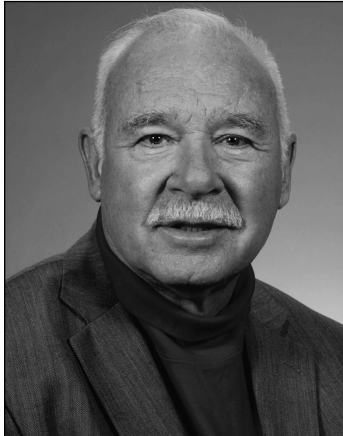


# **SEARCH AND SEIZURE**



### ABOUT THE AUTHOR

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Prior to *Search and Seizure*, Dr. Woody has authored thirty-three books, and approximately two hundred articles for professional journals.

In addition to his work as a professor, psychologist, and attorney, Dr. Woody is a professional musician.

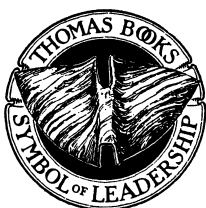
# SEARCH AND SEIZURE

The Fourth Amendment for  
Law Enforcement Officers

*By*

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**CHARLES C THOMAS • PUBLISHER, LTD.**  
*Springfield • Illinois • U.S.A.*

*Published and Distributed Throughout the World by*

CHARLES C THOMAS • PUBLISHER, LTD.  
2600 South First Street  
Springfield, Illinois 62704

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ISBN 0-398-07652-9 (hard)  
ISBN 0-398-07653-7 (paper)

Library of Congress Catalog Card Number: 2006040376

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*Printed in the United States of America*  
CR-R-3

**Library of Congress Cataloging-in-Publication Data**

Woody, Robert Henley.

Search and seizure : the Fourth Amendment for law enforcement officers / by Robert Henley Woody.

p. cm.

Includes bibliographical references.

ISBN 0-398-07652-9 -- ISBN 0-398-07653-7 (pbk.)

1. Searches and seizures--United States. 2. Police--United States--Handbooks, manuals, etc. I. Title.

KF9630.W66 2006  
345.73'0522--dc22

2006040376

*This book is dedicated to my fellow recruits in Basic Recruit Class #281 and my mentors (especially Coordinator E. E. Eunice) at the Pat Thomas Law Enforcement Center in Tallahassee, and to all law enforcement personnel who put their lives on the line to make our society a better place.*



## PREFACE

**D**uring my legal studies at the Creighton University School of Law, I realized how society is dependent on and shaped by the U. S. Constitution and the interpretations of it that the U. S. Supreme Court makes. Being also a professor of psychology, I was intrigued by how human behavior, which operates by legally-based rights and duties, is determined by constitutional law far more than psychology has acknowledged. That is, society and its individuals impose strong reinforcement on every person to adopt and maintain personal conduct that is deemed to be legal. Rewards and punishments accompany this powerful societal press, as evidenced by the criminal justice system.

After more than two decades of practicing law and teaching law-related courses at the University of Nebraska at Omaha, I became increasingly aware of the importance of law enforcement. As I began to study criminal justice in general and law enforcement in particular, it was obvious that law enforcement officers (LEOs) are the frontline of defense against harm to the public; and daily, each LEO must make autonomous judgments that can turn out to be effective or ineffective, and can make or break the LEO's career. Every aspect of the LEO's decision making is subject to close scrutiny by the chain of command within the employing law enforcement agency and the public at large (as well as the news media!). Often, unpredictable and extrinsic factors such as from political sources, will influence law enforcement operations with effects from policy to an LEO's decision making.

From my analysis of law enforcement, I recognized that search and seizure, as set forth in the Fourth Amendment, is one of the most problematic sectors of the LEO's daily routine. For example, when stopping a vehicle for, say, a traffic violation, the LEO, beyond issuing a citation, must immediately decide whether it is appropriate to detain or arrest the driver, and/or search for and seize possible evidence of

crime. A myriad of ill-defined factors can potentially influence the decision and determine the propriety of the LEO's actions.

After the 9-11 terrorist attacks, my commitment to law enforcement increased substantially, and in 2004, I completed a full-time Basic Police Academy at the Pat Thomas Law Enforcement Center in Tallahassee. Listening to the instructors and talking to my fellow recruits and many LEOs made it clear that, when on the job, LEOs typically have too little training for assuredly being effective in search and seizure. Likewise, many persons who work in the criminal justice system, such as corrections and probationary personnel, could benefit from advanced knowledge of search and seizure issues.

This book aims to provide critical information about the U. S. Constitution, with special emphasis on search and seizure. The method for learning capitalizes on review and analysis of relevant U. S. Supreme Court decisions. For each case considered, the specific meaning for law enforcement will be highlighted. Although it is not possible to establish a hard and fast formula for a LEO's decision making for all search and seizure situations, the U. S. Supreme Court cases provide legal reasoning, principles, and decisions that, taken as a whole, can constitute a useful mindset. The final chapter sets forth practical guidance for the LEO, with the goal of promoting effective decision making pertaining to search and seizure.

The substance of this book is essential for law enforcement and criminal justice training programs. Also, the book provides attorneys, forensic specialists, and law enforcement personnel already in the field with valuable information for professional development.

Appreciation is due to my spouse, Professor Jane DiVita Woody for her editing of the manuscript, and to the University of Nebraska at Omaha for providing the electronic database needed to research the U. S. Supreme Court Cases.

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## CONTENTS

	<i>Page</i>
<i>Preface</i> .....	vii
 <i>Chapter</i>	
1. UNDERSTANDING THE LEGAL PROCESS FOR CRIMINAL PROSECUTION .....	3
The United States Constitution .....	5
The Process of Law .....	6
Criminal Procedures .....	7
Thirteen Steps to Criminal Justice .....	9
Due Process and Equal Protection .....	14
Summary .....	16
2. CONSTITUTIONAL BASES FOR SEARCH AND SEIZURE .....	17
The Right of Privacy .....	17
Doing the Right Thing in Law Enforcement .....	18
The Construction of the Right of Privacy .....	19
The Diminishing Right of Privacy .....	26
Defending the Right of Privacy .....	27
Critical Amendments to the U. S. Constitution .....	27
The Fourth Amendment .....	28
The Sixth Amendment .....	29
The Eighth Amendment .....	30
The Tenth Amendment .....	31
The Fourteenth Amendment .....	31
Summary .....	32

3. KEY TERMS FOR LAWFUL SEARCH AND SEIZURE . . .	35
General Communication, Interviewing, and Detainment . . .	35
Mere Suspicion . . . . .	36
Reasonable Suspicion . . . . .	37
Frisking a Subject . . . . .	37
Obtaining Consent . . . . .	37
Custody and Arrest . . . . .	38
Search and Arrest Warrants . . . . .	39
Initial Court Appearances . . . . .	40
The Grand Jury . . . . .	42
The Arraignment . . . . .	42
The Role of the LEO Prior to Trial . . . . .	42
Legal Procedures . . . . .	44
The Plain View Doctrine and the Exclusionary Rule . . . . .	48
Summary . . . . .	49
4. IMPLEMENTING SEARCH AND SEIZURE . . . . .	51
The Threshold to a Reasonable Expectation of Privacy . . . . .	53
Warrantless Searches and Seizures . . . . .	55
Search and Arrest Warrants . . . . .	68
What Can Be Seized? . . . . .	72
Summary . . . . .	77
5. ON PATROL . . . . .	79
Searches of the Person . . . . .	79
Searches of Vehicles and Containers . . . . .	95
Summary . . . . .	100
6. RESIDENCES AND OTHER CONTEXTS . . . . .	103
Open Areas and Roads . . . . .	104
Commercial Buildings and Other Locations Not Under the Control of the Suspect . . . . .	107
Personal Residences . . . . .	115
Summary . . . . .	133
7. SEARCH AFTER ARREST . . . . .	135
The Nature of Detainment . . . . .	136

The Nature of Arrest .....	136
Search Incident to an Arrest .....	137
Summary .....	145
8. PRACTICAL GUIDANCE FOR LAW ENFORCEMENT	
OFFICERS .....	147
Working Within the Legal System .....	148
Considering Constitutional Law .....	150
Obtaining Consent or a Warrant .....	151
Participating in the Prosecution .....	153
Initiating Search and Seizure .....	153
Evaluating the Totality of Circumstances .....	154
Encountering a Citizen or Suspect .....	155
Collecting Information and Evidence .....	156
Detaining, Arresting, and Searching a Suspect .....	157
Searching Sites and Buildings .....	158
Summary .....	162
<i>References</i> .....	165
<i>Index of Cases</i> .....	167



# **SEARCH AND SEIZURE**



## Chapter One

### UNDERSTANDING THE LEGAL PROCESS FOR CRIMINAL PROSECUTION

**T**his book is for law enforcement officers (LEOs) and is specifically about how to execute search and seizure in a manner deemed appropriate under the Fourth Amendment of the United States (U. S.). As will be evident, law enforcement often undermines effectiveness by failing to protect the rights of the suspect or alleged offender. This book aims to strengthen the LEO's judgment about how to perform a search and seizure, and thereby maximize the potential for prosecution of offenses.

Today, well-formulated judgments in everyday law enforcement are essential. The modern trend is toward so-called "community policing," which is "being ushered into police departments across the nation" (Walker & Katz, 2005, p. 313), and is "largely focused on establishing and maintaining relationships between the police and the community" (p. 316). Community policing is linked to problem-oriented interventions, which call for discretionary judgments that reflect understanding, confidence, and competence (Toch & Grant, 2005). Consequently, community acceptance of law enforcement is particularly at risk when decisions must be made quickly in idiosyncratic situations. This means that the decision to stop, frisk, search, or seize a suspect, as well as possibly moving onto arrest, must be executed with prudence and wisdom. This book is intended to provide authoritative information, gleaned from U. S. Supreme Court decisions, that will provide the LEO with practical and wise ideas for daily decision making.

The contents of this book will not be adequate for a thorough understanding of many aspects of criminal law, since it has a limited scope. It does not deal in depth with the U. S. Constitution in general and such law enforcement specifics as, say, bookings (with photographs and fingerprinting), interviewing and interrogations, show-ups and

line-ups, and numerous pretrial procedures. Instead and with steadfast purpose, this book focuses only on understanding and implementing a search and seizure in the course of everyday law enforcement in order to provide the prosecution with an arrest and evidence that potentially can be used appropriately and effectively in court proceedings.

It is particularly important to realize the limitations imposed by studying cases. It is a public misconception to believe that there is such a thing as a “precedent case” that is assuredly applicable to and determinative of the facts and judgments of every encounter in law enforcement. With the first step in the detainment of a possible suspect (i.e., before there is probable cause for an arrest or a search or seizure), the LEO must, at the same time, make instant and appropriate judgments. One of the best ways to enrich these judgmental processes is to have knowledge of how the U. S. Supreme Court has viewed similar encounters.

One of the first things taught in law schools is how to distinguish one case from another case. Like an attorney, the LEO must be able to recognize that any given fact from the scene may alter the application of a seemingly clear legal principle or ruling in an earlier U. S. Supreme Court case. The new fact may call for a change in the course of action (e.g., during a search incident to an arrest).

The reviews of U. S. Supreme Court cases presented in this book offer information intended to educate, not provide hard-and-fast prescriptions and proscriptions for decision making related to search and seizure. In the end, the LEO must always exercise personal judgment regarding when, how, and on whom to conduct a search or seizure.

Certain cases discussed in this book may seem to contradict each other, and some have, in fact, been criticized and perhaps even judicially modified or overturned since the initial Supreme Court decision was published. Again, the materials in this book should be considered conceptually, not as precise directions for law enforcement decision-making or actions. The final chapter will, however, review each of the preceding chapters, cull out critical legal principles, and offer guidelines that have relevance to modern-day law enforcement.



## THE UNITED STATES CONSTITUTION

The U. S. Constitution is the guiding light for the criminal justice system. That is, for law enforcement activities, the judiciary, corrections, and numerous other governmental sectors aligned with dealing with crime must accommodate and protect the rights of individuals. A primary example is that, notwithstanding its great authority, a state legislature cannot, as per the Fourteenth Amendment, adopt any statute that is contradicted by the U. S. Constitution. For another example, any regulation or policy promulgated by a particular law enforcement source may or may not pass scrutiny for Constitutionality.

The interpretation of the U. S. Constitution is subject to human fallibility. Fallon (2004) underscores the importance of judicial determinations, yet recognizes that there may be flaws:

*Constitutional adjudication is frequently a highly judgmental process.* Some people may assume that the Supreme Court decides constitutional cases by simply taking note of the Constitution's plain language, perhaps in light of "the framers' intent," and then applying the written text rather mechanically to the problem at hand. This image is often dramatically misleading. (p. xx)

The esteemed U. S. Supreme Court is cognizant of and gives some undefined weight to the prevailing public policies (i.e., the values, preferences, and morals in society). From his scholarly analysis, Fallon offers eleven conclusions that should be internalized by LEOs: "*Our Constitution is a dynamic document, which draws its meaning partly from evolving thinking and the pressure of events*" (p. 269); "*Despite the dynamism of American constitutional practice, the Constitution is at the center of decision-making and debate*" (p. 270); "*Despite the Constitution's flexibility on some points, it is inflexible on others*" (p. 271); "*Actors besides the courts influence the development of constitutional law*" (p. 271); "*Judicial decision-making is inevitably 'political' in one sense of that term*" (p. 272); "*The role of politics appropriately triggers concern*" (p. 273); "*The Supreme Court seldom diverges too far from the central values of popular political majorities*" (p. 274); "*Although the courts have an important role in protecting minority rights, the protection historically afforded to minorities should not be exaggerated*" (p. 275); "*Political movements help to shape constitutional law*" (p. 275); "*It matters who sits on the Supreme Court*" (p. 276); and finally "*There are fewer*

*simple truths about constitutional law than most Americans would probably expect”* (p. 277).

The foregoing eleven principles pointedly tell the LEO to expect to encounter judicial rulings that may be difficult to fathom or accept. Regardless, as Fallon reminds us, “The status of the Constitution as higher *law* is crucial to the role played by courts, and especially the Supreme Court, in the American scheme of government” (p. 9). In other words, the LEO must uphold the tenets, principles, and rules articulated in U. S. Supreme Court decisions.

### THE PROCESS OF LAW

LEOs are an integral segment of the process of law, for which the primary objective is to resolve disputes. In the case of criminal law, the disputes are between society (e.g., the State as prosecutor) and a person alleged to have violated the criminal statutory code (e.g., the alleged offender as defendant).

Each state commonly promulgates its unique statutory definitions of crimes, as well as the criminal procedures for adjudicating the cases. LEOs must determine that there is probable cause for the arrest in an expeditious manner. After all, the prospect of arrest and incarceration can deprive a citizen of the right of liberty that is protected by the U. S. Constitution. Thus, the earlier statement about state determination of crimes and adjudication rules has limits.

By definition, a process is a method with a purpose, and can be highly complex and interactive with other systems or processes. With criminal law processes and procedures, the LEO’s functions are defined by public policy (the amorphous array of values and beliefs held by society), as well as statutory and case law. To complicate matters, law enforcement is subject to political influences, some of which may seem contradictory to logic and reason. Note, as discussed in the preceding section of the chapter, the similarity of influences on the judges and on LEOs.

Legal procedures are the rules for regulating actions of all involved in the criminal legal processes. Here again, statutory and case law defines and refines the procedural steps in administering law enforcement and criminal justice.