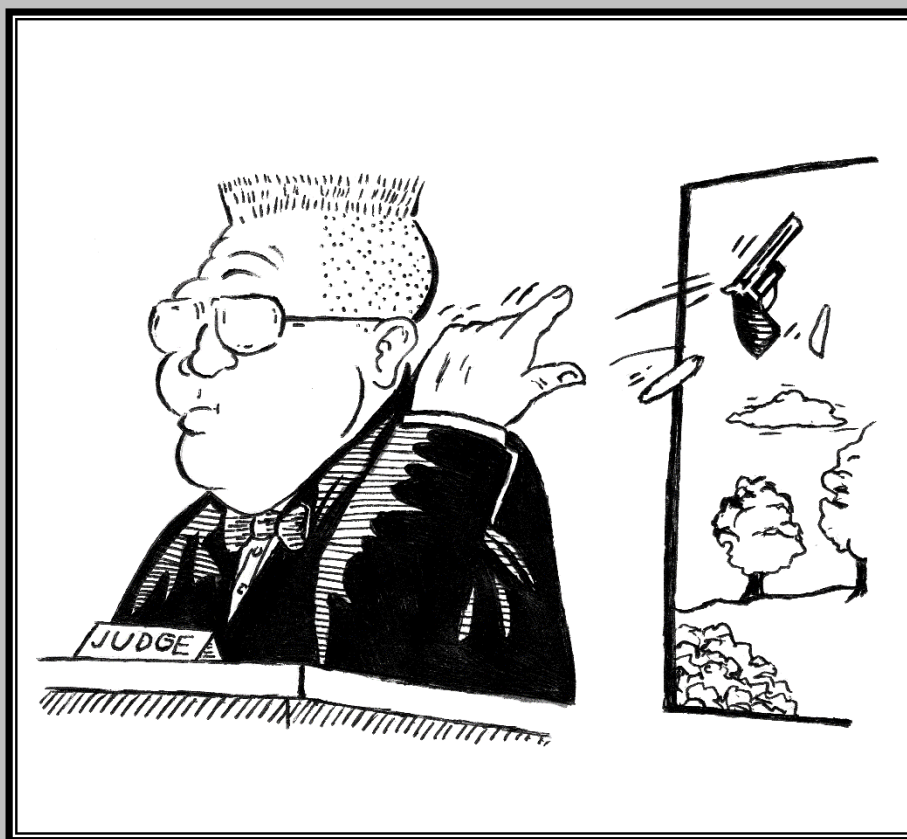


The Arizona Officer's Legal Source Book

by

Dale Anderson & Anthony A. Polse



The Peace Officer's Bible

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by

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CHAPTER 1: The Law

The law has often been described as a seamless web. This means that all legal “rules” within a given discipline are subtly related to each other. A perfect example of this is the constitutional law which controls the conduct of officers.

“You gotta be a lawyer to be a cop.”

Officers have often heard the expression that they have to be a lawyer to understand the complexities of the law as it relates to the officers’ jobs.

This attitude is both accurate and absurd—officers need not know the relevant law as well as lawyers; they must know it better! The reason is obvious. Officers must make practical and legal decisions on a moment’s notice. These split-second decisions will be scrutinized by lawyers and judges for months and even years. After hundreds of hours of research, a panel of judges may ultimately decide (by split decision) that your decision violated the constitutional rights of the suspect.

Lawyers and judges struggle with the Fourth and Fifth Amendments in much the same way that police do.

If you fully understand the concepts in this book, you will be as well versed in constitutional criminal procedure as the best defense attorney.



The judge’s position and attitude about police

Most judges sympathize with the plight of officers. Many courts will bend over backwards to find a legal theory for the admissibility of evidence if the defendant obviously committed the crime and will go free if the evidence is suppressed.

Judges, however, are supposed to simply look at the facts and look at the precedents. If the officers’ conduct was unconstitutional, evidence gathered as a result of the unconstitutional conduct usually must be thrown out of court.

To make matters worse, the courts generally will not create simple rules for officers to follow. Chief Justice Warren Burger of the United States Supreme Court stated in a majority opinion that he did not believe that it was appropriate to create constitutional rules for officers and added:

“We are construing the Constitution, not writing...a manual for law enforcement officers.” ARKANSAS V SANDERS

Officers should not be discouraged by the Chief Justice’s seemingly callous remark. It is simply a fact of law and your life that you must “think” rather than just follow some rule you memorized in the academy. Rarely has there been a case where officers could not have taken appropriate, professional, and constitutional action if they had understood the legal models and rules in this book.

Finally, let me state an unproven (and unprovable) theory about judges’ attitudes (as a note, of course). I think judges use the less serious cases to educate and the more serious cases to ensure that “justice” is done for society and the victim (i.e. the bad guys don’t get off). In other words, if the subject of the suppression motion is a baggie of marijuana, the courts sometimes

“stretch” to follow the legal theory and “teach” officers why the search or seizure was unconstitutional. If the subject of a search is a dead body, the court will do almost anything to see that the evidence is not suppressed. Does the theory always apply? No, but when it does it not only shows that judges are only human in trying to assure that “justice” prevails, it also sometimes throws the “rules” out of whack and makes them harder to understand or follow.

Most officers believe that the “law” should have “rules” or at least a “balancing” test that they can understand and follow. Constitutional “rules” are loaded with exceptions, based on all kinds of rationale, which are sometimes difficult to categorize or understand.

To understand this area as well as the defense attorneys, officers must work and apply themselves as hard as they do in their other professional spheres.



The prosecutor's attitude

Prosecutors normally do not need to understand the fine points related to constitutional law. Usually if a case arises that is related to the Fourth Amendment, for instance, the prosecutor will research the issue.

Prosecutors will usually determine the constitutionality of officers' conduct by reading the officers' reports and asking them for the facts of a case.

Most prosecutors hope that police learn the law in the academy, and many participate in that educational process. However, most prosecutors, on reflection, know that officers cannot learn the law under the present scheme. These prosecutors usually just shrug their shoulders and accept dismissals and suppressions as a natural part of the process. Some even believe that officers cannot learn the law because it is too complicated (after all, many lawyers don't understand it).

The defense attorney's attitude

Defense attorneys look for one small loophole in the prosecution's case. They then often concede every other point and try to drive their defense through the hole. Officers are often surprised to learn that their ironclad cases have many holes which a good defense attorney can drive a truck through.

Here's another way to look at it. The prosecutor not only has to prove the case beyond a reasonable doubt; he/she must disprove the defense beyond a reasonable doubt. That means that the defendant will figure out the best defense and force the prosecutor to prove to a 99 percent certainty that the defense is untrue.

For that reason, officers must learn how to help the prosecutor disprove the most likely defense. This is best accomplished by learning how to question suspects and witnesses.

Most defense attorneys are competent. Some are excellent, yet very few will understand constitutional law as well as you if you understand all of the concepts in this book. Defense attorneys who don't understand the concepts of this book, however, risk being embarrassed and worse when they fail to bring motions to suppress on facts that obviously call for such a motion.

Baker v Clover

An officer saw Baker driving 50 mph in a residential neighborhood. As Baker pulled into his driveway, he activated his garage door and then drove into the garage. The officer got out of his car and followed Baker into the garage. The officer subsequently arrested Baker for DUI. Baker was convicted, but his conviction was reversed because of “ineffective assistance of

counsel because of counsel's failure to move to suppress evidence of intoxication obtained as a result of [the officer's] warrantless entry into Baker's garage."

State v Fillmore

An officer, based on a tip, saw the top of a travel trailer on the other side of a wall. The officer entered the walled area and determined that the trailer was stolen. Fillmore was charged with the theft. The defense attorney failed to raise the issue of whether the entry was a search. If so, it was unconstitutional since the officer had no warrant, consent, or exigency.

The Arizona Court of Appeals ruled that the defense attorney was probably ineffective. Therefore, the case was reversed and remanded.

The Purpose of This Book

This book will help officers to understand how to apply the constitutional rules directly to the facts of cases which officers encounter as they investigate their cases.

Training and educational text

The book is intended as a training text—an educational tool. If the book is used in an academy, the materials will be much more understandable and much more helpful later as a reference source. Some parts of the book, particularly the models (which are crucial to the officers' understanding of the concepts), are very difficult to comprehend without training.

Reference source

The book is also intended to be a reference source. It has a subject index, which will permit officers to quickly look up problems they are confronting.

The book also contains a case index, so every officer will be able to speak from the "same page" as attorneys and judges.

True Story

A nurse at a hospital removed the sock of a patient who had just been admitted to the hospital after an automobile accident. The nurse found drugs in a sock and gave the drugs to officers.

An experienced prosecutor refused to file the case because he said the evidence was obtained in violation of the suspect's constitutional rights. The officer seeking prosecution simply showed the prosecutor the case citation reflecting that this was a "search" by a "private person" and as such the Fourth Amendment was inapplicable and the evidence was admissible. Because the officer could cite a specific case as authority for the "search," the prosecutor was impressed by the officer's professionalism and filed the case.

The Types of Laws

Officers must understand the different types of laws as they relate to criminal investigations.

Constitutional law

Constitutional law might seem very complicated and confusing. One fact officers should know is that only a few words in the United States and state constitutions relate to criminal investigations. These are discussed below.

The United States Supreme Court

The Constitution of the United States is the foundation of all of our laws and the supreme law of our country. Any other law which contradicts the constitution cannot stand.

The Fourth Amendment

About 90 percent of the constitutional criminal procedure cases which police must understand relate to the Fourth Amendment, and most of those issues center around one word—**reasonableness**. That is, was the search or seizure reasonable?

The Fifth Amendment

Approximately 5 to 10 percent of the cases relate to the Fifth Amendment (and the Fourteenth Amendment). Most of those issues involve officers' taking statements from suspects, particularly due process questions regarding voluntariness and self-incrimination questions regarding Miranda.

Miscellaneous constitutional issues

About 1 percent of the constitutional issues are miscellaneous issues related to the Fifth, Sixth, and Fourteenth Amendments. Most of these are questions regarding the right to an attorney and the identification of a suspect/defendant.

State constitutions

In addition to the United States Constitution, officers are bound by the constrictions of the constitution of their state. Usually state constitutions are very similar to the United States Constitution, and state courts will interpret their constitutions similarly to the federal courts' interpretation of the United States Constitution.

States can codify (legislate) constitutional provisions, which create higher standards for officers (more and broader rights for citizens).

But a state can never create constitutional standards that are more restrictive of our citizens' constitutional rights because the United States Constitution and constitutional case law sets "minimum constitutional standards." In other words, a state can always create laws that give officers less powers but never more than are permitted by the United States Supreme Court.

Example 1

A state legislature votes to abolish the Miranda warnings for the officers in its state.

The United States Supreme Court would likely rule that because the Miranda warnings and waiver set minimum standards for officers, a state does not have the power to abolish the requirements.

Example 2

A state court rules in a case that all suspects in custody must be given their Fourth Amendment rights before they can be asked to waive those rights. The basis for this decision is the search and seizure constitutional provision of the state's constitution.

The United States Supreme Court would uphold the state court's power to create rights which do not exist under the Fourth Amendment.

Statutory law and rules

Statutory law rarely addresses (directly) constitutional or criminal investigative issues. When legislators create statutes which recite or closely follow the holding of a Supreme Court case, they are "codifying" constitutional doctrine.