

**A Quick Reference Guide To Contemporary**

# **CRIMINAL PROCEDURE**

**For Law Enforcement Officers**

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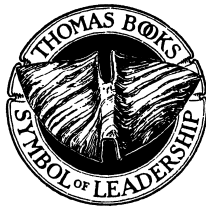
A Quick Reference Guide To Contemporary  
**CRIMINAL PROCEDURE**  
For Law Enforcement Officers

One Hundred Notable United States Supreme Court  
Decisions, and Their Effect on Modern Policing in America

*By*

**LT. MARK E. BANNON, B.A., M.P.A.**

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*This book is dedicated in loving memory to my father,*

***Officer John J. Bannon***

*Badge #253*

*City of Pittsburgh, Bureau of Police*

*whose example brought me into the field of law enforcement, and  
taught me that high standards and ethical behavior in policing  
were never meant to be the exception to the rule.*

*And who taught our family the meaning of unconditional love.*



## INTRODUCTION

### Criminal Law versus Criminal Procedure

There is a distinct difference between *criminal law* and *criminal procedure*, the subject of this book. Criminal law generally refers to the various statutory regulations adopted by the lawmaking body of a specific jurisdiction, and deals with the required or prohibited conduct of people within that jurisdiction. For example, there are laws prohibiting theft in every state. These laws were adopted by each state legislature, and are enforced by the police, prosecutors, and courts of that state. Similarly, there are federal criminal laws that are enacted by Congress.

Criminal procedure, on the other hand, refers to “the mechanisms under which crimes are investigated, prosecuted, adjudicated, and punished, and includes the protections of the accused persons’ constitutional rights.” (Reprinted from *Black’s Law Dictionary*, 2nd Edition, Bryan A. Garner, 2001, with permission of the West Group). For instance, the search of a vehicle, house, or person for evidence of a crime falls under this umbrella. So does the arrest of that person, or obtaining a confession from him. It is in the area of Criminal Procedure where police officers as a rule have the most difficulty. However, they are not alone. Many prosecutors, defense attorneys, and even some courts find Criminal Procedure difficult to understand under certain conditions.

One of the problems encountered in the area of law for police officers, and the reason I wrote this book, is that criminal procedure, unlike criminal law, has no general reference guide to assist law enforcement officers to deal with the issues that they may often encounter. The obvious reason for this is that statutory criminal law is usually found in a few volumes of text, which is then reproduced for police into a usable handbook. Procedural rules, on the other hand, are spread out among the various court decisions that affect that particular area of procedure. This book attempts not only to gather some of the most important of those decisions, but to place them into a handbook format familiar to law enforcement officers, in an effort to guide them in decisions

during their everyday work. There are 90 major cases and over 20 “note” cases reviewed in the guide.

### **Purpose and Scope of This Book**

The primary purpose of this book when conceived was to provide a “quick reference guide” to law enforcement officers in their quest to provide professional police services to their communities. Since the initial development, however, some other uses have come to light, such as use for promotional examinations, roll-call training, and as a guide to police academy or undergraduate criminal procedure studies.

### **How Best to Use This Guide**

The guide is laid out in a format that should help law enforcement officers and students understand the nature and impact of many U.S. Supreme Court decisions on all of our lives. First, there is a short overview of what each chapter contains. Much of the information at the beginning of each chapter is about the rules the Court has established in certain circumstances. Please read the chapter introduction before going on to review the “cases” section, because it may help you better understand the cases themselves. In the cases section of each chapter, each case is set up in a specific order. First, is a short listing of the **relevant** facts the Court considered. This is not every fact in the case, simply those on which the decision of the Court was based.

After the listing of facts, is the decision of the court, or “Holding.” The Holding is not identified as such, but is set apart from the rest of the case because it is written in **bold italic lettering** and indented. In most cases, I have tried to stay true to the language used by the Court as much as possible. For that reason, some of the decisions may seem difficult to read; however, since the Holding is the basic rule of law that the decision established, it is important to maintain the language of the Court as much as possible.

The third, and last, section of the case is entitled “Reasoning.” This is a very important part of the guide. The Reasoning section of each case is where you will find some of the explanations of what facts the Court felt were central to the decision, as well as some of the policy reasons the Court looked at in making the decision. An example of a policy-based decision is found in the case of *Pennsylvania v. Mimms*, where the Court held that a police officer may order occupants out of a motor vehicle during a traffic stop. The court came to this decision by weighing the safety of the officer against the interference with the occupant’s freedom of movement. The court decided that, as a matter of policy, the safety of the officers outweighed the minor inconvenience to the occupants. In many cases, understanding the policy that



guides a decision will make relating of that decision to new and slightly different facts a smoother process.

### **Why Use This Guide?**

The law is obviously an integral part of a law enforcement officer's daily work, and the decisions of courts influence the way law enforcement reacts to community problems to a high degree. Court decisions, often referred to as "case law," impact almost every investigation conducted by a police agency. This is particularly true of decisions made in cases heard by the U.S. Supreme Court. These decisions tend to either restrict police action or increase police authority, and they affect every community in the nation.

At least some aspects of search and seizure, arrest, probable cause, police interrogation, or exclusion of evidence are intertwined into the investigation of most crimes. Supreme Court cases decided over the last 50 years have addressed many of the issues involving the lawfulness of police action in these areas. It is important for law enforcement officers to understand not only **what** steps they are lawfully permitted to take in dealing with criminal investigations, but also **why** they are given certain types of authority in a particular situation. The "why" part is important for at least two reasons.

First, in order to determine if a decision by the Supreme Court applies to a given set of circumstances, it is necessary to understand what the Court is ultimately saying in its ruling. What was the Court's intent? What policy did the Court want to address, and what individual rights were either being protected or restricted by the holding of the Court? Once again, what was the Court hoping to accomplish with its ruling? Remember, the members of the Court do not live and work in a vacuum. They too must deal with changes in political climates, in crime rates, and in rising concern for personal liberties.

The second important reason a police officer must understand why a case was decided as it was, is to increase their proficiency with this tool of the trade. The law is similar to any piece of equipment used by a police officer. It is not enough to simply know **that** it will work. An officer must have a good idea of **why** a tool functions in a certain way under one set of facts, and another way under different facts. What action or inaction will cause a vehicle search to be ruled unlawful? Why was the temporary detention of someone proper or improper under particular circumstances? For example, it is important that officers that use a pre-copied traffic crash diagram for the intersection of Main Street and Oak Street to complete an accident investigation be able to properly draw that diagram on their own, because eventually they will respond to a traffic crash at Main Street and Maple Street, which has no prepared diagrams. The officers must understand how the orig-

inal diagram of the first intersection was drawn, and comprehend the relationship between various measurements and points of reference in a well-prepared crash diagram. If they don't, then drawing a usable crash scene diagram on their own will be difficult at best.

Major Supreme Court decisions that affect police officers are similar to a traffic crash diagram, in that the reasoning of the Court (like the measurements and points of reference in the diagram), becomes a "diagram" of how the Court developed its decision. This diagram can then be used to identify other fact patterns that are similar enough to fit within the decision. By carefully considering all of the relevant factors at an automobile crash scene, such as speed, point of impact, direction of travel, etc., a drawing is made of the site that should reveal the specific factors leading to the crash. Similarly, the Justices' arguments and inferences when combined with specific facts and policy concerns, lead them to draw a "diagram" of the current law in an area. However, like a vehicle crash diagram, an officer must recognize whether the facts of the case relate to the fact pattern the officer is looking at currently. In other words, does the holding by the Court in a case decided on specific facts, correlate to the case the officer is working on? Lawyers do this type of analysis all the time, because they do not look at the "rule" as only applicable to one case, they apply it to any case that has facts that can reasonably fit into the rule. This guide was developed to assist police officers in that same type of analysis. But, it is important that officers understand not just the rule, but also the **reasons** for the rule to use it effectively.

The lack of a full and complete understanding of any tool makes it a less valuable resource, and sometimes even a detriment. If an officer does not understand **why** the Court decided to allow the temporary detention of a person based on reasonable suspicion (a lower standard than probable cause which, prior to *Terry v. Ohio*, was the rule), the officer cannot possibly recognize the circumstances that lawfully allow him to conduct such a temporary seizure. Therefore, police officers are not as effective as they might be, or as effective as their community **needs** them to be.

## HOW THE GUIDE IS ORGANIZED

Because this guide was written to assist federal, state, local, and even military police officers to better understand the U.S. Supreme Court decisions that affect law enforcement, it should help make the law a more useful tool in their work. The guide considers 14 areas where the Court has made important decisions about police conduct. Keep in mind while reading this guide that the Court must always balance the protection of individual rights of citizens with the need for effective law enforcement.

The areas of police conduct are broken down into chapters, and many concepts will overlap. This is simply the nature of the law. The areas discussed were selected because they are particularly troublesome for police and prosecutors, as well as for courts of law.

The 14 chapters are entitled:

1. Arrests and Entry to Make Arrests
2. Detention and Searches of Persons
3. Search and Seizure Defined
4. Search Incident to Arrest
5. Vehicle Searches
6. Consent to Search
7. "Plain View" and "Plain Feel" Doctrines
8. Inventory Searches
9. "Open Fields," Curtilage, and Aerial Surveillance
10. "Exclusionary Rule" and "Fruit of the Poisonous Tree"
11. Police Interrogation
12. Probable Cause
13. Use of Informants
14. Entrapment

### **Some Other Uses for This Guide**

The value of this book depends in a large part on the needs of the particular person who uses it. One recommended use of this book is as a reference guide to conducting criminal investigations, whether in patrol or a plain clothes investigative unit. It can also be used as a primer for promotional examinations, as a training aid in roll-call, or even as a study guide to a criminal procedure class taught for police officers or undergraduates. The guide was written to be a quick reference manual to help clarify the application of certain important U.S. Supreme Court decisions to a set of facts. This book was not designed to be a textbook, although it may have use as supplemental material to criminal procedure classes for law enforcement officers, or possibly undergraduate level criminal justice courses.

Of particular interest for both training and promotional examinations is the Question and Answer sections found at the end of each chapter. They are designed to assist in applying the rules of law discussed in the cases.



## **DISCLAIMER**

The cases listed in this document are grounded in United States Supreme Court Decisions that have evolved from areas traditionally problematic for police officers.

There is no expressed or implied warranty that the information provided in this book is applicable to every situation in every U.S. jurisdiction. Federal, state, and local law enforcement officers should research federal and state appellate decisions for valid precedents in their particular jurisdictions, as well as any statutory restrictions, prior to relying on these cases to make important policing decisions. It is important to remember that while a state or local government may not restrict individual liberty rights once conferred by the (U.S.) Supreme Court, it may expand these personal rights beyond those granted by the Court. Thus, research into decisions of federal and state appellate courts may be necessary to ensure applicability of these cases.

For military law enforcement personnel, this additional research should include decisions of Military Courts of Appeal and applicable sections of the Uniform Code of Military Justice.





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# **CRIMINAL PROCEDURE**

**For Law Enforcement Officers**



## Chapter 1

### ARREST, AND ENTRY TO MAKE ARRESTS

There are rules that govern the law enforcement officer's legal right to make arrests of criminal suspects. In this section, we will examine the rules that control arrests for serious, or **felony**, crimes. While these rules may also apply to minor, or **misdemeanor**, crime arrests, there are usually special circumstances that further limit a law enforcement officer's ability to arrest on minor crimes and local criminal ordinance violations. However, the last case in this section, *Atwater v. City of Lago Vista*, does look at the overall police power to arrest on a misdemeanor that does not involve a "breach of the peace." The common law brought from England usually would not allow arrests for minor crimes that did not involve such a breach.

The first and most important decree involving arrest is simple, straightforward, and unlike most issues involving the law, it is unconditional:

*An arrest absent probable cause is always unlawful!*

As we will explore in other sections, a law enforcement officer may, under specific circumstances, **detain** a person on less than probable cause. Probable cause is always required, however, in order to arrest a person.

This section examines seven U.S. Supreme Court decisions that deal with where, and under what conditions, a police officer may have access to arrest a criminal suspect. It also examines the distinctions in police authority to arrest on private, as opposed to public, property. As we will see in this section, the Supreme Court's definition of private property for the purpose of making a criminal arrest is not based on ownership, but on the reasonable expectation of privacy.

The guide also examines the limitations on the law enforcement use of deadly force to make arrests. Finally, this section looks at the exceptions to some of these rules for exigent circumstances, and what types of circumstances the Court looks at to determine that an exigency exists.

**CASES: ARRESTS, AND ENTRY TO MAKE ARRESTS*****United States v. Watson***

423 U.S. 411 (1976)

**(Arrest in a Public Place, Without a Warrant)**

**Facts:** Watson was arrested with probable cause, but absent a warrant, in a restaurant and claimed that the consent to search he gave was unlawful, because it was the product of an illegal arrest.

***A warrantless felony arrest is lawful as long as probable cause is present, and it is effected in a public place.***

**Reasoning:** The Court found that both federal and state statutes generally held that warrantless felony arrests were valid, and that the common law supported this view, as had previous Supreme Court decisions. By “public place,” the court also included areas where the public has normal access, such as a privately owned restaurant.

***Payton v. New York***

445 U.S. 573 (1980)

**(Arrest in Person’s Home Without Warrant)**

**Facts:** This case concerned two separate challenges to a New York statute that allowed police officers to enter a private residence without a warrant, and with force if necessary, to make a routine felony arrest. In the named case, police went to Payton’s apartment with probable cause to arrest him for murder, but without a warrant. After knocking on the door for 30 minutes and receiving no answer, they pried open his door, entered the home and arrested him.

***An arrest warrant founded on probable cause is necessary to enter the dwelling of an individual to effect a routine felony arrest, absent consent or exigent circumstances.***

**Reasoning:** The Court held that “physical entry of a man’s home is the chief evil against which the wording of the 4th Amendment is directed.” The Fourth Amendment has drawn a “firm line” at entry into a home without a warrant, and that review by a magistrate must be completed before crossing this line. In the case of *Minnesota v. Olsen*, the Court gave some examples of what it would consider a reasonable exigent circumstance for the purpose of entry into an otherwise constitutionally protected area, without a warrant.



**Note:** In June 2002, the Court re-affirmed the decision in *Payton* when it ruled in *Kirk v. Louisiana*, 122 S.Ct. 2458, that police officers need either a warrant or probable cause plus exigent circumstances in order to make lawful entry into a person's home to effect a routine felony arrest.

***Steagald v. United States***  
451 U.S. 204 (1981)  
**(Arrest in a Third Person's Home)**

**Facts:** Federal narcotics agents, armed with an arrest warrant for Ricky Lyons, entered the home of Steagald, and conducted a search for Lyons. The officers did not have permission to enter, or a warrant to search. Lyons was not present, but during their search for him, they discovered cocaine, which was admitted in trial against Steagald.

***Absent consent or exigent circumstances, law enforcement officers must have a search warrant to enter the premises of a third person to make an arrest, even when they possess a valid arrest warrant.***

**Reasoning:** The Court distinguished *Payton* on the grounds that while a warrant "necessarily authorizes a limited invasion of the arrestee's privacy interests," the fact that the police have an arrest warrant for that individual, does not entitle them to deprive a third person of their liberty. Thus officers cannot derive the authority to deprive this person of his interest in the privacy of his home from an arrest warrant for another person. The Court also feared that the ability of officers to use an arrest warrant to enter any person's home to effect an arrest created a significant potential for abuse and that in, order to avoid this problem, the police had several options. First, they could wait until the person they were looking to arrest returned to his own home. Second, they could obtain a search warrant for the third party's home if the first alternative was not practical. Finally, if a true exigency existed, the police would be excused from the warrant requirement.

***Minnesota v. Olsen***  
495 U.S. 91 (1990)  
**(Exigent Circumstances Defined)**

**Facts:** In a case involving the arrest of an individual, the Minnesota Supreme Court elaborated on the exigent circumstances test for warrantless entries of homes. The U.S. Supreme Court affirmed this test.

*A warrantless intrusion may be justified by hot pursuit of a fleeing felon, or imminent destruction of evidence, or the need to prevent a suspect's escape, or the risk of danger to the police or to other persons inside or outside the residence.*

**Reasoning:** In the absence of hot pursuit, the Court found that there must be **probable cause** to believe at least one of these other factors is present to justify warrantless entry of a home for a routine felony arrest without a warrant. The Court also said that in assessing the risk of danger, the gravity of the crime and likelihood that the suspect is armed should be considered.

***Washington v. Chrisman***

455 U.S. 1 (1982)

**(Movement of Arrestee Monitored by Officer)**

**Facts:** A man, arrested in his home, was allowed to go into another room to get dressed while an officer accompanied him. *The officer charged the man with drugs seen in "plain view" in the other room.*

*It is not unreasonable under the Fourth Amendment for an officer to monitor the movements of an arrested person, as his judgment dictates, following an arrest.*

**Reasoning:** The Court found that "it is not 'unreasonable' under the Fourth Amendment for a police officer to monitor the movements of an arrested person, as his judgment dictates following an arrest." And, for the officer's safety, he may accompany the arrested individual to any part of the premises to which the officer gives the arrestee access.

***Tennessee v. Garner***

471 U.S. 1 (1985)

**(Use of Deadly Force to Effect an Arrest)**

**Facts:** Officers responded to a "prowler" call. One officer observed Garner run across the backyard of a home to a six-foot fence. With his flashlight, the officer could see Garner's face and hands and was "reasonably sure" that he was not armed. The officer called out, "Police, halt." Garner began to climb and, fearing he would escape, the officer fired at him, striking him in the back of the head. Garner died at the hospital. At that time, Tennessee had a statute authorizing police officers to shoot **any** fleeing felon.

*A police officer may not use deadly force to seize an unarmed, nondangerous suspect. Only where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, is it reasonable to use deadly force to prevent the suspect's escape.*