

Table of Contents

1

Constitutional Provisions – Federal and Arizona

§ 1.1	United States Constitution — The Fourth Amendment	1
§ 1.2	Arizona Constitution — Article 2, Section 8.....	1
§ 1.3	Application of Federal and Arizona Provisions – General Rules	1
§ 1.4	Searches and Seizures Complying with Fourth Amendment, But Not Statute.....	4
§ 1.5	Compliance With Statute May Support Reasonableness and Good Faith Reliance.....	5

2

General Search and Seizure Principles

§ 2.1	Actions Must Be Reasonable and Justified at Inception	7
§ 2.2	Evidence May Be Suppressed Only at Criminal Trial.....	7
§ 2.3	Fourth Amendment Claim Is Moot if Evidence Not Admitted	7
§ 2.4	Objective Test.....	8
§ 2.5	Collective Knowledge.....	10
§ 2.6	Burdens of Proof.....	11
§ 2.6.1	Searches with Warrant	11
§ 2.6.2	Warrantless Searches	11
§ 2.6.3	General Burdens Under Rule 16.2.....	12
§ 2.6.4	Defendant’s Burden to Demonstrate Standing.....	13
§ 2.6.5	Reasonable Suspicion.....	14
§ 2.6.6	Probable Cause	14
§ 2.6.7	Federal.....	14
§ 2.7	Least Intrusive Option/Availability of Warrant	15
§ 2.8	Defendant’s Testimony at Suppression Hearing.....	15

TABLE OF CONTENTS

§ 2.9 Participation of Federal or State Officers..... 16
§ 2.10 Civil Suits – Qualified Immunity 17

3

**Preliminary Considerations –
Is the Fourth Amendment Applicable?**

§ 3.1 Expectation of Privacy 23
 1. General Rule 23
 2. Non-Citizens – Fourth Amendment 26
 § 3.1.1 Automobiles..... 26
 1. Drivers..... 26
 2. Passengers..... 27
 3. Rental Cars 27
 4. Commercial Truck Passenger 29
 5. Stolen Cars..... 29
 6. Plain View from Outside Vehicle 29
 7. Vehicle in Parking Lot – Car Cover 30
 8. GPS Tracking..... 30
 9. Standing to Challenge Unlawfully Seized
 Evidence to Support Warrant..... 30
 § 3.1.2 Houses – Expectation of Privacy 30
 1. Overnight Guests – House and Apartments..... 30
 a. Expectation of Privacy Not Shown 31
 b. Expectation of Privacy Shown..... 32
 2. Standing Re: Search Warrant’s Execution 33
 3. Doorways, Hallways and Driveways..... 34
 a. Doorways and Hallways 34
 b. Driveways..... 35
 4. Knock and Talks..... 37
 5. Businesses..... 37
 § 3.1.3 Hotels/Motels/Tents/Forest Areas 39

TABLE OF CONTENTS

1. Tents, Campers or Trespassers on Public or Private Land.....	39
§ 3.1.4 Jails/Inmate Mail	40
§ 3.1.5 Garbage, Lockers, and Items in Public Places.....	42
1. Garbage.....	42
2. Lockers.....	42
3. Items in Public Places	42
§ 3.1.6 Probation and Parole.....	42
1. Probationary Conditions, Searches of Probationers and Parolees, Reduced Expectation of Privacy Generally	43
2. Other Federal Cases.....	47
§ 3.1.7 Mail and Packages.....	49
§ 3.1.8 Unmanned Surveillance Cameras/Videotaping of Hotel Room.....	49
§ 3.1.9 Bank Records/Records Held by Third Party	50
1. Bank Records & Other Third-Party Records.....	50
a. Bank Records.....	50
b. Phone Company Records/Pen Registers	50
c. Rental Car Company Records, Including GPS Data.....	50
2. Stored Communications Act & Historical Cellphone Records.....	51
a. General Rules.....	51
b. Probable Cause.....	53
c. Good Faith.....	53
§ 3.1.10 Foreign Searches & Searches of Non-Citizens.....	54
§ 3.1.11 Office Searches/Office-Issued Equipment	55
§ 3.1.12 Computers & Peer-to-Peer Networks/IP Addresses/Social Media Accounts.....	56
1. Computer & Peer-to-Peer Networks	56
2. IP Addresses/Subscriber Information.....	58
3. Social Media and Email Accounts	59
4. Probable Cause for Computer Searches	60

TABLE OF CONTENTS

§ 3.1.13	Transmitters, Beepers (Tracking Devices) and GPS on Vehicles, Boats and Airplanes	60
§ 3.1.14	Privacy in Conversations.....	61
§ 3.1.15	Abandonment.....	62
	1. General Rule.....	62
	2. Denial of Ownership	63
	3. Fleeing from Vehicle.....	63
	4. Discarding or Abandoning Item	64
	5. Admission Regarding Illegal Contents	64
	6. Abandoned Cars and Property	65
§ 3.2	Was There a “Search?” – General Rule	65
§ 3.2.1	Dog Sniff (or Human Sniff)	65
§ 3.2.2	Seizing Weapon or Contraband in Public	67
§ 3.2.3	Using Visual Aids or Viewing from Lawful Vantage Point.....	67
§ 3.2.4	Thermal Imaging of House (or Technology Not in Public Use).....	68
§ 3.2.5	Beepers and Electronic Devices in Public versus GPS Devices.....	69
§ 3.2.6	Personal Characteristics, including Blood, Breath, DNA, Urine, GSR	69
	1. Personal Characteristics.....	69
	2. Blood, Breath, Urine, GSR	69
	3. DNA Testing.....	70
§ 3.2.7	Looking at Exterior of Vehicles	72
§ 3.2.8	Obtaining Telephone “Pen Registers” (or Similar Information from Computers).....	73
§ 3.2.9	Manipulating or Squeezing Item.....	73
§ 3.2.10	Insertion of Key or Other Minimal Intrusions	74
§ 3.2.11	Undercover Officers/Informants	75
§ 3.2.12	Open Fields, Curtilage, and Knock and Talks.....	75
	1. General Rule.....	75
	2. Open Fields v. Curtilage.....	76
	3. 25-Mile Statute (8 U.S.C. § 1357(a)(3)).....	79

TABLE OF CONTENTS

4. Knock and Talks 80

5. Nighttime Knock and Talks 83

§ 3.3 Was There a Seizure? (Consensual Encounters) – General Rule..... 84

1. General Rule..... 84

2. Detention Can Become Consensual Encounter..... 87

§ 3.3.1 Examples of Seizures and Non-Seizures..... 87

1. Examples of Seizure of Person or Vehicle (Stop) 87

2. Examples of Consensual Encounter (No Seizure)..... 90

§ 3.3.2 Activating Lights or No Submission to Authority..... 92

§ 3.3.3 What Police May Do Without Reasonable Suspicion 94

§ 3.3.4 Chasing Running Suspect 94

§ 3.3.5 Airports, Railroad Terminals, Baggage Claim Areas..... 94

§ 3.3.6 Luggage Entrusted to Airlines 95

§ 3.3.7 Seizure or Detention of Item or Property..... 95

§ 3.4 Government Action – General Rule 97

§ 3.4.1 Stop or Arrest by Private Citizen..... 98

§ 3.4.2 Private Mail Carriers, Other Carriers, and Airlines 99

§ 3.4.3 Schools 100

§ 3.4.4 Private Security Guards, Off-Duty Officers, Tribal Officers, and Others..... 102

§ 3.4.5 Hospital Employees/Paramedics 103

§ 3.4.6 Motel/Hotel Employees 103

§ 3.4.7 Probation and Parole Officers 103

§ 3.4.8 Employer’s Search of Employees..... 104

§ 3.4.9 Foreign Searches 104

§ 3.4.10 Undercover Officers of Informants..... 104

4

Warrants

§ 4.1 Arrest Warrants 105

TABLE OF CONTENTS

1. General Rule.....	105
2. Arrest in Public Place.....	105
3. Arrest in Suspect’s House	105
4. Arrest of suspect in third-Party House	106
5. Execution of Arrest Warrant	106
6. Retreating into Home/Arrest in Doorway	106
§ 4.1.1 Exigent Circumstances and Consent	107
Officer Concealing Identity or Purpose or Using Deception.....	108
§ 4.1.2 Presumption of Regularity.....	108
§ 4.1.3 Good Faith.....	108
§ 4.1.4 “Pretext” or Subjective Intent of Officer.....	110
§ 4.1.5 Third Party Entry and Media “Ride-Alongs”	110
§ 4.1.6 Method of Arrest by Officer by Virtue of Warrant (A.R.S. § 13-3887)	110
§ 4.1.7 Arrest Warrant Execution Rules/Right to Break into Building	110
§ 4.1.8 Other Arrest Statutes.....	111
§ 4.1.9 Bench Warrants – Fees	112
§ 4.2 Search Warrants – General Rule	112
1. General Rule.....	112
2. Standing	115
3. Seizure of Detention of Item Pending Search Warrant.....	116
§ 4.2.1 Miscellaneous.....	118
1. Procedures Before Issuance.....	118
2. Issuance of Warrant	118
3. Hearsay.....	119
§ 4.2.2 Probable Cause of Generally.....	119
1. Probable Cause of Drug Activity/Odor of Marijuana.....	120
2. Probable Cause To Search Cell Phones	120
3. Probable Cause To Search Computers.....	121

TABLE OF CONTENTS

4. Probable Cause re Child Pornography or Child Sex Offense	122
§ 4.2.2 False, Misleading or Reckless Statements (“ <i>Frank’s</i> ” Issues)	123
1. General Rule.....	123
2. Cases.....	124
§ 4.2.3 Informants	126
1. Reliability of Informant	126
2. Disclosure of Confidential Informant.....	128
§ 4.2.4 Particularity Requirement (and Scope)	129
1. General rule.....	129
2. Specificity of Place To Be Searched	130
3. Specificity of Persons To Be Searched.....	131
4. Specificity of Items To Be Seized	131
5. Cases.....	132
6. Scope – General Rule	134
a. What Can Reasonably Be Included Within Warrant’s Scope	134
(i) Vehicles	134
(ii) Multiple Parts of Home or Building	135
(iii) Ledgers, Diaries and Writings.....	135
(iv) Listening to Recordings	136
(v) Answering Ringing Telephone	136
(vi) Destruction of Evidence.....	136
(vii) Taking Photographs, Measurements, Tests	136
(viii) Computers and Cell Phones.....	137
(ix) Addendums.....	139
b. Items in Plain View (Including Weapons).....	139
c. Evidence “Reasonably Related to Crime”.....	140
d. Items Belonging to Person Not Named in Warrant	141
e. Biometric Features.....	142
§ 4.2.5 Occupants	142

TABLE OF CONTENTS

1. Detention or Search of Occupants	142
2. Ensuring Officer Safety	144
a. Weapons	144
b. Dogs	145
c. Judicial Authorization to Use Biometric Features to Unlock Electronic Devices	145
§ 4.2.6 Staleness	147
§ 4.2.7 Notice to Owner	148
§ 4.2.8 Anticipatory Search Warrants/Time for Execution and Return Generally	149
1. Anticipatory Warrants – General Rule	149
2. Time for Execution and Return – General Rule	151
3. Seizure Warrants Are Not subject to 5-Day Requirement	151
§ 4.2.9 Receipt for Property and Retention or Return of Property	152
§ 4.2.10 Return of Warrant and Inventory/Restoration of Property	152
§ 4.2.11 DUI Search Warrants	153
§ 4.2.12 Nighttime Execution of Search Warrants	154
1. General Rule	154
§ 4.2.13 Knock and Announce	
1. General Rule	155
2. Arizona	155
3. Federal	157
4. Defendant Must Have Standing to Challenge Execution of Warrant	159
§ 4.2.14 Good Faith	159
§ 4.2.15 Doctrine of Severability	162
§ 4.2.16 “Murder Scene” Exception	163
§ 4.2.17 Third Party and Media “Ride-Alongs”	163
§ 4.2.18 Federal Cases – Federal v. State Warrants	163
§ 4.2.19 Subpoenas	163
§ 4.2.20 Evidence Unlawfully Seized Included in Warrant	164

TABLE OF CONTENTS

§ 4.3	Wiretap Evidence and Other Electronic Information (Stingray Devices)	164
1.	Arizona Wiretaps	165
2.	Federal Wiretaps	165
a.	Standing	165
b.	Necessity and Exhaustion	166
c.	Facial Validity	166
3.	Stingray Devices	167
§ 4.4	Search of Person in Magistrate’s Presence	167
§ 4.5	Obtaining Person’s Physical Characteristics	168
§ 4.6	Forfeiture – Seizure Warrants	169
§ 4.7	Interviews of Children at School	169

5

Exceptions to the Warrant Requirement (Warrantless Searches and Seizures)

General Rule	171	
§ 5.1	Seizures (Stops, Detentions and Arrests) – General Rule	173
§ 5.1.1	Stops Based on Reasonable Suspicion of Criminal Activity	174
1.	General Rule	174
2.	Stopping a Potential Witness	176
3.	Tribal Officers and Personnel – Authority	176
4.	Cases – Reasonable Suspicion to Stop Based on Criminal Activity	177
a.	Reasonable Suspicion Generally	177
b.	Reasonable Suspicion of Burglary or Robbery	177
c.	Reasonable Suspicion of Drug Activity or Smuggling	178
d.	Drug Activity/Subjective Intent to Cite & Release Irrelevant	182
e.	Reasonable Suspicion of DUI	183

TABLE OF CONTENTS

- f. Reasonable Suspicion of Domestic Violence..... 184
- 5. Cases – No Reasonable Suspicion to Stop
Based on Criminal Activity..... 184
- 6. Unprovoked Flight 187
- 7. Mistake of Fact or Law 187
- 8. Pretext Stops or Arrests..... 188
- § 5.1.2 Stops Based on Traffic Violation/Further Detention..... 189
 - 1. General Rule..... 189
 - 2. Cases – Lawful Stops Based on Traffic
Violation..... 191
 - 3. Cases – Unlawful Stops Based on Traffic
Violation..... 194
 - a. When Does Traffic Stop Conclude?..... 194
 - b. Adequacy of Citation 195
 - 4. Tribal Officers and Personnel – Authority To
Stop..... 195
 - 5. Stop and Arrest by Private Citizen (or Officer
with Limited Jurisdiction)..... 195
 - 6. Detention Can Become Consensual Encounter 195
 - 7. Actions That Officer May Ordinarily Undertake
After Stopping a Vehicle (Without Any Other
Justification)..... 196
 - a. Officer May Ask for Driver’s License and
Registration..... 196
 - b. Officer May Run Warrants Check on the
Driver or Passengers 197
 - c. Officer May Order Driver and Passengers Out
of Car (or Order Them to Remain in Car) 197
 - d. Officer May Look for Vehicle Identification
Number..... 198
 - e. Officer May Ask for Consent to Search and
Ask Questions Unrelated to Traffic Stop 198
 - f. Officer May Search for Vehicle Registration if
Driver Does Not Produce It..... 200
 - g. Officer May Search for Driver’s License if
Driver Does Not Produce It..... 201

TABLE OF CONTENTS

h.	Officer May Reasonably Ensure Safety.....	201
i.	Officer May Run Dog Around Vehicle, But Not After Stop Based Solely on Traffic Violation Has Concluded, Absent Additional Reasonable Suspicion or Warrant Exception.....	201
8.	Anonymous Tips	207
a.	General Rule.....	207
b.	Case Examples	207
9.	Face to Face Tips – Citizen Personally Reports.....	210
10.	Known Informant	211
11.	Chasing Suspect	211
12.	Lead or “Heat” Cars.....	211
13.	Drug Courier Profile	212
14.	Mistake of Fact or Law	212
15.	Length of Detentions.....	212
a.	Detention Beyond Purpose of Stop/Asking Questions Unrelated to Stop	215
b.	Detention Can Become Consensual Encounter.....	215
16.	Officers May Arrest for Misdemeanor and Fine Only Violations	215
17.	Community Caretaking Exception.....	216
18.	Continued Detention /De Facto Arrest	217
19.	Shooting Someone Is a Seizure	217
20.	Tribal Authority to Stop Non-Indians	217
§ 5.1.3	Border Stops and Related Searches.....	218
1.	General Rule.....	218
2.	Border Search of Vehicles	219
3.	Border Search of Personal Belongings, Including Computers and Electronic Devices	219
a.	Border Searches of Computers & Laptops	220
b.	Border Searches of Cellphones	221
4.	“Extended Border Searches” vs. “Functional Equivalent”	223

TABLE OF CONTENTS

5.	Detention at Border	225
6.	Cases on Detention vs. Arrest at Border	225
	a. Detention v. Arrest	225
	b. Probable Cause to Arrest	226
7.	Immigration Checkpoints.....	226
8.	Drug Interdiction Checkpoints.....	226
9.	Dogs	228
10.	Roving Stops	228
11.	Examples of Factors That Have Contributed to Reasonable Suspicion.....	229
	a. Particular Region Known for Narcotics or Alien Smuggling.....	229
	b. Use of Rental Vehicles.....	230
	c. Avoiding Checkpoints	230
	d. Shift Change.....	231
	e. Vehicle or Driver Unfamiliar to Agent Who Works Area Often.....	231
	f. Characteristics of Vehicle.....	231
	g. If Occupants Appear To Be Citizens of Another Country	232
	h. Sensor Activity.....	232
	i. Flight, Erratic Driving, or Significant Reduction in Speed	232
	j. Evasive Occupant Behavior	234
	k. Nervous or Strange Conduct of Driver or Occupants.....	234
	l. Prior Criminal History	234
	m. Tandem Driving	235
	n. Handprints	235
	o. Mexican License Plate.....	235
12.	Examples of Roving Vehicle Stops – Lawful and Unlawful.....	235
	a. Lawful Stops/Reasonable Suspicion Found	235

TABLE OF CONTENTS

	b. Unlawful Stops/No Reasonable Suspicion Found.....	238
13.	Immigration Field Situations.....	241
	a. Consensual Encounter	241
	b. Stops v. Arrest	241
§ 5.1.4	Detention of Packages or Mail – General Rule.....	242
§ 5.1.5	Roadblocks.....	245
§ 5.1.6	Airport Detentions	246
§ 5.1.7	Arrest – Probable Cause and General Authority	246
	1. General Rule.....	246
	2. Timing of Arrest.....	248
	3. Advising Defendant of Incorrect Crime.....	248
	4. Arrest by Private Person.....	248
	5. Detaining Other Occupants	248
	6. Probable Cause to Arrest, Generally	249
	a. Drug Arrests	249
	(i) Occupants of Vehicle.....	249
	(ii) Odor of Drugs	250
	b. Weapons.....	251
	c. Minor or Misdemeanor Offense.....	251
	d. Adequacy of Ticket.....	252
	e. DUI Arrests – Probable Cause	252
	f. Shoplifting.....	253
	g. Unlawful Entry of Home.....	253
	h. Resisting Arrest	253
	i. Collective Knowledge to Arrest.....	254
	j. Community Caretaking Function (Incident to Arrest).....	254
§ 5.1.8	<i>De Facto</i> Arrest and What Constitutes Arrest	254
	1. General Rule.....	254
	2. Restraints	257
	a. Use of Gun.....	258
	b. Use of Handcuffs	258

TABLE OF CONTENTS

	c. Placing Defendant in Police Car	260
	d. Involuntarily Moving Defendant	260
	e. Prison Inmates	261
	f. Detention vs. Arrest at Border	261
§ 5.1.9	Statements or Consent as Fruit of Illegal Stop, Detention or Arrest	261
§ 5.2	Frisks (Pat-Downs)	263
§ 5.2.1	People	263
	1. General Rule	263
	2. Frisking During Consensual Encounter	265
	3. Stopping a Potential Witness	266
	4. Consensual Frisk	266
	5. Scope of Frisk	267
	6. Cannot Frisk as Routine	267
	a. Totality of Factors	267
	b. Plain Feel	268
	c. Seizing of Weapons After Arrest	269
§ 5.2.2	Cars – General Rule	269
§ 5.3	Plain View (and Plain Smell) – General Rule	270
§ 5.3.1	Manipulating Object	271
§ 5.3.2	Visual Aids	271
§ 5.3.3	Plain View from Inside House	271
§ 5.3.4	Plain View from Outside House	272
§ 5.3.5	Automobile – Plain View	272
§ 5.3.6	Related Issue – Single Purpose Container Exception	272
§ 5.4	Consent	273
§ 5.4.1	General Rule	273
	1. Voluntariness Presupposes Innocent Person	273
	2. Adequacy of Consent & Implying Consent?	273
	3. Use of Deception	274
	4. Unlawful Arrest – Consent May Be Tainted	275
	5. <i>Miranda</i> Issues and Violations – Effect on Physical Evidence	275

TABLE OF CONTENTS

§ 5.4.2	Voluntariness of Consent (General Rule)	276
	1. DUI – Voluntariness of Consent/Implied Consent.....	277
	2. Related Issue – Medical Blood Draws.....	282
§ 5.4.3	Apparent Authority	282
	1. General Rule.....	282
	2. Storage Locker	283
	3. Houses/Apartments	283
	a. Parents	283
	b. Co-occupants.....	283
	c. Present and Objecting Co-occupant	284
	d. Juveniles/Babysitters/Caretakers	286
	e. Domestic Violence Victims.....	287
	3. Hotels/Motels.....	287
	4. Businesses.....	287
	5. Vehicles.....	287
§ 5.4.4	Scope of the Search	288
	1. General Rule.....	288
	2. Houses.....	289
	3. Vehicles	289
	a. Consent to “Look in Car”	290
	b. Use of Dogs	290
	c. General Consent.....	291
	4. Scope of Consent to Search Cellphones	291
§ 5.5	Vehicle Searches	291
	1. General Rule	291
	2. Searching All Containers	292
	3. Searching Persons in Car.....	292
	4. Seizing Vehicle in Public Place	293
	5. Search Need Not Be Contemporaneous.....	293
	6. Automobile Exception Applies to Other Moving Vehicles	293
	7. Vehicle Parked on Curtilage.....	293

TABLE OF CONTENTS

§ 5.5.1	Probable Cause.....	293
	1. Odor of Marijuana.....	293
	2. Other Drug Evidence	295
	3. Dog Alert.....	296
	4. Forfeiture	297
	5. Safety of Public.....	297
	6. Search Need Not Be Contemporaneous.....	297
§ 5.5.2	Scope of Search.....	297
	1. Probable Cause for Vehicle.....	297
	2. Probable Cause for Container	298
	3. Beepers, GPS, or Tracking Devices on Cars.....	298
	4. Registration or Evidence of Driver’s Identity	298
§ 5.5.3	Vehicle Search – No Contemporaneous Requirement.....	298
§ 5.6	Exigent Circumstances – General Rule	299
§ 5.6.1	Emergency Aid – General Rule	303
	1. General Rule.....	303
	2. Cases	304
	3. Related Issue – Community Caretaking Function.....	306
§ 5.6.2	Examples – Exigent Circumstances and/or Emergency Aid Entries	308
	1. Evidence of Burglary or Fire Emergency	308
	2. Drugs – Burning Marijuana/Destruction of Evidence	308
	a. Burning Marijuana.....	308
	b. Destruction of Evidence	309
	3. Domestic Violence and 911 Calls	311
	4. Multiple Entries	314
	5. Alien Smuggling.....	314
	6. Danger to Officers/Fear for Safety.....	316
§ 5.6.3	Evanescent Evidence	316
	1. Exigency – Blood (DUI)	317
	2. Qualified Person To Draw Blood.....	321

TABLE OF CONTENTS

3. Medical Blood Draws	321
4. Fingernail Scrapings.....	323
§ 5.6.4 Hot Pursuit	324
1. Misdemeanor Suspects	324
2. Examples of Hot Pursuit.....	324
§ 5.7 Search Incident to Arrest	325
§ 5.7.1 Search Incident to Arrest – Person (General Rule).....	325
1. General Rule.....	325
2. DUI Breath Tests Incident to Arrest	326
3. Personal Possessions/Cellphones and Pagers	326
a. Personal Possessions	326
b. Cellphones and Pagers	327
c. Seizure of Weapons	329
4. Contemporaneous Requirement	330
§ 5.7.2 Search Incident to Arrest – Vehicle	330
1. General Rule.....	330
2. Recent Occupant.....	331
3. Scope of Search of Vehicle Incident to Arrest	332
4. Speeding Violation or Cite and Release Offense.....	332
5. Occupant Handcuffed or Removed	333
6. Contemporaneous Requirement	333
§ 5.8 Inventory Search	334
§ 5.8.1 Inventory Search – Person	334
1. General Rule.....	334
2. Repeated Searches	334
3. Search by Magistrate	335
§ 5.8.2 Inventory Search - Vehicle	335
1. General Rule.....	335
2. Cases	336
§ 5.9 Protective Sweeps – General Rule.....	338
§ 5.9.1 Incident to Lawful Arrest	340
§ 5.9.2 Officer Safety.....	341

TABLE OF CONTENTS

§ 5.9.3	Seeing Evidence or Weapon in Plain View.....	342
§ 5.9.4	If Entry is Unlawful.....	343
§ 5.10	Hotel and Motel Searches – General Rule	343
§ 5.10.1	Standing.....	344
§ 5.10.2	Asking Employees	345
§ 5.10.3	Knock and Talks	346
§ 5.10.4	Consent	347
§ 5.10.5	Exigent Circumstances/Emergency Aid Entry.....	348
§ 5.11	Administrative Searches – General Rule.....	348
§ 5.11.1	Housing Inspection	349
§ 5.11.2	Business Inspection	349
§ 5.11.3	Welfare Inspections	349
§ 5.11.4	Inspections at Fire Scenes	349
§ 5.11.5	Border Searches.....	349
§ 5.11.6	Roadblocks.....	349
§ 5.11.7	Airport Searches or Searches at Entrances to Government Buildings (Including Suspicionless Searches).....	349
§ 5.11.8	Prison Searches and Strip Searches	352
§ 5.11.9	Searches Directed at Probationers and Parolees	353
§ 5.11.10	Searches of Students by School Officials	353
§ 5.11.11	Searches Directed at Public Employees (or “Special Needs” Searches Generally)	353

6

If There Is Unlawful Search or Seizure (Exclusionary Rule)

§ 6.1	General Rule	355
§ 6.2	Inevitable Discovery – General Rule	360
§ 6.3	Independent Source – General Rule	361
§ 6.4	Immunity from Prosecution.....	363
§ 6.5	Identity.....	363

TABLE OF CONTENTS

§ 6.6	Suppression in Criminal Trial Only	363
§ 6.7	Dissipation of the Taint	364
§ 6.8	Statements or Consent as Fruit of Illegal Stop, Detention or Arrest.....	367
§ 6.9	<i>Miranda</i> Violation – No Suppression of Physical Fruits.....	367
§ 6.10	Good Faith.....	368
6.10.1	Good Faith Execution of Warrant	368
6.10.2	Good Faith Reliance on Binding Precedent.....	369
6.10.3	Good Faith Reliance on Statute or Court Order Based on Statute.....	372
§ 6.11	Evidence Seized in Violation of Statute, But Not Fourth Amendment	373
§ 6.12	Use of Illegally Seized Evidence as Impeachment at Criminal Trial	373
§ 6.13	Mootness if Evidence Not Admitted at Trial.....	374
§ 6.14	Prosecution Cannot Use Defendant’s fourth Amendment Invocation as Evidence of Guilt.....	374

7

Appeal or Other Review of Suppression Order

§ 7.1	Defendant May Appeal Suppression Order.....	377
§ 7.2	State or Government May Appeal Suppression Order	377
§ 7.3	Standards	378
§ 7.3.1	Factual Findings and Motions to Suppress.....	378
§ 7.3.2	Reasonable Suspicion.....	379
§ 7.3.3	Probable Cause.....	379
§ 7.3.4	Warrants	379
§ 7.4	Waiver/Appellate Court’s Discretion To Consider Arguments/ Adequacy of Records/Mootness	380
§ 7.4.1	Waiver.....	380
§ 7.4.2	Appellate Court May Consider Issues Not Raised Below	380
§ 7.4.3	Adequacy of Record.....	381

TABLE OF CONTENTS

§ 7.4.4 Mootness382
§ 7.5 State Prisoner – Federal Habeas Corpus382
§ 7.6 Federal Procedure for Motion to Suppress383

8

**ANALYZING SEARCH AND SEIZURE ISSUES –
STEP BY STEP**

Analyzing Issues (Step by Step)385

Table of Authorities

Cases389
Statutes423
Rules.....425