutral citizen who has no interest in the case, has informed the police that a particular person is guilty of a crime and possesses contraband or the fruits of his crime. The Superior Court ruling in Legard's case carried the "exception" to an extreme and, if confirmed on appeal, would have swallowed the general rule of "reliability" in the exception. The danger to privacy in the Superior Court's ruling was manifest and, on appeal,

ACLUNC filed a friend of the court brief and participated in oral argument in support of Legard's attorney, Mrs. Barbara Clark of Vacaville.

Reliability Must Be Shown

ACLUNC's volunteer attorney, Demetrios P. Agretelis of Berkeley, contended that since the police, when obtaining a search warrant on the strength of a reliable informant, must set forth the reasons why they believe the informant to be reliable, a similar rule is necessary if warrants are to issue on the basis of the word of a "citizen informer." In the Legard affidavit the police baldly stated that they got their information from a "private citizen." But everyone, including the most unreliable of informers, Agretelis pointed out, is a "private citizen." The Court of Appeal agreed and reversed Legard's conviction.

Allegation Insufficient

Writing for a unanimous three-judge panel, Justice Harold Brown found that the Court could not "accept a bare allegation of citizenship as a sufficient circumstance from which the magistrate could conclude that the information was reliable . . . all citizens are obviously not reliable as informers. Any facts which bear on the reliability of a citizen who has furnished the information should also be revealed in the affidavit [filed by the police in their attempt to secure a search warrant] . . . Only by consideration of facts relevant to reliability can the magistrate make the independent determination of reliability required [by the Fourth Amendment]."

Decision's Meaning

The upshot of the decision is this: the courts will not permit the police to search one's home on the unsupported allegations of a "citizen" that there is contraband or illegal activity being conducted in the home.