THE POLICE OFFICER IN COURT

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Assistant District Attorney
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With Forewords by

The Honorable G. Conley Ingram
Justice of the
Supreme Court of Georgia

Thomas P. Burke, Esquire
Former Assistant District Attorney
New York County, New York

This text:

- **concentrates on criminal process**
- **deals with testifying**
- **reviews evidence**

Often the key witness for the prosecution in a criminal trial is the law enforcement officer. The defendant may have confessed to the officer, or a member of the crime laboratory may have matched the fatal bullet to a weapon owned by the defendant. It is vitally important that the officer know the proper way to testify in order to convince the jury. Such knowledge requires an understanding of the respective roles of participants in a criminal trial, the rules of evidence, and exposure to trial testimony.

This book describes and explains what occurs in the criminal courtroom. The preferred behavior and demeanor for the police officer in court, his role in assisting the prosecutor and his role as a witness are discussed. Included are detailed instructions on the proper method for listening to and answering questions in order to make the best impression on the jury.

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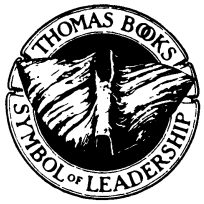

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To my Mother and Father

FOREWORD

THE enforcement of the criminal laws in our society today has become an increasingly complex and demanding task. The dual objectives of safeguarding individual rights and protecting the lives and property of the populace produce continuing conflicts. The resulting problems are encountered initially by the law enforcement officer who must not only be morally upright, physically sound and mentally courageous, but must also be alert, intelligent and well informed.

It is staggering to contemplate the drastic changes which have occurred in the role and responsibility of the law enforcement officer during the evolution of our criminal law system. Many of the most significant changes have come in the last quarter of a century, but when one compares the procedures used today with those employed in the earliest sessions of some of our courts the contrast is quite dramatic. For example, it is recorded about the 1833 first session of a superior court in one county in Georgia that: "That first court was not without its vicissitudes. There being no jail and consequently no means for the incarceration of disturbers of the peace, the problem of disposing of a number of drunken men who menaced the dignity of the court was solved by the simple expedient of throwing these gentlemen upon the ground and turning a wagon body over them until such time as they were able to go about their business peaceably." It is unfortunate that the names of the hardy defenders of the law who sat upon the wagon body in the interests of justice have not been preserved. Their methods were not conventional, but they were certainly effective.

"Equally informal was the punishment meted out to the recalcitrant persons after the building of the courthouse. County funds could not compass the building of a jail, but a horse lot, surrounded by a high rail fence, in the rear of the courthouse, did

duty more than once as a temporary detention pen when lawless spirits disturbed [the] court. At a sign from [the] judge, the sheriff, . . . would remove the disturbers from the courthouse to the horse lot. If they were only slightly drunk, or showed signs of repentance, they might sit there until [the sheriff] deemed it wise to release them. If the offenders were obstreperous, however, [the sheriff] placed their heads between the rails of the fence, after which he took his seat upon the topmost rail, nodding to friends and acquaintances from his perch while he kept an eye upon his prisoners. Good behavior and remorse usually followed."

The success of the criminal justice system on a day-to-day basis focalizes on the police officer because he continues to be the key figure in the enforcement of the criminal laws. For this reason, every police officer should stay abreast of both the substantive and procedural aspects of the criminal law as it touches the lives of people on the streets and in the courtrooms across the country. This is sometimes a burden, but always a responsibility for all of us who work in the system. We need the disciplined habit of continuing study to improve our performance. Because so many publications dealing with the administration of criminal justice are technical and abstract, it is useful and important to have a practical and effective book written to assist the police officer in this field.

The Police Officer in Court utilizes a common sense approach and will be valuable not only to the police officer but also to any person who may be involved in the preparation and trial of a criminal case. The author has made a significant contribution to the administration of criminal justice with this book, and it will serve to illuminate the proper handling of criminal cases by law enforcement officers. Let justice be done though the heavens may fall – this is the creed we seek to serve and it requires our best informed effort. *The Police Officer in Court* will help us achieve it.

Justice G. Conley Ingram

FOREWORD

YEARS of prosecutorial experience have demonstrated the burden cast upon police officers required to participate in a trial, a grand jury presentation or a hearing. Testifying at a criminal proceeding is a vital law enforcement function; however, training in and exposure to this area is often missing from the officer's training. As the demands on law enforcement have increased, the instruction of officers has been directed to performance of their primary responsibility, the protection of life and property, while other phases of their duties have received less attention. The dilemma of being unable to assure the total development of the officer has been solved by *The Police Officer in Court.*

With the exception of a booklet or two in which a list of "dos" and "don'ts" is given, *The Police Officer* in *Court* is, to my knowledge, the first complete trial handbook for the law enforcement officer. In a well-paced style, the author gives the reader a total view of procedural and evidentiary rules as they affect the manner of testifying.

The thrust of this book is directed toward direct and cross-examination of the police officer. The author presents a detailed discussion of the officer's participation in a trial, from the preservation of evidence to the giving of testimony. In developing a fuller understanding of court procedures, the roles of the judge, jury and attorneys (prosecution and defense) are discussed in depth. Reasons for procedural and evidentiary rules, which to some are designed to "hamstring" justice, are portrayed in a clear, succinct manner, as permitting the officer to relate evidence to the judge and jury.

After reading this book, I believe that law enforcement officers on all levels (city, county, state and federal) now have a tool available which will prepare them for court appearances, regardless

of the nature of the particular offense or the issues involved. It will assist all officers in the vitally important function of testifying.

This book is long overdue in the law enforcement community and I heartily recommend it to police officers everywhere.

THOMAS P. BURKE

INTRODUCTION *

OFTEN the key witness for the prosecution in a criminal trial is the law enforcement officer. The defendant may have confessed to the officer. A member of the crime laboratory may have matched the fatal bullet to a weapon owned by the defendant. It is vitally important that the officer know the proper way to testify in order to convince the jury. Such knowledge requires an understanding of the respective roles of participants in the criminal trial, the rules of evidence, and exposure to trial testimony.

This book contains three major parts. The first begins with an overview of the criminal process, from arrest to appeal. Also included is a description and explanation of what occurs in the criminal courtroom, including the respective roles of the judge, prosecutor, defense attorney, jury and witness.

The second part presents a detailed discussion of preferred techniques used by credible officers testifying in court. This part also contains excerpts of actual criminal trial testimonies of police officers and crime laboratory personnel.

Part three reviews the rules of evidence followed in a court of law and closes with a chapter on the admissibility of specific types of physical evidence.

A glossary follows the last chapter. It contains legal words and phrases used throughout the text.

*The materials presented in this book do not necessarily express the opinions of the author in his official capacity.

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R.D.P.

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THE POLICE OFFICER IN COURT

PART 1

CRIMINAL TRIAL COURT

THE CRIMINAL PROCESS

ARREST

NORMALLY, the first real encounter a suspect has with the criminal justice system is an arrest by law enforcement officers, with or without a warrant.

With Warrant

If a suspect has not been indicted and police wish to arrest him by warrant, an officer must first appear before an impartial magistrate or judge and demonstrate to the judge's satisfaction that probable cause for arrest exists. In doing such, the officer submits a sworn statement called a *complaint* to the magistrate. The basis for the complaint may be the officer's own observations or those told to him by a third party.

Should the magistrate be convinced that probable cause for arrest exists, he will issue a warrant for arrest of the suspect. The officer may then serve the arrest warrant on the suspect, as long as the suspect remains within the officer's jurisdiction.

Without Warrant

A police officer may arrest without an arrest warrant when he has *probable cause* to conclude that the suspect probably committed, is committing, or is about to commit a crime.

Depending on particular state law, a police officer may make a warrantless arrest of someone who commits either a felony or misdemeanor in his presence, or of someone who committed a crime outside of his presence and is trying to escape.

A private citizen may make an arrest without a warrant, called a "citizen's arrest," when the suspect commits a criminal offense in

his presence. However, a private citizen may *not* effect an arrest by serving a warrant.

MAGISTRATE

After an individual has been arrested, he must be brought before a neutral magistrate without delay.

The magistrate will inform the suspect of: the charges against him; his right to counsel; and his right to a court-appointed attorney if he is unable to afford one.

When the suspect has been advised of his rights, the magistrate may fix bail and release the accused if he is charged with a bailable offense (usually those crimes below the grade of felony). In some states the suspect may be released on his own *recognizance,* which is a sworn, written promise to appear at an appointed time and place to answer charges.

PRELIMINARY HEARING

In felony arrests the accused is entitled to a *preliminary hearing* to determine if grounds exist to hold him for trial.

At a preliminary hearing the presiding magistrate, judge or justice of the peace will listen to the prosecutor's case and decide if there is probable cause that the accused committed the charged offense. If the accused has not waived counsel, he has the right to be represented by an attorney at the hearing. Defense counsel may cross-examine witnesses for the prosecution and present witnesses on behalf of the accused.

A preliminary or committment hearing is not required in misdemeanor cases; when the accused waives the hearing; or when an indictment has been returned by a grand jury prior to the hearing.

ACCUSATION

Officially, the criminal prosecution may be initiated when the state files an "accusation" in court. The name a particular state gives the document containing the charge depends on state law.

Confusion in terminology may result from the fact that at *common law* (the law adopted from England by the original thirteen states) the term "accusation" included *indictment, presentment,* and *information.*

In most states, *an indictment* is returned by a grand jury charging the commission of a felony; an *information* is filed by a prosecutor charging commission of a felony; and a *complaint* is filed by a prosecutor, law enforcement officer, or private citizen charging commission of a misdemeanor.

A few states (such as Georgia) have a *special presentment* returned by a grand jury for felony prosecution, an *indictment* filed by a prosecutor for a felony prosecution, and an *accusation* or *information* filed for prosecution of all misdemeanors and some low grade felonies if the accused consents.

As a general rule, it should be remembered that in most jurisdictions either an indictment or an information is filed in felony cases and a complaint is filed in misdemeanor cases.

Indictment

Initially, the district attorney submits a written accusation of a crime, called a *bill of indictment,* to the grand jury. The grand jury then conducts hearings at which the prosecutor presents witnesses and other evidence.

If there is probable cause that an individual under suspicion committed a felony, the grand jury "hands down" an indictment or endorses the bill of indictment as a *true bill of indictment* (or simply a *true bill* or an *indictment*). If the accused has not yet been arrested, a *bench warrant* is issued for his arrest.

Although the Fifth Amendment requires the federal government to have grand juries return indictments for capital crimes, an individual state may depart from the federal standard by reason of its constitution and statutory law.

Information

In many states when a prosecutor, such as a district attorney, files a written accusation of a felony, the document is called an

information and is similar in form and substance to a grand jury indictment. Some jurisdictions do not allow filing until a preliminary examination has been held before a judge or magistrate.

Nolle Prosequi

Nolle prosequi or "nol pros" is a formal court entry by the prosecutor expressing his unwillingness to prosecute the case and his voluntary withdrawal. Usually a nol pros is entered with the consent of the accused and is subject to court approval. Once a nol pros has been entered and approved, the trial judge is powerless to proceed with the case and must dismiss the accused.

ARRAIGNMENT

The *arraignment,* the second major step in a criminal proceeding (the first being *accusation*) accomplishes three important tasks: it establishes the identity of the accused; it informs the accused of the charges against him; and it allows an opportunity for the accused to enter his plea.

At the arraignment the accused has the right to counsel.

Motions

The accused may wish to file any one of many *motions* with the court at the arraignment.

Motion to Quash

A *motion to quash* moves the court to set aside the indictment or information because of procedural defects in the indictment or information or because of lack of evidence.

Motion to Dismiss

If the accused has been held in custody for a long period of time (the exact length of time varies from state to state) and no

indictment or information has been filed, he may move the court to dismiss the criminal proceeding against him and release him.

Motion for Change of Venue

Change of *venue* (locality where the trial is to be held) may be requested when: the trial court does not have proper jurisdiction to hear the case; the judge is biased or prejudiced; or local prejudice and excitement prevent a fair trial.

Motion to Suppress

A *motion to suppress* invokes application of the *exclusionary rule.* This means that certain evidence must be suppressed or excluded because it was obtained in violation of the Fourth, Fifth or Sixth Amendment rights of the accused, for example, evidence obtained in an illegal search and seizure.

Motion for Continuance

The trial judge, according to his discretion, may grant a *continuance* when all of the following elements are present:

(1) an identified witness is absent;
(2) the absence is not attributable to the party asking for the continuance;
(3) the witness has been subpoenaed;
(4) his testimony is material;
(5) the substance of the absent witness's testimony is presented to the court;
(6) the witness is available for the next term of court; and
(7) the motion is not made for purposes of delay.

Also, the trial judge may grant a continuance because of illness of the defendant or his attorney or to allow the defendant adequate time to prepare a defense.

Demurrer

The *demurrer* is the proper method to attack an indictment

which is based on an unconstitutional law; it attacks any defects that may appear in the form of the indictment. A demurrer is similar to a motion to quash.

Pleas

At the arraignment, the accused will be asked to enter a plea to the charges against him. He may respond by pleading: guilty; not guilty; *nolo contendere;* former jeopardy; or special plea of insanity.

Guilty

A guilty plea admits all elements of the formal criminal charge and waives all defenses and several constitutional rights; for example, the privilege against self-incrimination; the right to trial by jury; the right to confrontation of accusers; and all nonjurisdictional defects in the proceeding.

After the accused enters a guilty plea, the judge has nothing more to do than pronounce judgment and sentence.

PLEA BARGAINING. The accused may agree with the prosecutor to plead guilty to a number of unsolved crimes he has committed or to plead guilty to a lesser charge that is stated on the indictment, provided the prosecutor will drop the remaining charges or recommend leniency in sentencing.

By engaging in *plea bargaining* the prosecutor reduces the number of court cases and "closes the books" on a number of uncleared cases at police headquarters.

Not Guilty

By pleading "not guilty," the accused challenges every material allegation of the charges in issue. Included in the plea is the insanity defense (insane at the time the offense was committed).

The accused may either enter a "not guilty" plea at the time of arraignment or waive formal arraignment at that time. After entering a "not guilty" plea, the accused has a right to trial by jury, although he may waive the jury and be tried before the judge.

Nolo Contendere

Pleading *nolo contendere* (no contest) means the accused is technically guilty of the crime but wants to avoid a jury trial or the stigma of pleading guilty. If the judge accepts the plea, he may sentence the defendant as though he pled guilty. However, the plea may not be used as an admission in any other proceeding against the defendant.

Former Jeopardy

A defendant may not be prosecuted twice for the same offense, and if such is attempted, he may enter a plea of "former jeopardy." The basis of former or double jeopardy is found in the Fifth Amendment to the United States constitution and applies to both state and federal proceedings. The plea is made by the defendant when he is prosecuted a second time for an offense after an acquittal or conviction, or he needs protection against multiple punishment for the same offense.

Special Plea of Insanity

Defense counsel may enter a *special plea of insanity* when the defendant is insane *at* the time of trial, for a person may not be tried and sentenced unless he is sane. Presuming the defendant is competent or sane to stand trial, the defense has the burden to prove insanity. However, if the trial judge learns without the defense's motion that the accused suffers from a mental or emotional sickness, he must determine whether the accused is competent to stand trial.

To be competent to stand trial, the defendant must understand the nature of the charges, the purpose of the criminal proceeding against him, and must be able to assist his attorney in the defense of his case. If the accused is found not to be sane at the time of his trial, all proceedings must be postponed until a psychiatrist certifies his competency.

EXTRAORDINARY WRITS

The accused may attempt to obtain his release by either writ of *habeas corpus* or writ of prohibition.

Habeas Corpus

The writ of habeas corpus serves as a means to question the lawfulness of the accused's detention at any stage in the criminal proceeding. It is a remedy for false imprisonment.

Writ of Prohibition

A writ of prohibition is granted by a higher court to prevent a lower court, such as a trial court, from proceeding when there is a lack of jurisdiction or an insufficient accusation.

DISCOVERY

The defendant in a criminal case is allowed to find out the prosecutor's evidence before trial by means of *discovery*. Some evidence subjected to reasonable discovery includes autopsy reports, bullets and ballistic reports, chemical tests, fingerprints, photographs, reports, seized books and records, victim's clothing, weapons, witnesses' names, and written confessions.*

One reason for permitting discovery is a greater opportunity for a fair trial.

Bill of Particulars

Under the general rubric of discovery is a defense motion for a *bill of particulars*. The motion, if granted by the court, requires the prosecution to plead the details of the offenses charged.

TRIAL

The Sixth Amendment to the United States Constitution provides the defendant in a criminal trial proceeding with

*Some states limit discovery to the names of witnesses for the state, evidence which may be used in mitigation or aggravation of sentence, and anything which would help the defendant.

numerous rights:

1. the right to a speedy trial;
2. the right to a fair and impartial trial;
3. the right to a trial by jury;
4. the right to a public trial;
5. the right to a confrontation of accusers;
6. the right to compulsory process for obtaining defense witnesses; and
7. the right to counsel.

At any time during the proceeding the defendant may invoke the privilege against self-incrimination as guaranteed by the Fifth Amendment.

Jury Selection

Citizens selected from a voter's registration list or from tax rolls are subpoenaed into court to provide a *panel* from which jurors may be chosen. Depending on state law, the panel may consist of forty to fifty people from which a jury of twelve will ultimately be chosen.

Voir Dire

The prosecution and the defense are allowed to question panel members in an examination called the *voir dire.* Voir dire determines if any prospective jurors are biased toward either the state or the defendant. Specific questions asked on voir dire might include:

1. Have you formed or expressed any opinion regarding the guilt or innocence of the defendant?
2. Do you have any prejudice or bias toward the defendant?
3. Do you feel that you can render an impartial verdict in this case?
4. Are you related by blood or marriage to the defendant?

CHALLENGE FOR CAUSE. A prospective juror may be dismissed for cause if a legal reason exists; for example, if he is related to the prosecutor, defendant, or victim; if he is under age; if he is a lunatic; if he is not a resident of the county of trial; or if

he is biased or prejudiced.

PEREMPTORY CHALLENGE. A certain number of prospective jurors may be *struck* by the defense or prosecution without a legal reason or cause. A defendant may have up to twenty *peremptory strikes,* depending on state law, while the prosecution may be limited to an equal or lesser amount.

Steps of Trial

After the jurors have been selected and sworn in the trial commences.

Reading of Charges

The clerk of the court first reads the indictment and plea of the defendant to the jury.

Opening Statements

The prosecutor states to the jury what he intends to prove during the course of the trial. The attorney for the defense may make an opening statement and tell why the defendant should not be found guilty.

Prosecution

The prosecutor introduces evidence, both testimonial and physical, which he hopes will prove the elements of the alleged crime (*corpus delicti*) and that the defendant committed the crime. The defense has the right to cross-examine any of the prosecution's witnesses to determine if they are telling the truth or are mistaken. In addition, the defense may object to the admission of anything into evidence which may be questionable in origin, quality, or method of acquisition.

Since the defendant is presumed innocent until proven guilty, the prosecutor must prove the defendant's guilt *beyond* a reasonable doubt.

Defense

After the state presents it's case and "rests," the defense may move to dismiss the indictment for failure to prove corpus delicti; or the defense attorney may move for a directed verdict claiming there is no evidence to connect the defendant with the crime. If the motions are denied, the defense attempts to present evidence which creates a reasonable doubt in the juror's minds regarding the guilt of the defendant. The defense attorney may attempt to establish the defendant's innocence by defenses of: alibi, duress, entrapment, infancy, insanity, intoxication, mistake of fact or self-defense.

After presenting the defendant's case defense counsel may again move to dismiss the case. At any point in the trial the defense may move for *mistrial* due to prejudicial conduct by the judge, the prosecutor or witnesses.

Argument

Each side may present a closing argument or summation to the jury and ask for a favorable ruling. The prosecution summarizes the state's evidence and theories of guilt, while the defense attempts to cast doubt on the defendant's alleged guilt. Generally, if the defendant offers evidence, the prosecution has the opening and closing arguments.

Jury Instructions

The trial judge in his *charge* (jury instructions) to the jury relates the relevant law which must be considered in deciding the case. Included in the instructions are those pertaining to the offense charged, and those which are full and fair statements of the law regarding every defense the defendant has supported with evidence presented during the trial.

Jury Deliberation

After receiving the charge from the judge, the jury deliberates in