SUPREME COURT OF THE UNITED STATES

No. 97–1230

CITY OF WEST COVINA, PETITIONER *v.*
LAWRENCE PERKINS ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[January 13, 1999]

JUSTICE THOMAS, with whom JUSTICE SCALIA joins, concurring in the judgment.

I agree with the holding of the majority's opinion, *ante,* at 6, that the Due Process Clause does not compel the City to provide respondents with detailed notice of state-law post deprivation remedies. I write separately, however, because I cannot endorse the suggestion, in *dicta*, that "when law enforcement agents seize property pursuant to warrant, due process requires them to take reasonable steps to give notice that the property has been taken so the owner can pursue available remedies for its return." *Ibid.* In my view, the majority's conclusion represents an unwarranted extension of procedural due process principles developed in civil cases into an area of law that has heretofore been governed exclusively by the Fourth Amendment.

As far as I am aware, we have never before suggested that procedural due process governs the execution of a criminal search warrant. Indeed, we have assumed that "[t]he Fourth Amendment was tailored explicitly for the criminal justice system, and its balance between individual and public interests always has been thought to define the 'process that is due' for seizures of person or property in criminal cases . . . ." *Gerstein* v. *Pugh*, 420 U. S. 103, 125, n. 27 (1975). In my view, if the Constitution imposes a "notice" requirement on officers executing a search

warrant, it does so because the failure to provide such notice renders an otherwise-lawful search "unreasonable" under the Fourth Amendment.[1]

We have previously suggested that the procedure for executing the common-law warrant for stolen goods "furnished the model for a 'reasonable' search under the Fourth Amendment." *Id.*, at 116, n. 17. At common law, officers executing a warrant for stolen goods were required to furnish an inventory of property seized. T. Taylor, Two Studies in Constitutional Interpretation 82 (1969); see also 2 W. Hawkins, Pleas of the Crown 137 (6th ed. 1787) ("The officer executing such warrant, if required, shall shew the same to the person whose goods and chattels are distrained, and shall suffer a copy thereof to be taken"). Furthermore, the failure to adhere to this procedure was denounced in *Wilkes* v. *Wood*, Lofft 1, 98 Eng. Rep. 489 (K.B. 1763), and *Entick* v. *Carrington*, 19 How. St. Tr. 1029 (C. P. 1765), two celebrated cases that profoundly influenced the Founders' view of what a "reasonable" search entailed.[2] In both cases, Lord Camden criticized the fact that the officers executing the general warrants were not constrained by the safeguards built up around the warrant for stolen goods. He specifically complained that the officers did not provide an inventory of the property seized.[3]

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[1]Although we have never addressed the issue, there is near unanimous agreement among the lower courts that the notice requirements imposed by Federal Rule of Criminal Procedure 41(d) and the state statutes cited in the Appendix to the majority's opinion, *ante*, at 11–12, are not required by the Fourth Amendment. See W. LaFave, Search and Seizure: A Treatise on the Fourth Amendment §4.12 (3d ed. 1996).

[2]See, *e.g.*, T. Taylor, Two Studies in Constitutional Interpretation 39–41 (1969); Amar, Fourth Amendment First Principles, 107 Harv. L. Rev. 757, 775 (1994); Stuntz, The Substantive Origins of Criminal Procedure, 105 Yale L. J. 393, 400 (1995).

[3]See *Entick*, 19 How. St. Tr., at 1067 ("[T]he same law which has

In light of this historical evidence, I would be open to considering, in an appropriate case, whether the Fourth Amendment mandates the notice requirement adopted by the majority today. See *Wilson* v. *Arkansas*, 514 U. S. 927 (1995) (relying on common-law antecedents to define a "reasonable search"). I am unwilling, however, to endorse the majority's ahistorical reliance on procedural due process as the source of the requirement. I therefore concur in the judgment.

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with so much circumspection guarded the case of stolen goods from mischief, would likewise in this case protect the subject, by adding proper checks; . . . would require him to take an exact inventory, and deliver a copy . . . . [W]ant of [these safeguards] is an undeniable argument against the legality of the thing"); *Wilkes*, Lofft, at 19, 98 Eng. Rep., at 499 ("As to the proof of what papers were taken away, the plaintiff could have no account of them; and those who were able to have given an account . . . have produced none").