



# POLICE / PROSECUTOR UPDATE

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The United States Supreme Court recently issued a couple of opinions of interest to law enforcement. One addressed the following question: Whether one occupant may give law enforcement an effective **consent to search** shared premises as against a co-occupant who is present and refuses to consent to the search.

In Georgia v. Randolph, \_\_\_\_ U.S. \_\_\_\_ (2006), the Supreme Court held that the *physically present* co-occupant's stated refusal to permit entry prevails, rendering the warrantless search unreasonable and invalid *as to him*. The Court drew a fine line, however. To quote the Court: If a potential defendant with self-interest in objecting is in fact at the door and objects, the co-tenant's permission does not suffice for a reasonable search. Whereas a potential objector, nearby but not invited to take part in the threshold discussion, loses out. Also, the Court made very clear that police are not required to take affirmative steps to locate a potentially objecting co-tenant.

The Court's holding applies to evidence searches. The Court stated that police have authority to enter a dwelling with consent to protect a resident from domestic violence so long as they have good reason to believe such a threat exists. Put another way, the question whether the police may lawfully enter over objection to provide any protection that might be reasonable "is easily answered yes." And since the police would then be lawfully in the dwelling, there is no question that they could seize evidence in plain view.

A couple of observations. The Court refers to a *physically present* objecting occupant. Presumably, this means he must be at the door when police request consent to enter and refuse the request. It appears, then, that if he is present in the building but is unaware of the presence of the police, he is not protected by the rule announced in this case.

Also, the Court said the search was invalid *as to* the objecting occupant. Although the Court did not specifically say so, it would seem logical that the search would be valid *as to* the consenting occupant or any other absent occupant. It will take further court action to clarify these points.

The second case dealt with **anticipatory search warrants**. In United States v. Grubbs, \_\_\_\_ U.S. \_\_\_\_ (2006), the Supreme Court said these warrants are constitutional under the Fourth Amendment. They are no different in principle from ordinary warrants.

They require the judge to determine (1) that it is *now probable* that (2) contraband, evidence of a crime, or a fugitive *will be* in the described premises (3) *when* the warrant is executed. Most anticipatory warrants subject their execution to some condition precedent other than the mere passage of time – a so-called "triggering condition." For a conditioned anticipatory warrant to comply with the Fourth Amendment's requirement of probable cause, two prerequisites *must* be satisfied. It must be true not only that *if* the triggering condition occurs, "there is a fair probability that contraband or evidence of a crime *will* be found in a particular place, *but also* that there is probable cause to believe the triggering condition *will occur*. The supporting affidavit must provide the judge with sufficient information to evaluate both aspects of the probable-cause determination."

Finally, the Fourth Amendment's particularity requirement does *not* require that the search warrant itself specify the triggering condition.

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With regard to corroboration of an anonymous tip, a recent Indiana Court of Appeals case said it is of *utmost importance* that police corroborate the "critical claim" – that criminal activity has occurred or is about to occur. State v. Fridy, 842 N.E.2d 835 (Ind. App. 2006).