Coast Community College district

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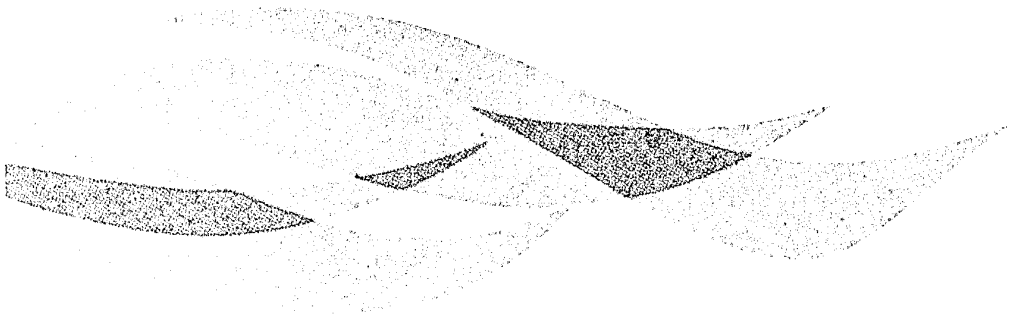

PROJECT CALCOP FINAL REPORT DECEMBER, 1970

ORANGE COAST COLLEGE
COSTA MESA

GOLDEN WEST COLLEGE
HUNTINGTON BEACH

Project CALCOP

December, 1970

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PREFACE

This report describes the activities of Project CALCOP. a joint project of the Coast Community College District, the Los Angeles Police Department, and the Los Angeles Police Academy. The project was financed in part by a grant from the Law Enforcement Assistance Administration (Institute Grant NI-066), and this paper serves as the final report of the project.

A number of individuals deserve recognition for their efforts in doing the work of the project:

Mr. Derald D. Hunt, Director of Law Enforcement Program for Golden West College, for designing and preparing the Study Syllabus and the computer simulated case problems and for scoring the final examinations.

Sergeant M. R. Ingalls, of the Los Angeles Police Academy, for designing and testing the final examination and for reviewing the Syllabus and other training materials.

Mr. Monty Ruth, of the Coast Community College District, for preparing and implementing computer programs used in the simulation exercises and in the statistical analysis.

Sergeant Diane Harber, of the Los Angeles Police Department, for coordinating the otherwise diverse efforts of the Los Angeles Police Academy and the Coast Community College District.

Miss Bonnie Borawski and Mrs. Ellen Gradick, of the Coast Community College District, for their efforts in assuring that the study materials and this report were properly produced.

I list here others whose help represent important contributions to the success of this project: Lieutenant Delbert R. Wheaton, of the Los Angeles Police Department; Officer Ray Heslop, of the Los Angeles Police Department; Mr. George Martin, of the Los Angeles Police Department; Mr. Thomas Adams, Coordinator of the Police Science Program at Santa Ana College; and Officer Roger Sobie, of the Los Angeles Police Department.

R.W.B.

69-NI-066

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I. PROJECT CALCOP SUMMARY

Coast Community College District and the Los Angeles Police Department have completed a joint project for the development, implementation and evaluation of computer assisted instruction techniques in a specific area of police training.

Recent months have seen considerable excitement concerning computer assisted learning as a new instructional technique. By and large, computer assisted learning, or as it is often called, computer assisted instruction (CAI), is defined as a process in which a student interacts more or less directly with a computer system in a learning situation.

PURPOSE

Project CALCOP served a two-fold purpose. First, the project sought to develop a computer assisted learning system for the purpose of training in the area of search and seizure and rules of evidence. Second, the project evaluated the effectiveness of the computer assisted learning system. In doing this, the project examined the hypothesis that the learning system designed by the project, consisting of independent study and CAI exercises, would be more effective than conventional classroom instruction.

PROCEDURES

Procedures followed in Project CALCOP, are enumerated below:

1. Objectives of training programs in search and seizure and rules of evidence were formulated.

2. An examination designed to test the degree to which the objectives were met was developed.

3. A syllabus of cognant material to be used for study purposes on an independent basis was prepared.

4. Case problems simulated through the use of the computer terminal were prepared and implemented.

5. Training was conducted using the computer assisted learning system and the syllabus at Golden West College. Training also took place through conventional classroom instruction at the Los Angeles Police Academy.

6. The examination was administered to police cadets at both the Los Angeles Police Academy and the Golden West Academy. Performance on this examination was compared between the two groups to determine if the computer assisted instruction techniques were more or less effective than conventional classroom techniques.

RESULTS

Comparison of examination performance levels on the part of the Los Angeles Police Academy cadets and the cadets at Golden West College Police Academy showed that the Golden West College group performed significantly better on each of the three parts of the examination as well as for the examination as a whole. The difference in performance levels was found to be statistically significant in each case at the .01 level of confidence.

CONCLUSIONS

Learning systems such as that developed by Project CALCOP which remove the police cadet from the rigid discipline of the academy classroom show significant promise as more effective pedagogical techniques than current methods.

II. PROCEDURES

Project CALCOP engaged in a number of activities during its execution. These include establishment of behavioral objectives to be achieved by police cadets using the learning materials developed; establishing a steering committee for the project; establishing an executive committee for the project; preparing the simulation materials; and designing, testing and executing evaluation methods. Each of these activities is discussed in the paragraphs to follow.

ESTABLISH PROJECT STEERING COMMITTEE

As outlined in the project proposal of April 10, 1969, Project CALCOP operated under the guidance of a steering committee composed of police officials, educational experts, and lay police advisors. Individuals serving on the Project CALCOP steering committee are listed below.

Inspector George Beck, Assistant Commander, Office of Special Services, Los Angeles Police Department, Chairman.

Dr. Norman E. Watson, Chancellor, Coast Community College District.

Deputy Chief Robert Gaunt, Commander, Planning and Fiscal Bureau, Los Angeles Police Department.

Inspector Vernon Hoy, Assistant Commander, Personnel and Training Bureau, Los Angeles Police Department.

Mr. Arthur Suchesk, Manager of Instructional Media and Systems, Southern California Regional Occupational Center.

Mr. John S. Owens, Vice Chancellor, Vocational Education, Coast Community College District.

Captain George Conroy, Commander, Records and Identification Division, Los Angeles Police Department.

Mr. Derald D. Hunt, Director of Law Enforcement Program, Golden West College Police Science Program.

ESTABLISH PROJECT EXECUTIVE COMMITTEE

The Project Executive Committee oversaw the work done by the project, determined goals and objectives, and reviewed the final results. The Executive Committee consists of police officers and educators as listed below.

Lieutenant Delbert R. Wheaton, Los Angeles Police Department.

Sergeant Diane Harber, Los Angeles Police Department.

Sergeant M. R. Ingalls, Los Angeles Police Department.

Mr. Derald Hunt, Director of Law Enforcement Program, Golden West College.

Mr. Richard W. Brightman, Director of Research and Planning, Coast Community College District.

ESTABLISH GENERAL AND BEHAVIORAL OBJECTIVES

The initial Project CALCOP proposal outlined broad objectives to be served by the Project. The first task of the Executive Committee, meeting during the summer of 1969, was to develop specific general and behavioral objectives of the program. These objectives are described in a later section of this report.

PREPARATION OF STUDY SYLLABUS

A syllabus was prepared outlining the factual or cognate material that Golden West police cadets should master before entering the field as operating

police officers. Preparation of this document involved the efforts of the Law Enforcement staff at Golden West College. The completed syllabus was thoroughly reviewed by the instructional staff at both Golden West College and the Los Angeles Police Academy. The review revealed several points in the syllabus that require updating and revision because of recent court decisions regarding police procedures in arrest, search and seuzire. A syllabus critique prepared by the Los Angeles Police Academy is available. Interested parties should address requests to:

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In general, use of the syllabus by Golden West College police cadets pointed out the necessity for its continual review and updating. For this reason, the syllabus as shown in this report should not be viewed as a final document ready for distribution to law enforcement students, but rather as the first of a series of progressively updated documents outlining matters of arrest, search and seizure and rules of evidence. The syllabus appears in Appendix I of this report.

PREPARATION OF SIMULATED CASE PROBLEMS

Case problems simulated through the use of computer terminals were developed for twenty-six cases reported in the Law Enforcement Legal Information Bulletin published by the Los Angeles District Attorney's office. Use of these case problems involved a two-fold process. First, police cadets would aprise themselves of the basic facts of a particular case situation. Once satisfied that they were familiar with it and with the laws surrounding

the situation as presented in the syllabus, they would approach a computer terminal, identify themselves and the particular case they wanted to work on. The computer terminal would respond by asking them questions about the case, providing them additional information, and evaluating the results of their work.

Appendix II includes all of the written descriptions of the twenty-six case problems as well as a list of all of the case problems identified by number and by the APL workspace name in which the cases could be found in the Coast Community College District computer system. Computer programming for the simulated portions of the case problems was accomplished through the use of APL programming language. Complete program documentation of each of the case problems is available from the Coast Community College District and interested parties should send requests to the address shown on the preceding page.

Appendix III shows typical computer terminal output for the execution of cases 12 and 22. For the purpose of illustrating the manner in which incorrect responses were treated by the computer, the operator answered questions incorrectly about as many times as he answered them correctly.

PREPARATION OF EVALUATION MATERIALS

In considering techniques of evaluation, the Executive Committee recognized the need to approximate, as much as possible, actual field situations that prospective peace officers are likely to encounter while on duty. Ideally, each cadet should investigate a mock field situation prepared by the educational institution and would be evaluated in terms of his performance in conducting his investigation. Clearly, this ideal evaluation

technique is impractical for most educational institutions, as it requires considerable amounts of time for each student being evaluated. A promising alternative, investigated by the Committee, involved depiction of one or more field situations through the use of photographic slides and/or video tape. Such presentation could be made to an entire class at once with the students answering specific questions concerning the situation as a means of taking the examination. Our investigations showed that with the resources available to Golden West College, production of photographic slides or video tapes for use as described above was impractical.

As a more feasible alternative, a written final examination was prepared using the same conceptual logic as might be used in a video tape presentation. A specific situation was described, questions were asked of the student about the situation and the student's responses were evaluated to determine a test score. The examination prepared was tested thoroughly at the Los Angeles Police Academy before it was implemented and administered to the control and experimental groups. This examination appears in Appendix IV.

EVALUATION OF LEARNING MATERIALS

The learning materials, consisting of the syllabus and the simulated case problems, were evaluated using established statistical and experimental techniques. These procedures are thoroughly described in Section IV of this report.

III. OBJECTIVES OF PROJECT CALCOP

As reported in the Project CALCOP quarterly progress report of October 1, 1969, and as later refined, the general and behavioral objectives of the project are enumerated below.

GENERAL OBJECTIVES

1. Develop study materials in search and seizure to be used for recruit training in criminal investigation;

2. Develop computerized case problems which stem from (1) above and which reinforce learning, broaden perspectives, and provide simulated field experiences for those completing the search and seizure section of recruit training; and to

3. Evaluate the effectiveness of the learning materials developed in (1) and (2) above as compared with conventional classroom instruction in the same subject areas.

These general objectives serve the broader purposes of:

1. Preparing officers for field police work.

2. Preparing officers to apply basic rules of evidence to field situations involving criminal investigation.

BEHAVIORAL OBJECTIVES

After completing the segment of study prepared by Project CALCOP, police officers and police cadets should be able to perform the following tasks:

1. Recognize Evidence and Identify Types of Evidence

   Demonstration of the ability to perform this task will involve studying a field situation and selecting and identifying pertinent evidence related to the situation. Within ten minutes, students will correctly identify 80 percent of the pertinent items of evidence found in an actual situation as examined through the use of written case descriptions and/or audio-visual presentations.

2. Gather and Preserve Evidence

   a. Prepare Reports and Field Notes Demonstration of the ability to do this will involve studying field situations and identifying evidence to be included in specific report types. Within fifteen minutes students will examine a field situation and prepare reports required by the evidence on hand. The situation will be presented through the use of written case description and/or audio-visual presentation.

   b. Gather Testimony from Witnesses Demonstration of the ability to do this will involve identifying witnesses to a field situation who should be interviewed. Students will examine a field situation and within ten minutes must identify all witnesses who should be interviewed. The field situation will be presented through the use of written case descriptions and/or audio-visual presentation.

   c. Gather and Preserve Physical Evidence Demonstration of the ability to do this will involve identifying artifacts to be gathered from field situations as evidence and selecting means to collect and preserve them. Students will examine a field situation and list 85 percent of the items that should be gathered as evidence and will associate these with written descriptions of the means best used to gather and preserve them. This will be accomplished in twenty minutes. The field situation will be presented with written case descriptions and/or audio-visual presentation.

3. Exercise Evidence-Gathering Techniques that Assure the Admissibility of the Evidence in Court

Demonstration of the ability to perform this task will involve:

a. Distinguishing evidence from non-evidence in field situations.

b. Identifying evidence as found in field situations that will be inadmissible in court as opposed to that which will not be admissible.

The student will examine a field situation and list items of evidence as differentiated from non-evidence and will further categorize items of evidence into those that will be excluded as opposed from those that would not be excluded in a court of law. Eighty-five percent of the items in the situation must be correctly categorized within twenty minutes. The field situation will be presented using written case descriptions and/or audio-visual presentation.

MEETING THE OBJECTIVES

As originally articulated in the Project CALCOP proposal and in subsequent quarterly reports, the project's objectives pointed to considerably more elaborate learning systems than were feasible for development with the resources available to the District. For example rather than preparing elaborate tutorial interactive materials for computer-assisted study of cognant material in the area of search and seizure, the project found it more feasible to develop the study syllabus found in Appendix I. A syllabus was determined to be more flexible for student's use inasmuch as it could be used and studied virtually anywhere without requiring the student to use a computer terminal.

The specific behavioral objectives found in Section III of this report were particularly difficult to evaluate in terms of the time available for evaluation. There is little question that the syllabus and the simulated

case problems as learning strategies contribute to the police cadet's ability to recognize, identify, gather, and preserve evidence in a manner that assures admissibility of the evidence in court. Designing evaluation devices to measure the degree to which these objectives are served by the learning strategies is quite a difficult matter. The total amount of classroom time typically spent in the area of search and seizure seldom exceeds ten hours. Testing exercises sufficient to measure the behavioral objectives outlined in Section III of this report must necessarily be very comprehensive and very detailed in nature, involve considerable photographic representation of case situations and probably would be best impelmented through the use of a crime-site mock-up. Surrendering to the difficulties of preparing such evaluative instruments, we developed the examination appearing in Appendix IV as an approximation to the ideal expressed in the behavioral objectives. More about this important matter will be said in the conclusion of this report.

Despite the difficulties in preparing an evaluative technique that meets the aspirations of the expressed behavioral objectives of the project, evidence presented in Section IV of this report leads us to believe that these instructional techniques are more effective in meeting the objectives of course work in search and seizure than in conventional classroom techniques. The examination that has been employed does in fact present the police cadet with a case situation in which he must evaluate appropriate steps to take. His answers to the questions put to him by the examination are some indication of the degree to which he understands the appropriate procedures to use when actually in the field.

IV. EVALUATION OF THE LEARNING PROCEDURES

STATISTICAL PROCEDURES

Evaluation of the learning procedures designed as part of Project CALCOP followed conventional statistical procedure. We were interested in the null hypothesis that there would be no significant difference in performance levels between cadets at the Golden West Police Academy (the experimental group) and cadets at the Los Angeles Police Academy (the control group) as measured by the examination enactments shown in Appendix IV. Finding a statistically significant difference would give us cause to reject the null hypothesis, concluding that the CAI learning procedures were either more or less effective than the conventional procedures, depending upon the sign of the difference.

Comparison of performance scores between the control and experimental groups with respect to the CALCOP examination enactments as well as on the California Short Form Test of Mental Maturity and the Wonderlic Personnel Test made use of the t test for significant differences in mean scores[1] and the Wilcoxon matched pairs signed-rank test.[2]

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[1]Fergeson, G. A., Statistical Analysis in Psychology and Education, (New York: McGraw-Hill), pp. 167-174.

[2]Seigal, S., Non-Parametric Statistics for the Behavioral Sciences, (New York: McGraw-Hill), pp. 75-83.

In comparing mean performance scores we used one of two calculation procedures to arrive at t, depending upon the homoscedasticity of the test score distributions of the two groups being compared. For those cases in which the variances were homogeneious, we used the formula

$$t = \frac{\bar{X}_1 - \bar{X}_2}{\sqrt{\frac{\Sigma(X_1 - \bar{X}_1)^2 + \Sigma(X_2 - \bar{X}_2)^2}{N_1 + N_2 - 2} \cdot \left(\frac{1}{N_1} + \frac{1}{N_2}\right)}}$$

Where X_1 is the individual score for members of Group 1, X_2 the individual scores of the members of Group 2, $\bar{X}_1$ and $\bar{X}_2$ the representative mean scores of Groups 1 and 2, N_1 the total number of students in Group 1, and N_2 the total number of students in Group 2.[3]

In those cases in which the variances of the two distributions the means of which were to be compared were not homogeneious, we used the formula

$$t^* = \frac{S_{\bar{x}_1}^2 t_1 + S_{\bar{x}_2}^2 t_2}{S_{\bar{x}_1}^2 + S_{\bar{x}_2}^2}$$

[3]Freund, J. E., Modern Elementary Statistics, Third Edition, (Englewood Cliffs, New Jersey: Prentice Hall), p. 256.

Where t_1 is the critical value of t_i required for significance at the .05 level of confidence with N_1-1 degrees of freedom and t_2 the critical value of t_i required for significance at the .05 level of confidence with N_2-1 degrees of freedom and where

$$t_i = \frac{\bar{X}_1 - \bar{X}_2}{S_{\bar{x}_1 - \bar{x}_2}}$$

with i = 1,2 and where

$$S_{\bar{x}_i - \bar{x}_2} = \sqrt{\frac{\Sigma(X_1 - \bar{X}_1)^2}{N_1(N_1-1)} + \frac{\Sigma(X_2 - \bar{X}_2)^2}{N_2(N_2-1)}} = \sqrt{S_{\bar{x}_1}^2 + S_{\bar{x}_2}^2}$$

where the variables are as described above.[4]

We tested the score distributions on each of the tests administered for homogeniety of variance by considering the ratio of the two variances as calculated by

$$R = \frac{\frac{\Sigma(X - \bar{X}_1)^2}{N_1 - 1}}{\frac{\Sigma(X - \bar{X}_2)^2}{N_2 - 1}}$$

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[4]Fergeson, op. cit., pp. 171-172.

and consulting a table of the F distribution for R to determine whether or not the difference between the variances is significant.[5] In those cases in which the variances were not homogeneious, t^* was calculated, otherwise we found t. Hereafter in this report, tests of significant mean differences will be reported as significant in terms of t or t^* depending upon the homoscedasticity of the two distributions yielding the means.

Use of the t (or t^*) test for significance of mean differences requires, in addition to homogeneity of variance, that the distributions be normally distributed. Usually, with N = 30, normality may be assumed.[6] However, as our populations never exceeded 28 in number and on one occasion was only eight, we performed the Wilcoxon ranked-pairs test to verify that the significant differences we found with the t and the t^* tests also appeared significant under the weaker yet distribution-free non-parametric test. In every case, the Wilcoxon test yielded results that agreed with our t and t^* calculations.

Evaluation procedures and the results of statistical calculations are described in the paragraphs that follow.

EXAMINATION DEVELOPMENT

Inasmuch as the purpose of the evaluative phase of Project CALCOP was to measure the relative effectiveness of the computer assisted instruction techniques used with conventional classroom presentation techniques, a first important task of the project was to develop the final examination as appears in Appendix IV.

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[5] Ibid., pp. 181-183.

[6] Freund, op. cit., p. 255.

The examination was tested at the Los Angeles Police Academy. Groups of cadets at the Academy would take the examination. After scoring, the cadets and the instructor would critique the examination in terms of clarity and legal accuracy. After making appropriate modifications, the instructor would administer the examination to a fresh group of cadets and repeat the evaluation. In this manner, cadet reactions to and performance on the examination was carefully considered in subsequent revisions of the final examination. Revisions were retested as described above until the final draft of the examination as appearing in Appendix IV was completed.

The examination consists of four case enactments each of which provide the cadet with certain information regarding a particular case situation. In every case, the case situation presented by the examination was similar to a real life situation with names of persons and of places changed to prevent students, to every extent possible, from recognizing the situation as one that he may have studied earlier.

CONTROL AND EXPERIMENTAL GROUP SELECTION

The experimental group for this study consisted initially of twenty-seven police cadets enrolled in the Golden West College Police Academy during the Fall semester, 1970-71. This group undertook to study matters of search and seizure through independent use of the syllabus and through the use of the computer assisted instruction simulation exercises described earlier in this report.

The control group for the experiment consisted of police cadets at the Los Angeles Police Academy who undertook to study matters of search and seizure through conventional classroom instruction as conducted at that

Academy. Sixty police cadets out of a class of seventy-one at the Los Angeles Academy took the final examination enactments.

Members of both the control and the experimental groups took the California Short Form Test of Mental Maturity and the Wonderlic Personnel Test. Using the IQ scores achieved on the California Short Form Test of Mental Maturity for each of the twenty-seven members of the experimental group as a basis, twenty-seven members of the Los Angeles Police Academy group were selected so as to give twenty-seven matching pairs of cadets, one group each from the Golden West College Police Academy and from the Los Angeles Police Academy. Table I shows the initial populations of both the control group (Los Angeles Police Academy group) and the experimental group, (the Golden West College group) and the degree to which IQ scores differed as between two members of any one matched pair. The differences between the mean IQ scores of the twenty-seven members of the control group as compared to the twenty-seven members of the experimental group were evaluated through the use of the t distribution. This yielded a t score of 0.218 indicating no significant differences between the mean IQ scores between the control and the experimental groups.

After completing the training program and gathering performance data, there remained twenty-three matched Golden West - Los Angeles Academy pairs for whom complete data were available. These matched pairs and their respective California Short Form Test of Mental Maturity scores (IQ scores) appear in Table II.

Differences in IQ scores as shown in Table II between the Los Angeles Police Academy control group, Group 1, and the Golden West College experimental group, Group 2, were compared using two techniques. As described

earlier, the t test was performed to assess the differences between mean IQ's for the groups. This yielded a t score of -0.04. This score is not significantly different at the .05 level of confidence. We also performed the Wilcoxon matched pairs signed-rank test. This procedure yielded a T score of 43 with an N of 14 which demonstrated no significant differences between the matched pairs at the .05 level of confidence.

Table III shows the relative Wonderlic Personnel Test scores for both the Golden West College experimental group and the Los Angeles Police Academy group. We performed the same tests on the Wonderlic score differences as we performed for the California Short Form Test of Mental Maturity scores. The t test for significant differences between mean Wonderlic scores yielded a t of 0.8 which showed that there was no significant difference between the mean Wonderlic scores between the control and experimental groups. The Wilcoxon matched pairs test yielded a T of 83 for an N of 19, again showing no significant difference at the .05 level of confidence.

We were also interested in the degree to which the Los Angeles Police Academy control group, consisting of twenty-three selected members, represented the total seventy-one members of the Los Angeles Police Academy from whom the control group was drawn. The t test for differences in mean IQ scores yielded a t of -1.4 which was not significant (.05 level). Similarly, the t test was used to measure differences in mean scores on the Wonderlic examination between the twenty-three members of the Los Angeles control group and the total seventy-one member Los Angeles Academy group that took the test. In this case, the t score was -1.7, again not significant at the .05 level of confidence.

We also compared the Golden West College experimental group with the total seventy-one member Los Angeles group. The t test in this case yielded a t score of -1.43 which was not significant at the .05 level for mean IQ scores. Similarly, the t score for the differences in mean Wonderlic scores was -0.83, again not significant at the .05 level of confidence.

As a result of these calculations and comparisons we can make the following observations:

1. There is no significant difference in mean IQ scores as measured by the California Short Form Test of Mental Maturity between the twenty-three member experimental group at Golden West College and the twenty-three member control group at the Los Angeles Police Academy.

2. There is no significant difference in mean Wonderlic Personnel Test scores between the control group and the experimental group.

3. The control group of Los Angeles Police Academy cadets is a representative sample in terms of IQ and Wonderlic scores of the total seventy-one member group of Los Angeles Police Academy cadets.

4. There is no significant difference in either mean IQ scores or in mean Wonderlic scores between the Golden West College experimental group and the total group of Los Angeles Police Academy cadets.

Accordingly, any differences to be found between performance levels on the examination enactments as between Group 1 and Group 2 cannot be attributed to differences in intellectual ability as measured by the California Short Form Test of Mental Maturity and the Wonderlic Personnel Test. Differences in performance levels on the final examination must be accounted for by other factors than differences in measured ability.

TRAINING

Police cadets at the Los Angeles Police Academy studied materials relating to proper procedures in search and seizure matters under conventional

classroom instruction. This instruction consisted of lectures and classroom discussions. As described earlier in this report, police cadets at the Golden West College Police Academy studied the same materials making use of the study syllabus and the computer assisted simulated case problems. This group received no classroom instruction.

EXAMINING

After completing the training program in search and seizure, cadets at both the Police Academy in Los Angeles and the Academy at Golden West College completed a written examination consisting of four case problems or enactments in which the student was asked specific questions about procedures and matters of fact relating to the situation described. The examination appears in Appendix IV.

All of the examinations were scored by Derald Hunt, the Coordinator of the Law Enforcement program at Golden West College. Scoring was done by one individual to minimize to every extent possible differences in scoring procedures that might arise should more than one person score the tests. Of the four enactments included in the final examination, only three were scored for the Los Angeles Police Academy group. This is so because the fourth enactment was returned to the students and was therefore unavailable for scoring at the same time that the other three enactments were available. For this reason, only the first three enactments of the final examination have been used in this study to measure differences in performance levels between the Los Angeles Police Academy group and the police Academy at Golden West College.

RESULTS

Tables IV, V, and VI show the relative examination scores for enactments 1, 2, and 3, respectively. Maximum score possible for enactment 1 was 11. Maximum score possible for enactment 2 was 9, and for enactment 3, a maximum score of 10 was possible. Table VII shows the total scores on all three enactments for each of the control - experimental matched pairs.

Both the t test and the Wilcoxon matched pairs signed-rank tests were applied to the performance scores on the examination enactment. Table VIII lists the results of these calculations. In every case, cadets at the Golden West College Police Academy performed better on the final examination than did cadets at the Los Angeles Police Academy and in every case the difference in performance levels was statistically significant at the .05 level of confidence. For enactment 1 Golden West College cadets averaged 2.17 points higher in performance scores than did their counterparts at Los Angeles. For enactment 2 the difference in mean performance level was 1.52 points higher. Similarly, for enactment 3 Golden West College cadets averaged 1.96 points higher than did the Los Angeles Police Academy cadets. For the three enactments taken together the Golden West College group averaged 5.65 points higher in performance scores than did the group at the Los Angeles Police Academy.

V. CONCLUSIONS

The most obvious conclusion to be drawn from the procedures outlined above says that the learning procedures followed at Golden West College in the area of search and seizure were more effective than were the procedures followed at the Los Angeles Police Academy, at least as measured by the final examination enactments appearing in Appendix IV of this report. Testing and selection of the experimental and control group minimized differences in performance level that might arise as a result of differences in abilities between the two groups. Selection procedures exercised by the Los Angeles Police Academy and the several police agencies employing the Golden West College cadets probably minimized differences in educational level, reading skills and writing skills that would not also appear as differences in IQ and Wonderlic scores. There remains then the difference in training procedures between the two groups as a factor which would account for the differences in performance levels.

The control group at the Los Angeles Police Academy undertook training in the area of search and seizure with conventional classroom instruction under rigid circumstances in which the learning situation was rather well structured. Instructors at the Los Angeles Academy lectured to the cadets,

described to them specific case situations, and elicited responses from members of the class as to what they would do or what should be done in a particular case situation. Cadets at the Golden West Police Academy program had no such classroom instruction and limited their efforts to studying the syllabus and answering questions put to them about specific case situations by a computer terminal. We assert, and our conclusions here are based upon the statistics reported above, that this basic difference in instructional approach accounts for the differences we find in performance levels between the Los Angeles Police Academy control group and the Golden West College Academy experimental group.

As we analyzed our data, however, we became interested in other phenomena that might partially account for some of the observed performance differences. Experimental bias, for example, is a common place failing in most experimental studies of this kind and there is some likelihood that it may have played a part in increasing the performance level of the experimental group. The experimental group and the control group were widely separated geographically and enjoyed no inter-group communication whatsoever. Nevertheless the group at Golden West College did know that their performance levels on an examination covering the areas of search and seizure would be compared with scores on the same examination earned by Los Angeles Police Academy cadets. This knowledge may have motivated the group to apply themselves more assiduously to their studies and, to the extent that they did, the experiment was biased. However, we should point out that most classroom teachers turn to a number of devices and strategies to motivate students to study harder and whether or not the devices and strategies employed by the

Los Angeles Police Academy instructors in this area were more or less effective as motivators than the knowledge on the part of Golden West College cadets that their performance was to be compared with another group, is a matter of conjecture.

A second phenomenon which might play an even more important part in explaining differences in performance levels between the two groups had to do with the experimental group at Golden West College learning how to take the final examination. The case problem approach as employed through the computer assisted simulations presented materials and questions about the facts of cases in almost exactly the same manner as is found in the examination itself. Thus students studying the syllabus and then answering questions about specific case situations as posed by the computer terminal were in effect taking an examination not at all unlike the one they would take as a final measure of their achievement. In this way, they were learning how to take this type of examination. Cadets at the Los Angeles Police Academy, on the other hand, had no similar training experience. Their exposure to the presentation of case situation facts and then answering questions about the situation was probably a new one for them. To examine the degree to which this might be true, we compare the control group performance on a multiple choice examination covering the area of search and seizure and rules of evidence with the performance of a preceding class on the same examination.

At the completion of the Police Academy at Golden West College, all cadets took a multiple-choice final examination covering all phases of the Academy program. The experimental group in this study took this examination as did the Academy class that immediately preceded them. The examination consisted of a number of separate parts, three of which contained no test items

dealing with matters of search and seizure and rules of evidence. The remaining parts contained, among other things, twenty-five questions concerning search and seizure and rules of evidence. Being interested in the degree to which cadets in our experimental group at Golden West College did better or worse than did their predecessor class, we examined their relative performance on the multiple choice final examination for the complete academy. The results of our analysis appear in Table IX. This table presents the mean percentage scores earned on each of the three portions of the test that included no test items dealing with search and seizure, and rules of evidence as well as for the three sections taken together, and those twenty-five test items that deal exclusively with search and seizure and rules of evidence. Our comparison of mean scores followed the procedures discussed earlier and the resulting t (or t^*) scores also appear on the table.

Of the five mean differences in exam scores shown in Table IX, only the mean differences on the twenty-five questions dealing with search and seizure and rules of evidence is statistically significant (.01 level). Our control group, then, did significantly better than their predecessors on the search and seizure and rules of evidence portion of their final exam but performed only equally as well on those protions of the final examination that dealt with other matters.

Reconsider the argument that the experimental group performed better on the examination appearing in Appendix IV as a result of having learned how to take this type of examination more effectively than the control group. This may be true. However, they also learned, apparently, how to take multiple choice examinations better than their predecessors, but only with

respect to questions dealing with search and seizure and rules of evidence. The data appearing in Table IX lead us to discount heavily the argument that performance differences we found between the control and the experimental groups can be largely explained away as the result of having learned how to take a particular type of examination.

A third phenomenon that could explain performance differences between the control and experimental groups has to do with the degree of experience as operating police officers that cadets may have had prior to entering the police academy. Several cadets at Golden West College had previous experience as police officers before enrolling. Only one of the cadets at the Los Angeles Police Academy had any experience before entering his training program. In an effort to isolate the effect which previous experience may have had upon differences in mean performance levels between the two groups, we eliminated all those matched pairs in which the Golden West College member had had more than a few days prior experience. The remaining matched pairs, their respective IQ and Wonderlic scores, as well as their performance scores on each of the three examinations enactments and for the total examination appear in Table X. Both the T test and the Wilcoxon matched pairs ranking test for this non-experienced sub-group showed that there were no significant differences at the .05 level of confidence between the Los Angeles and the Golden West groups with respect to either the IQ scores or the Wonderlic scores. As with the large group analysis, Golden West College cadets performed consistently better on all three enactments and for the total examination than did the Los Angeles cadets. In every case the increased performance was statistically significant at the .01 level of confidence. On enactment 1

Golden West College cadets earned an average of 2 points higher than did the Los Angeles group. This mean difference was 1.7 points higher for the second enactment and 1.9 points higher for the third. With respect to the examination taken as a whole, Golden West College cadets performed better than did the Los Angeles cadets by a mean difference of 6.2 points.

This examination of the non-experienced cadet pairs leads us to conclude that the experience enjoyed on the part of some of the Golden West college police cadets played no significant role in accounting for the overall increased performance levels of the entire twenty-three man experimental group.

An even more important factor that might well explain the performance differences we found may be that of removing the police cadet from the classroom. Typically, classroom learning situations in police academies is much more rigorous and much more structured than typical classroom situations found in other college areas. Discipline is more rigidly enforced and students may feel less free to investigate areas of interest to them than do students in such areas as say philosophy, literature, or even mathematics and physics. In this respect, police academy classrooms resemble military basic training camps. As a result, police academy programs may be criticized as being non-condusive to learning. Developing learning situations for specific skills and specific areas of conceptual knowledge in law enforcement and removing students from a rigidly disciplined classroom enviromment while they study these subjects may well prove to be more effective than current methods.

Although we are not prepared on the basis of Project CALCOP to conclude that the computer assisted learning portion of the learning system devised is more effective than classroom instruction, we do think that the total

learning system including independent study of the syllabus as well as computer assisted case problems, presents a more effective learning environment in the area of search and seizure than does conventional classroom instruction. This is not to say, of course, that conventional classroom instruction has been other than excellent in quality. In fact we cannot say, as a result of this study, that it has been good, bad, or indifferent. Rather, we have found evidence that instructional effectiveness in search and seizure can be further improved through the use of learning systems similar to that developed by Project CALCOP.

VI. RECOMMENDATIONS

We have never seen a research report that does not close with recommendations for additional research. This one will not conclude differently. It is clear to us from the work we have done so far that independent study and computer assisted learning techniques can play a most important role in the training of police officers. What is needed most at the present time are better examination procedures that more adequately assess the ability of police officers to perform in the field. The written examination used as part of Project CALCOP may not serve adequately at all as compared to a more realistic evaluation procedure in which police officers investigate a mock-up crime situation. The first step, then, in continuing the type of study started with Project CALCOP is to engineer such evaluation devices and validate them as appropriate measures of operating skills on the part of active police officers.

Other experimentation with computer assisted learning as well as that undertaken with Project CALCOP has led us to believe that the typewriter terminal is an inadequate device for computer assisted learning. It would be much better, we think, to present written, photographic, or other graphical information to students in the form of visual display. This cannot be done at

the present time through the use of typewriter terminals such as those employed in Project CALCOP. Under investigation at this time by the Coast Community College District is the use of random access microfiche display units under the control of a computer. Combining the materials we have already prepared for Project CALCOP with microfiche display techniques, we think that we could substantially improve the learning system devised. Rather than read a written description of a case situation, students would instead study photographic images portraying the particular situation. In such a system the student would still enjoy the individualized attention that he currently receives from the computer terminal, however, he does not have to wait for the typewriter terminal to finish typing out a message before he can respond to it. Written messages as well as photographic information can be displayed on an illuminated screen within a few seconds access time while the student continues to enter his answers into a computer typewriter terminal. Experimental work with this system is just beginning and we think that Project CALCOP has played a significant role in pointing us in this direction.

Officials at the Golden West College Police Academy are interested in pursuing the learning strategies employed in Project CALCOP in other areas of police training. This too is an important area for continued study and research. An earlier study completed by the Coast Community College District found CAI to be equally effective as classroom instruction, but no better.[7] We harbor strong suspicions that learning systems that remove the police cadet from the disciplinary atmosphere of the Academy classroom may alone be

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[7] Computer Assisted Learning to Teach Computer Operations, Unpublished research report, November, 1970.

more effective than current techniques. We need to answer two questions in this regard. First, to what extent can the performance differences found by Project CALCOP be explained by the CAI system as opposed to simply removing the student from the classroom for self-study? Second, is self-study in general (whether or not computer-assisted) a more effective instructional stragety for police training than current classroom techniques?

Matched Pair	Group 1 Los Angeles Police Academy Control Group	Group 2 Golden West College Experimental Group	Differences (LAPA--GWC)
1	81	81	0
2	95	96	-1
3	97	98	-1
4	98	98	0
5	102	102	0
6	102	103	-1
7	104	104	0
8	105	106	-1
9	108	108	0
10	111	111	0
11	112	112	0
12	113	113	0
13	114	115	-1
14	114	115	-1
15	114	116	-2
16	117	117	0
17	119	118	1
18	119	118	1
19	120	122	-2
20	120	122	-2
21	121	122	-1
22	122	122	0
23	122	123	-1
24	124	123	1
25	126	125	1
26	129	127	2
27	129	128	1

Group 1		Group 2	
Sample Size	27	Sample Size	27
Maximum	129	Maximum	128
Minimum	81	Minimum	81
Range	48	Range	47
Mean	112.52	Mean	112.78
Variance	132.95	Variance	127.49
Standard Deviation	11.53	Standard Deviation	11.29
Mean Deviation	9.09	Mean Deviation	9.00
Median	114	Median	115
Mode	114	Mode	112

Table I

California Short Form Test of Mental Maturity

Matched Pair	Group 1 Los Angeles Police Academy Control Group	Group 2 Golden West College Experimental Group	Differences (LAPA--GWC)
1	81	81	0
2	95	96	-1
3	97	98	-1
4	98	98	0
5	102	102	0
6	104	104	0
7	108	108	0
8	111	111	0
9	112	112	0
10	114	115	-1
11	114	115	-1
12	114	116	-2
13	117	117	0
14	119	118	1
15	119	118	1
16	120	122	-2
17	121	122	-1
18	122	122	0
19	122	123	-1
20	124	123	1
21	126	125	1
22	129	127	2
23	129	128	1

Group 1		Group 2	
Sample Size	23	Sample Size	23
Maximum	129	Maximum	128
Minimum	81	Minimum	81
Range	48	Range	47
Mean	112.96	Mean	113.09
Variance	146.77	Variance	140.26
Standard Deviation	12.11	Standard Deviation	11.84
Mean Deviation	9.44	Mean Deviation	9.37
Median	114	Median	116
Mode	114	Mode	112

Table II

California Short Form Test of Mental Maturity Series

Matched Pair	Group 1 Los Angeles Police Academy Control Group	Group 2 Golden West College Experimental Group	(LAPA--GWC)
1	18	19	-1
2	16	26	-10
3	18	23	-5
4	20	19	1
5	26	25	1
6	31	26	5
7	21	21	0
8	41	21	20
9	36	20	16
10	24	24	0
11	34	27	7
12	32	29	3
13	29	28	1
14	29	29	0
15	32	32	0
16	30	32	-2
17	27	29	-2
18	26	33	-7
19	40	27	13
20	32	36	-4
21	33	27	6
22	25	34	9
23	29	30	-1

Group 1		Group 2	
Sample Size	23	Sample Size	23
Maximum	41	Maximum	36
Minimum	16	Minimum	19
Range	25	Range	17
Mean	28.22	Mean	26.83
Variance	45.09	Variance	23.51
Standard Deviation	6.71	Standard Deviation	4.85
Mean Deviation	5.32	Mean Deviation	3.85
Median	29	Median	29
Mode	29 32	Mode	27 29

Table III

Wonderlic Personnel Test Scores

Matched Pair	Group 1 Los Angeles Police Academy Control Group	Group 2 Golden West College Experimental Group	(LAPA--GWC)
1	7	11	-4
2	8	9	-1
3	8	11	-3
4	8	11	-3
5	10	11	-1
6	8	11	-3
7	11	11	0
8	11	11	0
9	10	11	-1
10	6	11	-5
11	8	10	-2
12	6	10	-4
13	8	11	-3
14	10	11	-1
15	7	11	-4
16	7	9	-2
17	8	11	-3
18	11	10	1
19	6	11	-5
20	11	10	1
21	8	11	-3
22	8	11	-3
23	10	11	-1

Group 1		Group 2	
Sample Size	23	Sample Size	23
Maximum	11	Maximum	11
Minimum	6	Minimum	9
Range	5	Range	2
Mean	8.48	Mean	10.65
Variance	2.81	Variance	0.42
Standard Deviation	1.68	Standard Deviation	0.65
Mean Deviation	1.41	Mean Deviation	0.51
Median	8	Median	11
Mode	8	Mode	11

Table IV

Enactment 1 Scores

Matched Pair	Group 1 Los Angeles Police Academy Control Group	Group 2 Golden West College Experimental Group	(LAPA--GWC)
1	6	7	-1
2	5	8	-3
3	8	9	-1
4	6	8	-2
5	6	8	-2
6	7	9	-2
7	7	7	0
8	6	9	-3
9	8	8	0
10	7	9	-2
11	8	8	0
12	8	8	0
13	8	9	-1
14	7	8	-1
15	8	9	-1
16	6	9	-3
17	7	8	-1
18	7	9	-2
19	6	9	-3
20	7	8	-1
21	7	9	-2
22	6	8	-2
23	7	9	-2

Group 1		Group 2	
Sample Size	23	Sample Size	23
Maximum	8	Maximum	9
Minimum	5	Minimum	7
Range	3	Range	2
Mean	6.87	Mean	8.39
Variance	0.75	Variance	0.43
Standard Deviation	0.87	Standard Deviation	0.66
Mean Deviation	0.69	Mean Deviation	0.58
Median	7	Median	8
Mode	7	Mode	9

Table V

Enactment 2 Scores

Matched Pair	Group 1 Los Angeles Police Academy Control Group	Group 2 Golden West College Experimental Group	(LAPA--GWC)
1	7	10	-3
2	5	10	-5
3	8	10	-2
4	8	10	-2
5	7	9	-2
6	5	10	-5
7	9	9	0
8	9	7	2
9	8	10	-2
10	10	10	0
11	7	9	-2
12	7	10	-3
13	7	10	-3
14	9	9	0
15	5	10	-5
16	7	8	-1
17	9	10	-1
18	8	9	-1
19	7	10	-3
20	9	10	-1
21	9	9	0
22	8	10	-2
23	5	9	-4

Group 1		Group 2	
Sample Size	23	Sample Size	23
Maximum	10	Maximum	10
Minimum	5	Minimum	7
Range	5	Range	3
Mean	7.52	Mean	9.48
Variance	2.17	Variance	0.62
Standard Deviation	1.47	Standard Deviation	0.79
Mean Deviation	1.19	Mean Deviation	0.64
Median	8	Median	10
Mode	7	Mode	10

Table VI

Enactment 3 Scores

Matched Pair	Group 1 Los Angeles Police Academy Control Group	Group 2 Golden West College Experimental Group	(LAPA--GWC)
1	20	28	-8
2	18	27	-9
3	24	30	-6
4	22	29	-7
5	23	28	-5
6	20	30	-10
7	27	27	0
8	26	27	-1
9	26	29	-3
10	23	30	-7
11	23	27	-4
12	21	28	-7
13	23	30	-7
14	26	28	-2
15	20	30	-10
16	20	26	-6
17	24	29	-5
18	26	28	-2
19	19	30	-11
20	27	28	-1
21	24	29	-5
22	22	29	-7
23	22	29	-7

Group 1		Group 2	
Sample Size	23	Sample Size	23
Maximum	27	Maximum	30
Minimum	18	Minimum	26
Range	9	Range	4
Mean	22.87	Mean	28.52
Variance	7.02	Variance	1.44
Standard Deviation	2.65	Standard Deviation	1.20
Mean Deviation	2.15	Mean Deviation	1.02
Median	23	Median	29
Mode	20 23 26	Mode	28 29 30

Table VII

Three-Enactment Summary

Enactment	t or t*	Wilcoxon N	Wilcoxon T
1	-5.8*	21	8
2	-6.7	19	0
3	5.6*	19	8
All	-9.3*	22	0

Table VIII

Tests of Significance

MEAN PERCENTAGE SCORES

	No Questions on Search and Seizure or Rules of Evidence				Twenty Five Search and Seisure Questions
	Section 1	Section 2	Section 3	All 3 Sections	
Central Group (N=28)	91.2	88.3	91.7	90.4	94.0
Preceding Class (N=17)	91.3	90.2	89.9	89.6	84.5
Difference	.9	- 1.9	1.8	.8	9.5
t or t*	2.67*	2.50*	1.08	1.13	1.45

Table IX

Mean Percentage Scores of Multiple Choice Final Examination

Pair No	IQ Scores		Wonderlic Scores		Enactment 1		Enactment 2		Enactment 3		Total	
	LA	GWC	LA	GWC	LA	GWC	LA	GWC	LA	GWC	LA	GWC
1	81	81	18	19	7	11	6	7	7	10	20	28
4	98	98	20	19	8	9	5	8	5	10	22	29
5	102	102	26	25	8	11	8	9	8	10	23	28
7	108	108	21	21	8	11	6	8	8	10	27	27
10	114	115	24	24	10	11	6	8	7	9	23	30
11	114	115	34	27	8	11	7	9	5	10	23	27
16	120	122	30	32	11	11	7	7	9	9	20	26
19	122	123	40	27	11	11	6	9	9	7	19	30
22	129	127	25	34	10	11	8	8	8	10	22	29
23	129	128	29	30	6	11	7	9	10	10	22	29
t or t*	-0.03		0.33		-4.43		-5.07		-3.94		-7.59	
Wilcoxon												
T	8		17		0		0		0		0	
N	6		8		9		8		8		9	

Table X

Comparative Analysis of Non-Experienced Cadets

APPENDICIES

Appendix I: Syllabus

Appendix II: Case Problems

Appendix III: Sample Terminal Output

Appendix IV: Examination

APPENDIX I

Syllabus

COAST COMMUNITY COLLEGE DISTRICT

PROJECT CALCOP

SYLLABUS

Arrest, Search and Seizure

and

Rules of Evidence

Edited by

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Table Of Contents

ARREST, SEARCH AND SEIZURE

RULES OF EVIDENCE

ARREST, SEARCH AND SEIZURE

I. The Exclusionary Rule

A. Exclusionary Rule Defined

Any evidence that is obtained in violation of the Fourth Amendment to the United States Constitution in any matter will be forever excluded from any trial in court. Evidence that is "tainted" by violation of the exclusionary rule may sometimes lead to other evidence and that "tainted" quality--if it can be shown that there is a direct relationship--will transfer to any other evidence. This is sometimes referred to as the "fruit of the poisoned tree" doctrine.

B. History Of Exclusionary Rule

1. Prior to 1914, the law generally permitted all relevant and material evidence to be used in court regardless of how it was obtained.

2. Weeks v. United States, 232 U.S. 383, 34 S.Ct. 341. Kansas City police officers and United States marshals searched the defendant's house and took evidence in two different searches following an earlier arrest at another location. The court ruled that the evidence taken by the federal officers should be returned to Weeks and it could not be used in evidence against him.

The rule was applied to the federal officers and not the city officers because the Supreme Court at that time was of the opinion that the Bill of Rights consists of restrictions placed upon the federal government and its officers, not binding upon individual state governments.

3. Wolf v. Colorado, 338 U.S. 25, 69 S.Ct. 1359 (1949). The United States Supreme Court ruled that the Due Process clause of the Fourteenth Amendment should make the right against unreasonable search and seizure guaranteed in the Fourth Amendment applicable to the states as well as the federal government. But, the Court also ruled that it would leave to the state courts the responsibility to enforce that right.

4. Rochin v. California, 342 U.S. 165, 72 S.Ct. 205 (1951). In this case, the officers attempted to prevent Rochin from swallowing capsules of heroin. They had his stomach pumped and he was convicted of possession of narcotics. The Court ruled that evidence generally obtained by illegal means would still be left to the states' courts, but whenever such evidence was obtained by "shockingly improper" methods "which are so unfair as to offend notions of decency and justice to a degree that they shock the conscience," it would be inadmissible in any case.

C. Constitution And Bill Of Rights Sections Applicable

1. United States Constitution, Fourteenth Amendment.

a. "Due Process" Amendment.

b. "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

2. California Constitution, Article I, Section 19.

3. United States Constitution, Fourth Amendment.

a. "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."

4. United States Constitution, Fifth Amendment. "No person shall be held to answer for a capital or other infamous crime unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation."

D. Pre-Mapp - Before 1961

1. People v. Cahan, 44 Cal.2d 434 (1955). California adopted the exclusionary rule applied earlier in the federal cases and "shockingly improper" cases of the states. The California Supreme Court decided to act up its own exclusionary rules that would be similar to the United States Supreme Court's rules, but not as strict.

2. Many states, including California, gradually evolved through a series of their respective Appellate and Supreme Court decisions their own exclusionary rules that become almost identical to the federal rule.

3. Some states retained their "non-exclusionary" policy of allowing any evidence providing it was material and relevant regardless of the means used to obtain it.

E. Post-Mapp - 1961 To Present

1. Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684 (1961). The United States Supreme Court reversed its earlier decision not to interfere in the individual state's Constitutional matters and decided to enforce the federal exclusionary rule in all matters when they would find what they interpreted as violations of the United States Constitution.

Ohio officers had information from some source (not indicated in the case whether the source was reliable or not) that a person wanted for questioning in a bombing case was hiding in Mrs. Mapp's house. They asked permission to enter and were refused admittance. Forced entry was accomplished and there were several concurrent struggles between officers and occupants of the house.

Mrs. Mapp was arrested and her house ransacked. She was later charged with possession of some obscene pictures that were found in the search. The Ohio court stated the search was clearly illegal, but was not quite bad enough to "shock the conscience." They allowed the evidence and Mrs. Mapp's conviction was upheld.

The United States Supreme Court ruled that, by virtue of the Fourteenth Amendment "due process" provision, the Fourth and Fifth Amendments did apply to the states as well as to the federal government and its officers. It appears that this was the beginning of the United States Supreme Court's direct involvement in matters of State search and seizure cases and the Fourteenth, Fourth, and Fifth Amendments as they applied to the exclusionary rule.

2. People v. Mickelson, 59 A.C. 465 (1963). The California Supreme Court sat down a few guidelines for California officers:

a. Circumstances short of probable cause to make an arrest may still justify an officer's stopping pedestrians or motorists on the streets for questioning.

b. If circumstances warrant it, he may in self-protection request a suspect to alight from a vehicle or to submit to a superficial search for concealed weapons.

c. Should the investigation then reveal probable cause to make an arrest, the officer may arrest the suspect and conduct a reasonable incident search.

d. This may be somewhat at odds with earlier cases heard by the United States Supreme Court but this does not automatically make it unconstitutional.

3. Ker v. California, 374 U.S. 23, 83 S.Ct. 1623 (1963). Ker was observed by officers doing what appeared to be buying marijuana from another man. The officers followed him and lost him when he made a U-turn and reversed his direction of travel. The officers obtained, through a reliable source, information that Ker had purchased marijuana in the past from that other person and they found out where he lived by checking his auto registration.

a. The officers went to Ker's apartment, determined that someone was inside, obtained a key from the manager, and entered without announcing their presence. They observed Ker and his wife in the apartment, and also observed a kilo of marijuana in the kitchen. They arrested Ker and his wife, took the marijuana as evidence.

b. The officers explained their failure to announce their entry without knocking by stating it was their experience which caused them to act as they did, because in previous investigations they found narcotics being destroyed as they entered and they wished to prevent destruction of the evidence.

c. In a five to four decision, the Court ruled that the officers had reasonable cause to act as they did and that Section 844 of the California Penal Code applied in this case. They found that the officers had reasonable cause to suspect Ker of possessing marijuana and to make their unannounced entry to prevent the destruction of evidence.

4. Effect of Mapp and others on field procedures:

a. Precise police procedures were not prescribed by the Court.

b. Generally, the States established their own guidelines in accordance with United States Supreme Court decisions.

c. Following cases in this syllabus will help set the stage. The true test is whether the officers are acting on reasonable cause when they perform. Subterfuge will not be permitted.

II. The Use Of Force In Effecting An Arrest Or Recovering Evidence

A. General Rule

While the police are entitled to use force where necessary for the purpose of effecting an arrest or recovering evidence, the use of such force must comport to the appellate courts' notions of due process of law. The appellate courts have viewed the extent of force which may be used as a question of fact, each case being decided on its own merits. However, certain generalizations can be made and the following examples indicate the approach taken by the appellate courts.

1. Use of Force Upon Person of a Suspect:

a. The police are not entitled to use either a stomach pump or an emetic in order to recover evidence which the suspect has swallowed into his digestive system. (Rochin v. California, 342 U.S. 165; and Vasquez v. Superior Court, 199 Cal.App.2d 61 (1962).)

b. Nor are the police permitted to club a man to obtain evidence which he has stuffed into his mouth. (People v. Parham, 60 Cal.2d 378.)

c. Nor are the police entitled to choke a man to extract evidence from his mouth. (People v. Erickson, 210 Cal.App.2d 177; People v. Sevilla, 192 Cal.App.2d 570; People v. Martinez, 130 Cal.App.2d 54.)

d. However, the police are entitled to put an arm around the suspect's neck in order to prevent him from swallowing contraband which he has placed in his mouth, so long as the armlock does not amount to choking. (People v. Dawson, 127 Cal.App.2d 375; People v. Cisneras, 214 Cal.App.2d 62.)

e. Furthermore, the police may attempt to prevent a suspect from swallowing evidence by holding his adam's apple so long as they do not choke him, and if the defendent chokes because he is trying to swallow contraband, the police have a right to remove the contraband from the defendent's mouth to prevent his choking to death. (People v. Dickenson, 210 Cal.App. 2d 127.)

f. The police also have a right to use such force as is necessary to accomplish an arrest and to defend themselves so long as the amount of force applied does not violate due process. Thus, the police may pound a suspect's fist three or four times in order to recover evidence which that suspect attempts to keep in his clenched fist. (People v. Almirez, 190 Cal.App. 2d 380.)

B. The Use Of Force Necessary To Effect An Entry Into A Premises For The Purposes Of Arresting A Person Whom The Police Reasonably Believe To Be Inside The Premises

1. Statutory Provision - Text:

a. Penal Code 844: "To make an arrest, a private person, if the offense be a felony, and in all cases peace officers, may break open the door or window of the house in which the person to be arrested is, or in which they have reasonable grounds for believing him to be, after having demanded admittance and explained the purpose for which admittance is desired."

2. Interpretation:

a. General Rule: The police have a right to make a forcible entry without first identifying themselves and demanding admittance if they reasonably believe the defendant to be inside the premises and if the explanation and demand requirements of Penal Code 844 increase the officer's peril or frustrate the arrest or result in the destruction or disposal of evidence. (People v. Maddox, 46 Cal.2d 301.)

b In most factual situations which have been presented to the appellate courts, the courts have found some basis in the facts known to the arresting officer which reasonably lead the arresting officer to believe that compliance would result in the destruction of evidence by the particular suspect the police desire to arrest. (See Ker v. California, 374 U.S. 23.)

c. However, it has recently been held that at least in the case of narcotic suspects, where the evidence in the form of narcotics or money is of a kind susceptible to destruction in a matter of seconds, the police may make entry on the basis of their belief that their experience has indicated to them that persons involved in narcotic trafficking will always attempt to dispose of the evidence, even in the absence of any facts which would have permitted the police to believe that this particular suspect was about to destroy or dispose of evidence. (People v. Manriquez, 231 A.C.A. 799.) Whether this belief in the general destruction of evidence by narcotics suspects will be applied to areas other than narcotics has not yet been determined in any appellate decision. However, it would appear that the appellate courts would also apply this principle to bookmaking cases. (Cf. People v. Russell, 223 Cal.App.2d 733.)

III. What Constitutes A Legal Search

A. Search Defined

1. Search and Seizure. A prying into hidden places for that which is concealed, and the object searched for has been hidden or intentionall put out of the way. A seizure contemplates a forcible dispossession of the owner and is not a voluntary surrender. (People v. Fitch, 189 Cal.App. 2d 398.

2. Cursory Search. A contact or petting of the outer clothing of a person to detect by the sense of touch if a concealed weapon is being carried. This is generally considered by the Courts as reasonable to protect the safety of the officers.

3. Areas not protected by Fourth Amendment, United States Constitution:

a. Merely looking at that which is open to view. (People v. Fitch, 189 Cal.App.2d 398.)

b. Observe through a car window what is open to view. (People v. Myles, 189 Cal.App.2d 42.)

c. Mere presence on the land of another does not bar reliance and action on what is seen from such a vantage point. (People v. Rayson, 197 Cal.App.2d 33.)

d. The Fourth Amendment does not extend to open fields and woods and search and seizure may be made in such a place without a warrant. (Hecter v. United States, 265 U.S. 57.)

e. An officer may enter a place of business or other building opened by practice to the public. If he observes an offense being committed, or if he observes contraband, he may arrest and he may seize such contraband. (Marion v. United States, 275 U.S. 192; Hock v. State of Wisconsin, 225 N.W. 191.)

f. The officer is not required to close his eyes to what he observes to be obvious. (People v. Griffin, 162 Cal.App.2d 712.)

g. An officer observed a person drop an object to the ground. He picked it up and found it to be a marijuana cigarette. The voluntary dropping of the object did not constitute a search. (People v. Spicer, 163 Cal.App.2d 676.)

B. Authority For Search Under P.C. 833 For Weapons Without Arrest

1. C.P.C. 833. A peace officer may search for dangerous weapons any person whom he has legal cause to arrest, whenever he has reasonable cause to believe that the person possesses a dangerous weapon. If the officer finds a dangerous weapon, he may take and keep it until the completion of the questioning, when he shall either return it or arrest the person. The arrest may be for the illegal possession of the weapon.

2. By its own wording, the law makes it possible for an officer to search for a dangerous weapon on reasonable cause to ascertain if the person to be searched has such a dangerous weapon in his possession. This should be limited to a cursory search, or "pat down," however, because of other case law covered elsewhere in this course.

3. The results of the search may determine whether the person searched is to be arrested or not.

C. Search With Consent

1. Consent, defined: The individual who has the legal right to waive his Constitutional protection against search and seizure except on reasonable cause may do so by voluntarily allowing the officer to conduct a search. The voluntariness must be clearly indicative of a meeting of the minds "of the officer and the person to be searched" that the consent was of free choice. There shall have been no real or implied threat or use of force or any other form of intimidation.

2. Examples of cases involving consent:

a. Acting on unclassified information (i.e., unknown reliability of informant) that the suspect had marijuana, officers knocked on subject's door and said they wanted to talk to him. One officer stated, "You don't mind if we search your apartment, do you?" The subject replied, "No. Go ahead." (People v. Burke, 47 Cal.App.2d 45.)

b. Suspect was under arrest for possession of heroin. He was arrested and consented to the search. The defense contended that since he was under arrest his consent was not a consent but a submission to authority. The Court stated that the factor that the defendent is under arrest must be considered when determining if consent was freely given, or it is a matter of fact to be determined by the Court. (People v. Robinson, 149 Cal.App.2d 282.)

3. Voluntary nature of person who has legal right to give consent must be shown.

4. Express consent is that which is directly given either orally or in writing. It is a positive, direct, unequivocal consent, requiring no inference or inference to supply its meaning.

5. Implied consent is manifested by signs, actions, or facts, or by inaction or silence, which raise an inference that the consent has been given.

6. There is no requirement that an officer shall first advise a person of his Constitutional rights and of his right to refuse to grant consent to a search before the officer seeks a valid consent from the person to conduct a particular search. (People v. Chaddock, 249 A.C.A. 557.)

D. Limitations Of A Search With Consent

1. Authority to consent to search:

a. Secretary of suspect consented to search of office. (People v. Allen, 142 Cal.App.2d 267.)

b. Mother of suspect consented and assisted in search. (People v. Michael, 45 Cal.App.2d 751.)

c. Wife of suspect consented to house search. (People v. Carter, 48 Cal.App.2d 737.)

d. One of four occupants of house and garage converted into two bedrooms unrented, although others did not. Held valid. (People v. Silva, 140 Cal.App.2d 791.)

e. Minor daughters consented to search of house. Consent held invalid. (People v. Jennings, 142 Cal.App.2d 160.)

f. Owner of private premises where defendant roomed was valid consent. (People v. Gorg, 45 Cal.App.2d 776.)

g. Apparent authority to consent. "It has been held that where a search is made pursuant to consent obtained from a person believed by the officers to have authority to grant such consent, such search will be reasonable even though the officers may be mistaken or to the extent of the authority of such person." (People v. Gorg, 45 Cal.App.2d 776; People v. Coratativo, 46 Cal.App.2d 68; People v. Kelly, 195 Cal.App.2d 669.) "If the entry is made in good faith and with the consent of a person with apparent authority, it is not unlawful." (People v. Ronsome, 180 Cal.App.2d 140; People v. Quinn, 194 Cal.App.2d 172; People v. City, 210 Cal.App.2d 489.)

2. Scope of search as to time, distance, and subsequent search:

a. Search for long period of time. In People v. Montes, 146 Cal.App.2d 531, officers observed two narcotics transactions, followed the cars involved, and made arrests. They went to the suspected dealer's house and found marijuana. They arrested Montes at 7:45 p.m. and the search continued all night and part of the next day.

b. Another search lasted for six hours in the office of an alleged "Cancer Specialist," during which the office was searched and seizure made of patients' case histories, financial records, and medical equipment. The search was ruled valid. (People v. Schmitt, 155 Cal.App.2d 87.)

c. Time lapse between arrest and search. It was deemed a valid search for the officers to search a vehicle 45 minutes after an arrest and the vehicle had been towed to a garage. Following an arrest for drunk driving, officers gained information that the defendant had a weapon in his car. They searched, found the weapon, and the search was sufficient to warrant a conviction for the weapon violation. (People v. Baker, 135 Cal.App.2d 1.)

d. Search some distance from the arrest. This is presently subject to dispute because of the recent Chimel case. The scope of search is generally restricted to the area under the immediate control ("within arm's reach") of the suspect. (Chimel v. California, 395 U.S. 752, 89 S.Ct. 2034, 1969.)

e. Subsequent searches. Generally, a search warrant should be obtained for subsequent searches.

E. Probationers And Parolees

1. Local parole policies make it possible for officers and parole officers to conduct searches of parolees without the limitations of the Fourth Amendment. The prisoner is at large but still technically in "constructive custody."

2. Probationers may have a condition of probation which provides for their submission to search whenever any police officer considers it necessary to conduct such a search. By accepting the conditions of probation, the probationer waives his Constitutional rights against search and seizure.

IV. Search Incident To Probable Or Reasonable Cause

A. Probable And/Or Reasonable Cause Defined

For all practical purposes for this course, probable cause and reasonable cause will be considered synonymous.

"Reasonable or probable cause for arrest has been the subject of much judicial scrutiny and decision. There is no exact formula for the determination of reasonableness. Each case must be decided on its own facts and circumstances..., --and on the total atmosphere of the case... Reasonable cause has been generally defined to be such a state of facts as would lead a man of ordinary care and prudence to believe and conscientiously entertain an honest and strong suspicion that the person is guilty of a crime." (People v. Ingle, 53 Cal.App.2d 407, 412, 1960.)

B. Reasonable/Probable Cause Factors

1. Good faith is essential, but it is not enough alone. (People v. Ingle, Supra.)

2. Interrelationships of innocent facts.

a. When a known narcotics user, frequently visited by other users, is overheard talking of "balloons," and a "funnel," then "heads for the bathroom," when officers knock and announce themselves, the combination of these individually explainable circumstances are sufficient to raise a strong suspicion that the known user is packaging narcotics for sale or transport. (People v. Fisher, 184 Cal.App.2d 308, 311.)

b. Telephones, tables, blackboards, chalk, swatch sheet, and a wet rag, all innocent when considered separately, constitute the usual "bookmaking" paraphernalia of a "relay spot," and give officers reasonable cause to believe that a bookmaking violation is taking place. (People v. Martin, 45 Cal.App.2d 755.)

3. Flight or consciousness of guilt. Sudden realization that officers are present and focusing attention on suspect, leading to attempt to flee, constitute reasonable cause.

4. In company with known criminals may be a factor to be considered.

5. Location where crimes frequently occur and the actions or the presence of the subject indicate the need for further inquiry.

6. Time of day or night, particularly night.

7. Informants.

8. Possession of stolen property certainly leads to reasonable cause to inquire as to the means whereby the possessor came into possession.

9. False statements, evasive answers, or refusal to answer. These do not constitute criminal acts and are within the protection of the Fifth Amendment, but may lead to establishment of a suspicious train of thought.

10. Refusal to identify self. C.P.C. 647 (E) requires an individual to identify himself and explain his presence when public safety demands such inquiry.

11. Subject significantly fits the description of a wanted person.

12. Hue and cry. When a person appears to be in the act of committing a serious crime or escaping after such a crime, and where an immediate decision is required, the Courts appear more lenient in their weighing of reasonable cause, particularly if there is apparent danger to human life.

13. Emergency nature of the situation.

a. Disturbance of peace situations involving an impending juvenile gang fight. Because of the anticipated "rumble," when the officer saw one of four juveniles in a car reach forward as if to reach for a gun, he found marijuana. (People v. Jiminez, 143 Cal.App.2d 671.)

b. Officers or others in danger, evidence may be destroyed, or a felon may escape. There must clearly be shown sufficient cause to take the emergency action in order to explain such action.

14. Contemporaneous with arrest.

a. Search may or may not be coupled with an arrest.

b. Reasonable cause to search may lead to arrest or release.

c. Arrest may lead to search.

15. Limitations of search:

a. Weapons except when circumstances or nature of crime indicate the need for more detailed search.

b. The thoroughness of the search should not be inconsistent with the nature of the arrest.

c. Chimel case outlines nature and scope of search. See Appendix A.

d. Subject of the search. What may be seized:

1) Fruits of the crime for which the person is suspected.

2) Means by which crime committed.

3) Stolen property.

4) Weapons.

5) Means used for escape.

C. Temporary Detentions (Probable Cause)

1. A motorist driving in an eccentric manner on the freeway.

a. The police may suspect the possibility the driver may be intoxicated.

2. A motorist driving without proper lighting on his license plates and with dirt obscuring the visibility of the numbers.

a. The police may suspect the possibility the car may be stolen.

3. A driver sitting in an automobile with the motor racing at the side entrance of a suburban bank during banking hours.

a. The police may suspect the possibility of a holdup.

4. A motorist driving a truck without lights from a closed warehouse driveway at 2 a.m.

a. The police may suspect the possibility of theft or commercial fraud.

5. A man staggering on the street outside a bar at 11 p.m.

a. The police may suspect the possibility of drunkenness in a public place.

6. Two men parked in an automobile in lovers' lane at midnight with the lights out.

a. The police may suspect the possibility of an attempt at robbery or rape.

7. A man on the street at 11 p.m. in a high burglary area carrying several large bulky cardboard cartons.

a. The police may suspect the possibility of burglary.

8. An elderly man in a public park in the afternoon offering candy to young children and patting them on the arm.

a. The police may suspect the possibility of child molestation

9. The appearance on the highway of three men in a grey Chevrolet after the police have received a report of a gas station stickup an hour ago in another part of the city by three men in a grey Chevrolet.

a. The police may suspect the possibility the men are wanted for robbery.

10. A man carrying a new portable typewriter case toward an area of several pawnshops and from time to time looking back in the officers' direction.

a. The police may suspect the possibility that he was about to pawn a stolen typewriter.

V. Search With A Search Warrant

A. Authority: Legal Basis For Search Warrants

1. The Constitution of the United States (Fourth Amendment) and the Constitution of the State of California (Article I, Section 19) both state:

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

2. Search warrant defined:

a. A search warrant is an order in writing, in the name of the people, signed by a magistrate, directed to a peace officer, commanding him to search for personal property, and bring it before the magistrate. (P.C. 1523.)

3. Grounds for issuing search warrant, C.P.C. 1524:

a. When property is stolen.

b. When used as means of committing a felony.

c. When in possession of another for concealment.

d. When property is evidence or contraband.

e. A search warrant cannot be issued but upon probable cause, supported by affidavit, naming or describing the person, and particularly describing the property and the place to be searched. (P.C. 1525.)

B. Affidavit Required For Search Warrant (See Appendix B)

1. The affidavit or affidavits must set forth the facts tending to establish the grounds of the application, or probable cause for believing that they exist. (P.C. 1527.)

2. Sworn statement of petitioner.

3. Set out probable cause for search.

4. Identify location to be searched and subject matter to be searched for.

a. Premises, person and/or subject to be searched for must be specifically and particularly described.

C. Search Warrant

1. Format. (See Appendix C)

2. Specific directions on warrant limits search.

3. No duty to ignore obvious contraband when officer is legally present.

a. Post guard and serve another warrant.

b. Exceptions for emergencies.

4. Reasonable force may be used to serve warrant. (P.C. 1531.)

5. Inventory and receipt. Described on the actual document.

6. Return. (See Appendix D)

7. Vehicles, boats, and aircraft are usually exempt from search warrant requirements because of their high mobility.

D. The Use Of Force Necessary To Effect An Entry Into A Premise For The Purpose Of Executing A Search Warrant

1. Statutory Provision - Text:

a. Penal Code 1531: "The officer may break open any outer or inner door or window of a house, or any part of a house or anything therein, to execute the warrant, if, after notice of his authority and purpose, he is refused admittance."

2. Interpretation:

a. General Rule: The police have a right to make a forcible entry without first identifying themselves and explaining their

purpose, if they reasonably believe that someone is inside the premises, and if the explanation requirements of Penal Code Section 1531 would result in the destruction or disposal of the evidence which the officers are authorized by the search warrant to search for and seize, if found. (People v. Villanueva, 220 Cal.App.2d 443; People v. Finn, 232 A.C.A. 515.)

VI. Search of Vehicles (See Appendix E)

A. Must Be Based On Reasonable Cause

1. Contraband or stolen property.
2. Used in felony.
3. Vehicle stolen.
4. Search for weapons.

B. Incident To Arrest

C. During Inventory Following Impound Or Storage

D. Subsequent Re-Search Of Vehicle

E. Removal Of Vehicle For Later Search - Emergency Conditions

F. Abandment Of Vehicle

VII. Emergency Searches

A. When Necessary For Officer's Safety

B. To Prevent The Destruction Of Evidence

C. Prevention Of Escape

D. Emergency Itself - Smoke, Fire

RULES OF EVIDENCE

I. Evidence Defined

A. Is The Material From Which Inferences May Be Drawn

1. "Evidence means testimony writings, material objects, or other things presented to the senses that are offered to prove the existence or non-existence of a fact (Ev. C. 140)."

2. "The law of Evidence is the introduction and processing of information designed to support or negate a particular issue or fact." Witkins

II. Forms Of Evidence

A. Real Evidence

1. Tangible objects.

2. Many types must be evaluated by expert testimony, i.e., blood test.

B. Document

1. Must be authenticated.

2. Best evidence rule--original writing must be used if avail.

3. Ev. Code 250.

a. Evidence includes handwriting, typewriting, printing, photostate, photo and every other means of recording upon any tangible thing, any form of communication or tape.

C. Testimony

1. Qualifications.

a. Able to express himself.

b. Understand duty to tell truth.

c. Knowledge and recollection.

2. Competency up to judge.

3. Weight up to jury.

4. Factual or opinion. (See opinion under presentation.)

D. Judicial Notice

1. The trier of fact accepts certain facts as true without the necessity of formal proof.

a. Federal and local laws.

b. Practice and procedure.

c. Matters of Universal knowledge.

d. Meaning of English.

2. Judicial notice cannot be used to fill in the essential elements of the crime (State v. Lawrence).

III. Types Of Evidence

A. Direct

Proves the fact in issue without presumptions or inferences.

B. Circumstantial

Proves the fact in issue indirectly from which an inference or presumption will arise.

C. Cumulative

Additional evidence which repeats or verifies (Court may exclude it).

D. Corroborative

Tends to buttress other evidence.

IV. Relevancy

A. Logical Relevancy

B. Legal Relevancy

1. Unduly prejudicial, e.g., (gory photo).

2. Time consuming.

3. Collateral issues.

C. Note: Evidence Must Have Probative Value, i.e., Must Tend To Prove The Proposition For Which It Is Offered

V. Gathering - Reporting

A. Corpus Delicti

1. Required on arrest or crime report.

2. Must be established prior to the introduction of any admissions or confessions.

B. Consciousness Of Guilt

Proof of acts, conduct, statements, and appearance are admissible to indicate a consciousness of guilt.

1. Appeared nervous.

2. Appeared excited.

3. Attempted to return property.

4. Attempted to influence juror.

5. Attempted to influence witness.

6. Attempted bribery.

7. Attempted escape or flight.

8. Falsehoods - deceptions.

9. False name.

10. Resisting arrest or search.

C. Privileged Communications

1. Husband and wife.

a. Confidential marital communication.

b. Presumption.

c. Eavesdropper.

d. Divorce.

e. Observations of one spouse.

2. Attorney - Client.

3. Physician - Patient.

4. Priest and penitent.

a. Some states must be a confession.

b. California Ev.C. 1032, "made in course of religious practice."

5. Self incrimination. Fifth Amendment (Griffin v. California).

D. Illegally Obtained Evidence

1. Fourth Amendment--people shall be secure from unreasonable search and seizure.

2. Exclusionary rule made applicable to the states by Mapp v. Ohio.

3. Wiretap eavesdrop. Fourth Amendment bars use of such evidence regardless of whether committed by trespass.

VI. Presentation Of Evidence

A. Presentation Of Testimony

1. Competency is up to the judge.

2. Credibility is up to the jury.

3. Impeachment - discredit a witness.

4. Mechanics of testimony.

a. Direct examination.

b. Cross examination.

c. Redirect - rehabilitate

d. Re-cross.

5. Opinion.

a. Expert.

b. Non-expert. (Speed - Intoxication - Identity - Size - Distance - Time)

6. Memory refreshed.

a. Present memory refreshed.

1) After being refreshed he may recall and then he may testify.

2) Opposition is entitled to examine the entire article used to refresh.

b. Past memory recorded.

1) No recollection at all.

2) May be allowed to read if:

a) Notes were made by him or at his direction.

b) Had personal knowledge of the facts when notes were made.

7. Hearsay and its exceptions.

a. Hearsay.

1) A witness's testimony may be based on:

a) His own knowledge generally admissible.

b) His opinion generally not admissible.

c) Reports to him from others (hearsay).

2) Hearsay defined. Hearsay is oral testimony or documentary evidence as to someone's word or conduct outside court offered to prove the truth of the matter asserted. May consist of:

a) Oral statements.

b) Writings.

c) Assertive conduct.

3) Hearsay is not usually allowed because:

a) Deprives adversary of his right to cross examine.

b) Lack of confrontation.

c) Lack of oath.

d) Lack of trustworthiness.

e) Jury cannot weigh credibility of declarant.

B. Exceptions

1. Admissions - Confessions.

a. Admission - part of the corpus.

b. Confession - all of the corpus.

c. Both must be free and voluntary.

1) (Fruit of the poison tree - poison tree doctrine.)

2) Question of the voluntariness is passed on by judge.

d. Admissible only after:

1) Establishing the Corpus Delicti.

2) Miranda.

e. Statements against interest and are therefore deemed more reliable.

2. Dying declarations.

a. Requirements for its admissibility.

1) Pertain cause of death.

2) Conscious hopeless expectation of impending death.

3) Capacity of a witness when made.

4) Must have died.

3. Prior testimony. Not permitted in a criminal case where the accused was not a party to the prior trial. (Because it deprives him of the right to confront witnesses against him.) However, the defendant can submit on the transcript.

4. Past recollection record.

5. Res Gestae - Spontaneous, no time for deliberation.

C. Presentation Of Document Evidence

1. Best evidence rule.

2. Officer's notebook.

3. Diagrams.

4. Photographs.

D. Presentation Of Real Evidence

1. Must be logically as well as legally relevant.

E. Presumptions

1. Conclusive.

2. Rebuttable.

APPENDIX A

CHIMEL V. CALIFORNIA

SEARCHES INCIDENT TO ARREST

Chimel v. *California*, 395 U.S. 752
(United States Supreme Court, June 23, 1969)

Late in the afternoon of September 13, 1965, three police officers arrived at the Santa Ana California, home of the defendant with a warrant authorizing his arrest for the burglary of a coin shop The officers knocked on the door, identified themselves to the defendant's wife, and asked if they might come inside. She ushered them into the house where they waited 10 to 15 minutes until the defendant returned home from work. When the defendant entered the house, one of the officers handed him the warrant and asked for permission to "look around." The defendant objected, but was advised that, "on the basis of the lawful arrest," the officers would nonetheless conduct a search. No search warrant had been issued.

Accompanied by the defendant's wife, the officers then looked through the entire three-bedroom house including the attic, the garage, and a small workshop. In some rooms the search was relatively cursory. In the master bedroom and sewing room, however, the officers directed the defendant's wife to open drawers, and "to physically move contents of the drawers from side to side so that (they) might view any items that would have come from (the) burglary " After completing the search, they seized numerous items – primarily coins, but also several medals, tokens, and a few other objects. The entire search took between 45 minutes and an hour.

At the defendant's subsequent trial on two burglary charges, the items taken from his house were admitted into evidence against him, over his objection that they had been unconstitutionally seized He was convicted. The United States Supreme Court reversed the conviction on the ground that the search of defendant's entire house was invalid. The Court assumed that the arrest of the defendant was valid *Id*

The United States Supreme Court, in reversing Chimel's conviction, made the following important points, concerning the scope of a search incident to a lawful arrest:

1 When an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to resist arrest or effect his escape. Otherwise, the Court explained, the officer's safety might well be endangered and the arrest itself frustrated

2. Additionally, it is reasonable for the arresting officer to search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction.

3. Moreover, the arresting officer may search the area into which an arrestee might reach in order to grab a weapon or evidentiary items. As the Court explained:

> "A gun on a table or in a drawer in front of one who is arrested can be as dangerous to the arresting officer as one concealed in the clothing of the person arrested. There is ample justification, therefore, for a search of the arrestee's person and the area 'within his immediate control' - construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence."

4. Arresting officers *may not* routinely search rooms other than that in which an arrest occurs - or, for that matter, search through all the desk drawers or other closed or concealed areas in that room itself. Such searches, in the absence of "well-recognized exceptions," may be made only under the authority of a search warrant.

5. The Court's decision is not intended to affect the validity of the rule permitting the warrantless search of an automobile or of some other vehicle, assuming the existence of probable cause, where it is not practicable to secure a warrant because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought. Such a warrantless search of a vehicle is permitted even if it cannot be justified as incident to a lawful arrest or pursuant to a consent. 2/

6. The Court rejects the argument that so long as there is probable cause to search the place where an arrest occurs, a search should be permitted even though no search warrant has been obtained.

The Court disapproved of the search of Chimel's house because it went far beyond the defendant's person and the area from which he might have obtained either a weapon or something that could have been used as evidence against him.

COMMENT

Before *Chimel*, the general rule governing searches conducted as incidental to a lawful arrest was as follows: The search must have been limited to the premises where the arrest is made; it must have been contemporaneous therewith and not remote therefrom; it must have had a definite object; it must have been reasonable in scope; and it must have been reasonally related to the arrest. Where a search was otherwise reasonable, arresting officers conducting a search incidental to a lawful arrest did

not have to have probable cause to believe that seizable items could have been found were the search made. The probable cause requirement related only to whether there was probable cause to believe that the person arrested had committed the offense for which the arrest was made. 3/ Thus, it is likely that in many, if not most, cases where searched were made incidental to lawful arrests, the searching officers had probable cause to arrest but nor probable cause to search. The reasonableness of the search of the place of arrest was grounded on the fact that seizable items were frequently found following a search

It can be easily seen that *Chimel* revolutionizes the law governing searches incident to lawful arrest. Where a search can only be justified on the ground that it is incidental to a lawful arrest, the admissibility of any evidence obtained as a result of such a search will depend upon whether the officers have complied with the new *Chimel* rules. The *Chimel* rules apply to arrests whether or not the arrests are made pursuant to a warrant of arrest.

For the convenience of the reader, the affects of the Chimel rules can be summarized as follows:

1 An officer arresting a suspect inside a dwelling or other structure may search the person of the suspect for weapons and for evidence reasonably related to the arrest.

2. The officer may also search for weapons or evidence in an area within the immediate control of the person arrested, that is, the area from within which he might gain possession of a weapon or destructible evidence.

3. Officers arresting a suspect lawfully within a dwelling or structure may ordinarily not search, as an incident to the arrest, beyond the area within the arrestee's immediate control even though they have probable cause to believe that seizable items can be found.

4. Arrests effected outside a dwelling house or structure will not authorize an entry into the house or structure in the absence of an emergency or other justification (e.g., to execute a search warrant).

5. If officers unreasonably delay an arrest which could have been made outside a structure and then arrest inside, the courts may consider the delayed arrest a subterfuge and invalidate the entry and the seizure of any evidence not on the person of the arrestee.

NOTE: While this has not been expressly stated by the United State Supreme Court, language in its opinion in the *Chimel* case suggests the same.

6 Searches of vehicles, motorists and pedestrians are not effected by *Chimel*.

7 *Chimel* does not affect the rule that officers may seize items observed in plain view where the officers have the lawful right to be. Thus, evidence observed in plain view within the room of the arrest, or in other rooms entered while searching for the suspect or in entering or leaving the premises

could be subject to seizure. This plain view rule would not apply where officers enter rooms just for the purpose of having a plain view.

8. If officers have made an arrest, they should seek to obtain a valid consent to search from the arrested person where the officers desire to search an area or place not within the immediate control of the arrested person. This Office recommends that, to be on the safe side, an arrested person should first be advised of his right to refuse to consent to a search, before being asked whether or not he consents to search. The validity of consent searches is not affected by *Chimel.*

9. An arrested person who refused to consent to a search should be properly *Miranda-ized* and questioned concerning the presence or location of seizable items within the place of arrest. Should an arrested person, having been properly *Miranda-ized* disclose that the premises contain certain seizable items, the officers have probable cause to search. Can they then search? In the ordinary case, probable cause to search does not justify a search without a search warrant. Therefore, ordinarily a further search of the premises would require the authorization of a search warrant.

10. Where officers have made an arrest and believe they have probable cause to make a search more extensive than a search permitted by *Chimel*, but are unable to secure a valid consent to search, this Office should be contacted for issuance of a search warrant.

11. Under California law, a valid arrest (that is, no citation issued) for a simple traffic offense, standing alone, justifies only a cursory (that is, pat-down) search for weapons. This rule has *not* been changed by *Chimel.* For a discussion of searches incidental to arrests for simple traffic offenses, see LEIB. October 1968, at pages 166-170.

12. Where officers intend to make an arrest, whether or not pursuant to a warrant of arrest, and it is believed that there is probable cause to make a search of a particular place for seizable items, officers should first secure a search warrant if reasonably practicable to do so. If a search warrant is obtained it must be executed without unreasonable delay and, in all cases, not later than within ten days after its date of issuance. It should be remembered that a warrant of arrest is *not* a search warrant.

13. It should be noted that *Chimel* involves a case (as the dissenting opinion makes clear) where the officers, before the arrest was made, had probable cause to arrest defendant and probable cause to search his house. In *Chimel* the officers did not secure a search warrant. It was not shown that it was reasonably practicable to search without a warrant. Accordingly, having made the arrest within the premises a further search would have been justified only pursuant to a search warrant or a valid consent. It is the position of this Office that where (1) officers have probable cause to arrest and to search and (2) it is not reasonably practicable to obtain a search warrant and (3) the arrest is not unreasonably delayed so that the arrest is effected within a place or its threshold, then a search of a

place where the arrest is made and to which the probable cause relates would be lawful as falling within a "well recognized exception" spoken of by the Court. 5/ *Cases falling within this "well-recognized exception" will be exceptional.* It should also be borne in mind that after the arrest is made and it *becomes* reasonably practicable to obtain a search warrant, the arresting officers should do so before making a search beyond the scope of that permitted by *Chimel*.

14. It has been pointed out that where an arrest is made, and it is *after* the arrest that the officers believe they have now probable cause to make a search, a search warrant will be ordinarily required before a search more extensive than the *Chimel* type search can be undertaken. Here again, if it becomes impracticable to obtain a search warrant, a further search may be reasonable. In *Chimel*, it should be noted, the officers did not attempt to obtain a search warrant before making the arrest. Nor did they attempt to obtain a search warrant while they were upon the premises. Had officers been dispatched to obtain a search warrant, and the defendant's wife or another person did not cooperate with the officers' reasonable requests to prevent destruction or concealment of evidence, it would have become impracticable to further delay the search.

15. When officers have determined that, following an arrest, there is probable cause to search the place of arrest beyond the area of the arrestee's immediate control, the question arises what can be done to prevent the concealment, removal, or destruction of evidence while a search warrant is being obtained. In one case, *People* v. *Edgar*, 60 Cal.2d 171 (1963), the facts were as follows: The defendant, Edgar, lived with his mother and stepfather, and after his arrest, his mother visited him in jail. A deputy sheriff overheard their conversation. Edgar told his mother that there were pictures at home that might be important to his case and asked her to hide them until he told her what to do with them. The deputy sheriff told the police officer in charge of the case about the conversation, and he and another officer went to Edgar's home. They told Edgar's mother they knew about the pictures and asked her for them. She told the officers she did not know what she should do and that she thought she should consult an attorney. The officers talked to her from 15 to 30 minutes and told her two, three, or four times that if she did not deliver the pictures to them, they would be forced to take her to the police station, book her for withholding evidence, obtain a search warrant, and come back and get the pictures. As a result of these statements, Edgar's mother went into another room, returned with the pictures, and gave them to the officers. The California Supreme Court, at the outset, ruled that the officers would not have any right to arrest defendant's mother for concealing evidence in violation of Penal Code Section 135 6/

The court noted that the officers did not have reasonable cause to believe that defendant's mother violated or attempted to violate Section 135 in their presence. Nor, the court added did she conceal the pictures within the meaning of the statute by her initial refusal to give them to the

officers. Therefore, the officers acted lawfully in compelling her to choose to submitting to arrest and giving them the pictures. The following language of the court is pertinent:

> "Were there a right to arrest persons for insisting on search warrants and to conduct warrantless searches and seizures as incidental to such arrests, search warrants would become pointless necessities except when no one could be found at home."
> "The Attorney General contends, however, that it was necessary for the officers to act without a search warrant to prevent Edgar's mother from successfully disposing of the pictures. No such necessity appears. The officers knew that Edgar wishes the pictures hidden, not destroyed. They could have kept his mother under surveillance, and forewarned of what Edgar wished her to do, they were confronted with no substantial risk that she would succeed in putting the pictures beyond their reach before a warrant could be obtained."

On the other hand, officers watched the premises need not wait for the arrival of a search warrant where violence or destruction, removal, or concealment of the property intended to be seized is imminent 7/

16. Finally, it should be noted that the position of this Office is that the *Chimel* rules do not apply to searches made before the case was decided (June 23, 1969). This position has been taken in *People* v. *Castillo*, A.C.A. (a case not yet final).

FOOTNOTES

1/ The opinion of the United States Supreme Court does not affect the policies concerning arrest warrants adopted by this Office following the California Supreme Court's decision in *People v. Sesslin*, 68 A. C 431 and *People v. Chimel*, 68 A. C. 448 (1968), discussed in the April 1968 issue of LELIB at pages 66-75.

2/ For cases illustrative of this rule, see LELIB, May-June issue.

3/ In cases of misdemeanors, the probable cause relates to a public offense reasonably believed to have been committed in the arresting officer's pressence. Where arrests were made pursuant to warrant, the probable cause is required to be set forth in the affidavit or declaration supporting the complaint and arrest warrant.

4/ Advising a suspect of his right to refuse to consent to a search is not required. Giving such advise, however, is more likely to result in favorable rulings on the issue of whether the consent was freely and voluntarily given.

5/ As Justice White, in his dissenting opinion in *Chimel*, notes: "The Court has always held, and does not today deny, that when there is probable cause to search and it is 'impracticable' for one reason or another to get a search warrant, then a warrantless search may be reasonable."

6/ Penal Code Section 135 provides: "Every person who, knowing that any book, paper, record, instrument in writing, or other matter or thing, is about to be produced in evidence upon any trial, inquiry, or investigation whatever, authorized by law, willfully destroys or conceals the same, with intent thereby to prevent it from being produced, is guilty of a misdemeanor."

7/ See *People v. Marshall*, 69 A. C. 46, 56 (1968).

APPENDIX B

AFFIDAVITS REQUIRED FOR SEARCH WARRANTS

AFFIDAVIT REQUIRED FOR WARRANTS

The statutory authority permitting the issuance of a warrant of arrest or search warrant based soley upon formal allegations in the language as required by PC 806 is unconstitutional and violates the Fourth Amendment as applicable to the states through the Fourteenth Amendment. However, in a case in which an officer in good faith obtains a warrant for the arrest of the accused, and additionally, has personal knowledge constituting probable cause for the arrest of the accused at the time he attempts to execute the warrant otherwise invalid on federal grounds, the arrest is lawful and fruits of the search incidental to that arrest are admissible if material and relevant to prove any element of the offense.

Briefly what the court is saying is that the Constitution of the United States and that of California require that before a warrant shall issue (either search or arrest warrant) the magistrate shall review upon affidavit the probable cause for that arrest or search. Complaints previously used to secure warrants of arrest were mere conclusion or statements that an offense had been committed but did not upon oath state what was the probable cause or reasons for believing that the offense had been committed. Now in order to secure arrest warrants, particularly in felony cases, the courts require affidavits accompanying the complaint. If such affidavit is not used, any evidence found as a result of a search incidental to that arrest will not be admitted into evidence. Of course if the defendant is already in custody, no affidavit is needed with the complaint. Each court in the various judicial districts have different forms for the affidavit that may be used by that particular court. Officers should check with the particular court in which they routinely do business.

Hearsay evidence is admissible in these affidavits because it is being used to establish probable cause for the arrest, not the truth of the matter of the offense. (People v. Chimel, 254 ACA 13, 4th Dist., Div. 2.)

SEARCH WARRANT: SUFFICIENCY OF AFFIDAVIT

People v. Flores, 68 A.C. 585

An officer of the Los Angeles Police Department procured a search warrant authorizing him to search defendant Flores, a 1961 car, and an apartment on Novgorod Street for narcotics. The affidavit in support of the search warrant stated that: the affiant swore that he had received information from informers that heroin could be purchased by calling a certain telephone number and asking for "Ferney" or "Annie," and that sales were consummated behind a certain store; that the affiant and other officers determined that the telephone number was that of the Novgorod apartment; that they observed the apartment for several days and saw defendant Flores take several trips in the automobile to the back of the store where he met with other persons; that during these trips, defendant made no stops other than behind the store; that on one such occasion an officer observed defendant hand a package to another man and receive money from him. The identity of the informers were not revealed in the affidavit.[1] Thereafter, a search, pursuant to the warrant, of the Novgorod apartment disclosed heroin.

The affidavit was held to justify the issuance of the search warrant. The court made the following points:

---

[1]The record shows no request by defendant's counsel for the disclosure of the informers' identities.

1. Even in the absence of an allegation in the affidavit that affiant believed that the informers were reliable, the magistrate may properly issue a warrant on the basis of their information if the supporting affidavit also recites facts indicating that reliance on the information is reasonable.

2. The affidavit, in setting forth the police observation of defendant's activities, alleged sufficient facts to establish the basis for reasonable reliance upon the information given to the officers. The informers had described the method by which the defendant sold narcotics. The officers had seen defendant drive from the apartment to the place of sale named by the informers without stopping. On one occasion, an officer had observed defendant exchange a package for money behind the store. The magistrate could, therefore, properly conclude that the affidavit established probable cause for his belief that defendant harbored contraband in his apartment.

The case illustrates the rule that information supplied by an informer, not a citizen-informant and one whose reliability has not been shown in the past, can justify a finding of probable cause if it is corroborated by other evidence showing that reliance on the information would be reasonable.

IN THE MUNICIPAL COURT _____ JUDICIAL DISTRICT

COUNTY OF ORANGE, STATE OF CALIFORNIA

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ORANGE

STATE OF CALIFORNIA)
)ss
COUNTY OF ORANGE)

AFFIDAVIT IN SUPPORT

OF SEARCH WARRANT

Personally appeared before me this _____ day of _____, 19____,

_____, who, on oath, makes complaint, and

deposes and says:

That ___he has, and there is just, probable and reasonable cause to

believe, and that he does believe that there is now on the premises located

at: _____

and in vehicle(s) described as: _____

and on the person(s) of _____

the following personal property, to-wit: _____

_____

Your affiant says that there is probable and reasonable cause to believe

and that he does believe that the said property constitutes:

(See PC Sec. 1524) _____

Your affiant says that the facts in support of the issuance of the

Search Warrant are as follows: that your affiant is a _____

_____

and has been so employed for _____;

That your affiant, while acting in said capacity, has received the following information: _____

_____

Your affiant has reasonable cause to believe that grounds for the issuance of a Search Warrant exist, as set forth in Section 1524 of the Penal Code, based upon the aforementioned facts and circumstances.

Your affiant prays that a Search Warrant be issued, based upon the above facts, for the seizure of said property, or any part thereof, -in the daytime - at any time of the day or night, good cause being shown therefore, and that the same be brought before this Magistrate or retained subject to the order of the court, or of any other court in which the offense(s) in respect to which the property or things taken, is triable, pursuant to Section 1536 of the Penal Code.

_____

Subscribed and sworn to before me

this _____ day of _____, 19___.

_____

Judge of the Municipal Court
Judge of the Superior Court

NIGHTTIME SERVICE

Your affiant states that in his experience in investigation of

_____

_____

_____

has shown that _____

_____

_____

_____

continues day and night; it is therefore important that the aforementioned personal property be seized as soon as possible, otherwise your affiant fears that it will become non-existant through _____

_____

_____

_____

_____

hence for this reason and because of the other facts and circumstances heretofore stated, your affiant requests that this Warrant contain a direction that it may be served at any time of the day or night, good cause appearing therefore.

APPENDIX C

SEARCH WARRANT FORMAT

IN THE MUNICIPAL COURT OF _____ JUDICIAL DISTRICT

COUNTY OF ORANGE, STATE OF CALIFORNIA

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ORANGE

S E A R C H W A R R A N T

THE PEOPLE OF THE STATE OF CALIFORNIA:

TO: ANY SHERIFF, CONSTABLE, MARSHAL, POLICEMAN OR ANY OTHER PEACE OFFICER IN THE COUNTY OF ORANGE, STATE OF CALIFORNIA:

Proof, by affidavit, having been made this day before me by

_____

that there is probable and reasonable cause for the issuance of the Search Warrant in accordance with Subdivision(s) _____ of the Penal Code, Section 1524.

YOU ARE THEREFORE COMMANDED to make immediate search in the daytime - at any time of the day or night, good cause being shown therefore, of the premises located and described as: _____

_____

and the vehicle(s) described as: _____

and the person(s) of _____

for the following personal property, to-wit: _____

_____

and if you find the same or any part thereof, to bring it forthwith before me at the Municipal Court of _____ Judicial District - Superior Court of the State of California, for the County of Orange, or to any other

CONTINUED

1 OF 2

court in which the offense(s) in respect to which the property or things taken is triable, or retain such property in your custody, subject to the order of the Court pursuant to Section 1536 of the Penal Code.

Given under my hand this _____ day of _____, 19____.

_____

Judge of the Municipal Court
Judge of the Superior Court

APPENDIX D

SEARCH WARRANT RETURN

IN THE MUNICIPAL COURT OF _____ JUDICIAL DISTRICT

COUNTY OF ORANGE, STATE OF CALIFORNIA

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ORANGE

RETURN TO SEARCH WARRANT

The following property was taken from the premises located at

_____

by virtue of a Search Warrant, dated _____, 19___, and executed by Honorable _____, Judge of the Municipal Court of _____ Judicial District - Superior Court of the State of California, for the County of Orange:

I, _____, by whom this Warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me under the Warrant.

All of the property taken by virtue of said Warrant will be retained in my custody subject to the order of this Court or of any other Court in which the offense(s) in respect to which the property or things taken is triable.

_____

Subscribed and sworn to before me

this _____ day of _____, 19___.

_____

Judge of the Municipal Court
Judge of the Superior Court

APPENDIX E

VEHICLE SEARCHES

VEHICLE SEARCHES

An automobile is a personal effect protected against unreasonable searches and seizures by the Constitution of the United States and the State of California. In many instances, the law relating to the search of persons and premises is equally applicable to the search of motor vehicles. But because an automobile can be moved quickly to an unknown location or beyond jurisdictional reach, the courts have seen fit to treat the search of a vehicle differently under some circumstances. In addition, the courts have recognized that it is inappropriate to equate the sanctity of the automobile, which is but a form of personalty, to that traditionally accorded a private home. It is difficult to accept the idea that a man's Ford is "his castle!"

It is these differences or modifications in the application of the law of search and seizure when applied to motor vehicles which merit a separate discussion. Material previously covered will be included only to the extent necessary to set forth the major methods of vehicle search and seizure available to law enforcement officers.

I. SEARCH UNDER THE AUTHORITY OF A WARRANT

A. Advantages of a Warrant

1. The courts tend to accept a magistrate's determination that probable cause exists. (See U. S. v. Ventresca, 380 U. S. 102 [1965].) Warrantless searches based on an officer's judgment are carefully scrutinized by the courts.

2. A warrant issued by an "impartial" person gives rise to a presumption that a search is legal. When a search is conducted by a policeman without a warrant, a heavy burden in placed on the prosecution to show that the search was reasonable and violated no basic constitutional right.

B. Requisites for Obtaining a Warrant

1. Probable cause - facts which are sufficient to cause a man of reasonable caution to believe that a crime has been committed and that evidence of that crime is located in a specific place.

2. Description of the property to be seized.

3. Description of the place (vehicle) to be searched. Where possible, include such data as:

a. make, model, body style;
b. license number;
c. color;
d. identity of owner or operator;
e. location where vehicle is expected to be located;
f. other distinguishing characteristics such as dented fenders, primer spots, window decals, broken windows, etc.

II. SEARCH WITHOUT WARRANT ON PROBABLE CAUSE

"It is to be remembered that it is only unreasonable searches which are prohibited. It was recognized by the framers of the Constitution that there were reasonable searches which could be made and for which no warrant was required. It has been stated over and over that what is reasonable is not to be determined by or from any fixed formula and the Constitution does not define what are unreasonable searches, and, it has been said, in our discipline we have no ready limitus-paper test. *United States v. Rabinowitz*, 339 U. S. 56. The recurring questions of the reasonableness of the search must find resolution in the facts and circumstances of each case." *People v. Airheart*, 262 Cal. App. 2d 673 (1968).

A. *Landmark Case - Carroll v. U. S.* 267 U. S. 132 (1925), held that a search may lawfully be made where there is probable cause to believe that an automobile or other conveyance contains that which by law is subject to seizure.

1. California has adopted and expanded the *Carrol Doctrine*. "If a police officer has probable cause to believe that an automobile contains contraband, he need not obtain a search warrant in order to search it." *People v. Terry*, 61 Cal. 2d 137 at 152 (1964).

2. The *Carroll Doctrine* allows a search to be made on probable cause, regardless of the lack of probable cause to arrest.

B. Probable Cause to Search a Vehicle for Contraband:

1. An officer observed a taxicab double-parked in front of a hote. When he approached the cab, he noticed the passenger withdraw his left hand from behind the seat at the juncture of the seat and back cushion. The officer removed the seat and found marijuana. "Since Officer Baker saw defendant's action in getting out, he had reasonable grounds to believe that he was hiding contraband and the search of the cab was therefore reasonable." *People v. Blodgett*, 46 Cal. 2d 114 (1956).

2. Defendant was observed driving a vehicle late at night with a burned-out taillight. The officer turned on his red light, sounded his horn several times and flashed his spotlight

across the back of the car. Prior to stopping, the driver leaned over so far that her head went out of view. Her car bounced off the curb at the same time. The car then stopped.

After the defendant got out, the officer looked under the front seat and found a bag containing marijuana. The defendant's failure to stop immediately and her movement justified searching the area around the seat. *People v. Shapiro*, 213 Cal. App 2d 618 (1963).

3. Defendant was stopped for a Vehicle Code violation. While standing by the open door waiting for the defendant to produce the vehicle registration card, the officer observed what appeared to be a marijuana seed and debris on the left rear floor of the vehicle. He then conducted a search for other contraband which he found in the glove compartment and in clothing in the vehicle.

Recognizing that some circumstances will justify the search of a vehicle, although they would not justify the search of a home or fixed piece of property, the search was declared reasonable. The observation in an automobile of a substance appearing to be a narcotic, even though not in a usuable amount, furnishes probable cause to believe a larger amount may be present and authorizes a search to find it. *People v. Schultz*, 263 Cal. App. 2d 114 (1968).

4. Where a person makes a curious movement which is not otherwise suspicious or furtive, there is no probable cause to search. The movement must be such as to give rise to a strong suspicion that the person is hiding contraband. Other observations concerning the car or its occupants, while not sufficient for arrest, might be used to justify a search. See *People v. Cruz*, 264 A.C.A. 506 (1968); *People v. Moray*, 222 Cal. App. 2d 743 (1963).

C. Probable Cause to Search a Vehicle Believed to Contain Evidence of a Crime

1. The police arrived about 4:30 a.m. at a men's store which had been recently burglarized. A suspect was found nearby and arrested. While continuing the investigation, the officer noticed a vehicle parked approximately 50 feet from the store. It was the only car parked in the area with the exception of the police cars. The keys were in the ignition and was parked near where the suspect was found hiding Because the officer has reasonable cause to believe that the car contained merchandise taken from the car, a search of the trunk, which was found to contain clothing from the burglarized store, was deemed to be proper. *People v. Morrison*, 258 Cal. App. 2d 75 (1968).

2. A man was shot while standing on the sidewalk talking to friends. The shots were fired from a passing vehicle. The license number and description of the vehicle were given to the police by witnesses. Approximately 40 hours later, the suspect vehicle was observed and stopped by two officers. The occupants were taken out of the car and the car was searched. A gun was found in the car. The search was found to be proper on the theory that the officers had probable cause to believe that an examination of the car "might produce evidence relating to the particular crime in which an automobile of that special description had been involved." *People v. Madero*, 264 A.C.A. 126 (1968)

D. Probable Cause to Search a Vehicle Believed to be Stolen.

1. Between 6 and 7 a.m., two officers came upon a car parked on a service road approximately three feet from the curb. The left door was slightly ajar. There were no other persons or vehicles in the area. The car was entered to check the registration card which showed the owner's address to be about two miles away. The ignition was being checked for a "hot wire" when a bag of marijuana was found under the dash.

"In this situation, it was not only proper but it was the duty of the officers to make an investigation of the vehicle in order to ascertain whether or not it had been stolen and if found to be stolen to take proper steps to remove it from the highway and cause its return to the person entitled to its possession." *People v. Drake*, 243 Cal. App. 2d 560, 564 (1966).

2. Where a suspect has been arrested driving a vehicle which had been reported stolen, and taken to a hospital for treatment of mi or injuries, a search made after the suspect was hospitalized may be too remote in time to be justified as incidental to the arrest However, because the vehicle is stolen, it is not unreasonable for an officer to seize and impound the car pursuant to the Vehicle Code for the benefit of the owner. Any search at that time is not subject to attack by the suspect because he had no interest in the car, possessory or otherwise. *Schoepflin v. United States*, 391 F. 2d 390 (1968).

E. Probable Cause to Search a Vehicle Used as a Means of Committing a Crime or an Instrument of the Crime

1. A "getaway" car used to leave the scene may be considered an instrument of the crime Even where the car fails to start and is left at the scene of the crime, it may be searched to ascertain the possible identity of the perpetrators of the crime. *People v. Cooper*, 256 Cal. App. 2d 500 (1967); *People v Laursen*, 264 A.C.A. 1069 (1968).

2. Victim noticed a white car parked acorss the street from her house, occupied by two men. On one occasion, the car left for a brief period and returned. When she left her

house, she noticed it was gone again. When she returned to her home, she saw the car was back again, but vacant. As she walked into the house, a man rushed out whom she recognized as the driver. The police were called and told of her observations.

The officers, upon arrival, searched the car. In the trunk was found a typewriter taken from a neighboring house. The search was justified, because the information received indicated that the car was used in the commission of the crime. *People v. Superior Court*, 264 A.C.A. 932 (1968).

3. When a body is found burned in an automobile, a detailed search and examination of the vehicle is warranted to determine if the instrument of death - the car - was a criminal or accidental one. *People v. Miller*, 245 Cal. app. 2d 112 (1966).

F. Flight as Probable Cause

1. At approximately 2 a.m., a vehicle without lights was seen leaving a parking lot of a cafe. The vehicle was stopped because the officer believed that the driver was possibly under the influence of alcohol. Four persons were found to be in the vehicle, in addition to the driver. All the occupants were ordered out of the car and a cursory search for weapons was begun. While the search was in progress, one of the passengers ran across the street into a housing project. The vehicle was searched after the flight of the one passenger, and evidence of a previous robbery was found under the rear seat.

There was no basis for a search prior to the flight of the passenger, but the sudden flight was found to be sufficient to give rise to reasonable inference on the part of the officers that he was guilty of some crime. Under such circumstances, the search of the automobile was justified. *People v. Alcala*, 204 Cal. App. 2d 15 (1962).

2. During the evening, a vehicle was observed parked near a vacant lot. A spotlight was put on the vehicle. At that time, the doors flew open, both occupants jumped out and ran. Several beer cans were observed on front seat of the car. A search of the vehicle revealed marijuana in the heater vent.

An officer has a duty to make a thorough investigation of suspicious circumstances, even when no specific offense is indicated by the conduct observed. A search made as part of the investigation is reasonable. *Perez v. Superior Court*, 250 Cal. App. 2d 695 (1967).

III. SEARCH OF IMPOUNDED VEHICLE

It is a common practice for law enforcement officers to impound a car after the driver or person in control has been taken into custody. This practice is authorized by statute in California. Veh

Code 22650, *et seq*. The procedure is usually preceded by an inventory to determine the contents of the vehicle. The inventory is made without a warrant, and any evidence found during the inventory is subject to the objection that it was obtained as the result of an illegal search and seizure.

A There is a difference in opinion as to whether an inventory incidental to impound is a search.

1. Majority view - An inventory is a search and must be reasonable under the circumstances. *People v. Roth*, 261 Cal. App. 2d 430 (1968).

2. Minority view - An inventory is not a search, but cannot be used as a subterfuge to conduct a search. *People v. Norris*, 262 Cal. App. 2d 897 (1968).

B. The "inventory" must be reasonable.

1. The *Carroll Doctrine* does not apply, because the vehicle has lost its mobility once it has been taken into custody for impound.

2. Justification is based upon the need to protect the property contained in the vehicle, as well as the vehicle itself.

3. The scope of the examination must be restricted to those areas where a person would ordinarily expect to store or inadvertently leave property:

   a. glove compartment,
   b. trunk,
   c. sun visors,
   d. front and rear seat area,
   e. view under the hood.

4. Ordinarily, the inventory should be made prior to towing the car car away.

   a. Consistent with the purpose of inventory.

   b Exceptional circumstances may justify searching the vehicle after it has been placed in storage:

      (1) auto blocking highway;
      (2) hostile crowd gathering, etc.

   c An unexplained delay in making an examination tends to convert an inventory into an exploratory search.

IV VEHICLE SEARCH INCIDENT TO ARREST

"When an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to resist arrest or effect his escape. Otherwise, the officer's safety might well be endangered, and the arrest itself frustrated. In addition, it is entirely reasonable for the arresting officer to search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction, and the area into which an arrestee might reach in order to grab a weapon or evidentiary items must, of course, be governed by a like rule." *People v. Chimel*, 395 U. S. 752 (1969)

A. Prior to *Chimel*, the rule was generally stated that a suspect's automobile could be searched incidental to his lawful arrest if the arrest took place in or near the vehicle.

1. When the suspect was arrested in or beside his vehicle, it was searched either as the "place of arrest" or as an object under his "immediate control."

2. Immediate control" was not limited to actual physical control:

a. arrestee could be passenger,

b. arrest could take place outside vehicle:

(1) on sidewalk,
(2) in building.

B. The *Chimel* decision modified existing law pertaining to search of a vehicle incident to arrest

1. Search of vehicle is reasonable to prevent the destruction of evidence or the securing of a weapon or other means of escape within the arrestee's "immediate control."

2 "Immediate control" is restricted to that area where the arrested person might gain possession of destructible evidence.

3 A footnote in *Chimel* indicates that the court did not intend to limit the searching of a vehicle with probable cause in accordance with the *Carroll Doctrine*.

4 The effect of *Chimel* on vehicle searches can be overemphasized.

a The case only affects those searches which must be justified as reasonable because they were made incident to arrest.

b. When the driver is arrested, the vehicle may be inventoried prior to impound.

c. Where probable cause exists, a vehicle may be searched under the *Carroll Doctrine*.

d. Often items subject to seizure can be observed without a search. The "plain view" doctrine will permit the officer to enter the car and may additionally provide probable cause for an independent search.

APPENDIX F

ADMISSIBILITY OF EVIDENCE - CASE LAW

ADMISSIBILITY OF EVIDENCE - CASE LAW

ABANDONED VEHICLE-If there is evidence that a car has been abandoned, even though properly parked and not otherwise indicating theft, it may be searched. *People v. Smith*, 63 Cal. 2d 779.

> In a case where the burglar fled from a residence upon the return of the occupant, a baby sitter had observed the burglar in a car parked across the street, the automobile offered the best clue to his identity. The court held that "the frequent use of stolen cars as a cloak for criminal activities negated reliance on the registration slip as conclusive of the offender's identity." The glove compartment revealed the wallet of one known to the officer in an earlier burglary investigation. The keys in the ignition lock invited investigation of the trunk of the car for the burglar tools which might carry fingerprints of one or both of the car's earlier occupants, and opening of the trunk disclosed evidence of still another burglary. The officer would have been remiss in his investigation of the Hill residence burglary if he had not begun and continued this search. *People v. Superior Court*, 264 A. C. A. 929.

ABANDONED PROPERTY-Abandonment is not to be foreclosed until paid rent runs out or the check-out hour arrives. *Fequer v. U. S.* 302 F. 2d 214; *Abel v. U. S.* 362 U. S. 217.

> The manager's consent to a police search of the motel room of the man and his wife arrested three hours earlier for car theft, made the search lawful and the evidence seized admissible, where, although the search took place about two hours before normal daily check-out time for the motel rooms, the manager had regained the right to complete control of their room by virtue of the fact that between the search and the check out time the wife with the authority of her husband told him over the telephone that they could not pay the bill. *People v. Raine*, 250 A. C. A. 587.

ARREST WITH WARRANT-Whenever possible, all arrests should be made with a warrant as 43.5 (a) Civil Code provides:

> No liability on the part of and no cause of action shall arise against any peace officer who makes an arrest pursuant to a warrant of arrest regular upon its face of such peach officer making the arrest acts without malice in the reasonable belief that the person arrested is the one referred to in the warrant.

In several cases the courts have held that the written complaint for obtaining an arrest warrant is equated with the affidavit for obtaining a search warrant and is given constitutional sanction. *Giordenello v U. S.*, 357 U. S. 480: *People v. Sesslin*, 68 A. C. A. 431; *People v. Chimel*, 68 A. C. A. 448.

> USE MORE WARRANTS- Each law enforcement agency should use warrants as a basis of arrest whenever possible. A warrant gives better insurance of probable cause and thus is more certain to legalize the arrest and thus to protect the officer and his department from false arrest suits.

ARREST WITHOUT WARRANT-An arrest for a misdemeanor can not be justified after the occasion has passed. *People v. Craig,* 152 Cal. 42.

ARREST USED AS A PRE-TEXT TO SEARCH-Where the defendant was arrested under the authority of a traffic warrant by a narcotics officer, the court held that the arrest was used as a mere excuse to search the defendant for marijuana cigarettes and the evidence was excluded. *Taglovore v. U. S.*, 291 F. 2d 262.

REJECTION OF PRESENT CONVENIENT OPPORTUNITY TO ARREST-Where police officers permitted the defendant to pass by them on a public street and then broke into his house, arrested him and conducted a search, the court noted "the police planned to and did reject a convenient opportunity to make a lawful arrest in a public street and, without a search warrant or enough information to get one, broke into a house in order to seize evidence they hoped to find there. They found it and seized it. We think this is a plain violation of the prohibition in the Fourth Amendment to the Constitution against reasonable searches and seizures. *McKnight v. U. S.*, 183 F. 2d 977.

The rejection of a present convenient opportunity to arrest may be proper if the officer has valid reason for waiting until the defendant enters his premises. Where officers feared a car chase and a gun battle in the streets which would endanger human life, whereas an arrest in a house could be safeguarded and escape could be prevented by surrounding the house, the court upheld the validity of the arrest, noting that the arrest was not made in the house solely for the purpose of enabling a search without a warrant *Leahy v. U. S.*, 272 F. 487; *Cert. Dism.* 364 U. S. 945.

MANEUVERING PLACE OF ARREST-It is improper for officers to maneuver the defendant, by subterfuge or other means, onto his premises in order to conduct a search incident to his arrest. *U. S. v. Alberti,* 120 F. Supp. 171; *Gilbert v. U. S.*, 291 F. 2d 586.

ANNOUNCEMENT-If announcement of authority and purpose (in compliance to section 844 of the California Penal Code) would permit the destruction of evidence, or endanger the lives of those involved, it is not required *People v. Maddax,* 43 Cal. 3d 301.

A parole officer who is attempting to take a former narcotic addict into custody for violation of the conditions of their release from the rehabilitation center was required to comply with Penal Code section 84. *People v. Meison,* 261 A. C. A. 351.

NOTE: Recent cases have held that the officer must reasonably believe that life is in danger, evidence might be destroyed or the defendant might escape before he is excused from compliance with section 844 of the Penal Code. Under Federal law, officers are required to identify, give their authority and purpose, demand entry and after refusal may force entry.

BLOOD SAMPLE-Sample taken after defendant refused to authorize it on advice of counsel was held to be admissible where it was taken in a medically approved manner. *Schemerber v. State of California,* 383 U S. 75. In this case, Justice Brenner noted:

The interests in human dignity and privacy which the Fourth Amendment protects forbid any such intrusions on the mere chance that desired evidence might be obtained. In the absence of a clear indication that in fact such evidence will be found, these fundamental human interests require law officers to suffer the risk that such evidence may disappear unless it is an immediate search. . . .

Given these special facts, we conclude that the attempt to secure evidence of blood-alcohol content was in this case, an appropriate incident to Schemerber's arrest. The blood test was administered in a humane and reasonable manner, and the taking of the blood was reasonable when projected against the history and purpose of the Fourth Amendment. (See also *People v. Fite*, 267 A. C. A. 762)

CONFESSIONS-See interrogation.

CONSENT A hotel clerk can not consent to the search of a tenant's room. *Stoner v. California,* 376 U. S. 483.

HOST FOR HOUSE GUEST-Binding on a guest, *Burge v. U. S.,* 342 F. 2d 408.

HUSBAND AND WIFE-Evidence collected under the authority of a spouse where the spouse is in joint possession and gives truly voluntary consent is admissible. *Dalton v. State,* 105 N. E. 2d 509 (Indiana); *U. S. v. Heine,* 149 F. 2d 485; *In re Lesard,* 62 Cal. 2d 497.

COMMON-LAW WIFE-Consent by common-law wife binding on common-law husband. *U. S. v. Ball,* 34 F. 2d 929; (mistress consented search of their hotel room), *State v. Shepard,* 124 N. W. 2d 712

PARENT AND CHILD-A parent may give consent to search, effective against his child, for bedroom or other part of the parent's premises occupied by the defendant's child. *Maxwell v. Stephens,* 229 F. Supp. 205, Aff'd 348 F. 2d 325, Cert. denied to U. S. 94, Reh. denied 82 U. S. 1000.

NOTE: A child who has been emancipated, whether by reaching the age of 21 years or otherwise (as by marriage), and who pays a regular rental for his room in the usual commercial manner, should be considered a tenant in possession of the room. (See discussion under *Tenant*).

EXCLUSIVE CONTROL BY CHILD-A search without warrant of a kit bag belonging to the defendant which police officers found in the room the defendant occupied in his step-father's home, was not justified by the consent to search the room to view the bag given by the step-father for such consent, being in lieu of the warrant for probable cause, extended only to the premises and their contents in which the step-father had some possessare right or control, where the step-father claimed no right, title or interest in the bag and made it abundantly clear that it was not his, where the officers were under no misapprehension as to the lending of the step-father's authority to consent, and where the bag was neither apparent contraband nor an abandoned article *People v. Egan,* 250 A. C. A. 500.

JOINT OCCUPANT-A joint occupant who is away from the premises over the objection of another joint occupant who is present at the time, at least where no prior warning is given, and no emergency exists, and the officer fails to disclose his purpose to the occupant or to inform him that he has consent of the absent occupant to enter. *Tompkins v. Superior Court,* 59 Cal. 2d 65.

Where entry was effected peacefully with the consent and in the presence of one joint occupant and without objection by the other, the latter can not assert a violation of his rights. *People v. LaPeluse,* 239 A. C. A. 792.

MOTEL MANAGER-An examination by police with a motel manager's permission of the contents of defendant's suitcase after the defendant and his two companions checked out of the motel was legal as the suitcase had been abandoned and was placed legally in the custody of the motel manager as lost and found property. *People v. Thomsen,* 239 A. C. A. 78.

OWNER-When the owner of the premises to be searched is not entitled to immediate possession, he cannot give a consent valid against a tenant. *Chapman v. U. S.,* 365 U. S. 610 as mentioned earlier, the owner may consent where the present exclusive possessare interest of his tenant is terminated and he regains the right to immediate possession by abandonment of the premises by the tenant, or where there is formal eviction for nonpayment of rent. *Paroutian v. U. S.,* 319 F. 2d 661

TENANT-As long as the tenant has the sole right to possess the premises, whether it be by mutual agreement or simply until the owner orders him to leave, he, and he alone, has the legal capacity to consent to a search of those premises that would be good against himself. *McDonald v. U. S.,* 335 U S. 451; *Thomas v. U. S.,* 154 F. 2d 355; *Curry v. U. S.,* 192 F. 2d 571.

WAIVER-There is no requirement in the law that an officer shall first advise a person of his constitutional rights and of his right to refuse to grant a consent to a search before the officer seeks a valid consent from the person to conduct a particular search. *People v. Chaddock,* 249 A. C A. 557. However, some Federal Courts have recently held that an expression of consent is no authority for a lawful search unless it is a waiver of constitutional rights. To insure that this standard is met, some Federal Courts have required that individuals be clearly advised of that which he is being requested to waive. *U. S. v. Blalock,* 255 F. Supp. 268.

CONTRABAND-There is a wide distinction between the seizure of property within the possession of a person and the seizure of property held and used in the violation of the law. *U. S. Camden County Beverage Company v. Blair,* 46 F. 3d 648.

Incidental to lawful arrest, the arresting officers have the right to seize contraband where they are legally on the premise. *Harris v. U. S.,* 331 U. S. 145. In *Abel v. U. S., 362 U. S. 217,* the court held "when an article subject to lawful seizure properly comes into an officer's possession in the course of a lawful search, it would be entirely without reason to say that he must return it because it was not one of the things that was his business to look for." Where entry on the

premises is lawful, the contraband opened to observation may be seized. *State v. Hoffman*, 14 N W. 2d 146; *U. S. v. Brown*, 366 U. S. 812; *People v. Howard*, 166 Cal. 2d 638.

DELAYED SEARCH-A short delay does not permit the search from being an incident to a lawful arrest. *Baskerville v. U. S*, 227 F. 2d 454.

DETENTION AND FRISK-The pat-down, or frisk, has been authorized by the courts as a preventive device to permit the officer to protect himself. Therefore, the scope of such searches has been limited as described in the following cases:

In *People v. Randal*, 226 Cal. App. 2d 105, a pat-down search did not give occasion for further search of the defendant's person.

In *People v. Jones*, 176 Cal. App. 2d 265, the officer, in running his hands over the defendant's outer garments, felt what was discovered to be an automatic pistol.

In *People v. McGlory*, 226 Cal. App. 2d 762, a search for weapons was begun before one of the persons to be searched voluntarily produced contraband because of a visible bulge.

In *People v. Rice*, 259 A. C. A. 418, search of the defendant was unreasonable where the officer conducting the search, without a search warrant or probable cause for arrest, observing that both of the defendant's back pockets were bulging, went directly into the pockets wihtout either asking the defendant what he had in his pockets or attempting to conduct a superficial "pat-down search" for weapons.

Section 647 (e) permits a peace officer to stop one who loiters or wanders upon the streets without apparent reason or business, and to require him to identify himself and to account for his presence, only if the surrounding circumstances are such as to indicate to a reasonable man that the public safety demands identification. The fact that such demand rests on a subjective discretion of the peace officer does not render the statutory provision unconstitutionally vague. If a person chooses to remain silent and refuses to identify himself to a peace officer in violation of section 647 (e), such silence is mere nonassertive conduct and, therefore, falls outside the ambit of the Fifth Amendment both as to self-incrimination and to invasion of personal privacy.

Before a person is asked by a peace officer to identify himself under the circumstances in Penal Code section 647 (e) relating to disorderly conduct, the peace officer is not required, under *Miranda*, to advise him of his right to remain silent, where there is neither probable cause for an arrest nor an actual arrest. *People v Weger*, 251 A. C. A. 663.

In *Curry v. State of Ohio*, 88 S. Cp. 1968, the U. S. Supreme Court emphasized that the right to frisk "must be a narrowly drawn authority to permit a reasonable search for weapons for the protection of the police officer, where he has reason to believe that he is dealing with an armed and a dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime."

In *Sibron v New York*, the U. S. Supreme Court re-emphasized the rule that had announced in the *Terry* case:

> The police officer is not entitled to seize and search every person whom he sees of the street or of whom he makes inquiries. Before he places a hand on the person of a citizen in search of anything, he must have constitutionally adequate reasonable grounds for doing so. In the case of self-protection search for weapons he must be able to point to particular facts from which he reasonably inferred that the individual was armed and dangerous.

The court contrasted the scope of the search for the weapons with a search frisk in *Sibron*. In *Terry*, there was a patting down of the outer clothing of the suspect for the weapon and only after the weapon was discovered did the officers place his hand inside Terry's pocket. In *Sibron* "with no attempt at an initial limited exploration for arms" the officers physically invaded Sibron's pocket and grabbed the narcotics. The court found that the officer in *Sibron* was looking for narcotics and was not attempting to protect himself.

On the afternoon of July 10, 1964, an off duty New York City police officer was in his apartment in Mount Vernon, New York. He had just finished taking a shower and was drying himself when he heard muted noises at his door. Interrupted momentarily by a telephone call, the officer hung up, and looked through the peep-hole in the hall to see if anything was going on.

The officer saw "two men tip-toeing out of the alcove down the stairway." Calling the police, the officer put on civilian clothes, armed himself with his service revolver and started to investigate. The officer had lived in the 120-unit apartment house unit for 12 years and did not recognize either man as a tenant. The officer opened the door, stepped into the hallway and slammed the door loudly behind him. After his sudden arrival, the two men ran down the stairs. The officer took after them in close pursuit. Catching up to them two floors below, the officer grabbed one of the men, Peters, by the collar and tried unsuccessfully to capture the other one.

The officer asked Peters what he was doing in the apartment house and Peters said that he was visiting a girlfriend. When the officer asked him who the girlfriend was Peters refused to identify the girl saying that she was a married woman. The officer immediately patted Peters down for weapons and discovered a hard object in his pocket. The officer testified at the suppression hearing that it did not feel like a gun but that he thought it might have been a knife. The officer removed the hard object from Peters' pocket and discovered an opaque plastic envelope containing burglar tools. Peters was tried and convicted for the unlawful possession of burglar tools and the New York courts upheld the officer's search-frisk of Peters on the basis of the New York stop-frisk statute.

The Supreme Court of the United States held that the officer was fully justified in stopping Peters under these circumstances as they occurred and that the facts in this case were so strong that they rose the level of probable cause to arrest Peters for attempted burglary. The Court analyzed the probable cause as follows:

1. "The officer heard strange noises at his door which apparently led him to believe that someone sought to force entry."

2. "When he investigated these noises he saw two men whom he had never seen before in his 12 years in the building, tip-toeing furtively about the hallway."
3. "They were still engaged in these maneuvers after he had called the police and dressed hurriedly."
4. When the officer "entered the hallway, the men fled down the stairs."

The combination of these four factors persuaded all nine members of the Supreme Court that the officer had a strong factual basis for an arrest of Peters for attempted burglary. As a court phrased it, ". . . deliberately furtive action in flight at the approach of strangers or law officers are strong indicia of *mens rea* and when coupled with specific knowledge on the part of the officer relating the suspect to the evidence of crime, they are proper factors to be considered in the decision to make an arrest."

The essence of these decisions is that while investigating dangerous activity, an officer is that while investigating dangerous activity, an officer may make brief inquiry and if still of the opinion that the person is dangerous, may search the outer clothing for weapons. The court does not sanction search for other than self-protection. Such search may consist of a pat-down but an officer may not go into pockets for paper or other items which do not feel like weapons. An officer should not stop anyone unless he is prepared to explain with particularity his reasons for stopping such a person.

DISCLOSURE OF INFORMANTS-Where the informant becomes a participant in the crime, he and the People lose the right to keep his identity anonymous. His identity must also be divulged where he is a material witness; where he is a participant in the crime; and where he is an eyewitness to the transaction; where his identity is relevant on the question of the identity of the defendant; where he is the only basis for reasonable cause and where, in view of the evidence, he would be a material witness on the issue of guilt.

DISCLOSURE NOT REQUIRED-Identity need not be revealed where the information from the informant merely provides the starting point of the investigation; where defendant consents to a search, *(People v. Melody*, 164 Cal. App. 2d 728); where the search and seizure is pursuant to a search warrant lawfully issued on an affidavit based on information furnished by a reliable confidential informant. *People v. Keener*, 55 Cal 2d 714; *McCrey v. Illinois*, 386 U. S. 1042.

ELECTRONIC SURVEILLANCE AFTER ARREST-A tape recording of a conversation between defendant and an accomplice while alone in a police car after their arrest was not inadmissible. In a criminal prosecution, the taking and using of such evidence was not violative of Penal Code section 653 (J) relating to the recording of a confidential communication, where the defendant and his accomplice were under arrest, handcuffed and seated in the back of a police car at the time the recording was taken, and where they had been advised of the charges against them and where the defendant testified that at the time of the conversation with his accomplice he knew that it was being recorded. The court also makes the point that "reasonably the right of the defendant to privacy while under valid arrest in a police car can be no greater than if he were confined in jail." *People v. Chandler*, 262 A C A 354.

ELECTRONIC SURVEILLANCE OF JAIL - *Lanza v. New York*, 370 U. S. 139, the Supreme Court said:

> But to say that a public jail is the equivalent of a man's "house" or that it is a place where he can claim constitutional immunity from search or seizure of his person, his papers, or his effects is at best a novel argument. To be sure, the court has been far from niggardly in construing the physical scope of the Fourth Amendment protection. A business office is a protected area and so may be a store. A hotel room, in the eyes of the Fourth Amendment, may become a person's "house" and so, of course, may an apartment. An automobile may not be unreasonably searched. Neither may an occupied taxi cab. Yet, without attempting either to define or to predict the ultimate scope of Fourth Amendment protection, it is obvious that a jail shares none of the attributes of privacy of a home, an automobile, an office or a hotel room. In prison, official surveillance has traditionally been the order of the day. Though it may be assumed that even in a jail, or perhaps especially there, the relationships which the law has endowed with particular eyes to confidentiality must continue to receive unceasing protection, there is no claimed violation of any such special relationship here. (NOTE: Authorities are not sure what effect the pronouncement by the U. S. Supreme Court in *Katz v. U. S.* that "the Fourth Amendment protects people, not place," will have on the *Lanza* decision.)

EMERGENCY-An emergency situation can furnish reasonable cause for entry and search; *i.e.*, entry to render assistance, entry to search for a kidnap victim, in response to screams, moans (*People v. Roberts*, 47 Cal. 2d 374), officer in danger (*People v. Barnett*, 156 Cal. App. 2d 803), (*People v. Shelton*, 151 Cal. App. 2d 587); in *People v. Edgar*, 59 Cal. App. 2d 65, the defendant asked his mother to hide evidence. The court held that his was not an emergency situation because the mother had been asked to hide evidence, not to destroy it, and that the officers should have posted a guard and obtained a warrant.

ENTRY-An actual physical breaking or entry by stealth both constitute activities which will result in the exclusion of evidence obtained thereafter. *Miller v. U. S.*, 357 U. S. 301.

Where officers had reasonable cause for arrest of defendant and, having knocked on the door of his apartment and having received no response, they had reasonable grounds for believing defendant to be inside the apartment, their entry was justified. *People v. Davis*, 211 Cal. App. 2d 455.

FLASHLIGHT-Search by flashlight or searchlight is not prohibited by the Constitution. *People v. Wright*, 153 Cal. App. 2d 35; *People v. Porter*, 196 Cal. App. 2d 684; *U. S. v. Lee*, 274 U. S. 559. *McGuire v. U. S.*, 273 U. S. 955.

FORCE-The amount of force that may be used in searching the person is not entirely clear. However where a doctor administers emetics through a tube causing defendant to vomit the narcotics he had swallowed, the court held that this violated the federal constitution and "shocked the conscience." *Rochin v. California*, 342 U. Sl 165; *Vasquez v. Superior Court*, 199 Cal. App. 2d 61.

Forcibly taking blood to determine alcoholic content is permissible if blood is taken in a medically approved manner. *People v. Duroncelay*, 48 Cal. 2d 766.

Court approved of officers conduct in a case in which the arrestee was forced to try on clothing *People v. Carltativo*, 46 Cal. 2d 68.

Evidence admissible in a case in which the arrestee was forced to disrobe for examination of his clothing and body; there was blood on clothing and blood at the scene of the crime, *People v. Smith*, 142 Cal. App. 2d 287.

Officers may not club a man to obtain evidence which he has stuffed into his mouth. *People v. Parham*, 60 Cal. 2d 378.

Nor are the police entitled to choke a man to extract evidence from his mouth. *People v. Erickson*, 210 Cal. App. 2d 177; *People v. Sevilla*, 192 Cal. App. 2d 570; *People v. Martinez*, 130 Cal. App. 2d 54.

The police are entitled to put an arm around the suspect's neck in order to prevent him swallowing contraband which he has placed in his mouth, so long as the arm lock does not amount to choking. *People v. Dawson*, 127 Cal. App. 2d 375; *People v. Cisneras*, 214 Cal. App. 2d 62.

The police may attempt to prevent a suspect from swallowing evidence by holding his adam's apple so long as they do not choke him, and if the defendant chokes because he is trying to swallow contraband, the police have a right to remove the contraband from the defendant's mouth to prevent his choking to death, *People v. Dickenson*, 210 Cal. App. 2d 127.

The police also have a right to use such force as is necessary to accomplish an arrest and to defend themselves so long as the amount of force applied does not violate due process. thus, the police may pound a suspect's fist three or four times in order to recover evidence which the suspect attempts to keep in his clenched fist, *People v. Almirez*, 190 Cal. app. 2d 380.

FORCIBLE ENTRY-Forcible entry can be made without complying with the provisions of section 844 of the Penal Code when the officer reasonably believes that (1) compliance would probably frustrate the arrest or (2) permit the destruction of incriminating evidence or (3) the person to be arrested might escape. *People v. Shelton*, 151 Cal. app. 2d 587; *People v. Maddox*, 46 Cal. 2d 301.

HOT-PURSUIT SEARCH - *Warden, Maryland Penitentiary v. Hayden*, 387 U. S. 294, involved a clear-cut case of hot pursuit. Within five minutes after an armed robbery, police officers in hot-pursuit of the armed bandit closed in on his home. They had neither an arrest nor a search warrant. This case is important because it discusses three critical questions with regard to arrest and search by police officers without warrants. (1) The police entry without a warrant (2) the scope and purpose of the search incidental to the defendant's arrest (3) the objects which could be seized by the police at the time of the defendant's arrest.

FACTS:

On the morning of March 17, 1962, an armed robber held up the Diamond Cab Company in Baltimore, Maryland and escaped on foot with nearly $400. Two cab drivers in the vicinity of the holdup followed the robber to 2111 Cocoa Lane in Baltimore. One of the drivers alerted the company dispatcher by radio that the robber was a Negro, 5'8", wearing a light cap and a dark jacket, and that he had gone into the house on Cocoa Lane.

The dispatcher immediately relayed this information to the Baltimore Police. Within minutes, the police surrounded the house. An officer knocked on the door and told the woman who answered - a Mrs. Hayden - that a robber had entered her house. The officer requested permission to search the house for the robber and Mrs. Hayden did not object.

The police officers then entered the house and started to search the cellar and the first and second floors. Hayden, the defendant, was found upstairs in a bedroom pretending that he was asleep. As the officer arrested him, the other officer searching the house reported that they did not find any other man in the house.

About that same time an officer hearing rushing water in the bathroom, discovered a shotgun and a pistol in the flushed tank. A second officer who was "searching the cellar for the man or the money" found a jacket and trousers in the washing machine. These articles of clothing matched the articles of clothing worn by the robber. Ammunition for the guns was found in Hayden's bedroom, and so was a light cap. The guns, the ammunition and the clothing were seized by the arresting officers and offered in evidence against the defendant at the trial. Hayden was convicted for this armed robbery and the Maryland courts upheld his conviction. In upholding the case, the Supreme Court observed "the police were informed that an armed robbery had taken place, and that the suspect had entered 2111 Cocoa Lane less than five minutes before they reached it. They acted reasonably when they entered the house, and began to search for a man of the description they had been given and for the weapons which he had used in the robbery or might use against them. The Fourth Amendment does not require police officers to delay in the course of an investigation if to do so would gravely injure their lives or the lives of others.

IMPOUNDING OF AUTOMOBILES-An officer does not have the legal right to search an impounded car and evidence so seized cannot be used. *Preston v. U. S.*, 376 U. S. 364; *People v. Burke*, 61 Cal. 2d 575.

A vehicle seized as evidence can be scientifically processed after the seizure. *People v. Dugas*, 242 Cal App. 2d 244.

Officers could reasonably interrupt the search of defendant's car at the scene of his arrest until the car could be moved to a safer location, away from a crowd of spectators and out of the line of oncoming traffic; a later search at the police parking lot, following a brief delay during which the car was under constant surveillance, was deemed a continuation of a search lawfully begun at the time and place of arrest. 66 Cal. 2d 107.

In *Cooper v. California*, 386 U. S. 58 the Supreme Court observed "we made it clear in *Preston* that whether a search and seizure is unreasonable within the meaning of the Fourth Amendment depends upon the facts and circumstances of each case and pointed out, in particular, that searches of cars that are constantly moveable may make the search of a car without a warrant a reasonable one although the result might be the opposite in the search of a home, a store, or other fixed piece of property." In the *Cooper* case, the defendant was arrested for selling heroin and his car was taken into custody under the state statute which provides that any vehicle used to store, conceal, transport, sell or facilitate the possession of narcotics should be impounded or held as evidence pending forfeiture

proceedings. Eight days after the defendant's arrest and the seizure of his vehicle the car was searched and evidence was discovered which was used to obtain a conviction. *Preston* was distinguished on the ground that the officers in that case had impounded the vehicle simply for defendant's convenience following his arrest on a vagrancy charge. There is no indication "that they had any right to impound the car and keep it from Preston or whomever he might send for it. It would be unreasonable to hold that the police, having to retain the car in their garage, had no right, even for their own protection, to search it."

It is not only reasonable, but also appropriate, that a police officer examine a vehicle seized as evidence or impounded so that an inventory of the property which is contained therein and the condition of the vehicle may be noted. Since entry is not effected for the purpose of uncovering evidence of crime, the examination of the vehicle is not considered a search within the terms of the Fourth Amendment and the usual limitations of reasonableness developed in that context are inapplicable. *Harris v. U. S.*, 370 F.2d 477. Thus, the impoundment inventory is viewed simply as an administrative custodial procedure not unlike the usual search of the person which accompanies the booking of an arrestee prior to his confinement. It is important to understand that the procedure cannot be used to "rummage around" for incriminating evidence and thereby circumvent the warrant requirement. The courts will carefully scrutinize any inventory conducted subsequent to an impoundment to insure that it is consistent with its avowed purpose.

In *Harris v. U. S.*, 370 F.2d 477, a police officer, during the inventory of a car seized after its owner had been arrested for armed robbery, found a registration card that had been taken from the robbery victim. The court said that the card was admissible because the officer, at the time that the card was discovered, was acting only to secure the automobile and its contents.

Several courts have read *Harris v. U. S.*, 331 U. S. 145, as standing for the proposition that where contraband or other incriminating materials are discovered during the course of a bona fide inventory, these items may properly be seized and are admissible in evidence. Since the officer is lawfully present in the vehicle and there has been no search in the legal sense, they opine that the situation falls within the "plain view" doctrine which permits the nontrespassing officer to seize contraband discovered in open view *People v. Nebbitt*, 183 Cal. App. 2d 452. It is considered in this situation that a crime is being committed in his presence and the law does not require "that under such circumstances the law enforcement officers must impotently stand aside and refrain from seizing such contraband material" *Harris v. U. S.*, 331 U. S. 145.

Where an officer discovers incriminating materials during the course of an inventory, some courts have held that the evidence may not be legally seized until the officer has secured a warrant directed to the custodian of property in his department. *Williams v. U. S.*, 170 A.2d 233; *Travers v. U. S.*, 114 A.2d 889.

INFORMANTS-Where an informant furnishes information for the affidavit must contain details of how the information was received from the informant and also indicate how the informant gained his information *People v. West*, 237 A.C.A. 951.

Probable cause for an arrest may be established solely by information from a reliable informants *Wilson v. Superior Court*, 46 Cal. 2d 291.

A reliable informant is one who has previously given information which proved to be accurate. *People v. Rodriquez*, 174 Cal. App. 2d 46.

The controlling issue is whether the officer could reasonably rely upon information from th individual involved *People v. Richardson*, 51 Cal. 2d 445.

Experienced stool pigeons are not the only sources of crediable information, and the test of reliability that must be applied to them does not necessarily apply to every citizen who assists the police through information. A private citizen who reports a crime committed in his presence is more than a mere informer. He is an observer of criminal activity who acts openly in the aid of law enforcement by calling the police. In otherwords, the citizen's standing is reliable and sufficient for probable cause for arrest or a search. *People v. Lewis*, 240 A. C. A. 582; *People V. Yeoman*, 261 A. C. A. 367.

Information from untested informants - Information from other informants may supply necessary corroboration, *People v. Luna*, 185 Cal. App. 2d 493. Corraboration may also be supplied by observation of suspicious or furtive conduct, *People v. Tahtinen*, 50 Cal. 2d 127.

Where the information from the informant is extremely detailed, little corroboration is needed. *People v. Holguin*, 145 Cal. App. 2d 520.

Information from a special employee that a defendant was peddling narcotics along with a detailed description of the defendant, his clothing, the fact that he was carrying a tan, zippered bag and habitually "walked real fast" as well as surveillance by a police officer which verified all of this except whether the defendant had been successful in purchasing heroin afforded reasonable grounds for making an arrest without a warrant and the search incident thereto which revealed the heroin was legal, *Draper v U. S.*, 358 U. S. 307.

MINOR INFORMANT-A crime report signed by a minor admitting a purchase of narcotics from a named suspect is sufficient in and of itself, without any additional corroboration, to supply an officer with probable cause to arrest the named suspect, *People v. Bishop*, 235 A. C. A. 814.

INTERROGATION-In *Estate v. Taylor* (Oregon), 437 P. 2d 853 (1968) a case of interrogation at the scene of an accident, the officer failed to advise the suspect of his constitutional rights. Upholding the officer, the court said: "In the case at bar the officer asked more questions than the minimum necessary to establish probable cause, but as soon as he concluded that an arrest should be made he stopped the questioning and advised defendant of his rights. . . . Under these circumstances we hold that the officer's investigation did not produce inadmissible evidence under the *Miranda* rule."

Probable cause to arrest does not create custody. The strongest argument against the view that it does create custody is the statement of the Supreme Court in *Hoffa v. U. S.*, 385 U. S. 293 where the court said "nothing in *Massiah* and *Escobedo* or in any other case that has come to our attention, even remotely suggests this novel and paradoxical constitutional doctrine, and we decline to adopt it now. There is no constitutional right to be arrested. The police are not required to guess at their peril the precise moment at which they have probable cause to arrest a suspect risking a violation of the Fourth Amendment if they acted too soon and a violation of the Sixth Amendment if they wait too long Law enforcement officers are under no constitutional duty to call a halt to a criminal investigation the moment they have the minimum evidence to establish probable cause, a quantum of evidence which

may fall far short of the amount necessary to support a criminal conviction."

Most of the cases have held that street, highway or sidewald detention alone, without the use of force other then the officer's command, does not create custody for *Miranda* purposes. If the other circumstances are non-custodial, the officer may interrogate for evidence of guilty without giving the warnings. *Allen v. U. S.*, 390 F. 2d 476 (Street detention to investigate several possible major offenses); *U. S. v. Littlejohn*, 260 F. Supp. 278 (Street detention to investigate major offense) ; *U. S v. Gibson*, 392 F. 2d 373 (Suspect came out of tavern for interrogation, on officer's request); *Schnapp v. State*, 437 P. 2d 84 (Street detention to investigate theft); *Green v. U. S.*, 234 A.2d 177 (Street detention to investigate suspected theft).

It has been held that detention with force is custodial for *Miranda* purposes. For example, shortly after an assualt in an attempt to rob a liquor store, two officers encountered defendant and a companion. Both officers drew their guns. Questioning without warning drew a statement which the State introduced at trial. In reversing his gun, the individual interrogated is actually deprived of his freedom and, under *Miranda*, he may no longer be questioned without first being warned of his rights . . ." *People v. Shivers*, 21 N. Y. 2d 118. The same rule probably would apply in any situation in which the officer physically takes hold of a suspect as a restraint. For example, where the facts in open view made it rather obvious that a woman had been murdered in the apartment and that a man at the apartment had committed the murder, the officer's act of taking the man by the arm to lead him to the patrol car was a restriction of his freedom of action and *Miranda* became effective. The *State v Saunders* (Arizona) 435 P. 2d 39.

There is no requirement that the warning be given at the moment of arrest. To require that it be given at that time would unjustifiably interfere with other and more urgent duties with which the officer often is confronted such as physically subduing and accused who resists the arrest, *Mont v. U. S* , 306 F.2d 412, Cert. Den 371 U. S. 935. At the moment of arrest, the officers' immediate rights and duties are first, to protect himself against harm, second to deprive the prisoner of means of escape and third to prevent the destruction of evidence. *U. S. v. Rabinowitz*, 339 U. S. 5672 (1950); *Abel v. U. S.*, 362 U. S. 217.

However, the Welfare and Institutions Code requires that police officers advise juveniles of their constitutional rights at the time of arrest. *In re Gault*, 387 U. S. 1, the Supreme Court observed:

> We conclude that the constitutional privilege against self-incrimination is applicable in the case of juveniles as it is with respect to adults. We appreciate the special problems that may arise the respect to waiver of the privilege by or on behalf of children, and that there may be some differences in technique, but not in principle, depending upon the age of the child and the presence and competence of parents. The participation of counsel will, of course, assist the police, juvenile courts and appellate tribunals in administering the privilege. If counsel was not present for some permissible reason when an admission was obtained, the greatest care must be taken to assure that the admission was voluntary in the sense not only that it was not coerced or suggested, but also that it was not the product of ignorance of rights or of adolescent fantasy, fright or despair.

Apparently, a juvenile is legally capable of waiving his rights under *Miranda* or to consent to a search

and seizure of his property. This is apparent in the above "from *Gualt*". Or as stated elsewhere, a minor has the capacity to make a voluntary confession, even of capital offenses, without the presence of counsel or other responsible adult, and the admissibility of such a confession depends not on his age alone but a combination of that factor with such other circumstances as his intelligence, education, experience, and ability to comprehend the meaning and effect of statement." *People v. Lara*, 432 P 2d 202 (1967).

The fact that juveniles in general are legally capable of waiving their *Miranda* rights does not mean that each and every juvenile has this capacity. Each case is different, and, assuming that the police have faithfully followed the *Miranda* procedure, the decision will hinge on age, intelligence, education, experience and other factors "There is no guide to the decision of cases such as this except the totality of circumstances." *Gallegos v. Colorado*, 370 U. S. 49.

CUSTODIAL INTERROGATIONS-For a person to be in custody it is not necessary that he be under arrest. The defendant, a sixteen-year-old youth, might reasonably have believed that his freedom of action was limited where it appeared that he was detained at a police station for eight hours; that both lunch and supper where brought to him, though he could have walked two blocks to his home and returned. Further, for a period of a little over an hour he had no trousers and had only one shoe. He was questioned continuously for five hours and the officers then decided to detain him overnight at juvenile hall to prevent flight. At no time did the police tell defendant that he was free to leave. *People v. Ellingsen*, 258 A. C. A. 635.

CUSTODIAL INTERROGATION-The trial court's finding that defendant was not in actual custody at the time police officers questioned him; thus, no warning of his constitutional rights under the *Miranda* rule was required where, although when the officers talked to defendant at his home the investigations was no longer a general inquiry into an unsolved cirme, but had focused on defendant as a suspect. the officers had no arrest warrant nor did they give any indication that an arrest was imminent or contemplated; where the interview took place in the friendly and familiar environs of defendant's own home with his mother seated only 15 feet away where the officer testified that he did not contemplate arresting the defendant or keeping him from leaving if he had chosen to remain silent *People v Butterfield*, 258 A. C A. 685.

CUSTODIAL INTERROGATION-The prosecution failed to sustain its burden of showing the accused had not been in custody at the time she made the confession that was admitted in evidence, where she had been notified by the deputy district attorney to come to his office to discuss the circumstances of her daughter's death, and where she testified that she did not know that she did not have to come, and might reasonably have believed that if she had tried to leave she would have been arrested, *People v Arnold*, 66 A C. A. 449.

INTERROGATION AFTER APPOINTMENT OF DEFENSE COUNSEL-*Massiah v. U. S.*, 377 U S 201, and the Sixth Amendment to the U. S. Constitution requires that after a criminal charge has been filed against a defendant and he is represented by counsel, he may not be subjected to an interrogation instigated by law enforcement officers for the purpose of eliciting incriminating statements in the absence of his counsel *People v Valencia*, 267 A. C. A. 679.

INTENSITY OF SEARCH-A search for checks for narcotics or other small articles will justify meticulous investigation while a search for a stolen vehicle will not. *Harris v. U. S.*, 331 U. S. 145; *People v. Cruz*, 61 Cal. 2d 861. (See also scope of search.)

INVENTORY-See impounding of automobiles.

JAIL, SEARCHES ON ENTERING-A search of an arrested person at the time of his booking has always been considered contemporaneous to his arrest and is a reasonable search. *People v. Reed*, 202 Cal. App. 2d 575; *People v. Rogers*, 241 A. C. A. 478; also see Government Code section 26640 and Penal Code section 1412, and 4003. These sections codify the long established right to search a person when he is booked at the police station in order to prevent weapons and contraband from being brought into the jail and to remove his personal effects from him. Once articles have lawfully fallen into the hands of police, they may examine them to see if they have been stolen, return them to the prisoner upon his release, or preserve them for use as evidence at the time of trial. *People v. Robertson*, 240 Cal. App. 2d 100.

JUVENILE-Regarding probable cause for arrest, see *Minor Information;* regarding advising minor of *Miranda* rights see *Interrogation.*

LINEUP-In *U. S. v. Wade*, 388 U. S. 218, the Supreme Court held that a lineup is a "critical stage" for criminal proceding and that an accused person at a lineup has the right to counsel under the Sixth Amendment The court further indicated that the lineup is a critical stage because the accused is denied his right to a fair trial if he does not have a lawyer representing him at the lineup. The lawyer's function at the lineup is to assure fairness in viewing procedure and to obtain basic information by which the lawyer could meaningfully cross-examine identifying witnesses at trial. Of course, as with other constitutional rights, the defendant can waive his constitutional right to have an attorney present during the lineup procedure. The Supreme Court indicated in a footnote some suggested procedures that would assure fairness to the accused at the lineup, some of these are as follows:

1 The right to have a lawyer present during any lineup or consultation of the accused.
2 The witness or victim should give a written, signed description of the suspect before he views him.
3 At least six persons in addition to the accused person - approximately the same height, weight, coloration of hair and skin, and bodily types as the suspect, should participate in the lineup.
4 All of the people in the lineup should be dressed as nearly alike as possible.
5 A complete written report should be made concerning the lineup containing the names and addresses of the people who participated in the lineup, as well as descriptive details of everything that happened including the reactions of the identifying witnesses.

The Los Angeles County District Attorney's Office has published model lineup regulations which should be available in all departments. These regulations include the following information which is to be conveyed to witnesses before the lineup:

1 Several persons will be shown at a lineup.
2 To determine which, if any, of these persons may be involved in a particular crime, witnesses are asked to come down and observe.

3. The enforcement agency desires to eliminate suspects from consideration as well as implicate them.
4. Each witness should not discuss identification with friends, family, or anyone prior to the lineup, as such evidence might jeopardize the fairness of the trial.
5. Witnesses should make no statement or outward indication of recognition when an identification is made.

OBJECTS IN PLAIN VIEW-*Harris v. U. S.* provides that anything an officer sees in plain view when he has a right to be where he is, is not the product of a search and is subject to seizure without the necessity for obtaining a warrant. In effect, the strictures of the Fourth Amendment do not apply to incriminating evidence lying out in the open.

PAROLEE Requirements of reasonable or probable cause do not apply to a search of a paroled prisoner when conducted by his parole supervisors. *People v. Hernandez,* 229 Cal. App. 2d 143; *People v. Deene,* 141 Cal. App. 2d 497; *People v. Arguello,* 24 A. C. A. 467.

PROBABLE CAUSE-Probable cause has been defined as "such a set of facts and circumstances as would lead a man of ordinary care and prudence to conscientiously entertain an honest and strong suspicion of guilt." Among the factors which courts throughout the country have recognized as building blocks of probable cause are: flight, hiding, furtive movements, attempt to destroy evidence, resistance to officers, admissions or confessions against interests, evasive answers, unreasonable explanations, inconsistencies, scientific identifications (fingerprints, hair follicle, handwriting, fabric, etc.), identification of suspects by witnesses, nearness to scent of crime, time of crime, time of day, area of high incidents of crime, contraband or weapons in plain view, criminal record of arrestee and those with whom arrestee associates, information from informant, information from fellow officer, information from police radio, information from a citizen, expert police opinion, police experience, corroboration of information from an unknown person, by past events, by present investigation, other informants, knowledge of *modus operandi* of crime.

Some courts break probable cause down into two questions:

1. Is there reasonable cause to believe a crime has been committed? (Corpus delicti.)
2. Is there reasonable cause to believe that the particular suspect to be arrested is the one who committed it? (Identity.)

RECORDING DEVICE-The use of the tape recorder concealed upon the person of an informer does not violate the Fourth Amendment, and the recording itself was admissible at an attorney's federal trial on a charge of endeavoring to bribe a member of a jury panel. *Osborn v. U. S.* 17 L. Ed. 2d 394

NOTE: The FBI in this case followed sound procedure. An agent presented an affidavit signed by the informer, a local police officer, alleging the commission of a criminal offense. Chief Justice Miller of the District Court observed, "the affidavit contained information which reflected seriously upon a member of the bar of this court, who had practiced in my court ever since I have been on the bench. I decided that some action had to be taken to determine whether this information was correct or whether it was false."

ROADBLOCKS-An officer who orders a roadblock must be in possession of information amounting to probable cause for believing that some specific crime is being committed, or has been committed by a person or persons still at large and likely to use the streets and highways as a means of escape. Lacking probable cause, the officer is in the position of having set up the roadblock for no reason than whim, caprice or uncorroborated suspicion which the law considers insufficient authority for stopping vehicles. *Brinegar v. U. S.*, 338 U. S. 160; *Wirin v. Horrall*, 85 Cal. App. 2d 497.

The officer's knowledge of the existence of some general criminal condition, such as the widespread use of narcotics by persons in the area, is not sufficient probable cause to justify stopping and searching specific vehicles. *People v. Gale*, 294 P. 2d 13.

Individual members of the Supreme Court have suggested that sufficient probable cause to identify some specific vehicle or person with a crime might not be necessary in the case of a crime with an obvious life or death potential. The late Justice Jackson wrote "if we assume, for example, that a child is kidnapped and the officers throw a roadblock about the neighborhood and search every outgoing car it would be a drastic and undiscriminated use of the search. The officers might be unable to show probable cause for searching a particular car. However, I should candidly strive hard to sustain such an action, executed fairly and in good faith, because it might be reasonable to subject travelers to that indignity if it was the only way to save a threatened life and detect a vicious crime. But I should not strain to sustain such a roadblock and universal search to salvage a few bottles of burbon and catch a bootlegger." *Brinegar v. U. S. supra*, at 183.

SCOPE OF SEARCH-A search for aliens involves looking in places where an alien might be concealed - it does not justify looking in a cigarette package. *U. S. v. Hortze*, 179 F. Supp. 913.

The general rule regarding the scope of search or the areas that may be searched incidental to arrest is that the police may only search the person being arrested in the area within his immediate control. In some cases, when a man is arrested in one room of his home, only that room may be searched incidental to his arrest, since that is the only area under his immediate possession and control. In other cases, the search may extend to the entire premises. *Harris v. U. S.*, 331 U. S. 145. An example of a case in which the police were permitted to search all areas of the house was the case of *Warden, Maryland Penitentiary v. Hayden*, 387 U. S. 294. In the *Hayden* case, the Supreme Court stated an exception to the general rule limiting the scope of search incidental to an arrest "the permissible scope of search must, therefore, at least, be as broad as may reasonably be necessary to prevent the danger that the suspect at large in the house may resist or escape. Thus, in the *Harris* case a search for five hours in a four-room apartment for checks relative to a mail fraud violation was approved by the Supreme Court

SEARCHES INCIDENT TO AN ARREST-Basically these searches are justified by (1) the necessity to deprive the person arrested of means of escape, (2) to deprive the person to be arrested of offensive weapons and (3) to prevent the destruction of evidence. In *People v. Cruz*, 61 Cal. 2d 861, the court held that a search held incident to an arrest is:

(a) Limited to the premises where the arrest is made:
(b) Is contemporaneous therewith;

(c) Has a definite object;
(d) Is reasonable in scope.

SECOND SEARCH-A second search of a person arrested is valid after evidence disclosed as the presence of contraband as an incident to an arrest for possession of the contraband. *Charles v. U. S*, 278 F. 2d 386 However, officers may not lawfully return to a building that has been searched incident to an arrest to conduct a second search with the consent of the defendant or under the authority of a search warrant. *Thomas v. Commonwealth,* 10 S. W. 2d 606.

SEARCHES BY WARRANT-For an affidavit in which a search warrant can issue to be sufficient, the statement of the informer in the affidavit must be factual in nature rather than conclusionary and it must indicate that the informer had personal knowledge of the facts related and the affidavit must contain some underlying factual information from which the issuing judge can reasonably conclude that the informant, whose identity need not be disclosed, was credible or his information reliable *People v. Tillman,* 238 A. C. A. 155.

EXECUTION OF SEARCH WARRANT-Ordinarily a search warrant shall be served in the daytime only and must be executed within ten days. The warrant may be served in the nighttime only if the magistrate upon a showing of good cause has authorized such service by direction in the warrant. A copy of the warrant must be delivered to the person from whom the property was seized. Penal Code section 1535 requires that an officer taking property pursuant to a search warrant give a detailed receipt to the person found in possession of the property. If no person is found in pssession, he must leave a receipt where the property was found. The original copy of the warrant is to be returned to the designated judge. The return must be made under oath and an inventory of all property seized is to be delivered to the judge. This must be done publicly or in the presence of the person from whom the property was taken, Penal Code section 1537.

SEARCH OF RESTROOMS-It is improper to receive testimony of officers as to their observations of acts committed in enclosed restroom stalls. *Bielicki v. Superior Court,* 57 Cal. 2d 602. However, when the acts are committed in areas not screened from the public view - officers may testify to their observations. *People v. Maldanado,* 240 A. C. A. 903.

SEIZURE BY PRIVATE CITIZENS-If a private person steals or illegally seizes incriminating evidence from someone and turns it over to the police, that evidence is admissible against the accused so long as the police did not in any way participate in the illegal seizure of the evidence. *Burdeau v. McDowell.* 256 U S. 465.

STANDING TO OBJECT-It is not necessary to be aggrieved by an unlawful search or to admit ownership in order to have standing to object. *Jones v. U. S.,* 362 257.

SUBTERFUGE-Entry by stealth, through social acquaintance, or in the guise of a business call falls within the scope of the prohibition of the Fourth Amendment. *Gouled v. U. S.,* 255 U. S. 298: *Taglavore v. U S*, 291 F. 2d 262.

THEORY OF SEARCH-There are five justifications for search;

1. Search warrant
2. Consent
3. Incident to a lawful arrest
4. Emergency or exceptional circumstances
5. Search of a mobile vehicle with probable cause

TRESPASS-When the performance of his duty requires an officer to enter upon private property, his conduct, otherwise a trespass, is justifiable. *Turner v. U. S.*, 126 F. Supp. 349; *Ellison v. U. S.*, 206 F 2d 476.

VEHICLE, SEARCH OF-Search of a vehicle may be made upon a showing of probable cause, in the absence of a search warrant where the vehicle is mobile. *People v. Terry*, 61 Cal. 2d 137.

Entry of an unoccupied car protruding unto the highway in such a position as to create a traffic hazard to search for registration is justified. *People v. Grubb*, 63 Cal. 2d 612.

Defendant drove to an apartment which the police had staked-out. Defendant was arrested inside the apartment on the charge of possessing heroin for sale. The court held; "As an incident to the defendant's arrest inside the apartment, the police were entitled to search the car that the defendant had used to deliver the heroin." *People v. Harris*, 62 A. C. A. 667. But, if the defendant had been arrested in the car near the apartment, the apartment could not have been searched. *People v Martinez*, 232 A C. A. 95.

Police were free to seize defendant's rented car without fear of infringing on any of his constitutional rights where the defendant after using the car to escape from the scene of his crime, abandoned it on a side street, hailed a taxi, met friends in a bar, and then left the city by train. *People v. Smith*, 63 A. C A. 838.

Where the defendant and his companion parked in a dark vacant lot, deserted defendant's automobile and fled over a fence when police officers shown a light on them, their conduct constituted extra-ordinary and exceptional circumstances which afforded reasonable cause for the search of the automobile and seizure of the marijuana found there. *Perez v. Superior Court*, 250 A. C. A. 801.

WIRE TAPPING-Electronic surveillance of a phone booth is not permitted in the absence of a search warrant. The Fourth Amendment protects people not places. *Katz v. U. S.*, 347.

APPENDIX II

Case Problems

COAST COMMUNITY COLLEGE DISTRICT

PROJECT CALCOP

ARREST, SEARCH AND SEIZURE AND RULES OF EVIDENCE

ACCOUNT NUMBER	WORKSPACE NAME	CASE NUMBER	DESCRIPTION
4501	CALCOP1	CASE 1	SEARCHES INCIDENT TO ARREST
		CASE 2	PEOPLE V. EDGAR
		CASE 3	NEUTRAL INQUIRER
		CASE 4	ADMISSIONS TO PARENTS BY SUSPECT IN CUSTODY
		CASE 5	CONVERSATION BETWEEN AN OFFICER AND A DEFENDANT
4501	CALCOP2	CASE 6	SEARCH FOLLOWING ARREST OF A FUGITIVE
		CASE 7	STOP AND FRISK
		CASE 8	SIBRON V. NEW YORK
4501	CALCOP3	CASE 9	PROBABLE CAUSE FOR ARREST
		CASE 10	PROBABLE CAUSE AND CITIZEN INFORMANTS
		CASE 11	PROBABLE CAUSE AND CITIZEN INFORMANTS
4501	CALCOP4	CASE 12	BLOOD TESTS
4501	CALCOP5	CASE 13	SEARCH INCIDENTAL TO ARREST
4501	CALCOP6	CASE 14	RIGHT TO REMAIN SILENT
		CASE 15	PROBABLE CAUSE
4501	CALCOP7	CASE 16	TEMPORATY DETENTION: RATIONAL
		CASE 17	MIRANDA REVISITED
		CASE 18	THE FOURTH AMENDMENT AND SEARCH OF TRASH CANS
4501	CALCOP8	CASE 19	PAROLE OFFICERS AND SEARCHES
		CASE 20	SEARCH AND SEIZURE: CONSENT BY LANDOWNER
		CASE 21	SEARCHES INCIDENTAL TO ARREST
4501	CALCOP9	CASE 22	PLAIN SIGHT RULE
		CASE 23	VEHICLE INSPECTION FOR REGISTRATION
		CASE 24	UNANNOUNCED ENTRY OF A RESIDENCE
		CASE 25	SEARCH BY PRIVATE INDIVIDUALS
4501	CALCOP10	CASE 26	HEARSAY RULE EXCEPTIONS AND PRIVILEGED COMMUNICATIONS

CASE 1· SEARCHES INCIDENT TO ARREST

Chimel v. California

Late in the afternoon, three police officers arrived at the Santa Ana, California, home of the defendant with a warrant authorizing his arrest for the burglary of a coin shop. The officers knocked on the door, identified themselves to the defendant's wife, and asked if they might come inside. She ushered them into the house where they waited 10 to 15 minutes until the defendant returned home from work. When the defendant entered the house, one of the officers handed him the arrest warrant and asked for permission to "look around." The defendant objected, but was advised that, "on the basis of the lawful arrest," the officers would nonetheless conduct a search of the entire house. No search warrant had been issued.

CASE 2

People v. Edgar

The defendant, Edgar, lived with his mother and stepfather and, after his arrest, his mother visited him in jail. A deputy sheriff overheard their conversation. Edgar told his mother that there were pictures at home that might be important to his case and asked her to hide them until he told her what to do with them. The deputy sheriff told the police officer in charge of the case about the conversation, and he and another officer went to Edgar's home. They told Edgar's mother they knew about the pictures and asked her for them. She told the officers she did not know what she should do and that she thought she should consult an attorney. The officers talked to her from 15 to 30 minutes and told her two, three, or four times that if she did not deliver the pictures to them, they would be forced to take her to the police station, book her for withholding evidence, obtain a search warrant, and come back and get the pictures. As a result of these statements, Edgar's mother went into another room, returned with the pictures, and gave them to the officers.

CASE 3: NEUTRAL INQUIRER

People v. Wright

Defendant went to the residence of his divorced wife and told her that he wanted $300. She said that she would give him the money and to call that evening. About 10:45 p.m., she telephoned defendant that she could not give him the $300 because she was paying bills. Defendant replied with a threat, vulgarly expressed, to take her life, then hung up. Five minutes later, defendant rang his ex-wife's doorbell. She looked out the window and saw him. Taking a gun from her sister, she picked up the phone, went into the bedroom, dialed the operator and asked for the police. Defendant forced the door before she could be connected. He stood with a gun pointed directly at her and fired six times. She fired six shots in defendant's general direction. Defendant then knocked out his ex-wife's sister by hitting her over the head with the gun. After that he beat his ex-wife with the gun crushing her skull and breaking a rib and her hand. While beating her, he told her, "I wish I had some more bullets."

Upon receipt of information over the police radio that there was a disturbance, Deputy Franzlick went to the residence. He saw the ex-wife's sister on the sidewalk; she had a bump on the head and blood over her face and appeared to be injured; she told him her sister was injured. Inside the apartment, the ex-wife was found covered with blood, appeared to be injured, and told the officer, "He beat me," pointing to the bedroom. The deputy looked into the bedroom from the front room and saw defendant lying across the bed on his stomach, face down, holding a cloth to his neck. The deputy asked the defendant "what happened", and the defendant said he had been shot by his wife. The deputy then went into the bedroom and again asked defendant to tell him what happened. Defendant said he had come to try to get $300, rang the doorbell, and no one answered; he kicked the door in, drew a gun and then just started firing.

CASE 4: ADMISSIONS TO PARENTS BY SUSPECT IN CUSTODY

People v. Petker

A woman was murdered in the course of a robbery. Defendant, a 17-year-old boy, was arrested and taken to the police station about 2:00 p.m. on the day of the arrest. The police immediately notified his parents of his arrest and his whereabouts. The defendant's parents arrived at the police station about 4:00 p.m. They were required to wait until about 6:00 p.m., when they were permitted to see defendant in his cell. The officers told the parents that defendant had confessed and of some of the substantiating evidence. The officers then accompanied the parents to the defendant's cell. The father said to him, "You didn't do it, did you? I know how much pressure these fellows can put on you." The defendant apparently ignored the father's question; at least he did not answer. The mother then said, "Why did you do it?"; to which defendant replied, "She kept screaming."

CASE 5

On June 10, 1966, an apartment at 4729 West San Vicente was entered and burglarized. This fact was not known until after the arrest of the defendant. At about 1:00 p.m., on the same date, a police officer driving a police unit toward San Vicente saw defendant and a second man carrying a stereo from an apartment house at 4729 San Vicente. They were carrying and struggling with this stereo on the sidewalk. Piled on top of the stereo were various articles of men's clothing, a radio, a pair of boots, records, and some cologne. As the officer approached, they quickly set down the stereo and defendant tripped or stumbled and fell out into the street. The officer questioned both subjects as to where they were taking the stereo. He was told that it was being taken to St. Elmo Drive, and the second man said that it belonged to defendant. Defendant stated he did not know what kind of stereo it was. The second subject said it was a Magnavox. The officer looked at it and found it was a Sears Silvertone. Defendant said he lived there (4729 San Vicente) or used to live there. The officer further testified that neither man was under arrest, only "under investigation." He then called for assistance. Another police unit arrived. The officer went with defendant to the apartment house where there was a discussion with the manager. Shortly thereafter, the officer and defendant returned to the police unit where both subjects were placed under arrest.

CASE 6: SEARCH FOLLOWING ARREST OF A FUGITIVE

People v. Baca

A State narcotics agent was informed by the fugitive detail of the Sheriff's Office that defendant failed to appear in a superior court trail and that a warrant had been issued for her arrest. The agent also had personal knowledge that the defendant failed to appear and a bench warrant was issued. He received additional information from a named woman that defendant moved to a friend's apartment at a given address. He and other officers went to the address in question, talked to the manager, knocked on the door of the apartment, heard noises but no answer, and then entered the apartment using a key provided by the manager. While in a bedroom, the agent saw defendant in the bathroom. The defendant was asked to come out of the bathroom. She did so and entered the bedroom where she was placed under arrest. The agent then went into the bathroom and discovered 11 containers of heroin. The agent's testimony indicated that the narcotics were not and could not have been seen until the officer entered the bathroom.

CASE 7: STOP AND FRISK

Terry v. Ohio

Officer McFadden was patrolling in plain clothes in downtown Cleveland at about 2:30 p.m. His attention was attracted by two men, Chilton and Terry, standing on the corner of Huron Road and Euclid Avenue. McFadden had been a policeman for 39 years and a detective for 35 and had been assigned to patrol this vicinity for shoplifters and pickpockets for 30 years. His interest was aroused by the two men, and he took up a post of observation in the entrance of a store 300 to 400 feet away from them. He saw one of the men leave the other one and walk southwest on Huron Road, past some stores. The man would pause for a moment, look in a store window, and then walk on a short distance, turn around, and walk back toward the corner, pausing once again to look in the same store window. He would rejoin his companion at the corner and the two would confer briefly. Then the second man would repeat what the first had done. The two men repeated this ritual alternately between five and six times apiece. At one point, while the two were standing together, a third man approached them and talked with them briefly. This third man, Katz, then left the two others and walked west on Euclid Avenue. Chilton and Terry resumed their measured pacing, peering, and conferring. After this had gone on for 10 to 12 minutes, the two men walked off together, heading west on Euclid Avenue, following the path taken earlier by Katz.

By this time, McFadden suspected the two men of casing a job (stick-up) and he considered it his duty as a police officer to investigate further, and he feared they may have a gun. Officer McFadden followed Chilton and Terry and saw them stop in front of a store to talk with Katz. The officer approached the three men, identified himself as a police officer and asked for their names. At this point his knowledge was confined to what he had observed. He was not acquainted with any of the three men by name or by sight, and he had received no information about them from any other source.

CASE 8

Sibron v. New York

At a hearing on a motion to suppress evidence, Officer Martin testified that while he was patrolling his beat in uniform he observed Sibron continually from the hours of 4:00 p.m. to 12:00 midnight in the vicinity of 742 Broadway. He stated that during this period of time he saw Sibron in conversation with six or eight persons whom Officer Martin knew from past experience to be narcotic addicts. The officer testified that he did not overhear any of these conversations, and that he did not see anything pass between Sibron and any of the others. Late in the evening Sibron entered a restaurant. Martin saw Sibron speak with three more known addicts inside the restaurant. Once again, nothing was overheard and nothing was seen to pass between Sibron and the addicts. Sibron sat down and as he was eating, Martin approached him and told him to come outside. Once outside, the officer said to Sibron, "You know what I am after."

CASE 9: PROBABLE CAUSE FOR ARREST

Peters v. New York

Officer Lasky was at home in his apartment about 1:00 p.m. He had just finished taking a shower and was drying himself when he heard a noise at his door. His attempt to investigate was interrupted by a telephone call, but when he returned and looked through the peephole into the hall, Officer Lasky saw two men tiptoeing out of the alcove toward the stairway. He immediately called the police, put on some civilian clothes and armed himself with his service revolver. Returning to the peephole, he saw a tall man tiptoeing away from the alcove and followed by the shorter man, Peters, toward the stairway. Officer Lasky testified that he had lived in the 120-unit building for 12 years and that he did not recognize either of the men as tenants. Believing that he had happened upon the two men in the course of an attempted burglary, Officer Lasky opened his door, entered the hallway, and slammed the door loudly behind him. This was followed by a flight down the stairs on the part of the two men.

CASE 10: PROBABLE CAUSE AND CITIZEN INFORMANTS

People v. Yeoman

Using the name Ernest Ryan, defendant and another man, Henry Ryan, representing themselves as brothers rented a bachelor-type apartment (No. 227) from the manager Henry Smith, on June 25, 1966. On July 7, 1966, Smith heard a cat crying in defendant's apartment; no one was home so he opened the door with a pass key, found a white kitten and fed it. As he started out of the apartment he saw on a shelf in an open closet a shoe box containing material he believed to be marijuana. He had seen marijuana on numerous occasions during his 20 years in the Air Force. Since defendant moved in, Smith had noticed numerous persons, all men - as many as five in one day - go and come from the apartment. Smith took a pinch of the material. He notified police and within a day or two, Sergeant Mullen, Narcotics, called him. Smith told Mullen of his observations and Sergeant Mullen told him to keep the sample until he could come out and identify it.

On July 10, 1966, defendant and the other man moved into a one bedroom apartment (No. 221). Henry Ryan told Smith he had ordered a telephone but was going to New York and if his brother was not in he should let the telephone man in the apartment. On July 13, the man came to install the phone. Smith went to the door of Apartment 221 and knocked; receiving no answer, he walked in, saw no one, looked in the bedroom and saw defendant asleep. He called to him but defendant did not awaken. On a dresser in the bedroom Smith saw a cellophane wrapped package of material that appeared to be the same he had seen in defendant's other apartment. He believed it to be marijuana. Smith left the apartment and called Sergeant Mullen advising him of the situation. Forty-five minutes later, Mullen and his partner arrived. Smith told him what he had seen in defendant's apartment (No. 227) on July 7, and showed him the sample of material he had taken from the box. Mullen examined the debris and identified it as marijuana.

CASE 11: PROBABLE CAUSE AND CITIZEN INFORMANTS

People v. Waller

At about 12:30 p.m., two young hitchhikers, McGraw and Johanson, were offered a ride in a white Dodge truck. There were three men and a woman, including defendant, in the van. During the course of the ride from Monterey, the hitchhikers were offered "pot" by one of the members of the group. Johanson observed the defendant take a puff from a pipe that the woman passed around. The odor emanating from the pipe that was passed around was "unusual" unlike any tobacco. The woman in the van had long stringy hair and was wearing an "orangish" sweatshirt, brown cord pants and sunglasses. The van proceeded on toward Asilomar after the two hitchhikers were let off at Pacific Grove. Some four or five minutes after being dropped off, the hitchhikers located a police officer and described to him what had happened in the van. The Johanson boy lived near the police station. The officer testified he knew him "fairly well" for about a year and a half as "generally as a person that had never been in trouble." The officer had never before received information from the boy upon which he had acted.

Shortly after the conversation with the hitchhikers, the officers saw the white van. As he pulled behind it, he was able to see four people, three males in front, and the woman in the rear. The woman's hair and blouse matched the description given by the boys. The officer stopped the vehicle and, as he was walking toward the driver's side, he noticed the woman rummaging around the right-hand corner, and the man in the front center seat putting something under the seat. The officer requested identification from the occupants, and asked the defendant, the driver, for the vehicle registration. The defendant presented an expired license, which was the only identification produced by anyone in the vehicle. No registration was produced for the vehicle.

CASE 12: BLOOD TESTS

Schmerber v. California

Under the California stature, a refusal by a suspect to submit to a test for blood alcohol constitutes grounds for license revocation upon application therefore by police. Since the principal reason that samples of blood, breath or urine are withdrawn is to provide evidence for a future prosecution, the question remains whether blood may be taken for that purpose and not specifically to provide grounds for license revocation. Schmerber v. California answers this question.

The defendant was charged with driving under the influence of intoxicating liquor. He had been arrested at a hospital while receiving treatment for injuries suffered in an accident involving the automobile that he had apparently been driving. Police directed a physician to withdraw blood from the defendant over the defendant's objection prompted by advice from his attorney. The chemical analysis revealed a percentage of alcohol, and the report thereof was offered in evidence at the trial.

CASE 13: SEARCH INCIDENTAL TO ARREST

People v. Barton

At 2:00 p.m. on June 10, 1970, two Costa Mesa officers in possession of a warrant of arrest for failure to appear for a traffic violation went to the address listed on the warrant. They knocked on the front door and a person fitting the description listed on the warrant opened the door. The officers then asked the person who opened the door if his name was Bruce Barton, the name listed on the warrant. The person answering the door stated that his name was Bruce Barton. The officers then informed Barton that he was under arrest on authority of the warrant.

Barton replied, "OK, I'll go with you. Let me get my coat off the chair here."

He then stepped into the room, and both officers followed him to the chair where his coat was. As the officers walked past a coffee table they observed a partially burnt marijuana cigarette. Barton did not appear to be under the influence of marijuana.

CASE 14: RIGHT TO REMAIN SILENT

People v. Cooper

Officer Jones and Brown, Huntington Beach Police Department, while on routine patrol, were hailed down by a female at 1:00 a.m. on January 5, 1970.

Female: "Help me! Some man just beat me up in that bar over there."

Officer Jones: "What happened?"

Female: "He hit me with his fist until I went down, and then he kicked me."

Officer Brown: "Do you know who the man is?"

Female: "No, I've never seen him before."

Officer Jones then asked the woman for some identification. She showed an operator's license in the name of Mrs. Sheila B. Combs. Her age was given as 32.

At this time, the officers observed several reddened, bruised areas on the victim's face. Mrs. Combs pointed out the bar where she had been and described the man who had beaten her. The officers then went into the bar and located a man fitting the description given by the woman. The officers requested the man to step outside.

Man: "What for, I haven't done anything."

Officer Jones: "You are under arrest for assault with a deadly weapon."

The man then accompanied the officers outside to where the woman was standing.

Mrs. Combs: "That's him, I want him in jail."

An argument then started between the man and woman. The officers stopped the argument and separated the two people.

Officer Jones to Man: "Do you know this woman?"

Man: "Yeh, she's my girl friend, we've come to this bar a couple of times before."

Officer Brown then asked the suspect for some identification. He produced an operator's license in the name of Clayton B. Cooper, age 34.

CASE 15: PROBABLE CAUSE

People v. Beckman

At approximately 10:15 p.m. on February 4, 1970, Santa Ana officer George White was on routine patrol in a high frequency crime area. Officer White observes a vehicle run a red light. While following the vehicle, the officer makes an auto-statis check to see if the vehicle has any outstanding wants or warrants against it. The check indicates that the car does not have a want or warrant against it. White then pulls the vehicle over to cite the driver for running the red light. While the vehicle is pulling to the side of the street, the officer observes the driver motion as though he were putting something under the front seat. After stopping, the driver gets out of his car and goes to the rear of it where he waits for the officer. The driver is neatly dressed, wearing casual clothes. Officer White then looks under the front seat where he finds a pistol, a pair of gloves, and a small pry bar. At Officer White's request, the driver produces an operator's license in the name of Donald D. Beckman, age 23.

CASE 16: TEMPORARY DETENTION: RATIONAL SUSPICION

People v. Henze

At about 2:30 p.m., two officers at a distance of 220 feet saw the two male subjects, whom they did not know, seated on the grass in a public park. They looked to be about 18 years of age. The subjects appeared to the officers to be dividing objects which shone in the sunlight. Seen through binoculars, they seemed to be counting coins and passing them back and forth. Coins could not actually be seen, but when one subject got up, one police officer saw him put what appeared to be a roll of coins in his pocket. The subjects then walked to a parked car and drove off, driving in a normal fashion and observing the traffic laws. The officers followed in a patrol car, then drove alongside the subjects, identified themselves, and ordered the subjects to stop their vehicle.

CASE 17: MIRANDA REVISITED

People v. Ireland

Defendant killed his wife. After he was arrested and handcuffed at his home he was escorted by two officers to a waiting police car. On the way to the car he was advised of his rights under Miranda v. Arizona, and upon being asked whether he had anything to say at that time, he replied: "Call my parents for my attorney." Apparently neither of the officers responded to defendant's request, took any action as a result of it, or attempted to communicate it to superior officers. Defendant was placed in the car and transported to the police station. At two points during the trip he asked some questions about his wife and his children, and the officer driving said to him: "Sir, I'm not allowed to talk to you at all concerning this case, and they will talk to you later at the station." The officer's response was in compliance with orders given to him earlier by a sergeant.

When defendant arrived at the police station he was placed in an interrogation room and placed in a special chair provided for the interrogation of suspects. About five minutes later, a police lieutenant (the watch commander) entered and asked defendant if he had been advised of his rights. Defendant replied in the affirmative, but the lieutenant nevertheless proceeded to give such advice "to see that he had been fully admonished." Defendant indicated that he understood and asked if the lieutenant wanted to talk to him. The lieutenant said that he did not, but that "there was an officer coming down that would talk to him."

About 35 minutes after defendant's arrival at the interrogation room, the interrogating officer arrived. He advised defendant of his Miranda rights for the third time. Defendant again indicated that he understood the admonition. The officer, who had not been informed of the defendant's request for an attorney, asked defendant "if he was willing to talk with me, and he said that he wanted to talk with someone ans was I willing to listen to what he had to say." The officer replied that he would be willing to listen. A confession resulted.

CASE 18: THE FOURTH AMENDMENT AND SEARCH OF TRASH CANS

People v. Edwards

Mr. Hansen, a resident of Santa Ana, lived next door to defendants, Robert and Jennifer Edwards. He saw on defendants' back porch a large plastic bag containing packages, one of which was torn and contained a dark green vegetable substance that appeared similar to alfalfa but did not smell like alfalfa and had a "small funny type seed."

About a week later, shortly after 9:00 p.m., he reported what he had seen to Detective Hern. After discussing this information with other officers, Hern accompanied by Detective Oden, walked down the railroad tracks behind defendants' residence and entered into "the open back yard area" of that residence. There the officers observed three trash cans two or three feet from the back porch door. The officers did not have a search warrant. Inside one of the trash cans they found, among other things, a bag which contained marijuana--"possibly enough to roll a couple of cigaretts or more" and which had "other stuff on top of it."

Hern took the marijuana back to his office to examine it more carefully. He and other officers then returned to the area of defendants' house where they conducted a stake-out from 12:30 a.m. until 4:00 a.m.

Thereafter, the officers arrested Robert Edwards in the dining room. Two officers went upstairs to bring down Mrs. Edwards, who came down moments later accompanied by the officers. The Edwards were told they were under arrest for possession of marijuana. The officers thereafter conducted a search of the house and found marijuana inside a duffle bag in an upstairs closet and L.S.D. and marijuana inside a suitcase. They also discovered marijuana in a sifter in the dining room, L.S.D. in the living room, and marijuana in a can on a bathroom shelf. Robert Edwards led the officers to a hole under the house, where additional marijuana was found, and particles (apparently of marijuana) were found in Edwards' vehicle. The officers did not have an arrest or a search warrant. The arrest took place on January 13, 1967, that is, before the decision of the United States Supreme Court in Chimel v. California on June 23, 1969.

CASE 19: PAROLE OFFICERS AND SEARCHES

People v. Quilon

Federal Narcotics Agents informed the defendant's state parole officer that the defendant, on felony parole, was selling narcotics. The parole officer asked the agents to accompany him to the defendant's apartment. The agents and the parole officer went to the door and rang the bell. Defendant looked out his window and asked who was there. The parole officer stepped off the porch and announced himself. When the defendant buzzed the door open, the parole officer and the agents entered. The parole officer told the defendant that he and the two agents wanted to search for narcotics. The defendant initially agreed, then later demanded a search warrant. The parole officer stated no search warrant was necessary. The search of the apartment, conducted by the parole officer and the agents, revealed narcotics.

At trial the defendant objected to the introduction of the evidence, contending that the parole officer was only a "front" for narcotic agents, particularly since the information originated with them.

CASE 20: SEARCH AND SEIZURE: CONSENT BY LANDOWNER

People v. Egan

As a result of police investigation, officers suspected defendant was implicated in a homicide. The victim had died from an overdose of narcotics. Investigators went to a condominium apartment owned and occupied by the defendant's stepfather. The stepfather informed the officers the defendant was away from home but that the officers were welcome to search. Upon entering the room which the defendant occasionally occupied, the officers observed a blue overnight kit in the closet. The stepfather stated that the bag did not belong to him and that he knew nothing about it. He stated the officers could search the bag. Inside the bag they found a revolver, which they seized. The next day they arrested the defendant.

Defendant was convicted of Penal Code Section 12021 but appealed, contending the search was unlawful.

Note: Penal Code Section 12021 prohibits possession of a concealable firearm by one previously convicted of a felony.

CASE 21: SEARCHES INCIDENTAL TO ARREST

Cooper v. California

The defendant had been lawfully arrested in his car which was thereafter towed away and impounded. One week after the arrest, the police searched defendant's car and recovered incriminating evidence which was subsequently introduced at trial. Police had no warrant for the search of the car.

Defendant was convicted of selling heroin to a police informer. The defendant appealed his conviction, contending the search of the car was unreasonable in that it was not contemporaneous in time or place with the arrest.

CASE 22: PLAIN SIGHT RULE

People v. Marshall

Situation:

Four police officers were in an unmarked police car at a vantage point across the street from defendant's apartment. They sent an informant to purchase marijuana from one, Matthews, who shared the apartment with defendant Marshall. At 8:15 p.m., the informant returned with marijuana and told the officers that defendant gave it to him free of charge. He also told them that the transaction took place in the bedroom and that the marijuana he was given was taken from a brown paper bag that contained more cellophane-type bags of marijuana.

The officers had neither an arrest nor a search warrant, but decided to arrest defendant on the basis of the informant's report. They ruled out forcible entry as dangerous to person and property. An officer, equipped to pick the lock of the apartment, arrived at 8:30 p.m. The officers knocked on the door several times, anounced their identity, and demanded entry. There was no response. The lock was then picked and at 8:40 the officers entered the apartment.

CASE 23: VEHICLE INSPECTION FOR REGISTRATION

People v. Monreal

A police officer was on duty in a Los Angeles business area at about 10:30 p.m. It was raining. There had been numerous burglaries in the area and the business establishments were closed. The officer observed the defendant, who was smoking a cigarette, step from his vehicle which was parked, walk to the rear of the vehicle, throw the cigarette onto the sidewalk, and open the trunk. He then opened a tool box, removed a pair of gloves and a screwdriver. The officer thought defendant might be a burglary suspect. He approached defendant and asked him for his driver's license and questioned him concerning the ownership of the vehicle. Defendant produced his driver's license, and said the vehicle belonged to him, but was registered to someone else in San Diego. The officer went to the driver's side of the car, shined his flashlight into the vehicle from the outside, saw no registration, and then opened the car door and put his head inside the car so he might be able to see if there was a registration on the sun visor or elsewhere in the vehicle. At this time, he smelled a strong sweet order which resembled marijuana. Upon being asked, defendant denied that he had been smoking marijuana. The officer checked the vehicle for possible marijuana but found none. He then went to the curb where he had earlier observed the defendant throw the cigarette. He saw a partially smoked handmade cigarette lying on the otherwise clean sidewalk. He broke it open and noted that it contained a substance resembling marijuana. The defendant was placed under arrest. During booking, a plastic bag containing marijuana fell from defendant's shorts.

CASE 24: UNANNOUNCED ENTRY OF A RESIDENCE

People v. Berutko

An informant advised the officer that Berutko was engaged in the sale of heroin at a certain address. The officer secured Berutko's description and that of his automobile, a red and white Buick. He and three other officers went to the apartment house address provided by the informant. They had neither an arrest nor a search warrant. The manager identified the suspect from a photograph presented by the officer. The manager stated that Berutko had "a large amount of traffic" to and from his apartment and that he "appeared suspicious."

The officers placed defendant's apartment under surveillance. They saw several persons go to the door and then leave without entering; it appeared that there was no one at home. Presently, defendant drove up in a red and white Buick and entered his apartment. The officers continued their surveillance for 10 to 15 minutes, and several times during this period Officer Wilson saw defendant come to a window and look briefly outside.

Officer Wilson then went to the front portion of the apartment. The window there was covered by a light curtain or drape, the bottom of which rested upon a table in such a way that an opening was formed through which a part of the interior of the apartment was visible. Officer Wilson was able to look into the interior from a vantage point which seemed to be a common area available to other tenants of the apartment building as well as to other persons admitted by such tenants or the management and having legitimate business upon the premises.

CASE 24: (Continued)

Looking through the aperture fromed by the arrangement of the drape, Officer Wilson saw a coffee table upon which there was a plastic bag which contained some "lumpy" material and was tied off at one end. On the basis of his experience in narcotics investigation, the officer formed the opinion that the bag contained heroin.

The officers thereupon obtained a key from the manager of the apartment building and entered defendant's apartment without knocking or giving any announcement as to their identity or purpose. A search disclosed narcotics and narcotic paraphernalia. Officer Wilson testified at the trial that the unannounced entry was made "to avoid having the contraband being disposed of."

CASE 25: SEARCH BY PRIVATE INDIVIDUALS

Stapleton v. Superior Court

Mr. Bradford, a special agent for a credit card corporation, together with agents from two other credit card corporations, went to a police station to aid in the arrest of Stapleton, for whom the police had an outstanding arrest warrant for credit card fraud. The agents and the police agreed to meet near Stapleton's home. After arriving there around midnight, the officers instructed Bradford and another agent to cover the rear of the house to prevent an escape while the two officers and the third agent went to the front door with the warrant. Bradford entered Stapleton's house after one of the officers requested him to do so and let him in through the back door. Stapleton was found in a bedroom and placed under arrest by the police. Bradford then started searching the house; the officers were also engaged in searching the premises and Bradford assisted them. He shortly asked whether anyone had searched Stapleton's car which, he remembered, he had seen parked some distance down the street. Receiving a negative response, Bradford then asked where the keys were and someone indicated the keys lying on a table. Another agent handed the keys to Bradford, who then went outside to the car. Bradford's purpose in going to the car was: "Well, it's one of those things that we have done in making arrests, searching incidental to the arrest." He also intended to look for credit cards or merchandise which may have been purchased with cards. Neither the agents nor the police had a search warrant and Stapleton had not given permission for the search.

CASE 25: (Continued)

Bradford searched inside the car, which was not locked, and then unlocked the trunk. In the trunk he discovered 60 canisters containing a tear gas-like substance. Bradford closed the trunk, reported his discovery to the officers. An officer returned to the car with Bradford, opened the trunk, and retrieved the canisters.

CASE 26: HEARSAY RULE EXCEPTIONS AND PRIVILEGED COMMUNICATIONS

People v. Jones

At approximately 9:00 a.m. an officer receives a radio call of a shooting. Upon arrival at the address he is admitted into the house by a Catholic priest and directed to the kitchen. There he finds a young woman on the floor with a head wound. She is apparently dead. There is an automatic pistol next to her body. There are three men present: (1) Percy Allen, whom the officer recognizes as a known homosexual, (2) George Jones, who identifies himself as a friend of the victim, and (3) Father O'Brian, the priest.

As the officer is securing the scene, he is advised by Jones that a fourth man, Le Roy Smith, had been present when the victim was shot, but had left in his car right after calling Father O'Brian. Father O'Brian said that he came to the house immediately after Le Roy had called him and upon finding the victim in the kitchen, called the police. He identified the deceased as Selma Brown, one of his parishioners. The officer immediately called headquarters to advise them of the facts and put out an APB on Le Roy Smith. He is advised by the desk that Smith has just been killed in an auto accident. He does not advise the others of Smith's death.

The officer then asked Percy if he saw what happened. Percy said that he didn't see anything, but while he was sitting on the couch with his boyfriend, Le Roy, he heard a gun shot. He also said that Le Roy who could see into the kitchen from where he was sitting, shouted, "My God, George just shot Selma." Le Roy left the house soon after.

APPENDIX III

Sample Output

C A S E 12

QUESTION 1: IF AN ATTORNEY HAS ADVISED HIS CLIENT NOT TO SUBMIT TO A BLOOD TEST IN A CASE SUCH AS THIS, MAY THE POLICE IGNORE THIS ADVICE AND LEGALLY HAVE A BLOOD SAMPLE TAKEN ANYWAY?

1. YES
2. NO

]:
YES
CORRECT HILL

IN THE SCHMERBER CASE THE UNITED STATES SUPREME COURT RULED THAT ATTORNEYS MAY ADVISE THEIR CLIENTS TO REFUSE PERMISSION TO CONSENT TO A BLOOD TEST, BUT POLICE ARE FREE TO IGNORE THIS ADVICE AND MAY PROCEED TO REQUEST THE TEST.

QUESTION 2: WHICH ONE OF THE FOLLOWING 5 STATEMENTS IS TRUE?

1. REMOVAL OF A BLOOD SAMPLE IS A SEARCH AND SEIZURE.
2. AS LONG AS A BLOOD SAMPLE IS TAKEN INCIDENTAL TO A LAWFUL ARREST IT IS REASONABLE.
3. NO SEARCH WARRANT IS NEEDED IN A BLOOD ALCOHOL CASE DUE TO THE URGENCY OF CONDUCTING THE TEST IMMEDIATELY.
4. STATEMENTS 1 THROUGH 3 ARE ALL TRUE.
5. STATEMENTS 1 THROUGH 3 ARE ALL FALSE.

]:

4
VERY GOOD HILL

IN THE SCHMERBER CASE THE U.S. SUPREME COURT SAID THAT REMOVAL OF A BLOOD SAMPLE IS A SEARCH AND SEIZURE. IN ORDER TO HAVE A PROPER SEARCH WITHOUT A SEARCH WARRANT, IT MUST BE CONDUCTED INCIDENTAL TO AN ARREST; OR, WITH THE DEFENDAN'S CONSENT; OR, IN AN EMERGENCY. BUT REMOVAL OF A BLOOD SAMPLE IS DIFFERENT THAN A SEARCH FOR WEAPONS, OR EVIDENCE OR FRUITS OF A CRIME. BECAUSE REMOVAL OF A BLOOD SAMPLE REQUIRES AN INVASION OF THE BODY SURFACE, SPECIAL CONCERN MUST BE EXERCISED. THEREFORE:

THE SEARCH MUST BE AN APPROPRIATE INCIDENT OF THE ARREST. EVIDENCE THAT THE DEVENDANT HAD BLOODSHOT EYES, AN ODOR OF ALCOHOLIC BEVERAGE ABOUT HIM, PLUS THE REAL POSSIBILITY THE EVIDENCE WOULD DISAPPEAR IN THE ABSENCE OF PROMPT EFFORTS TO RECOVER IT, JUSTIFIES THE SEARCH WITHOUT A WARRANT AS AN APPROPRIATE INCIDENT OF THE ARREST.

QUESTION 3: IN AN EMERGENCY MAY POLICE TAKE A BLOOD SAMPLE WITHOUT AN ARREST?

1. YES
2. NO

□:
YES

CORRECT HILL

CALIFORNIA STATUTE REQUIRES THAT A BLOOD SAMPLE MUST BE WITHDRAWN INCIDENTAL TO A LAWFUL ARREST. HOWEVER, CALIFORNIA CASE LAW ALLOWS POLICE TO WITHDRAW A BLOOD SAMPLE EVEN WITHOUT AN ARREST IF THERE IS AN EMERGENCY. PEOPLE V. HUBER, 232 C.A. 2D 663; PEOPLE V. GILBERT, 63 C.2D 690.

QUESTION 4: DOES REMOVAL OF A BLOOD SAMPLE WITHOUT PERMISSION IN A DRUNK DRIVING CASE VIOLATE ONES PRIVILEGE AGAINST SELF INCRIMINATION?

1. YES
2. NO

□:
NO
RIGHT HILL

AGAIN IN THE SCHMERBER CASE, THE U.S. SUPREME COURT SAID REMOVAL OF A BLOOD SAMPLE FROM A PERSON SUSPECTED OF DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR DOES NOT VIOLATE THE PRIVILEGE AGAINST SELF-INCRIMINATION. THE PRIVILEGE AGAINST SELF-INCRIMINATION 'PROTECTS AN ACCUSED ONLY FROM BEING COMPELLED TO TESTIFY AGAINST HIMSELF, OR OTHERWISE PROVIDE THE STATE WITH EVIDENCE OF A TESTIMONIAL OR COMMUNICATIVE NATURE, AND THAT THE WITHDRAWAL OF BLOOD AND USE OF THE ANALYSIS IN QUESTION IN THIS CASE DID NOT INVOLVE COMPULSION TO THESE ENDS.'

QUESTION 5: MUST ADMINISTRATION OF FIELD SOBRIETY TESTS BE PRECEDED BY ANY STATEMENT OF CONSTITUTIONAL RIGHTS?

1. YES
2. NO

□:
YES
SORRY HILL

COURT DECISIONS DO NOT REQUIRE A MIRANDA TYPE WARNING PRIOR TO GIVING A FIELD SOBRIETY TEST.

QUESTION 6. MUST ANY KIND OF WARNING BE GIVEN PRIOR TO TAKING A BLOOD OR URINE TEST IN DRUNK DRIVING CASES?

1. YES
2. NO

␣:
1
RIGHT HILL . . .

ADMINISTRATION OF BLOOD TESTS MUST BE PRECEDED BY A WARNING THAT FAILURE TO SUBMIT TO A TEST MAY RESULT IN THE SUSPENSION OF DRIVING PRIVILEGES FOR SIX MONTHS.

QUESTION 7: DOES TAKING OF BLOOD SAMPLES VIOLATE THE FIFTH AMMENDMENT OF THE U.S. CONSTITUTION?

1. YES
2. NO

␣:
YES
NO IT DOESN'T HILL

NOTE THAT SCHMERBER PERMITS EVEN WIDER USE OF BLOOD TESTS THAN THE CALIFORNIA STATUTE. VEHICLE CODE SECTION 13353 PERMITS WITHDRAWAL OF BLOOD SAMPLES FOR OFFENSES COMMITTED WHILE DRIVING A MOTOR VEHICLE. SCHMERBER, ALTHOUGH A DRUNK DRIVING CASE, APPROVES THE PRACTICE OF REMOVING A BLOOD SAMPLE, IN PART, BECAUSE IT DOES NOT VIOLATE THE PRIVILEGE AGAINST SELF-INCRIMINATION. BLOOD SAMPLES MAY BE TAKEN FOR ANY PURPOSE AS FAR AS THE FIFTH AMENDMENT IS CONCERNED.

QUESTION 8: DO THE VARIOUS POINTS BROUGHT OUT SO FAR IN THE SCHMERBER CASE INDICATE THAT BLOOD SAMPLES CAN BE TAKEN FOR MERE GENERAL EVIDENTIARY PURPOSES AT THE OFFICER'S DISCRETION?

1. YES
2. NO

␣:
NO
CORRECT HILL

THESE CASES DO NOT MEAN THAT BLOOD MAY BE WITHDRAWN FOR NO REASON WHATEVER. WITHDRAWAL OF A SPECIMEN FROM THE SUSPECT (BLOOD, BREATH OR URINE) IS A SEARCH AND MAY BE CONDUCTED INCIDENTAL TO A LAWFUL ARREST IF IT IS <u>APPROPRIATE</u> TO DO SO. IF AN ARREST IS MADE WITH PROBABLE CAUSE, OR IF AN OFFENSE HAS BEEN COMMITTED IN THE OFFICER'S PRESENCE, AND THE RELEVANCE OF SECURING A SPECIMEN OF BODY ALCOHOL CAN BE SHOWN, A TEST MAY BE ADMINISTERED.

THERE ARE SOME INSTANCES IN WHICH THERE MAY BE LESS THAN PROBABLE CAUSE TO ARREST FOR A FELONY, OR NO MISDEMEANOR COMMITTED IN THE OFFICER'S PRESENCE.

QUESTION 9: POLICE DISCOVER A SINGLE CAR CRASHED AGAINST A TREE; THE DRIVER PINNED BEHIND THE WHEEL; THE DRIVER APPEARS TO BE UNDER THE INFLUENCE: EVEN THOUGH THE MISDEMEANOR WAS NOT COMMITTED IN THE OFFICER'S PRESENCE, CAN BLOOD BE TAKEN?

1. YES
2. NO

□:
YES
CORRECT HILL

QUESTION 10: POLICE DISCOVER A TWO-CAR ACCIDENT AND NO EVIDENCE AS TO THE CAUSE. THE DRIVER OF ONE CAR HAS AN ODOR OF ALCOHOL ABOUT HIM: EVEN THOUGH THIS MIGHT NOT BE PROBABLE CAUSE TO ARREST, ARE SUCH CIRCUMSTANCES SUFFICIENTLY SUSPICIOUS TO WARRANT THE REMOVAL OF A BLOOD SAMPLE FROM THE DRIVER?

1. YES
2. NO

□:
NO
SORRY HILL . . . .
CIRCUMSTANCES ARE SUCH AS TO WARRANT A BLOOD SAMPLE IN THIS TYPE OF CASE.

QUESTION 11: COULD A BLOOD SAMPLE BE TAKEN FROM A SUSPECT WITHOUT A SEARCH WARRANT IN CASES UNRELATED TO DRUNK DRIVING SUCH AS RAPE?

1. YES
2. NO

□:
NO
YOU MAY BE RIGHT HILL:
ACTUALLY, WHETHER BLOOD COULD BE WITHDRAWN FROM A SUSPECT UNDER ARREST FOR A PURPOSE UNCONNECTED WITH DETERMINATION OF BLOOD ALCOHOL, AS, FOR EXAMPLE, TO MATCH BLOOD TYPES IN A HOMICIDE CASE, IS AN OPEN QUESTION. SCHMERBER STATES THAT THE MERE LIKELIHOOD OF RELEVANCE IS INSUFFICIENT JUSTIFICATION FOR INVADING THE BODY, IT NOT BEING AN APPROPRIATE INCIDENT OF THE ARREST. AS EVIDENCE OF BLOOD TYPE WOULD NOT DISAPPEAR, THE EMERGENCY EXCEPTION COULD NOT BE ARGUED. THEREFORE, APPLICATION FOR A SEARCH WARRANT WOULD PROBABLY BE NECESSARY.

END OF CASE 12 . . . . .

HILL. YOUR SCORE:

NUMBER OF QUESTIONS ASKED IN THIS CASE: 11
NUMBER OF QUESTIONS ANSWERED RIGHT: 8

PERCENT CORRECT: 72.72727273
WELL DONE HILL

C A S E 22

THE TIME IS: 2:09

QUESTION NO. 1: BASED UPON THE INFORMATION THEY HAD FROM THE INFORMANT AND THE MARIJUANA FOR EVIDENCE, DID THE OFFICERS MAKE A LEGAL ENTRY?

1. YES
2. NO

[]:

YES

YOU ARE CORRECT ON THIS POINT. THE COURT RULED IN THIS CASE THAT THEY HAD PROBABLE CAUSE TO MAKE A FELONY ARREST (I.E., FOR FURNISHING MARIJUANA); THEY HAD REASONABLE GROUNDS TO BELIEVE THAT DEFENDANT WAS INSIDE THE APARTMENT; AND THEY ENTERED TO MAKE AN ARREST.

QUESTION NO. 2: THE OFFICERS HAD THE LOCK PICKED TO GAIN ENTRY INTO THE PREMISES. IS THIS A LEGAL PROCEDURE?

1. YES
2. NO

[]:

YES

RIGHT MORGAN, PICKING A LOCK IS A FORM OF 'BREAKING IN', ALTHOUGH LESS DESTRUCTIVE.

P.C. SECTION 844 PROVIDES: 'TO MAKE AN ARREST, A PEACE OFFICER, MAY BREAK OPEN THE DOOR OR WINDOW OF THE HOUSE IN WHICH THE PERSON TO BE ARRESTED IS, OR IN WHICH THEY HAVE REASONABLE GROUNDS FOR BELIEVING HIM TO BE, AFTER HAVEING DEMANDED ADMITTANCE AND EXPLAINED THE PURPOSE FOR WHICH ADMITTANCE IS DESIRED.'

ONCE THE OFFICERS GAINED ENTRY THEY FOUND AN OPEN WINDOW WITH ITS SCREEN REMOVED INDICATING THE OCCUPANTS HAD FLED. ONE OFFICER DETECTED A SWEET ODOR SIMILAR TO THAT OF THE MARIJUANA DEFENDANT HAD GIVEN THE INFORMANT. IN OTHER NARCOTIC INVESTIGATIONS THE OFFICER HAD SMELLED SIMILAR ODORS FROM MARIJUANA THAT HAD BEEN SOAKED IN WINE. THE ODOR CAME FROM AN OPEN CARDBOARD BOX ON THE FLOOR INSIDE AN OPEN BEDROOM CLOSET. IN THE BOX THE OFFICERS FOUND A CLOSED BROWN PAPER BAG WHICH, WHEN OPENED, WAS FOUND TO CONTAIN 21 PLASTIC BAGS OF WINE-SOAKED, SWEET-SMELLING MARIJUANA. THE OFFICERS REMAINED IN THE APARTMENT TO AWAIT THE OCCUPANTS. MATTHEWS AND MARSHALL WERE ARRESTED AT 11:00 P.M. WHEN THEY RETURNED TO THE APARTMENT.

QUESTION NO. 3: BASED ON WHAT YOU HAVE READ, DO YOU BELIEVE THE OFFICERS SEARCH FOR--AND SEIZURE OF--THE MARIJUANA WAS VALID?

1. YES
2. NO

□:

YES

WRONG MORGAN

THE NEXT QUESTION WILL DETERMINE IF YOU KNOW WHY THE SEARCH AND SEIZURE WERE NOT VALID.

QUESTION NO. 4: WHICH OF THE FOLLOWING EXPLAINS WHY THE SEARCH AND SEIZURE WERE INVALID?

1. THE EVIDENCE WAS NOT IN PLAIN SIGHT
2. THE SEARCH WAS NOT CONTEMPORANEOUS WITH THE ARREST
3. A SEARCH WARRANT WOULD HAVE BEEN REQUIRED IN ANY EVENT
4. ALL OF THE ABOVE ARE CORRECT
5. 1 AND 2 ARE CORRECT

□:

2

YOU ARE PARTIALLY CORRECT, NUMBER 5 IS THE RIGHT ANSWER.

THE COURT RULED THAT:

1. A VALID SEARCH MUST BE CONTEPORANEOUS WITH THE ARREST. IT WOULD THEN HAVE BEEN VALID SINCE THERE WAS PROBABLE CAUSE TO ARREST.

2. WHILE THE OFFICERS WERE SEARCHING FOR THE SUSPECT ONLY THAT CONTRABAND 'IN PLAIN SIGHT' COULD BE SEIZED. THE MARIJUANA WAS IN A CLOSED PAPER BAG AND NOT IN PLAIN SIGHT.

3. ONCE THEY FOUND THE HOUSE UNOCCUPIED, A SEARCH WARRANT SHOULD HAVE BEEN OBTAINED AND SERVED ON DEFENDANTS WHEN THEY RETURNED.

E N D C A S E 22

YOUR SCORE - MORGAN
NUMBER CORRECT = 2
NUMBER MISSED = 2
DURATION: 0:05:57

APPENDIX IV

Final Examination

INSTRUCTIONS

Read the descriptions that follow and indicate your answers to the question as directed.

ENACTMENT 1

Officers in possession of a warrant of arrest for failure to appear when summoned for a traffic violation went to the address listed on the warrant. Upon arriving they observed two male persons enter the house. Officers knocked on the front door and a person fitting the description listed on the warrant opened the door. The officers then asked the person who opened the door if his name was Raymond Heslop, the name listed on the warrant. The person answering the door stated that his name was Raymond Heslop. The officers informed Heslop that he was under arrest on authority of the warrant.

HESLOP: O.K. I'LL GO WITH YOU. LET ME GET MY COAT OFF THE CHAIR HERE.

Heslop then stepped into the room, and the officers followed him to the chair where his coat was. As the officers walked past a coffee table, they observed a partially burnt marijuana cigarette. Heslop did not appear to be under the influence.

Question 1-1: Do the officers have probable cause to arrest Heslop for possession of marijuana? ☐ Yes ☐ No

Explain your answer below.

Question 1-2: Is the marijuana cigarette admissible evidence? Explain your answer below. ☐ Yes ☐ No

The officers then asked Heslop if anyone lived in the house with him. Heslop stated that no one did. The officers then walked through the house, looking in closets and under beds to see if anyone else was in the house, and possibly hiding. While in the bedroom, officers observed a large plastic bag filled with a green leafy substance resembling marijuana on the floor of the closet. The officers then conducted an extensive search of the bedroom and the remainder of the house. In the bedroom officers found, hidden in a drawer, a clear plastic container which contained several red capsules resembling seconal. In a shoe box on the closet shelf the officers found a plastic bag containing several white double-scored tablets resembling benzedrine. In a cabinet in the kitchen the officers found a cup containing an off-white powder substance resembling heroin. The officers seized all of the discovered materials.

Question 1-3: Can the officers legally check the entire house to ascertain if anyone else is there? ☐ Yes ☐ No

The officers then advised Heslop that he was under arrest for possession of marijuana.

Question 1-4: Can the officers legally conduct an extensive search of Heslop's person, or is the search restricted to a cursory search for weapons? ☐ Yes ☐ No

The officers then searched Heslop and found another marijuana cigarette.

Question 1-5: Is this cigarette admissible as evidence? ☐ Yes ☐ No

Question 1-6: Can the officers then legally conduct an extensive search of the house? Why? ☐ Yes ☐ No

Explain your answer below.

Question 1-7: Can the officers legally look under the beds and in the closets to ascertain if someone is hiding there? ☐ Yes ☐ No

Question 1-8: Can the officers legally look in the drawers, shoe box, and kitchen cabinet? ☐ Yes ☐ No

Explain your answer below.

Question 1-9: Which of the above contraband would be admissible as evidence? Why?

As you should have noticed, the officers did not ask Heslop if they could search the house. Assume that the officers had asked Heslop if they could search the house, and that Heslop agreed.

Question 1-10: Which of the above evidence would be admissible as evidence? Why?

Assume that Heslop had a roommate and that the roommate was present when Heslop gave the officers permission to search the house, and that the roommate told the officers that they could not search the house.

Question 1-11: Can the officers legally search the house? ☐ Yes ☐ No

Explain your answer below.

ENACTMENT 2

Officers on routine patrol were hailed down by a female.

FEMALE: HELP ME! SOME MAN JUST BEAT ME UP IN THAT BAR OVER THERE.

OFFICER: WHAT HAPPENED?

FEMALE: HE HIT ME WITH HIS FIST UNTIL I WENT DOWN, AND THEN HE KICKED ME.

OFFICER: DO YOU KNOW WHO THE MAN IS?

FEMALE: NO, I'VE NEVER SEEN HIM BEFORE.

At this time the officers observed several reddened, bruised areas on the victim's face. The victim pointed out the bar where she had been and described the man who had beaten her. The officers then went into the bar, and located a man fitting the description given by the woman. The officers requested the man to step outside.

MAN: WHAT FOR, I HAVEN'T DONE ANYTHING?

OFFICER: YOU ARE UNDER ARREST FOR ASSAULT WITH A DEADLY WEAPON.

The man then accompanied the officers outside to where the woman was standing.

FEMALE: THAT'S HIM, I WANT HIM IN JAIL.

An argument then started between the man and woman. The officers stopped the argument and separated the two people.

OFFICER TO MAN: DO YOU KNOW THIS WOMAN.

MAN: YEH, SHE'S MY GIRLFRIEND, WE'VE COME TO THIS BAR A COUPLE OF TIMES BEFORE.

Question 2-1: At this point, if the officers intend to question the man, should he be admonished of his constitutional rights? ☐ Yes ☐ No

Explain your answer below.

Question 2-2: Do the officers have to get a statement from the suspect indicating that he understands the admonishment once it is given? Explain your answer below. ☐ Yes ☐ No

Question 2-3: Do the officers have to get a statement from the man indicating an understanding of the rights? ☐ Yes ☐ No

The officers then admonished the man and got a statement that he understood the admonishment. They then asked the man if he wanted to tell them what had happened. The man stated that he would tell them.

Question 2-4: Can all the statements made by the man be admissible as evidence? ☐ Yes ☐ No

NOTE: Assume for the remainder of this enactment that the man had stated that he did not want to talk to the officers about the incident, but the officers questioned him anyway, and obtained several incriminating statements.

Question 2-5: Are these statements admissible as evidence? Explain your answer below. ☐ Yes ☐ No

Prior to being booked, the man was interviewed by detectives, who again admonished him of his constitutional rights and obtained an acknowledgement of understanding. The man then told the detective what had happened in the bar.

Question 2-6: Are the statements given to the detective admissible as evidence? ☐ Yes ☐ No

Explain your answer below.

Question 2-7: If the detectives had not questioned the man, and if, during the booking process, the man had called the officers over to him, and told them that he wanted to tell them what had happened at the bar, would the statements then made by him be admissible as evidence?

Explain your answer below. ☐ Yes ☐ No

ENACTMENT 3

While on night patrol in a high frequency crime area, an officer and his partner observed a vehicle run a red light. While following the vehicle, the officers make an AUTO-STATIS check to see if the vehicle has any outstanding wants or warrants against it. The check indicates that the car does not have a want or warrant against it. The officers then pull the vehicle over to cite the driver for running the red light. While the vehicle is pulling to the side of the street, the officers observe the driver motion as though he were putting something under the front seat.

Question 3-1: Do the officers have probable cause to search any particular area of the vehicle? ☐ Yes ☐ No

Question 3-2: If the officers have probable cause to search the vehicle, what are the legal limitations governing the search?

The driver gets out of his car and goes to the rear of it where he stands with one of the officers. The driver is neatly dressed, wearing casual clothes. The other officer looks under the front seat where he finds a loaded pistol, a pair of gloves, and a small pry bar.

Question 3-3: Do the officers have probable cause to arrest the driver of the vehicle for illegal possession of the pistol?

Explain your answer below. ☐ Yes ☐ No

Question 3-4: Do the officers have probable cause to arrest the driver for burglary? ☐ Yes ☐ No

Question 3-5: Do the officers have probable cause to detain the driver? Explain your answer below. ☐ Yes ☐ No

Question 3-6: If the driver had not bent over as if placing something under the front seat, would the officers have probable cause to look under the front seat? ☐ Yes ☐ No

The officer then takes the pistol to the rear of the vehicle where the driver is standing.

OFFICER: IS THIS YOUR GUN?

DRIVER: YES.

OFFICER: DO YOU HAVE A PERMIT TO CARRY IT?

DRIVER: YES, BUT I DON'T HAVE IT WITH ME.

The officer then checks to see if there is a want on the gun. The check shows that there is no want on the gun.

Question 3-7: Do the officers have probable cause to arrest the driver for illegal possession of the pistol? ☐ Yes ☐ No

The driver is then placed under arrest, handcuffed, placed in the rear seat of the police vehicle. The officer then searches the interior of the driver's vehicle.

Question 3-8: Do the officers have probable cause to search the interior of the vehicle? ☐ Yes ☐ No

Explain your answer below.

The officer then asks the driver if there is anything in the trunk of the vehicle.

DRIVER: NO, THERE'S NOTHING IN THERE, GO AHEAD AND LOOK.

The officer then asks the driver for the keys to the trunk, and the driver gives them to him. The officer opens the trunk of the vehicle and observes a box of transistor radios. A check of several serial numbers from several of the radios results in a report to the officer that the radios are stolen.

Question 3-9: Did the officers have probable cause to search the trunk of the vehicle? ☐ Yes ☐ No

Explain your answer below.

The driver was then booked for 459 P.C. (Burglary).

Question 3-10: If the officer has searched under the front seat without probable cause, could the transistor radios be used as evidence against the driver? ☐ Yes ☐ No

Explain your answer below.

ENACTMENT 4

An officer responding to a radio call arrives at a residence where he finds a yound woman with a head wound. She is apparently dead. There is an automatic pistol next to her body. There are three men at the scene:

Wilbur - a very emotional homosexual who is frequently interrupting the officer, and generally hampers the investigation.

Mike - a friend of the dead woman.

Father Nick - a priest.

OFFICER: (TO WILBUR) DID YOU SEE WHAT HAPPENED?

WILBER: I SAW NOTHING AT ALL, BUT I HEARD OH SO MUCH. WHILE I WAS ON THE LOVE SEAT WITH MY BOYFRIEND, WILLIE, I HEARD A GUN SHOT. WILLIE COULD SEE THEM AND SHOUTED, "MY GOD, MIKE SHOT DIANE!"

At this time, the officer received notification that Willie, Wilbur's boyfriend, has just been killed in an automobile accident.

Question 4-1: Is Wilbur's statement relevant? ☐ Yes ☐ No

Question 4-2: Would Wilbur's statement be hearsay if offered in court?

☐ Yes ☐ No

Question 4-3: Is Wilbur's statement admissable as evidence?

☐ Yes ☐ No Explain your answer.

Question 4-4: Is it appropriate to give Wilbur Miranda at this time?

☐ Yes ☐ No Explain your answer.

At this time, Mike, the dead woman's friend, was acting very nervous. The officer then overheard Mike telling Wilbur to be quiet and to say nothing. The officer questioned Mike. Mike's statements were conflicting with the information the officer had obtained from Wilbur. In the middle of this interview, Mike refused to say anything else until his attorney was present.

Question 4-5: Are Mike's actions relevant? ☐ Yes ☐ No

Explain your answer.

Question 4-6: Would it be appropriate to give Mike Miranda? ☐ Yes ☐ No

At this time, Father Nick has just finished giving Diane the last rites. The officer detains Father Nick to question him.

FATHER NICK: DIANE ASKED ME FOR ADVICE TWO DAYS AGO. SHE SAID SHE WAS PREGNANT, AND THAT SHE FELT THE ONLY WAS OUT WAS TO KILL HERSELF.

Question 4-7: Is Father Nick's statement relevant evidence? ☐ Yes ☐ No

Question 4-8: Should Father Nick be given Miranda? ☐ Yes ☐ No

Question 4-9: Could Father Nick's statement be considered a privileged communication if offered in court? ☐ Yes ☐ No

Questi-n 4-10: Can Father Nick legally refuse to testify in court on the basis of a privileged communication? ☐ Yes ☐ No