

Legal Tactics for Law Enforcement Officers

May 9, 2018



Cmdr. Bob Meader

**Legal
Foundation**

Legal Tactics

for

Law Enforcement Officers

**Tipping
Citizens**

**Use of Force
Standard**

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Hierarchy of Law

United States Constitution

Prevails Over

Treaties and Federal Law

Prevails Over

Executive Orders

Prevails Over

State Constitutions



This Constitution....**shall be** the
supreme law of the land. [emphasis added]

U.S. Constitution
Article VI Section 1



Municipal
Court of Common Pleas
Court of Claims

State



District

Appellate

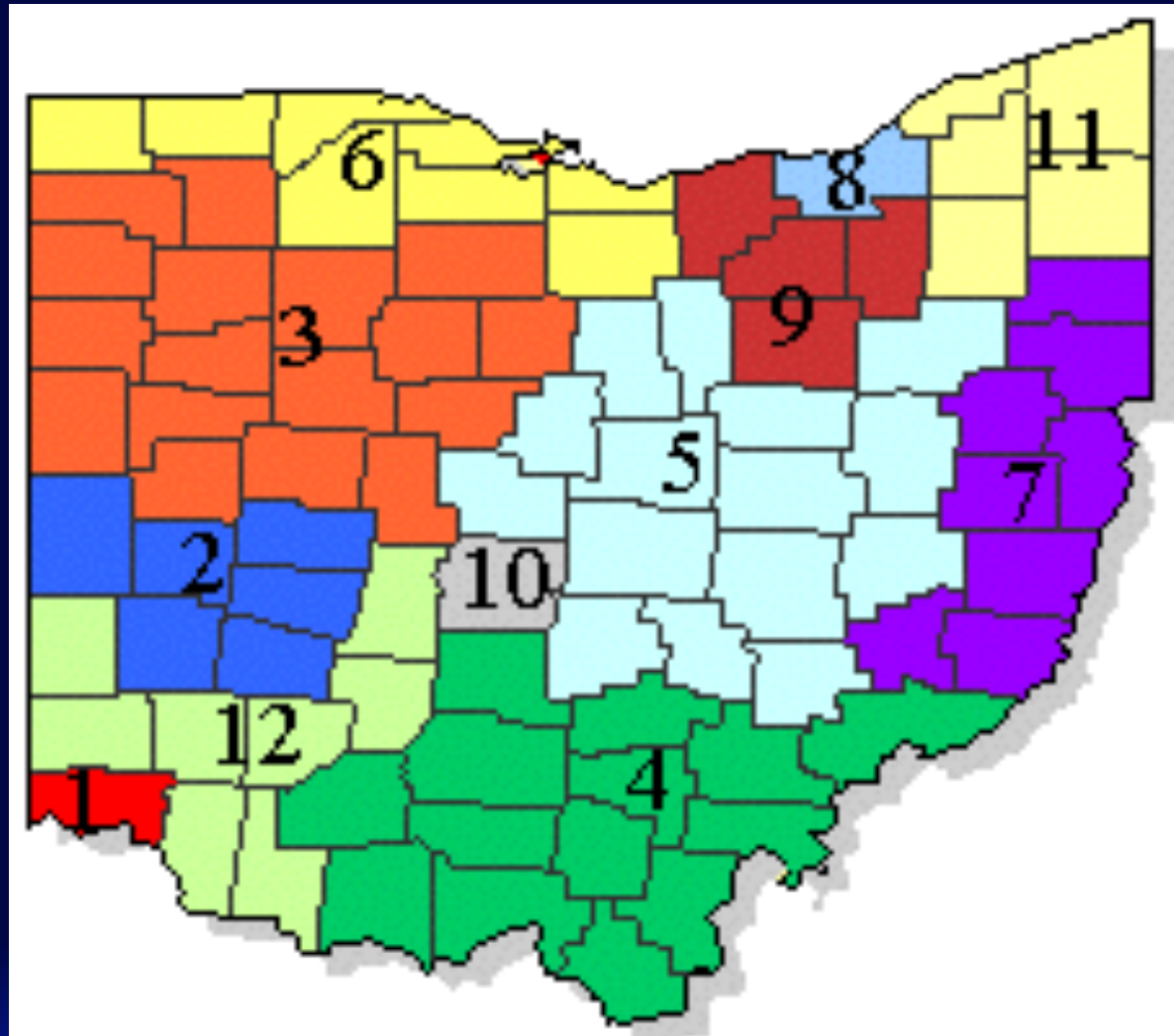


Municipal

Court of Common Pleas

Court of Claims

State



Supreme Court of Ohio



District

Appellate



Municipal

Court of Common Pleas

Court of Claims

State



Supreme Court of Ohio



District

Appellate



Municipal
Court of Common Pleas
Court of Claims

State



District
Entry Level

Federal



Supreme Court of Ohio



District

Appellate



Municipal
Court of Common Pleas
Court of Claims

State



Circuit



District

Entry Level

Federal

U.S. COURTS SITES

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U.S Supreme Court

Supreme Court of Ohio

Circuit

District

Appellate

Municipal
Court of Common Pleas
Court of Claims

District

Entry Level

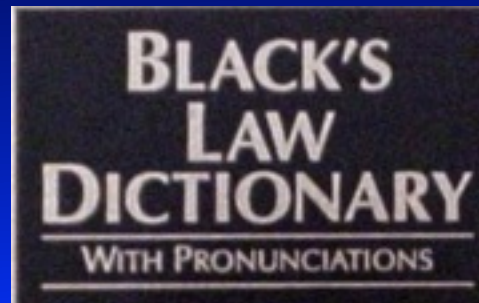
State

Federal



Criminal Law - Law which for the purpose of preventing harm to society.

Blacks Law Dictionary 374 (6th ed. 1990)

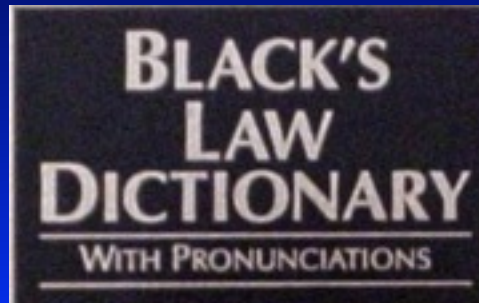


Criminal Law - Law which for the purpose of preventing harm to society.

Blacks Law Dictionary 374 (6th ed. 1990)

Civil [tort] Law - Action brought to enforce, redress or protect private rights.

Blacks Law Dictionary 245 (6th ed. 1990)



The Constitution
of the
United States of America

Fourth Amendment



The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized.

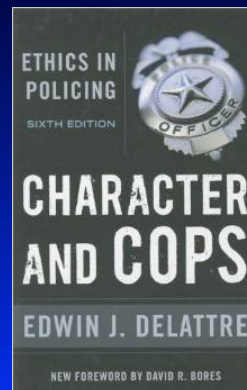


Ratified
December 15, 1791



Police authority can be, at once,
highly specific and exceedingly
vague.

Delattre, E.J. (1994). *Character and Cops: Ethics in Policing*, 59. (5th ed.). Washington D.C.: The AEI Press.



What is the primary rule in Law Enforcement?



Fourth Amendment

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

Reasonableness



Ratified

December 15, 1791



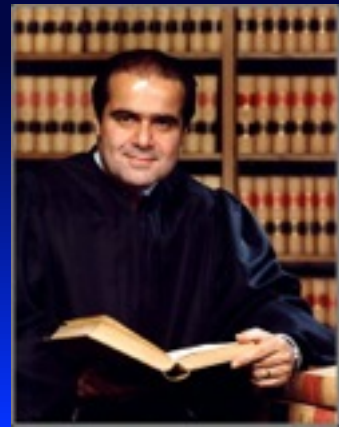
The *ultimate touchstone* of the
Fourth Amendment is
reasonableness. [emphasis added]

Brigham City v. Stuart
547 U.S. 398, 403 (2006)



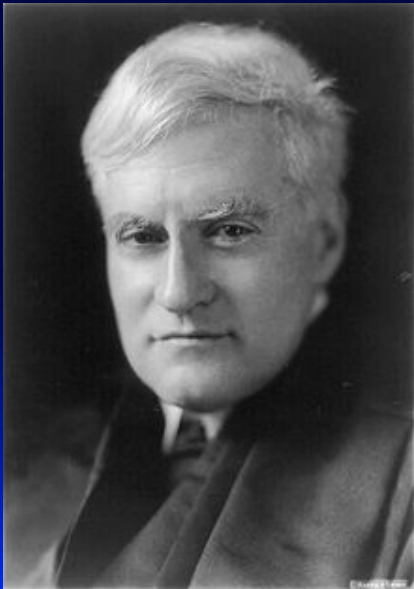
Even before today's decision, the
"warrant requirement" had *become*
so riddled with exceptions that it
was basically unrecognizable. [J. A. Scalia]
[emphasis added]

California v. Acevedo
500 U.S. 565, 582 (1991)



The criminal is to go free because
the constable has blundered.

People v. Defore
242 N.Y. 13 (1926)



Judge Benjamin Cardozo

Three Most Important Dates in Law Enforcement

3. May 15, 1989



Graham v. Connor

490 U.S. 386 (1989)

United States Supreme Court



Occurred: November 12, 1984

Argued: February 21, 1989

Decided: May 15, 1989

Three Most Important Dates in Law Enforcement

2. June 10, 1968



3. May 15, 1989



Three Most Important Dates in Law Enforcement

1. December 15, 1791

2. June 10, 1968

3. May 15, 1989



Investigative Detention Establishment of Reasonable Suspicion

Terry v. Ohio

392 U.S. 1 (1968)

United States Supreme Court

Occurred: October 31, 1963

Argued: December 12, 1967

Decided: June 10, 1968



Probable Cause

The infringement on personal liberty of any ‘seizure’ of a person can only be ‘reasonable’ under the Fourth Amendment if we require the police to possess ‘probable cause’ before they seize him.

[emphasis added]

Terry v. Ohio
392 U.S. 1, 38 (1968)
J. Douglas, dissenting

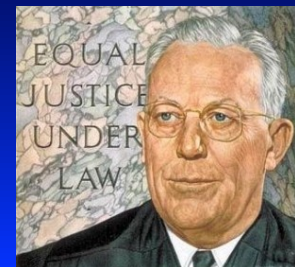


Constitutional Protections v. Officer Safety



There is no reason why an officer, rightfully but forcibly confronting a person suspected of a serious crime, should have to *ask one question and take the risk that the answer might be a bullet.* [emphasis added]

Terry v. Ohio
392 US 1, 33 (1968)
[C.J. Earl Warren]



Investigative Detention

Two Part Test

1. **Reasonable suspicion** that criminal activity is afoot.

Terry v. Ohio
392 US 1, 31 (1968)



Investigative Detention

Two Part Test

1. Reasonable suspicion that criminal activity is afoot.
2. A 'frisk' is permitted if the officer can articulate specific reasonable inferences that the person is **armed and presently dangerous to the officers or others**. [emphasis added]

Terry v. Ohio
392 US 1, 31 (1968)



*[T]here is no ready test for determining reasonableness other than by *balancing the need to search or seize against the invasion which the search or seizure entails...**

Terry v. Ohio
392 US 1, 21 (1968)



...And in justifying the particular intrusion *the police officer* must be able to point to *specific and articulable facts* which, taken together with rational inferences from those facts, *reasonably* warrant that intrusion. [emphasis added]

Terry v. Ohio
392 US 1, 21 (1968)

[I]t is imperative that the facts be judged against an *objective standard*: would the facts available to the officer at the moment of the seizure or the search "warrant a man of reasonable caution in the belief" that the action taken was appropriate? [emphasis added]

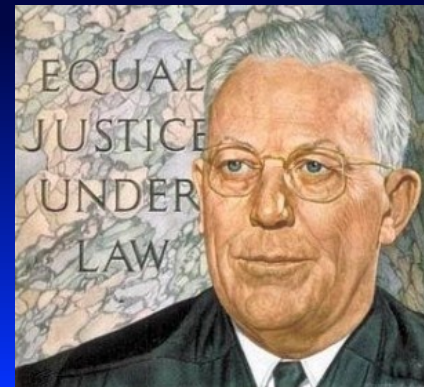
Terry v. Ohio

392 US 1, 21 (1968)

The *officer need not be absolutely certain that the individual is armed*; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger. [emphasis added]



Terry v. Ohio
392 US 1, 31 (1968)



It would be hard to *overestimate* the effect of *Terry* on Fourth Amendment jurisprudence. The Court not only permitted stops and frisks on less than probable cause; *it also explicitly invoked the reasonableness clause over the warrant clause as the governing standard.* [emphasis added]

S. Saltzburg, D. Capra, *American Criminal Procedure Cases and Commentary*, 201, West Publishing, St. Paul, Minnesota, 2010.

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Graham v. Connor

490 U.S. 386 (1989)

United States Supreme Court



Occurred: November 12, 1984

Argued: February 21, 1989

Decided: May 15, 1989

1. Severity of the crime in question.

Graham v. Connor

490 U.S. 386, 396 (1989)

1. Severity of the crime in question.
2. Apparent threat posed by the suspect.

Graham v. Connor

490 U.S. 386, 396 (1989)

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2. Apparent threat posed by the suspect.
3. Was the suspect attempting to flee or resist?

Graham v. Connor

490 U.S. 386, 396 (1989)

1. Severity of the crime in question.
2. Apparent threat posed by the suspect.
3. Was the suspect attempting to flee or resist?
4. Was the force 'objectively reasonable' when applied in a tense, fast-evolving situation?

Graham v. Connor

490 U.S. 386, 396 (1989)

Excessive Force

The Court ruled that the question of whether the police have violated a person's constitutional rights through the use of excessive force should be determined on the basis of the "objective reasonableness" of the police action, not whether the police maliciously intended to cause harm.

The 9-to-0 opinion, written by Chief Justice Rehnquist, overturned a ruling by the United States Court of Appeals for the Fourth Circuit, in Richmond, Va. That court had dismissed a lawsuit

May 16, 1989
Washington Post

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Florida v. J.L.

529 U.S. 266 (2000)

United States Supreme Court



Occurred October 13, 1995

Submitted February 29, 2000

Decided March 28, 2000

An **anonymous tip** that a person is carrying a gun **is not**, without more, **sufficient to justify a police officer's stop and frisk of that person.** [emphasis added]

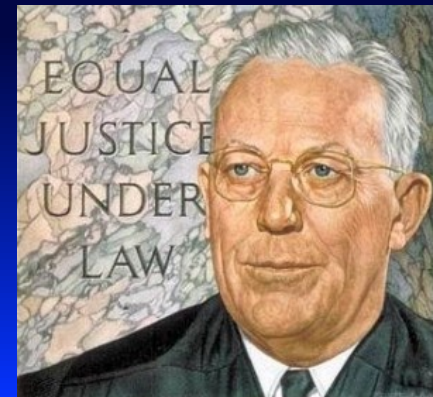
Florida v. J.L.

529 U.S. 266, 273 (2000)

There is no reason why an officer, rightfully but forcibly confronting a person suspected of a serious crime, should have to *ask one question and take the risk that the answer might be a bullet*. [emphasis

added]

Terry v. Ohio
392 US 1, 33 (1968)
[C.J. Earl Warren]



The police force of a municipal corporation shall preserve the peace, protect persons and property, and obey and enforce all ordinances of the legislative authority of the municipal corporation, all criminal laws of the state and the United States [emphasis added]

Legal Duty to Act
O.R.C. 737.11

City of Maumee v. Weisner

87 Ohio St.3d 295 (1999)

Supreme Court of Ohio



Occurred August 20, 1997

Submitted September 21, 1999

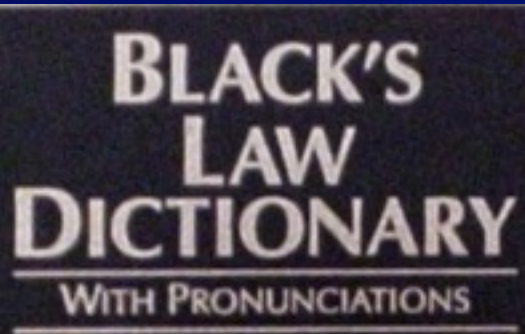
Decided December 22, 1999

We...hold that a telephone tip can, by itself, create reasonable suspicion justifying an investigative stop where the tip has a sufficient indicia of reliability. [emphasis added]

City of Maumee v. Weisner
87 Ohio St.3d 295, 296 (1999)

Indicia – Circumstances which point to the existence of a given fact as probable, but not certain.

Blacks Law Dictionary 772, (6th ed. 1990)



Adams v. Williams

407 U.S. 143, 147 (1972)

U.S. Supreme Court

Argued: April 10, 1972

Decided: June 12, 1972



[T]he information [informants in-person tip] carried enough **indicia of reliability** to justify the officer's forcible stop of Williams.

[emphasis added]

Adams v. Williams
407 U.S. 143, 147 (1972)

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