

THIRD DEGREE COMMUNICATIONS, INC.

TRAINING BULLETIN: LEGAL UPDATE

Consent, Continued

By Charles Gillingham

The legal update page has visited different areas of consent recently. Undoubtedly consent is faster, easier and less work to obtain than a warrant. Now we all know that law enforcement types like things that are faster, easier and less work. So the legal update page wants to insure that you quick types are well versed in this area. Again, DOCUMENT everything you said and did and what your suspect said and did. A thorough report that shows you understand what you were doing will help support your search but also show the defense that you knew what you were doing--keeping you off of the witness stand.

Limitations of Consent

Courts everywhere concur, you are allowed to search the areas where you were given permission. You may not exceed the agreement, and voluntary consent can be withdrawn at any time. You must scrupulously abide by the consent given and stop searching when consent is withdrawn in the same manner as a warrant would provide.

The court looks not at what the suspect believed the agreement was, or even what you subjectively believed the scope of consent to be, but what a "reasonable officer" would have understood. What courts are instructed to do when evaluating whether you exceeded the scope of consent is to look at what was said or done to limit the scope of consent.

SCOPE of Consent

A suspect may limit consent by telling the officers they can only search in certain locations. They may also tell you where to find what you are looking for. In that instance, a general search in other locations may very well be suppressed.

Don't limit yourself. There is absolutely no reason for you to limit the areas you can search when asking for consent. Officers can limit the areas they are authorized to search by telling the suspect where they want to look or what they are looking for. Clearly, telling the suspect you wish to search his garage and then going into the house would exceed the scope of the consent proffered. Moreover, telling the suspect what you are

looking for would lead a reasonable officer to look only in those locations the item could be located.

A reviewing court would probably look askance at a request to search for a shotgun leading an officer to search the pockets of a jacket. Now, if the officers had asked to search for a shotgun and ammunition the result would likely be different.

CONTAINERS

The question frequently is asked, “what about closed containers?” When you ask for general consent to search, the case law suggests that it is reasonable for an officer to search containers that do not obviously belong to someone else. Containers that clearly belong to someone other than that person who gave you consent cannot be searched. Computers are a special case. Some courts treat the computer no differently than a file cabinet and subject to search under a general granting of consent. It is the author’s position that that analogy is correct. Some courts, however, have rejected the analogy. The best practice when it comes to computers is to get a search warrant. The legal update page will follow up as to why—next month.

Chuck Gillingham is a veteran prosecutor and regular instructor for the California District Attorney’s Association and the Federal Internet Crimes Against Children Task Force. Chuck also teaches Multidisciplinary Child Interviewing and Child Exploitation Investigation for Third Degree Communications, Inc.

If you wish to print and share this Legal Update Training Bulletin with your colleagues, credit must be given to Third Degree Communications, Inc. and the Author.

[Join Our E-Mail List – Click Here](#)

[Forward This Training Bulletin To A Friend](#)