

law enforcement and criminal justice

- I Arrest *part 1*
- II Arrest *part 2*
- III Search and Seizure

law
enforcement
training
project



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"This nation has always preached and has always practiced local law enforcement and that's the way I'm going to keep it. . . . The quality and the performance of local law enforcement depends on the quality of the people in it and their training."

RAMSEY CLARK

Attorney General of the United States

INTRODUCTION

Law enforcement has become an increasingly complex field. It is becoming more and more difficult for the average police officer to perform his duties properly and at the same time to keep abreast of new developments in areas such as recent Supreme Court decisions, mob and riot control, scientific crime fighting techniques, and community relations.

Recognizing this problem, the United States Department of Justice, Office of Law Enforcement Assistance, has allocated funds to the WGBH Educational Foundation to provide an interesting and efficient means of in-service training to the thirty thousand law enforcement officers of New England. You as police officers can take part in this high-quality training given by police and legal experts who might otherwise be unavailable to you, and you can do it without loss of "on-the-job" time.

The television instructors for this series have been chosen from among the finest law enforcement training personnel available. Their knowledge of criminal law, of police procedure and practice, and of police operations is exceptional. Each of them has the most important quality of a good teacher - the ability to communicate his knowledge to a police audience in a way that clarifies the problems under discussion.

Television film crews have and will continue to travel throughout the six state region filming examples of the kinds of situations that police offi-

cers must be prepared to meet. These dramatizations, staged with the cooperation of police departments throughout New England, will be included in the programs to help illustrate the points being made by the instructor.

As a police officer, you can participate actively in this training from your own home or station-house. You will be able to ask questions drawn from your own experience and needs and receive the answers from the legal and police experts over the air instantaneously. For details, see the telephone instructions on inside back cover.

This booklet, which is available to all police on request, is designed as a guide to the programs. If you are able to spare ten minutes of your time before you sit down to watch each program to read over the section that will be covered in the broadcast, you will find that the programs will be more easily understandable and, therefore, more valuable to you. The booklet may be kept and used for reference with problems that arise in your day-to-day duties. It may also be a help to you in preparing for promotional exams.

One final note; these programs are intended to be as realistic and as useful as possible. In order to be of value, they must deal with the problems that the officer faces each day. You can help us accomplish this by sending us your comments and suggestions concerning what subjects you think ought to be covered on our future programs and how we can improve our services to you.

PROGRAMS I & II ARREST

Arrest is the first topic covered in our series because it is the starting point of the criminal process. It is essential that you understand the powers and limitations that you as a police officer must work with in the area of arrest. A good arrest lays the foundation for a successful prosecution; a bad arrest will often allow a guilty defendant to go free because of its far-reaching effects in rendering evidence inadmissible at a trial.

A police officer's power to arrest is derived from two basic sources: the common law (i.e. the decisions of English and American courts that have come to be accepted as binding "law" over the course of history), and state statutes. In substance, you have "inherited" as it were all of the powers and duties of the old common law constable in so far as these powers and duties relate to the common law. One of the basic powers thus inherited is that of making lawful arrests.

- A. Before any arrest may be made, with or without a warrant, the Constitution requires a showing of probable cause. The term "probable cause" is one that has profound meaning to a police officer in the performance of his fundamental duties and responsibilities. The phrase appears in the 4th Amendment to the United States Constitution:

"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 and Affirmation, and particularly describing the place to be searched, and the person or things to be seized."

The first ten amendments to the Constitution apply only to the Federal Government. The states, however, are required to protect these same 4th Amendment rights by the "due process" clause of the 14th Amendment which is applicable to the states. The Framers of the Constitution inserted the phrase "probable cause" into the 4th Amendment as a means of preventing the use of general search warrants and the so-called "writs of assistance." The prevalence and utilization of these processes were oppressive to the early Colonists. They were served indiscriminately by the representatives of the English Crown to enforce compliance with the tariff laws. General searches were made of private property, including homes, by the representatives of the King at any time of the day or night without any specific description of the premises to be searched or the property to be seized. In many cases these searches were made merely on the whim and fancy of the King's representative without any basis in fact, or probable cause.

1. Definition of probable cause:

- a. Probable cause was defined in *Beck v. Ohio*,

379 U. S. 89, in the following manner: "Whether the facts available to the officers at the moment of arrest would warrant a man of reasonable caution in the belief that an offense had been committed." In the case of a warrant, this same burden must be sustained at the moment the warrant is requested.

- b. The above decision sets forth the federal standards of probable cause. The probabilities involved are the factual and practical considerations of everyday life on which reasonable men act. You are not expected to be a legal technician. The "prudent person" test embraced in the above decision is an important matter. Ask yourself, "Would a reasonably cautious and prudent person have believed and acted as I did under these circumstances?" Probable cause, then, is more than a mere suspicion on your part, but it is less than the kind of certainty that would, under ordinary conditions, justify a conviction in a court of law. You can arrest a person without being certain of his guilt beyond all reasonable doubt.

2. Factors and evidence admissible in determining probable cause.

- a. An infinite variety of information may be relevant in determining whether probable cause exists: motive, conduct, dress, etc. You may take into consideration any fact which tends to indicate the guilt of a suspect.
- b. Hearsay evidence is admissible to show probable cause, so long as there is a substantial basis for crediting the hearsay. You should always be able to describe specifically the facts that led you to believe the hearsay evidence. The time and place that such information was obtained should be detailed. There can be no "undated, conclusory information," no information from "anonymous sources" and no "undated allegations of personal observation." *Rosen v. U. S.*, 356 F.2d sec. 310 (1966) 317, 318. To guarantee the validity of any arrest, then, you should be able to set forth all of the facts and background information that led you to believe (1) that the information available to you is reliable and (2) that such information provides you with a reasonable belief that a crime has been committed and the man you are seeking to arrest is the person who committed it. The more facts you can give to a court, the more likely it is that the court will support your actions. Remember, a criminal prosecution begins with an arrest, and the arrest must be a good one if a conviction is to follow.
- c. The word of an informer presents a special problem in the question of probable cause. Some important facts to remember are the following:

- 1.) There can be no arrest merely on the basis of an informer's word.
- 2.) You should always try to learn some of the underlying circumstances by which the informer came by his information. The knowledge of these underlying circumstances would give you a substantial basis for believing that the informer's word is accurate. Without such knowledge the court may classify the informer's word as insubstantial "hearsay" evidence and declare it insufficient to support a warrant or an arrest without a warrant. In other words, by itself, it does not provide probable cause for the arrest.
- 3.) You may keep the identity of an informer secret in order to protect and encourage your sources of information. *Roviaro v. U. S.*, 77 S. Ct. 623. However, you may be forced to disclose the identity of an informer if the court decides that such a disclosure is necessary to a fair determination of the case, or where disclosure is necessary to show that there was a substantial basis for believing in the informer's reliability. This is another good reason for gathering as many facts as possible and explaining them in depth. The more evidence you have available to show probable cause, the less likely it is that the court will demand the name of the informer.
3. One final word of caution; warrants are preferred in marginal cases. There is a judicial prejudice in favor of warrants. *Jones v. U. S.*, 362 U. S. 257. Though the circumstances of an arrest may be identical in two different cases, the court may hold the arrest legal if you got a warrant and hold it illegal on the same facts if you made the arrest without a warrant. If you do apply for an arrest warrant, be sure to state all the facts in your affidavit which you believe shows probable cause.

B. Arrest without a warrant: You should pay special attention to this category. Over 90% of all arrests in this country are accomplished without the issuance of a warrant, at least initially. Far less than 10% of arrests are effected through the warrant function. This is the area where probable cause is most important. Since you are not submitting yourself to a magistrate's control as you do when you seek a warrant, you can expect that the court will examine the circumstances of the arrest in great detail. Be prepared to explain what made the defendant a suspicious person. You may arrest without first securing a warrant in the following circumstances:

1. if you know that a warrant has been issued for the suspect's arrest for the commission

of a misdemeanor or a felony and is effective at the time you see him;

2. if you have probable cause for believing that the suspect has committed a felony;
3. if a misdemeanor amounting to a breach of the peace has been committed in your presence and the arrest is made immediately;
4. and, in a variety of special circumstances - drunkenness, motor vehicle offenses, gambling offenses, etc. (These circumstances are generally governed by state statutes. You should be familiar with these statutes, so that you are always aware of your own powers to perform an arrest without having a warrant in your possession.)

C. The search incident to an arrest.

1. A search incident to an arrest is valid only if the arrest is. Generally speaking, it must take place after the arrest has been made and must be contemporaneous in time and place with the arrest. For instance, you may not stop a man driving an automobile, force him to drive you to the police station, and then perform a search of the vehicle. The search should be made closely following the arrest.
2. A search without a warrant is valid if genuinely incident to an arrest even if there was sufficient time to procure a warrant and one was not obtained.
3. Subterfuge arrests have been declared illegal. You may not use the pretext of a parking offense in order to justify an exploratory search of an automobile for narcotics. You must first have a factual basis for believing the narcotics are present, and that there is a need to search immediately. If you perform a search incident to an arrest you should be prepared to explain with particularity your reasons for doing so.
4. To understand the limitations placed upon searches incident to an arrest, it is necessary to keep in mind the purposes justifying such a search. They are three:
 - a. to insure your own self protection;
 - b. to guard against the destruction of evidence that the suspect may have under his control;
 - c. to prevent the escape of the suspect.
5. The scope of the search: reasonability is usually the key question in this area, the reasonability of the "prudent man." There are differing theories as to the permissible area of search.
 - a. Some argue that all of the purposes of allowing a search incidental to an arrest will be met if the search is limited to the person and his physical extension.

- b. Others extend this reasoning to allow for a search of the premises under the immediate control of the suspect. The farther you extend the search, however, the more you will have to explain to the court.
 - c. In the case of motor vehicles, they may be stopped and searched when you reasonably believe that they contain articles the possession of which is illegal. The usual rationale for allowing searches of this kind in the case of moving vehicles is the exigency of the situation. If an emergency does not exist, the court may be inclined to declare the search illegal. If, however, you arrest a person riding in a motor vehicle, you may search the vehicle incident to the arrest, subject, of course, to the normal constitutional limitations of the scope and intensity of the search.
 - d. What is in plain view is not a search.
6. The intensity of the search: again, reasonability is the key question.
- a. The nature of the offense being investigated has a bearing upon the question of reasonableness. You can search more intensely when investigating a murder than you can when investigating a parking offense. Try to avoid unreasonable or extreme rumaging or ransacking since the courts frown upon such practices.
 - b. The "shock the conscience" test. In *Schmerber v. California*, 384 U. S. 757, the Supreme Court upheld the actions of police officers in withdrawing a blood sample from a suspect. The defendant had been arrested for drunken driving, and the Court felt that the behavior of the officers was reasonably calculated to prevent the "destruction" of evidence (i.e. the dissipation of the alcohol in the suspect's bloodstream). The Court reasoned that a blood test performed under sanitary conditions in a hospital was a familiar occurrence and subjected the defendant to a minimum of pain and inconvenience. They felt that his due process rights had not been violated. You should be aware of some of the complications of this decision. For instance, if the defendant had an acute fear of needles, then a blood test that caused him extreme mental anguish might deprive him of the due process guarantees of the 14th Amendment. (In Massachusetts, which does not yet have an implied consent law, a blood test can only be taken if the defendant consents.

Schmerber conflicts somewhat with *Rochin v. California*, 342 U. S. 165. In *Rochin* the court declared illegal the

pumping of the stomach of a defendant who swallowed narcotics in order to prevent their capture. The Court has explained the differences between the two decisions by saying that the methods employed in *Rochin* were such as to "shock the conscience" of reasonable men. The greater pain of stomach pumping, the relative familiarity of the average citizen with blood tests and stomach pumping, and many other factors were probably decisive. Each case, then, turns upon the facts of the individual situation. You are expected to act reasonably in light of what confronts you. If your investigative methods are unusual or will cause the suspect any kind of discomfort, then you should carefully weigh the benefits to be gained from the use of those methods against the dangers of having the court exclude the evidence because it feels you did not act reasonably.

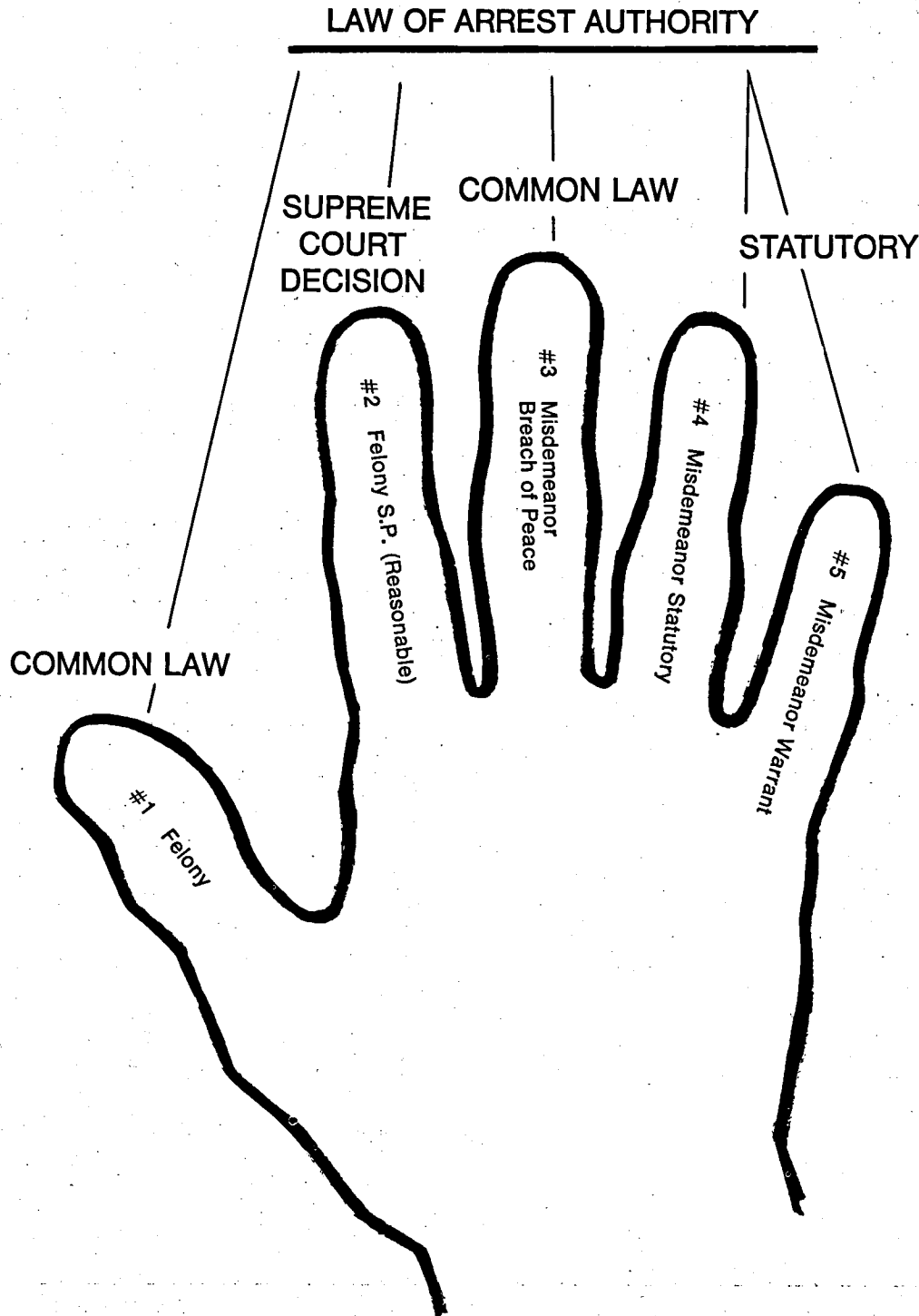
D. Threshold inquiries.

- 1. What constitutes an arrest?
 - a. Some people feel that any stop, any restraint placed upon the free locomotion of a person is an arrest.
 - b. The more common definition is that an arrest is the taking of a person into custody with the intent of bringing him forward to answer for a suspected crime.
- 2. Stop and frisk laws.
 - a. Some states allow police officers to stop and question a person when the person might have knowledge valuable to you, or when you suspect that the person might be involved in criminal activity. The usual grounds for allowing this kind of stop are usually given as "reasonable grounds for inquiry," or "reasonable grounds for suspicion." This is less than probable cause, but more than your own good faith suspicion.
 - b. The right to stop necessarily gives you a right to frisk in order to protect yourself. You may not frisk every person you stop, but only those whom you reasonably suspect may be carrying a weapon. A frisk involves the patting of the outer clothing. If a hard object is discovered, the officer may search that part of the clothing. Handbags, briefcases, and other such objects should not be searched. Rather, they should be placed beyond the suspect's reach. Be careful when using the "stop and frisk" laws. Many judges and attorneys dislike them intensely, and many others feel that they are unconstitutional. The more reasonable you are in their application, the more likely it is that the courts will allow them to stand. The is-

RIGHTS OF ARREST

Thousands of police officers have found this diagram which is presented to trainees at the Boston Police Academy useful in helping them to organize, in their own minds, the laws of arrest. The diagram is included here in the hope that others may find it useful.

Each finger of the hand represents the basis for the authority to make a lawful arrest. They each point to one of the major sources of that right.



Items 3 and 4 may vary somewhat from state to state but a little research on the laws of your jurisdiction will clear up the specifics and you will

have a handy blueprint for determining when you have the right to make an arrest.

sue of the constitutionality of the stop and frisk laws is now before the Supreme Court and will most likely be decided during the next term. You should be prepared to change your methods if the Court rules these laws are unconstitutional.

1. If you reach into a person's clothing under the mistaken but reasonable belief that a weapon lies within and discover contraband instead (e.g. narcotics), the evidence has been legally obtained.
2. If you discover an article while frisking the suspect but you do not seize the article until after the arrest has been made, its admissibility depends upon the legality of the original frisk.
- c. Always ask yourself what effect certain court decisions will have in related areas. In the area of "stop and frisk," for instance, if the courts decide that there is a "custodial interrogation" or a "significant deprivation of freedom of action within the meaning of the Miranda decision, then any person stopped and questioned will first have to be informed of his rights. The anticipation of developments like this will allow you to more easily adapt your own procedures should the law be changed.

PROGRAM III SEARCH AND SEIZURE

A police officer is concerned primarily with those searches that take place incident to an arrest. Patrolmen are not often called upon to use a search warrant. This activity is usually a function of the detective branch of the department. All police personnel, however, should be familiar with the area of search and seizure. It is an important subject, and a complicated one to anyone who does not have a thorough understanding of it. At any time any one of you may be called upon to obtain and serve a search warrant. Oftentimes it is the cases involving the most serious offenses - rape, murder, the transportation of narcotics - where these warrants are issued. If you should make a mistake anywhere along the line in your sworn affidavits, in the way you conduct a search, etc. - the suspect may go free because of your procedural error, and a serious miscarriage of justice will have taken place.

A. The 4th Amendment, as we said before, guarantees the right of citizens to be free from unreasonable searches and seizures.

1. As in the case of arrest warrants, the issuance of a search warrant requires a showing of probable cause. Again, you should set forth in writing in your affidavit all of the facts, information, and circumstances which in your belief establish sufficient grounds for a warrant. Recent court de-

cisions indicate that the courts are becoming increasingly reluctant to hear evidence involving the oral testimony of an officer before a clerk or magistrate. If probable cause does not appear on the face of a warrant, it may be declared invalid. In Massachusetts, for instance, the courts have said that probable cause must appear in writing in the affidavit that the officer files when he applies for a warrant. Most other New England states, like most states throughout the country, seem to be moving in the direction of requiring more and more material to be put in writing. If the clerk or magistrate wants additional facts before issuing a warrant, you should set them out in an additional warrant.

- a. The time and date of all observations should be detailed.
- b. You should describe all evidence, sounds, smells, conduct, etc., in detail, and you should explain any prior experience that has given you an expertise in judging the suspiciousness of the evidence.
- c. All hearsay evidence must have a substantial basis.
- d. As in the case of an arrest, you may use information from an informer only if he has a past history of reliability, or when you have knowledge of some of the underlying circumstances by which he gained the information;
2. You should always specifically designate the place to be searched. In the case of an apartment building, for instance, you should at least include the address of the building and the number and location of the apartment to be searched.
3. The property to be seized should also be specifically designated. If you were seeking a warrant for the seizure of prurient literature, a general request to search a bookstore for "obscene books" would be too vague. Be careful not to seize one object under a warrant that describes another. If, however, you are legally on the premises under the power of a search warrant, and while there you observe facts that give you probable cause to perform an arrest, you may arrest and search incident to it.
4. What kind of property can be seized?
 - a. Most states, and the Federal Government, have functioned for years under the Gouled or "mere evidence" rule. *Gouled v. U. S.*, 255 U. S. 298. This rule says that property cannot be seized simply because it would be valuable evidence in the prosecution of the suspect. Only three kinds of property can be seized under this rule:
 - 1.) stolen property;

- 2.) articles, like weapons, used in the commission of a crime;
 - 3.) and contraband (i.e. property, the possession of which is forbidden by law. Counterfeit money would be an example).
 - b. The Supreme Court has overruled the *Gouled* rule, so that it is no longer applicable in federal courts. Most states, however, still restrict the types of property that can be seized. All officers should be familiar with these local statutory regulations.
- B. A warrant is necessary to perform a search unless the search takes place incident to a legal arrest. In certain emergencies where fire, water, or other such forces threaten to destroy the evidence, you may search for and seize the evidence without a warrant. However, if no emergency exists and the search is not incident to an arrest, then you must obtain the warrant. You should learn your state procedural rules governing the issuance of a warrant - the form of affidavits, examination of witnesses etc. and comply with these rules as closely as possible.
- C. The scope and intensity of the search; reasonability, under all the circumstances, is the standard the courts apply.
1. You should not perform a general exploratory search to turn up evidence. Probable cause to justify the warrant must exist at the time it is issued. In a court room you cannot use incriminating evidence that you have discovered during a search to show that it was reasonable to issue the warrant; a search is not made legal by what it turns up.
 2. The nature of the articles sought has a bearing upon the question of intensity. You should not pry into desk drawers or open handbags when searching for a stolen refrigerator.
 3. You, of course, may exercise surveillance over a person you suspect of criminal activity, but be careful to avoid gross invasions of privacy or physical intrusions upon the property of another person.
- D. A person, of course, may consent to either an arrest or a search. The consent, however, must be intelligent, knowing, and voluntary. You should never use trickery or force to obtain a suspect's consent because your actions will nullify the consent.
1. The consent must be given in clear language. A simple statement by the suspect that, "I might as well let you in," would probably not be adequate to show consent.
2. You should not go beyond the consent given. If a suspect agrees to allow you to search his living room, this does not mean that you also have permission to enter the bedroom. It has not yet been decided whether the consent, once given, can be revoked. If the suspect changes his mind and refuse to allow the continuance of a search to which he originally consented, the safest course of action for you is to obtain a warrant.
3. Who may consent?
- a. Usually, consent may be given by any person who has the right to immediate possession of the property.
 - b. A hotel clerk or landlord cannot give permission to search the premises of a tenant. Also, an employer cannot consent to the search of an employee's desk. *Stoner v. California*, 376 U. S. 483. You should be careful of the situation where two people have equal rights to enter the premises. If one married person or business partner gives you permission to search, but the other refuses, then you should be wary of proceeding except in exceptional circumstances.
- E. When serving a warrant you should first identify yourself and announce your purpose before entering the premises. If after such identification the suspect refuses to allow you to enter, you may use force to break down the door. You may make this kind of forcible entry without prior announcement if you believe that evidence may be destroyed between the moment of announcement and the time of entry if your state laws give you the right. *Ker v. California*, 374 U.S. 23, (1963). This belief must be more than a hunch. It must be a reasonable belief based upon hard facts: noises, observations, etc.
- F. The consequences of an illegal arrest or an illegal search.
1. If physical evidence is discovered during an illegal arrest or an illegal search, it will be excluded from the trial.
 2. The "Wong Sun" rule says that confessions or other damaging admissions elicited from a suspect during an illegal arrest or search are excluded as evidence just as tangible evidence is excluded. Most courts limit the "Wong Sun" rule to the more extreme cases.
 3. The "fruit of the poisonous tree" doctrine forbids the use of evidence which is obtained even indirectly through the practice of illegal methods. It excludes not only physical and verbal evidence discovered in the course of an illegal arrest or search, but may also exclude

other evidence to which you are led by the original illegally obtained evidence. If, however, you discover the same piece of evidence from two different and independent sources, and one of the sources is untainted by an illegality, the evidence may be used. An example will help to explain the "fruit of the poisonous tree" doctrine: If you discover cer-

tain papers during the course of an illegal search, and the papers contain the names of a number of people who you later call as witnesses against the defendant, these witnesses may be disqualified because you learned of them as a result of an illegal act. *People v. Martin*, 382 Ill. 192, 46 N.E. 2nd 997 (1942).

NOTES

TELEPHONE INSTRUCTIONS

If you wish to ask a question of a panelist during a live broadcast, place a collect call to (Area Code 617) 491-5600, Boston. This number is being made available to police agencies only.

A special switchboard and corps of operators will be set up to handle calls between 3:00 and 4:00 PM on the last Thursday of every month. If you should get a busy signal, please place the call again.

This service has been set up for the use and benefit of police officers. We hope you'll take full advantage of it. The telephone number is being made available to police agencies only.



LAW ENFORCEMENT AND CRIMINAL JUSTICE

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TELEVISION BROADCAST SCHEDULE: "LAW ENFORCEMENT AND CRIMINAL JUSTICE"

LOCATION	TV CHANNEL	DAY	TIME	ARREST I	ARREST II	SEARCH & SEIZURE
Boston, Mass.	WGBH (2)	Thursday	3:00 PM	Sept. 28	Oct. 26	Nov. 30
	WGBX (44)	"	"	"	"	"
	* WGBH (2)	"	11:00 PM	"	"	"
Presque Isle, Me.	WMEM (10)	"	3:00 PM	"	"	"
Calais, Me.	WMED (13)	"	"	"	"	"
Orono, Me.	WMEB (12)	"	"	"	"	"
Augusta, Me.	WCBB (10)	"	"	"	"	"
Durham, N. H.	WENH (11)	"	"	"	"	"
Hartford, Conn.	WEDH (24)	"	"	"	"	"
Providence, R. I.	WSBE (36)	"	"	"	"	"
Providence, R. I.	* WSBE (36)	Wednesday	6:00 PM	Oct. 11	Nov. 8	Dec. 13
Maine, New Hampshire & Vermont:						
Poland Spring, Maine	* WMTW - TV	(8) Thursday	7:30 AM	Oct. 19	Nov. 30	Dec. 21

* Pre-taped broadcast

Several new educational television stations serving areas not now covered are scheduled to begin broadcasting in January, 1968. As these stations go on the air, those in their broadcast area will be notified. If you are in an area which is not, as yet, reached by the television stations now carrying the "LAW ENFORCEMENT AND CRIMINAL JUSTICE" series, we will make 16mm

films of the programs available, on request, for local viewing. These films may be ordered through the New England Police Television Advisory Committee (names listed on inside front cover) who have agreed to act as liaison between the police departments in their respective states and the WGBH Educational Foundation.