

CAN A POLICEMAN...?

A Responsibly Armed
Citizen's Guide to
Your RIGHTS When
Dealing with Law-
Enforcement Officers.





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"Can a Policeman...? A Guide to Civil Liberties."
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A GUIDE TO CIVIL LIBERTIES

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Note from Delta Media: Generally, we save the 'about the author' section for last, but given the material in this report, we think it's a wise idea to show you who the author of this report is, and why we trust him with this kind of information...

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Introduction

K.L. Jamison, Esq.

Whenever a question begins “Can a policeman . . .?”, the rest of the question becomes irrelevant. The answer is always “Yes, the man has a gun.” Is he allowed to do this, will he get away with it, are there other solutions? These are secondary questions and always the respective answers are maybe, sometimes, and it depends.

You can come into official contact with law enforcement in many ways. You can be in the wrong place at the wrong time. If you work in a regulated industry, of which there are many, know that administrative agencies can and will conduct random inspections. Some persons derive amusement or revenge from making false police reports. While conducting traffic and DUI checkpoints, law enforcement officers will look not only for driver licenses and illegal aliens (sometimes far from the border), but also for other infractions that are in plain view. One judge issued “no knock” warrants that allowed the police to check for safe storage of firearms. In one instance, police were asked to check on the welfare of a man who had slept through repeated phone calls to his residence. Officers found him safely asleep, but in the company of a number of semi-automatic firearms. Law enforcement concluded that a man who owns such guns and who sleeps through phone calls must be crazy. He was briefly committed for psychiatric evaluation. The man was eventually determined to be sane, but unhappy.

The Fourth Amendment to the U.S. Constitution protects us against “unreasonable search and seizure” (*italics added*). The question then becomes, “What is reasonable?” A warrant is almost always considered to be reasonable. But in some cases, warrants have

been found to be invalid. However, resisting the rare, obviously invalid warrant is only likely to result in the search or seizure being found valid; see “Resisting” below.

If police raid your home or business, always ask to see the warrant. It must specify the location to be searched and what law enforcement expects to find. Police have conducted raids at wrong addresses and have been quite willing to look around once allowed inside. The scope of the search must be reasonable. A warrant that allows police to look for stolen pianos does not justify a search of medicine cabinets. In the 1950s, a deputy sheriff asked a bootlegger to let him search his vehicle. The bootlegger had obviously watched the early “Dragnet” episodes and said he could not without “a paper.” The deputy rooted around in his own vehicle and came out with the car registration, which he presented to the bootlegger. The bootlegger agreed that it was “a paper” and permitted the search. Illiteracy is a terrible thing.

A drug task force carried out a “no-knock” raid on a Missouri house at 2 AM. Task force members shouted “police” and started to batter down the door. The resident was asleep and did not hear their shouting. The door did not easily succumb to the battering ram, and the noise eventually woke the resident. The week before, he had been the victim of home invaders who had also been looking for drugs. The resident thought they were back. He grabbed a pistol and shot at the figures approaching in the dark. Fortunately, he missed. A great deal of shouting ensued — “police!” The resident surrendered. He was tried for drug possession and assault on a police officer. The cross examination of the raid leader went something like this:

“Why did you execute the warrant at 2 AM?”

“For surprise.”

“Why did you yell, ‘police’?”

“So he would know we were executing a warrant.”

“Why didn’t you call him from your cell phone?”

“Because then he would know we were executing a warrant.”

The conflict between surprise and announcement led to the defendant’s acquittal on the charge of assaulting a police officer, so he did not get life in prison. Police did find meth everywhere in the house, so the resident did get a twenty-year prison sentence. Executing warrants is a high adrenaline experience. Police training courses conduct scenarios in which assailants appear from improbable locations, boobytraps are tripped and dangerous animals attack officers. Officers train for these scenarios because these things do happen. While executing a warrant, officers revert to their training and recall war stories of ambushes by nice, normal psychopaths. Officers’ nerves are on edge, and so they do not respond well to argument from those they raid. Citizens have the right of free speech and the right to remain silent — there is a time and a place for each. Silence is golden. He who remains silent, spends less gold in his own defense.

Police now use modern technology to issue “telephonic warrants” on locations of transitory interest, often these are vehicles. A judge simply signs the necessary paperwork to give telephonic permission for a search. This process, however, does not allow the suspect to review the warrant. And even if a warrant had a flaw, the search would still be conducted.

A warrant requires a citizen to allow access. It does not require his cooperation. It does not require explanations by him. It does not require a citizen to provide keys or combinations, although doing so will prevent damage to property. If the warrant is later thrown out, whatever was found will be excluded. If the citizen cooperates, the prosecutor will claim consent. During a search by warrant, citizens should only talk with a lawyer. The citizen served with a warrant may be required to stay or to leave. Follow instructions, but note badge numbers of the officers present and the names of all departments or agencies involved.

An alternative to a warrant is consent. The legal term for consent is “stupid, stupid, stupid!” Police will occasionally appear at a citizen’s door and ask if they can come in. You must resist your hospitable impulse. Once police are in, they are not easily ejected. Consent will in no way work to a citizen’s advantage. The search may uncover some forgotten misdemeanor or contraband dropped by a former guest. The trophy that grandpa brought back from the war might actually be a functioning machine gun or explosive device. A Kansas City lady inherited her grandfather’s home and eventually found that he had a German WW I machine gun in the basement; now in her illegal possession. One Civil War collector

was the proud possessor of a cannonball fired more than 150 years earlier. It was actually an antique, but an illegal explosive device — a fact he discovered when it blew up in his hands.

A home or business owner may consent to search by law enforcement for illegal aliens, and anything else found to be illegal in the course of the search is admissible. In one memorable case, police officers working an accident found a revolver in the car. They promptly arrested the car’s owner for carrying a concealed weapon. Eventually another officer plaintively asked if anyone had seen his “misplaced” gun; indeed they had.

Consent given under duress is invalid; however, duress must be proven in court. Consent given through deceit is yet a greater problem. In some communities, police have gone door-to-door offering courtesy inspections for drugs and guns, specifically in teenager’s bedrooms. Trying to keep officers to an agreed upon space becomes problematical once they are inside your home, and anything that they see is fair game.

A co-tenant or co-owner may give consent, but a landlord cannot. And legal disputes have arisen in cases where one tenant consents while the other refuses. In these cases, the dissenting party must make a record that he (or she) does not consent to the joint property being searched, does not consent to his (or her) personal area being searched and does not consent to his (or her) personal property being searched. This probably will not prevent



a search, but it gives defense lawyers something to work with in getting search results excluded at trial or getting a reasonable plea bargain.

The proper response to an officer's request to search or announcement of intent to search, is "No, thank you." Being polite in your phrasing can only help you. Continue to say "no." And it is not necessary to try variations of this theme. Variations will not help you and may even be twisted by others to show proof that you had changed your mind about the search once you learned how much fun it could be. It is not helpful or necessary to explain anything found during a search. Explanations do no good and the information can be used against you. Any property damage incurred during the search is the responsibility of the government, unless evidence of a crime is found — in which case, the owner has bigger problems.

A second exception to a warrant is the ever-popular "probable cause." Probable cause refers to circumstances where "specific articulable facts create an objectively reasonable suspicion that the individual is involved in criminal activity." This is judged by the totality of the circumstances one single element may provide probable cause, but usually other factors apply. The U.S. Supreme Court ruled, in a particular case where officers chased a cocaine dealer into a building where he took shelter in one of two possible apartments, that it is reasonable to pound on the door where officers smell marijuana. The court further ruled that it is reasonable that police can break in when they believe evidence is being destroyed. Even though police did not find the cocaine dealer, busting the marijuana operation was a consolation prize. This case teaches us not to flush the toilet when police are at our door.

The required level of probable cause increases with the level of intrusion — from frisk, to search, to arrest. Courts have found the sighting of a cartridge to be probable cause. These cases typically turn on sightings of drug paraphernalia. Given the imagination and determination of drug addicts, the scope of objects known for drug use is growing uncomfortably large. A license to carry or

own guns is not probable cause to suspect a crime. As such, the U.S. Supreme Court had to rule that an NRA bumper sticker is not probable cause for a search.

A third exception is "exigent circumstances," which means an emergency situation where warrantless arrest is necessary. If in the course of responding to a citizen's failure to answer a telephone call because police fear for the citizen's safety and the police find evidence of what they think is something else, it is evidence.



Police Contact

The police do profile. Officers spend eight hours a day playing, "What's wrong with this picture?" A white face in a minority neighborhood or a ratty car in a rich neighborhood draws notice. This is not probable cause, but cause enough for a second look — perhaps personal contact, known in police circles as a "walk and talk." An individual's reaction during this second look or contact may escalate circumstances into probable cause. In one instance, an officer saw a ratty car turn into a wealthy neighborhood late at night. She radioed for backup saying the car "didn't belong there" and she turned to follow. The car's occupant turned out the car lights and made several quick turns to evade the officer. The officer had no justification to stop the car until it employed evasive tactics. The officer was later reprimanded, not for losing the suspect, but because her comment about the car constituted "profiling." Police may spend eight hours a day profiling, but they are not allowed to say so.

When police have probable cause to stop a person, they can usually search for weapons anywhere within arm's reach of the person.

Probable cause statements overflow with accusations of "subjects" being "evasive" and "nervous." Eye contact with an officer is a sign of the calm confidence, as Mark Twain said, "of a Christian holding four aces." It is natural for you to be nervous during unexpected contact with police. Learn to live with it.





Stopped with a gun

A frequent question asked by police during a stop is “Do you have any drugs or guns?” You will hear this so often that you may suspect the Highway Patrol Academy teaches this line as a substitute for “good morning.” A number of social commentators have suggested using responses that range from the evasive “I do not have anything illegal” to the demanding “Am I under investigation?” to the rude “I do not care to participate in your weapons survey.” Officers respond to evasion with suspicion, to demands with “You are now” and to rudeness with the full weight of government regulations — the petty, ambiguous, possibly imaginary rules that are too much trouble to enforce, usually.

In many states, persons with a license to carry are required to identify themselves and show their license. When you are in such a state, you must comply with local laws. It is a good policy to volunteer the presence of a gun; police officers hate surprises. It is a valid argument that a concealed firearm should go unnoticed, but experience shows they do not. Many vendors sell “concealed carry” badges. Police take a violent dislike to these badges because they believe that these persons are pretending to be police officers. Whether this is a rational or irrational reaction is not

the point, these badges will complicate the encounter rather than simplify it.

In police jurisdictions where possession of a firearm is presumptively illegal if not treasonous, the impulse to lie may be irresistible. Most citizens lie badly, and it is not the function of lawyers to teach this skill, no matter the popular perception. Before Missouri passed its concealed carry law in 2003, a man drove through downtown Kansas City after 6 PM, a sufficiently unusual event in those days to be suspicious. He was stopped for the ever popular “weaving” and given the traditional greeting. He replied that he did not have a gun; however, the bulge at his belt begged investigation. The bulge turned out to be a two-way radio, but the handgun next to it proved interesting. The officers arrested him for carrying a concealed weapon and demanded to know why he had lied to them. He asked them what would they have done had he admitted to having the gun. “We would have arrested you,” they replied. Honesty does not appear to be the best policy when the wages are the same; and most people lie badly. When honesty is not the best policy, a reasonable facsimile is required. Replying that the “family lawyer” gave you instructions never to answer such questions is advisable. Blaming your lawyer always works. And this will prompt the follow-up question, “What is your lawyer’s name?” There is a name at the beginning of this article. Referring to the legal denizen as the “family” lawyer puts a nice Middle America spin on it, unless you have an Italian name, which draws out certain prejudices.

Manners

Good manners will keep you out of trouble better than a lawyer can get you out of trouble. The more impolite an officer becomes, the more excruciatingly polite you must become. These days, law enforcement vehicles typically have on-board cameras, and the visual and audio recordings are used as evidence. No probable cause dispute has ever noted that the suspect was polite. On the other hand, many criminal charges have been summarized by knowledgeable persons as “contempt of cop.” This unwritten but very real crime has brought a number of marginal cases into court. Some officers have allegedly responded to insults by eating the offender’s driver license, issuing a ticket for driving without a license, and then asking for the registration. This appears to require a strong jaw and steady digestion, but it is unwise to test this urban legend.

Being humans themselves, officers respond well to manners. This is not to be confused with subservience, which may be seen as irritating. A popular reality police show filmed an officer questioning a suspicious person. The suspect constantly referred to the officer as “Boss,” which the officer took (correctly) as evidence that he had done time in the state’s prison system. This is not the button to push. Law enforcement officers are the graduates of a demanding training course. They have earned their rank and like to hear their titles — officer, deputy, trooper — used, and they deserve to hear them.



Walking

Unless you're escorted by a dog, walking at night is unusual enough to draw attention to yourself. Police can and do ask nocturnal pedestrians for identification, but it is not necessary to answer or provide identification. Refusal to answer will draw further attention. Police officers do not initiate contact without some sort of suspicion, harassing people is just too much work. In one instance, a police report recorded an officer's attempt to help an intoxicated pedestrian. The pedestrian was leaving a biker rally, and the officer's unusually helpful hands located a concealed bayonet. The pedestrian had taken away the bayonet from another person who had improper intentions. But before the pedestrian could discard the weapon, he was arrested for his vigilante efforts.

Police officers can frisk any person they encounter in a situation with a low level of probable cause. As Conan Doyle has Sherlock Holmes say, "The game is afoot!" This ability by police comes from the Supreme Court case *Terry vs Ohio* in which an officer saw three men separately (but equally) walk up to a store window, look inside and return to the group for discussion. This might have been a group impatiently waiting for a friend to complete some task or transaction or thieves casing the store for a robbery. The officer decided to ask, and in the interests of officer safety, ran his helping hands over the outside of the men's clothes. In this

manner, he detected two revolvers. The gun owners were charged with carrying concealed weapons, and the search was upheld. These Terry frisks are normally, but not always, conducted on pedestrians; however, people have been instructed to get out of cars for the purpose. The term, "officer safety" is a commonly encountered catch phrase to justify a search, and courts have indulged reasonable searches for this purpose.

Man with a gun

In some states, a concealed weapon must remain concealed. You must obey local law in these jurisdictions. Certainly, the first principle of concealed carry is "concealed" — out of sight is out of mind and out of trouble. There is some dispute if a single report of a man with a concealed weapon is grounds for a search. In nearly every state, this would be grounds to ask to see the person's license. In other states, this may be grounds for a stop and frisk, but that depends on the reliability of the informant. If the informant has given reliable information in the past, this increases the strength of probable cause. It also means that the informant is probably a drug addict who sends other persons to jail in his stead. It is a peculiarity of our system that drug addicts are only reliable when testifying for the government.

Open carry advocates are likely to inspire "man with a gun" calls to the police, often with imaginative embellishments. Some people cannot conceive of a man with a gun except for the purpose of mass murder and will not be deceived by the evidence of their own eyes. A man carrying an umbrella prompted a series of such hysterical calls. The police will respond to investigate. The first rule of police work is to go home alive at the end of each shift. Their interactions with citizens are often abrupt and commanding. Your failure to follow their instructions will escalate matters and force will be used. Force will be unnecessary, but the officer does not know that and failure to comply with instruction leaves him with few options. Walking away from a situation is not an option for an officer. Negotiating compliance is also not an option, and this is a technique used by criminals to distract and gain an advantage over an officer. Police know this tactic, and this is not the button you want to push. Your excruciatingly polite compliance is the only tactic. The reasonableness of an officer's instructions can be determined later in court.

Car

Drivers can be required to show their driver licenses, car registration and insurance. Car stops are the most common interaction between citizens and law enforcement. A disproportionate number of police casualties occur during car stops. This makes any officer a little tense when he walks up to the driver's window. The driver could be muling drugs, just robbed a bank or have chopped up pieces of his significant other in the back seat — and



all these things have happened. This may explain some drivers' experiences with the police.

A few simple rules will make your experience more pleasurable for everyone involved.

1. Pull all the way over to the right.
2. Stay in the car. Experts in body language insist that it's more polite to get out of the car and walk back to the cruiser. However, police have seen people bounce out of their cars and shoot them; they really hate this.
3. Turn off the car's engine. This tells the officer that you will not try to flee, another thing they really hate.
4. Turn off the radio, DVD player, CD player, cassette player, 8 track player or whatever other device may be playing. An officer does not want to hear your tape of "Cop Killer." He wants you focused on what he has to say.
5. Switch on the car's overhead light. If the officer can see you clearly, he will be more comfortable about the encounter, and this will reflect in how he treats you.
6. Keep your hands on the wheel or otherwise casually visible. This tells the officer that you are not reaching for something

that will hurt him. Placing your hands on the car's ceiling will make the officer believe that you are familiar with a felony stop; and he will wonder why. Rooting around the vehicle will look like an attempt to hide contraband or recover a weapon. In one case, a driver was stopped for the ever-popular "weaving." He dropped something on the floor of his car, reached down for it, and when he sat back up, he found a .38 in his ear and was four pounds of pressure away from being a headline.

7. Inform the officer that you have a gun. When you are armed, you are often required to tell an officer. Even if a state does not require you to inform an officer, some law enforcement officers believe that gun owners must volunteer this information. Law enforcement officers hate surprises, and the side of the road is no place to have a legal argument. Informing an officer that you have a gun is good policy. Under no circumstances should you pull out your master-blaster and exclaim, "I've got this!" You will have a Glock in your ear before you can utter an explanation. Under no circumstances should you say that you have a "gun." The exclamation "gun" is a warning in police circles and that is not the button you want to push. Instead state "I have a license to carry" (or whatever it is called in your state). The officer may hold your gun while he writes the ticket or runs the serial number to see if it is stolen or written in blood at a crime scene. Gun owners should wait for the officer's instructions and follow them.

Increasingly officers will ask:

"What kind of gun are you carrying sir?"

"I have a Colt Combat Commander."

"Cool, I'd like to get one of those too."

Court decisions have allowed officers to hold the gun during the encounter. Some officers have demanded proof of ownership before returning the firearm. These demands by police are not made for other types of property. They are subterfuges to harass gun owners and expose their departments to lawsuits for deprivation of property without due process of law. Citizens do not have to prove ownership; the police have to prove a gun was stolen. Some officers believe that they are required to seize all firearms encountered for "ballistic testing." This is nonsense and only serves to expose the department to a lawsuit for deprivation of property without due process of law. Again, the side of the road is no place to argue the law. Policies by departments that provide employment for lawyers cannot be an entirely bad thing, but they are annoying for normal people. Threats of lawsuits will only encourage ticket writing in order to, as Gilbert and Sullivan wrote in *The Mikado*, "add artistic verisimilitude to an otherwise bald and unconvincing narrative."

A police officer can require the driver and passengers to remain in the car, to get out of the car, to get out and then get back inside, order some to get out and others to remain inside. The courts give considerable discretion to the officer in the interest

of officer safety. Your refusal to comply will result in additional officers being summoned, forced compliance, a detailed search, and as many charges as the evidence and officers' imaginations will bear.

The officer will often ask permission to search the car or a portion thereof. The appropriate legal answer is "no." It's often argued that if you don't have anything to hide, then there is nothing to fear from a search. This is not true. There is no possible way that a search can benefit a citizen. Since an officer will not allow a citizen to search his car, locker or home, then there is no reason to allow him to search the citizen. The average citizen has better things to do than watch his car being searched, and the officer has better things to do than to conduct the search.

If a police officer has probable cause to search one person in a car, then he has the right to search all the people in the car. If one piece of contraband is found in the car, everyone can be charged with possession. Choose your passengers carefully.

A police officer can detain a vehicle for a short time in order to



summon a search dog or require the driver to follow him to the dog's location. An officer may insist that he can detain a driver for as long as he pleases while waiting for a search dog, but this is a calculated bluff used to force consent. If you are stopped, note the time of the stop. This will help to determine the reasonableness of the wait. Search dogs are utilized for finding drugs, explosives (including ammunition) and people. A search dog that alerts an officer to a vehicle is probable cause for a search, although a warrant is more appropriate. The dog does not care about the law, the Constitution nor the war on drugs. The dog only knows that when it detects a certain smell, it gets a cookie. This requires the dog's handler to interpret the dog's behavior. This often results in a prejudice in favor of a search. If the dog's behavior is on the police cruiser's video camera, the dog's behavior can be evaluated later and the search may be ruled improper and any contraband excluded. In one particular case, a dog alerted police to a driver's prescription medication, but the search disclosed an illegally concealed revolver, an acceptable consolation prize for police.

Police officers boast that they can turn any traffic stop into a federal case. This is a mild exaggeration. The rule is that a driver's attitude determines the number and severity of tickets written. In an early episode of "Hill Street Blues," an officer is angry at her boyfriend/partner and takes out her aggression on a motorist, circling the car writing ticket after ticket to a driver whose worst crime was having a Y chromosome. This is entirely possible, although typically it is the arrogant, abusive or insulting motorist who inspires the flurry of tickets. Peace officers have bad days, too, and it is unwise to make the day worse.

Anything that draws the eye runs the risk that police officers will notice a violation. Police are often accused of targeting minority drivers. One particular African-American reports that he does not get tickets when he drives alone. But when his wife, who is white, is with him, he is frequently stopped. Someone suggested to him that maybe his wife was somehow distracting him from safe driving, but he did not think so. Police officers report that they cannot tell the race of a driver until they approach the driver's window, especially at night. Casual observation supports these reports.

During an innocuous traffic stop, a gentleman volunteered the presence of a handgun. The officer ran a routine search of the gun's serial number. He found the gun to be on the national list of stolen firearms. The gentleman was arrested for possession of stolen property. The investigation later determined that the gun was stolen when the gentleman was a baby in diapers, and had an alibi. He was quickly released, but it was a bad night. Consent to a search can never work to a citizen's benefit.

Once an officer finishes writing a traffic ticket, he no longer has any legal reason to delay the driver. Anything the officer may find after he writes a ticket and the driver signs it has a very good chance of being excluded from evidence. Efficiency is a



wonderful thing.

In another case, a female driver was pulled over for driving safely during rush hour, a practice sufficiently unusual in her community to be suspicious. After running her license plate, the officer knew that she had a license to carry and demanded to see her gun. The lady explained that she did not have it with her that day. The officer declared that was probable cause to search her car. This is not even remotely true, but the lady obligingly told him to beware of the mole traps in her trunk. The officer considered this information, told her to have a nice day and left. Mole traps will not reliably repel police officers, but it is wise to warn of any hazardous objects even when the officer has absolutely no right to conduct a search.

Home

Your home, no matter how humble, is your castle. The old saying is that wind and rain may enter an Englishman's hovel, but the King's men could not. The legend is that vampires could not enter a home until invited. Regrettably, vampires have more regard for the sanctity of the home than the government. A home is a home, be it temporary or permanent, or even a tent. The highest level of probable cause is required to enter into a citizen's home. Police will rarely attempt to enter without a warrant. In the case of exigent circumstances or very strong probable cause, police may enter without a warrant. Anything in the home that can be detected by sight or smell will be grounds for a warrant to search. Authorities are allowed to use binoculars and similar devices to enhance their senses to obtain evidence, but the use of heat-seeking devices, which can penetrate the home, have been found to be unconstitutional. Therefore the use of metal detectors to locate guns is unlikely to be constitutional. The use of microwave radiation to control our thoughts, as one person improbably warned me, is certainly unconstitutional, and with our people, futile as well.

Police can force their way into a home without a warrant if they reasonably believe that someone inside is in distress or if another

emergency exists. They can also force their way into a home if it reasonably appears that persons inside are destroying evidence. This is true even when the evidence in question cannot be readily destroyed; it doesn't have to make sense, it's just the law.

RV & Guns

Recreational vehicles inhabit a nether world between vehicle and home. The critical question here is for what purpose was the RV being used at the time of the search. If it's being driven, the vehicle is given a lesser expectation of privacy. If parked, it is a home and only a very good reason for a search will be sustained.

Business

Police may enter a business to the same extent as the general public can enter. Police cannot enter portions of the business not open to the general public, unless, of course, some raving idiot gives them permission. If police see something suspicious, their presence may become a search. Administrative inspections are conducted for many purposes. Police have approached fire marshals with suggestions of places to inspect, with the added advice that they may need police protection.

Cell Phones

A device exists to download the contents of cell phones. However, it must be attached to the phone in order for it to work, and this requires a warrant. A police officer may ask to examine your cell phone and may chuckle over your friend's prank message about bombs and drugs, but he probably won't.

Recovering Property

It is within a citizen's right to ask for a receipt for any seized property. The receipt need not be formal, it can be written in crayon on the back of a fast food wrapper. It need only record what was seized, by whom, and when it was seized. The officer may refuse to give you a receipt. Again, the side of the road is a bad place to argue such legal matters.

You can retrieve your property by a phone call, a suit for replevin, or a "1983 suit." A phone call to the officer's superior or the jurisdiction's legal authority may suffice, but usually not quickly. A suit for replevin will result in return of property to the legal owner. The department will insist on proof of legal ownership; mere possession when it was seized is not enough. The remedy is return of the property. The legal process will usually cost more than the price of your gun. A "1983 suit" is legal shorthand for 42 U.S. Code Section 1983, which allows lawsuits against government agencies for violation of constitutional rights. Seizure of a gun without due process of law is a violation of the Fifth Amendment. The remedy is return of the property, punitive damages, and attorney's fees. The damage done by the seizure must be significant and the violation extreme.

Statement

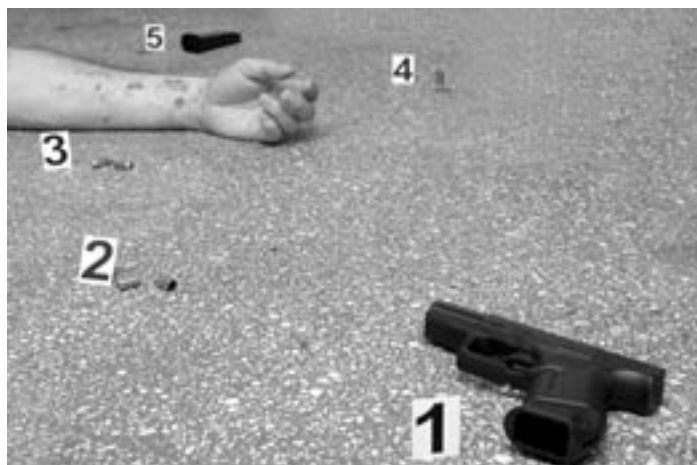
Police do not have to read Miranda rights to anyone, even persons they arrest, unless the police intend to ask questions. One experienced police officer tells suspects that he does not want a statement from them. He tells them that he has plenty of evidence already and anything they say will only complicate his case. This provokes a stream of self-justification, excuse and accusation. Since the statement is not the product of questioning, it is considered “volunteered” information. In the military, you quickly learn to never volunteer. Statements can be oral, written or even body language. In one particular case, a court ruled that a suspect’s refusal to uncross his legs during his statement was evidence of deception. One detective swears that when left alone, a guilty suspect will fall asleep because the stress is over, and for an innocent man, the stress is just beginning. In a nation where nude dancing is First Amendment protected speech, anything can be a statement.

To invoke the right to remain silent, you must say so. This is counter-intuitive, but not to the Supreme Court. The police are not required to assume that the suspect desires to remain silent simply because he remains silent.

The police are not required to provide you with a lawyer until you ask for one. Even if a lawyer who has previously represented you is pounding on the interrogation room door demanding to see you, the police do not have to give him access until you ask to see him. Again, vampires cannot enter unless invited.

Self-Defense Scene

After a self-defense shooting, old advice was to look for witnesses, pick up cartridge cases and leave. This is massively stupid advice. When the police find evidence of a shooting, much less a body, they begin circling. They look for witnesses who had the discretion to remain out of sight when shots were fired. They look at traffic cameras, ATM cameras and security cameras. They find people who left the area and ask why. It is commonly considered



a crime to leave the scene of a shooting. It may also be a crime to abandon a corpse. These charges may stick even if the shooting is ruled to be self-defense, and that is not at all certain. Flight is always considered to be evidence of guilt.



Statements

It is a crime to lie to the police under any circumstances. Police can, and do, lie to citizens. Lying to the police is, at minimum, obstruction of justice. Lying to a citizen about evidence, witnesses or the like is a time-honored interrogation tactic. This is why citizens have a right to remain silent. A private security guard in Kansas City heard gunshots near his post. He ran to his car for a first aid kit, and shotgun. He fired two blasts, ran off the shooters and saved two men’s lives. Responding officers took the shotgun as evidence. When detectives arrived, they asked the rattled guard if he had fired his weapon. He believed they meant his handgun and said no. When they asked about shotguns, he gave a full explanation. He was stripped of his license to be a security guard because of this “lie” and because he was not authorized to have a shotgun at his post. When the authorities do not hear what they want to hear, they often decide the subject is lying. When citizens

lie to the police it is a crime. When police lie to citizens it is good police work. Silence is golden.

It is important to be the first person to call 911. The terror in the voice is recorded and is thus evidence. Bystanders, criminals and friends of criminals will call 911 with imaginative embellishments of an incident. The first person to call 911 is usually considered to be the victim.

It is a conundrum to advise silence and to call 911. There are legitimate arguments for doing either. The call to 911 must be limited and focused.

State:

1. Your location
2. "He tried to kill me"
3. "I was never so scared in my life"
4. "I was forced to defend myself"
5. "Send an ambulance"
6. "Scene is Safe"

Location is the first thing you should mention, just in case they lose the call. "He tried to kill me" establishes you as the victim. "I was never so scared in my life" is important because fear is an essential element of self-defense. A prosecutor once told a jury that the defendant never claimed to have been afraid until he talked to a lawyer. This was not true. The prosecutor was lying to the jury, and the judge was letting him get away with it. If a defendant has a legitimate defense, he is expected to provide it at an early stage of the case. Failure to do so will draw adverse comments. The request for an ambulance makes the caller look like a humanitarian. Stating that the scene is safe tells the responding officer that he is not walking into a gunfight. Greet the officer with the gun unloaded and the action open, unless it is needed to control prisoners. Follow the officer's instructions.

The responding officer will want more details — detail that may be used against you later. The responding officer will use a checklist to process the scene. You, too, should have a checklist.

- Remember the acronym SHIELD.
- Remain Silent; this is the overriding principle.
- He attacked me; I am the victim.
- I am Innocent; if you do not claim this as early as possible, it will be adversely mentioned in court.
- There is the Evidence; the "CSI" team will not be summoned to pick up every hair and fiber. It is necessary to point out cartridge cases, blood, witnesses (who may disappear) and any injuries.
- I want a Lawyer; once you request one, police questioning is supposed to stop.
- Don't consent and don't resist.



Travel

When you plan trips, it's necessary to also plan for how to avoid arrest. The web sites www.Handgunlaw.us and www.nraila.org/gunlaws/ provide information on the firearm laws of various states and territories. If your trip involves traveling through Indian Reservations, it's also necessary to review their laws. For the purpose of firearms possession, you should consider Indian Reservations as foreign nations. It may be legal to carry firearms on public highways through a Reservation, as long as you don't stop. Again, it is necessary to check before your trip. Please note that a state license to carry will not be valid on an Indian Reservation within the same state.

You cannot enter a foreign nation with firearms. Professional hunting guides can arrange to import specific firearms and ammunition for the purpose of the hunt. It is unwise to attempt this paperwork alone. Guns removed from the United States for the purpose of a hunt must be registered with United States Customs. Once your firearm is in a foreign country, it cannot be sold or given away. To do so violates U.S. laws governing munitions exports.

Contrary to popular opinion, no federal regulation prohibits commercial truck drivers from carrying guns. Department of Transportation regulations do not address this issue. No federal law specifically addresses firearms and commercial drivers. State laws banning gun possession may be enforced at truck weight stations. Some trucking companies tell their drivers that federal law prohibits firearms in commercial vehicles. They may simply be wrong, but they may be lying.

Many states have a “traveler’s defense” against a charge of carrying concealed weapons. There are two definitions of a “traveler”: the Texas Rule and the Circle of Friends Rule. The Texas rule determines if the traveler intended to spend the night away from home. (And even among Texas sources, the impression is that this exemption may be defined by time, distance or jurisdictional boundaries.) Despite these arguments, a night away from home is the critical determination. The Circle of Friends test determines if the party is out of range from neighbors and acquaintances and unfamiliar with local threats or where cell phone or 911 coverage may be absent. The Circle of Friends Rule is not a bright line and neither rule is an adequate substitute for a license to carry.

The only federal law concerning interstate transportation of firearms is 18 U.S. Code §926A. This allows transportation of typical firearms across state lines. Machine guns and destructive devices have other, more restrictive rules. The law requires that possession of the firearm be legal in the state from where the journey begins and where it ends. The firearm must be unloaded and inaccessible from the passenger compartment of a vehicle. Vehicles without a compartment separate from the passenger compartment must transport the unloaded gun in some kind of locked container. The type of locked container is not specified. However, the glove compartment or console are not considered to be containers, even if they have locks. As a practical matter, the more barriers that lie between the owner and a functioning firearm, the less likely is an arrest. It is also less likely to be used in self-defense.

The law covers transportation by “vehicle.” However, an appellate court has indicated that it applies only to cars and not aircraft. Airline passengers have been diverted to cities with abusive gun laws. Airlines typically unload baggage and return it to the passenger while further arrangements are made. When the passengers try to check their firearm back on the airline, they have been harassed, delayed and even arrested. When airlines are diverted, it is critical that passengers do not recover the bag containing their firearm. Require the airline to secure the bag and accept no excuses.

When traveling by air, Transport Security Administration regulations require the firearm to be unloaded and in a locked hard-sided container in checked baggage in the belly of the aircraft. (See “Traveling with Special Items” at www.tsa.gov/travelers/airtravel/assistant/editorial_1666shtm.) This regulation requires that you show your gun to the ticket clerk who will then have you sign an orange card swearing the gun is unloaded. The card goes into the locked container, which goes into the bag, which goes into the belly of the aircraft. The discreet, concealed, procedure is to give the clerk a letter stating that you are transporting an unloaded gun and small quantity of ammunition; this avoids saying “GUN” in a crowded airport. Follow the clerk’s instructions. Ammunition cannot be loose, it must be in the original cardboard, wood or metal container or other container specifically designed to contain

ammunition. It can be in magazines, clips, or speed loaders only if it is then in a container that completely encloses the loading device. It is wise to keep it out of sight and out of mind. The first rule of concealed carry is concealed.

Some airlines have rules that are more restrictive than federal regulations. These typically limit the amount of ammunition allowed or require it to be in a separate container. You can find these rules on your airline’s website.

You can place firearms in checked baggage on Amtrak trains if Amtrak offers baggage service in your city of departure; they do not offer this service in all cities. Amtrak requires passengers to call twenty-four hours prior to their departure to notify them that the passenger will be transporting an unloaded firearm in a locked hard-sided container, just like airlines. There is no good reason for this warning. It does not have to make sense; it is just the law.



Resisting

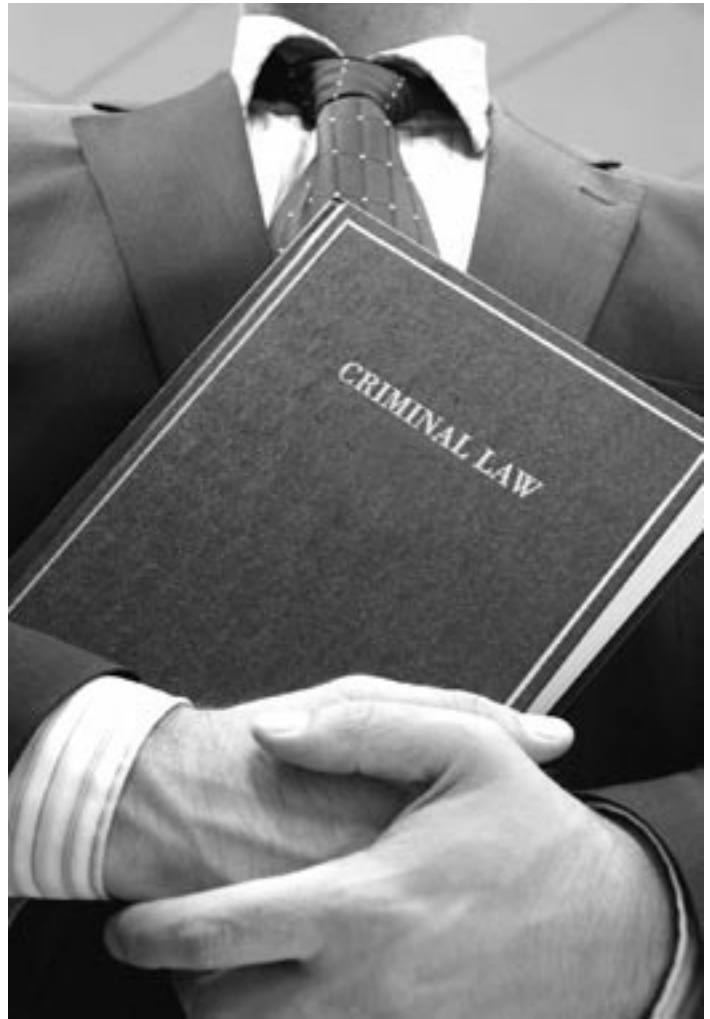
On May 12, 2011, the Supreme Court of Indiana handed down *Barnes v State*. In this case, police had responded to a 911 domestic violence call. They found Mr. Barnes in the yard where much yelling ensued from Mr. Barnes, never a wise move. Mr. and Mrs. Barnes went inside their home and the officers followed. Mr. Barnes blocked the door and forbade them entry. Mrs. Barnes was present, was not in any obvious danger, and did not invite them in, but instructed Mr. Barnes to let them in. They entered despite Mr. Barnes’ orders. Mr. Barnes threw one of the officers up against a wall. A struggle, a choke hold and a taser decided the matter. Mr. Barnes was charged with misdemeanor assault on a

police officer. The trial court refused to give the jury instructions about the right of a citizen to reasonably resist unlawful entry into his home. Mr. Barnes was convicted.

The facts are important to understand the right to resist the police; there isn't one. Supreme Court of Indiana upheld the conviction even when the officers had no right to enter the premises. In a footnote, the Court speculated that any domestic violence call might constitute exigent circumstances, however, both Mr. and Mrs. Barnes were in the doorway and in no danger. There was a great deal of outrage regarding this ruling, but it is not at all unusual. Some states have model jury instructions for cases involving persons claiming self-defense against police officers. These instructions are rarely, if ever, employed and the Indiana court did not even let the jury consider the point. The Indiana Supreme Court was not at all troubled by this omission, citing the various other remedies for unjustified searches and the danger of citizens being allowed to decide if an entry is justified in the heat of the moment. Such a decision, in the Court's experience, can only be decided after a great deal of briefing and dispassionate argument. And then, it is sometimes decided by a 5-4 margin.

Resisting a search will certainly result in charges of assault, obstructing justice and contempt of cop (not in the statute books, but it's a very real crime). The courts will assume that the resistance was to cover up some criminal action. It is not impossible that resisting a police officer may someday be justified. The damage would have to be so obvious and irreparable as to befit an old melodrama. The Branch Davidians were convicted of resisting the initial raid at Waco.

Home invaders often shout "Police!" when breaking into homes. Police raid jackets can be purchased through the mail. It may be wise to move the family into a safe room while calling 911 to determine if the family is hosting a raid.



Conclusion

This article is no substitute for personal legal advice. The information provided here is general in nature and not specific to various state laws. The law does not usually change quickly but they do change. A subtly amended statute or a state or federal court decision can make dramatic changes in gun owner rights. We always hope that these changes are in the gun owner's favor, but they aren't always. A subscription to a magazine or membership in a state advocacy group can help alert citizens to changes in the law. A consultation with an attorney is of tremendous value and is cheap insurance. This article can help citizens focus consultations with local counsel, which again, I highly encourage.

Police can do a great many things and not just because they have guns and the authority to use them. They have radios to call other law enforcement officers with guns and nightsticks and peppergas. There is no way to win a street fight. It is common for the police to close ranks around one another when they have committed Constitutional violations. The legal system gives a great deal of

deference to officer discretion and safety. Newspapers, juries and the average citizen will give an officer the benefit of the doubt, especially if the officer was met with violence. Officer can do very much as they want on the street. But afterwards, in the courts, there is a world of possibilities.

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