Police Guidance Manual No. 4

Patrol Frisk Arrest

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1. Introduction

Patrol by the uniformed forces is the Police Department's main tactic to maintain order, assure the populace of the presence of protection and aid, deter and arrest the lawless, and pick up information which, supplemented by the investigations of the Detective and other bureaus, will lead to the detection of criminals at large.

A. TYPES OF PATROL

Most patrolling in Philadelphia, as in other cities, is done by automobile rather than on foot. Motor patrol has the obvious advantage over foot patrol of enabling officers to cover much more area in a given period of time, or, to put it another way, to visit the same points much more frequently. Motor patrol is also a more impressive show of force. A police car, with its distinctive color, red lights and insignia, helps to discourage potential wrongdoers by manifesting the presence or quick availability of officers of the law. It also reassures the public, who come to rely on the regular reappearance of the cars. Finally, motor patrol enables police officers to take along more equipment, e.g., for rescue or first aid, special weather gear, special purpose weapons, than an officer could carry while on foot.

On the other hand, foot patrol allows more person-to-person contact with the public than can occur when police officers are riding in the patrol car. This intimate contact can be quite important for both crime detection and community relations.

The Philadelphia Police Department has tried to draw a balance between these two forms of patrol. The city is divided into 22 districts or precincts, each under the command of a captain. Although most patrolling is done in cars, each district has some patrol officers walking beats. They are usually sent to commercial areas and high crime residential areas. The areas to be covered by foot patrolmen are

decided for each district by its captain. In addition, Philadelphia is experimenting with a combined motor-foot patrol system in which a two-man car is used with one partner walking a beat with a portable radio to communicate with the man in the car.

Today there is a good deal of controversy over whether one man or two man cars should be used for motor patrol. A leading book on patrol procedure summarizes the arguments on both sides of this question as follows:

Two Man Patrol Cars

(1) A two man patrol car provides the officer with a greater safety factor by doubling the firepower and the physical protection. It prevents trouble in many cases.

(2) The mistake that one man makes may be caught by his partner, and vice versa. We all have our bad days, and we are all different. A quality that one officer lacks is often a strong point of his partner.

(3) One officer does not have to drive a full eight hours, and he is therefore more rested and can do a better job. The variety of tasks makes the job more interesting.

(4) Two pair of eyes are better than one. It is difficult enough to drive in our present traffic let alone devote much attention to what is going on around us while we are driving.

(5) One man can operate the radio while the other drives.

(6) On quiet nights the driver can have someone to talk to and help keep him awake. Morale is improved through companionship.

* * *

Advantages of the One Man Patrol Car

(1) The preventive enforcement is doubled by having twice as many police cars on the street.

(2) When the officer is alone, he devotes his full attention to his driving and the beat rather than to the conversation with his partner.

(3) In a two man car, the officers begin to rely on each other, and as a result of human error, an officer expects support when it isn't there. A man alone develops self-reliance.

(4) In the two man car, an officer will take more chances than if he were alone. He apparently builds a false sense of security, and sometimes acts without caution because he does not want to appear to be a coward in front of his partner. More officers have been killed when riding in two man cars than when riding alone.

(5) Personality clashes are reduced. Riding in a small patrol car with another person, for eight hours will soon reveal most of his faults. In a short time these faults can get on the other person's nerves. It is very unusual for a two man team to last much over a year.[1]

The policy of the Philadelphia Police Department is to use two-man cars whenever possible. However, due to manpower needs, recent years have shown an increasing use of one-man cars. Two-man cars are generally concentrated in high crime areas. The captain determines where the available two man cars are employed in his district. It is the policy of the Philadelphia Department to have two-man cars racially integrated wherever possible.

Motor patrols are required to cruise the sector without parking for any length of time, unless instructed otherwise by higher authority. Officers on motor patrol should not leave the car except for specific purposes such as checking a store door at night to see that it is locked. Patrol should not follow a fixed route, but should be varied from day to day to prevent potential criminals from anticipating the officer's whereabouts. As stated in the Department's Duty Manual, a patrolling officer should eat only at his prescribed meal break, and is not to read newspapers or periodicals nor engage in idle conversation while on patrol.

B. LEGAL RESTRAINTS ON PATROL

Patrol officers are the first-line intelligence agents of the Department. As they drive or walk their beats, they should be constantly on the alert for unusual or suspicious or dangerous conditions and persons. They should get to know their districts thoroughly. They should open up channels of information with the residents and businessmen. In other words, the force is engaged every day and all the time in surveillance. If something suspicious turns up, surveillance of a particular person or situation becomes closer and more intense.

Sooner or later the officer will reach a point where he—or a detective or Juvenile Aid Officer or other specialist—must go *beyond surveillance to questioning of witnesses or suspects, searching persons, cars, or premises, or arresting a suspect.* Surveillance is simply a matter of keeping one's eyes and ears open; it is not regulated by law. Questioning, searching, and arresting, however, are regulated by law. The central theme of this Manual and the following one (PGM No. 5 on Search and Seizure) is at what point does unregulated surveillance turn into regulated activity, and what regulations apply.

At this point you might ask why the law regulates police action that goes beyond surveillance. Why can't an officer arrest a person when he has a hunch he is involved in criminal activity? Why can't he stop and search any suspicious looking car?

The essence of the restrictions on arrest or detention of people is the belief that government should leave a citizen alone unless there is a good reason to interfere with his private life. In our society the people are supreme and the government is the servant of the people, not the other way around. We all want the right to be let alone to lead our lives as we desire. We also all want the comfort of knowing that we will not be arrested and given the bad reputation that goes along with an arrest unless there is a good reason to arrest us. Thus, these restrictions protect us all—including police officers in their roles as citizens. The restrictions are not designed to protect criminals, although they may

have that effect occasionally. Rather they are designed to protect law-abiding citizens who might otherwise be innocent victims of the law enforcement process.

Accordingly, the nation's Founding Fathers adopted the Fourth Amendment to the Federal Constitution, which provides as follows:

> 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 person or things to be seized.

The history of the Fourth Amendment will be explored more fully in PGM No. 5 on Search and Seizure. It should be pointed out here, however, that the prohibition of unreasonable searches and seizures had its origin in the abuses the American colonists suffered under the British. Almost immediately after independence, eight of the thirteen states (including Pennsylvania) adopted constitutional restrictions on searches and seizures of persons and property. These state provisions served as models for the later Fourth Amendment. Article 1, section 8 of the Pennsylvania Constitution is virtually identical with the federal Fourth Amendment.

Recently there has been a great deal of debate concerning whether or not the adherence by the courts to strict interpretations of these Constitutional principles is "handcuffing" the police. It is believed by some, including some highly respected law enforcement officials, that these guarantees hamper effective law enforcement. It is natural that those in law enforcement are deeply concerned with the need to protect the great majority of society against its criminal elements. Yet we do not have to go back to colonial times to realize the dangers possible in law enforcement that is not restrained by a deep concern for individual liberties. Our society has determined that the possible gains in law enforcement by unlimited interfering with individual liberties are not worth the loss involved.

Moreover, it is not at all clear that these constitutional principles really hinder law enforcement in the long run. Of course, every police officer is aware of cases in which someone he thought was guilty was not convicted because a police officer had violated restrictions on arrest or search and seizure. Looking solely at this effect on law enforcement, however, is looking only at the short run. Many of these cases may be ones in which a conviction could have been obtained if the officer had observed the rules. Also, these restrictions may provide a positive benefit by stimulating greater use of modern technology to make law enforcement more efficient. Finally, most violations of civil liberties seem to occur in areas which have the highest crime rates. Violations of the liberties of the residents of high crime areas can only antagonize them, thus making a bad situation worse.

2. Detection and Investigation of Crime

A. SURVEILLANCE

The key to effective patrol is familiarity with the ordinary activities of your area combined with an alertness to activities that are out of the ordinary. As discussed above, the law does not regulate what a police officer can do when he is observing activity without stopping, searching, or questioning a citizen. The point at which an officer's activity stops being mere observation and starts being a search that is regulated by law, is discussed in PGM No. 5 on Search and Seizure. The basic rule, however, is simple: when an officer is in a place where he has a right to be, his seeing, hearing, or smelling things does not constitute activity regulated by law. This applies to an officer who is on the street, an officer who enters a public building open to all people, or one who enters a private building by invitation of the owner or by other legal authority.

B. PRESERVATION AND COLLECTION OF EVIDENCE

The detailed, continuing investigation of a crime is a job for Detectives, men who are specially trained in investigative techniques. Since this manual is designed primarily for an officer on patrol, we will not go into detail as to these investigative techniques. A patrolling officer, however, does perform important immediate investigative functions when he arrives at a place where a crime has been committed.

After rendering aid, if necessary, to the victim of the crime, the first responsibility of the police officer is to prevent destruction of evidence. In order to do this, it may be advisable to prevent a crowd from gathering too close to the scene. This should be done by requests, if possible, rather than by commands. Use authority only if you really must. The assistance of citizens may be enlisted in restricting access to the crime scene.

The area should be scrutinized for evidence of a short-lived nature, such as liquids that may quickly evaporate and other things that may be altered or destroyed easily. It is advisable to have a notebook in which to record the exact position of all objects and persons at the scene and all actions taken by yourself and others.

Objects at the scene which could possibly be relevant to the crime must be carefully identified and preserved so that they can later be used as evidence. When the District Attorney offers in court evidence found at the scene of the crime, he must prove that the object offered is the exact one found at the crime scene. This is done by establishing a "chain of custody," that is, the chain of police officers and other officials who had custody of the object from the time it was found until it is introduced into court. Each officer who handled the object must testify in detail about his receipt of it, his possession of it, and his turning it over to someone else. In order to do this correctly at the time of trial, each officer who handles an object that might later be used in evidence should carefully record all these facts. Also, the fewer officers who handle an object, the easier it is to prove the chain of custody.

C. STOP AND FRISK

The Fourth Amendment and Article I, section 8 of the Pennsylvania Constitution prohibit unreasonable "seizures" of persons and property. Arrest is a seizure of the person and is forbidden except on "probable cause." We will later discuss in detail the meaning of "probable cause"; basically, it is the existence of facts and surrounding circumstances sufficient to justify a reasonable man in believing that a crime has been committed and that the person to be arrested has committed it.

The question arises, however, as to the legality of an officer stopping a person on the street, possibly frisking him, and detaining him for a short period of time. Does this constitute a "seizure" of the person within the meaning of the Constitution? If it does, can it be done without probable cause to arrest? In the Spring of 1968, the United States Supreme Court examined these questions.[2] The Court concluded that a stop and brief detention does constitute a "seizure." However, since it is a lesser restraint on the person's liberty than an arrest, it may be done under a standard that is not as stringent as probable cause to arrest. The standard is one of "reasonable suspicion" to believe that the suspect has committed or is about to commit a serious or violent crime.

It may be hard at times to determine whether an officer has only spoken with a person without stopping him or whether a stop has occurred. However, whenever an officer uses any authority to stop a person or keep him there, a stop has occurred. Thus an order to stop or an order to remain clearly constitutes a stop. Also, whenever a person is frisked a stop has clearly occurred.

When an officer makes a stop, he should explain to the person whom he has stopped the purpose of the stop. The officer may postpone this explanation until the completion of any frisk undertaken for the officer's protection. The explanation should include the information that the stop is not an arrest and that it is intended to last for only a short time.

You should bear in mind that stopping to question and frisk is an intrusion on a person's liberty and may constitute for him a serious source of embarrassment and irritation. Among youths and minority groups especially, these intrusions may be very much resented and may be an important factor in increasing undesirable police-community tensions. Thus stop and frisk authority should be used sparingly and only when good cause arises for its use. Do not stop on the basis of suspicion only for petty or non-violent offenses such as minor gambling and liquor violations or infractions of the motor vehicle code.

The purpose of a stop on reasonable suspicion is to make an immediate investigation of the situation. This is usually done by looking at the person stopped and briefly questioning him as to his identity and his actions. In some cases this information will be enough to make a decision to let him go or to arrest him on probable cause. This should not take more than a few minutes. In some cases, however, an officer may want to check out the person's story before deciding to release or arrest him. If this can be done quickly, for example, by a telephone call, the person stopped may be detained for the short time necessary to do this. Rarely would a stop of more than twenty minutes be justifiable.

Reasonable Suspicion

No precise definition of "reasonable suspicion" can be provided, but "reasonable suspicion" is clearly more than mere suspicion or an inarticulate hunch. It exists when specific facts, not mere conjectures, indicate that a person has committed or is about to commit a crime. Examples of persons who may reasonably be suspected although probable cause may not yet exist are:

(1) a person who generally fits a description, beyond that of race, gained from a victim, or police headquarters, of a perpetrator of a crime;

(2) a person running from the scene immediately after a crime has taken place;

(3) a person fleeing an area where there is an unexplained

body (unconscious, beaten or dead) or where there is evidence of forcible entry into a building.

EXAMPLES

I

Facts: *While patrolling your beat at 4 a.m. you receive a call that a burglary has just been committed. While en route to the scene, you see a man carrying a suitcase running from the direction of the reported burglary. He is a block from the scene of the reported burglary.*

Action: *You have reasonable suspicion to stop the man and question him as to his identity and actions.*[3]

II

Facts: *The same as above, but after you stop him he denies running from the direction of the burglary and states that he was coming from the opposite direction. He also states that he had been playing poker that night but cannot name any of the other players or where he had been playing. He is evasive concerning why he has the suitcase. You recognize him as one with a prior record for burglaries similar to the one reported.*

Action: *As discussed later in this manual, the facts now added to your original "reasonable suspicion" to stop constitute "probable cause" to arrest. Thus, you can arrest the suspect and search the suitcase, incidentally to the arrest.*[4]

Frisking

A frisk is a "patting down," an external feeling of clothing in order to find a weapon or weapons on a person. A frisk must be distinguished from a search of a person. A search is a more detailed exploration which involves going into pockets, bags, luggage, and the like.

You may not search a person who has been stopped on the basis of reasonable suspicion only. You do have, however, the limited power to frisk a stopped person for weapons when the facts indicate that he may have a weapon on him

which he could use against you. This may be based on the nature of the suspected offense or such things as bulges in the person's clothing.

Remember that this frisk power is not a power to search. It is a power only for the protection of the police officer and others in the vicinity; it is not a power to hunt for evidence. Thus you may not open an object the person is carrying, such as a handbag, suitcase, or sack, which may conceal a weapon, since you can, and should, place it out of reach of the suspect so that it will not present a danger to you or others.

EXAMPLES

I

Facts: *While patrolling in the afternoon, you notice two men standing on a street corner. Although you cannot pinpoint the basis for your suspicion, your training and experience lead you to be suspicious of them. You therefore take up an observation spot in a store entrance. You see one of the men walk down the street past a row of stores. He pauses and looks in a store window. In walking back he again looks into this store window. He talks to his companion and then the other man makes the same trip also looking in the window. The two men repeat this routine alternately about five or six times apiece. After observing all this you believe that the men are "casing" the store for a robbery.*

Action: *Stop and question the men as to their activities. On these facts you have a reasonable suspicion that the men are casing the store for a robbery. Note that you did not have this reasonable suspicion based solely on your initial unarticulated hunch about the men and you could not have stopped them at that time. You correctly investigated further without stopping them. After your suspicions were confirmed by their pacing activities you could stop them. You can also frisk the men for weapons. Since they are apparently casing the store for a daytime robbery it is reasonable*

to believe that they are planning an armed robbery and thus are armed.[5]

II

Facts: *A robbery has just occurred. You question the victim. She says that her pocketbook was taken at gunpoint and she gives a description of the suspect stating, among other things, that he is about six feet tall and is wearing a brown leather windbreaker. While the victim is receiving medical treatment, you start a search in the area and see a man running down a dark street. The man's hand is clutching a bulge under his brown windbreaker, and he glances back at you repeatedly. The suspect meets the description of the perpetrator except for one discrepancy: he is only five feet tall.*

Action: *You do not have probable cause to arrest the suspect for his description is clearly inconsistent with the victim's estimate of the perpetrator's height. However, from your experience you realize that victims of crime, in an excited condition, often give descriptions which are not correct in every detail. Although you lack probable cause to make an arrest, from all the circumstances you may have a reasonable suspicion that the man you have spotted has committed the crime. If you do suspect this person, stop him and ask for his identification and an explanation of his actions. Because the crime involved the use of a weapon and the suspect's windbreaker seems to conceal unnatural bulges which may well be a weapon, a frisk is in order.*[6]

If, in frisking, an officer feels something which he believes might be a weapon, he should uncover it and remove it. If it turns out that it is a weapon, the person frisked should be arrested for carrying a concealed weapon. There is no question that the weapon was properly seized and can be introduced into evidence at the trial. What about the situation, however, where, in frisking, an officer finds not a weapon, but some other contraband object, such as narcotics? While the law on this is not perfectly clear, the prevailing view is that the contraband can be seized and will be admitted into evidence at the suspect's trial. This view is based on the belief that evidence should not be excluded, so long as the police officer found it while acting properly in conducting a frisk. The evidence will be exluded, however, if an officer was not engaging in a good faith frisk, but was using a frisk as a pretext to conduct a search for general contraband and evidence.

D. QUESTIONING

General

While intensive interrogation is a task for experts, normally Detectives, general on-the-spot questioning of crime victims, witnesses and possible suspects is another important tool of the officer on patrol.

Questioning a Witness or Victim of Crime

Before questioning a witness or victim of crime you should identify yourself as a police officer, either by being in uniform or by showing identification. Many persons are overawed, frightened, or even panic-stricken by authority. The best approach, therefore, is usually that of being friendly and helpful, not formal, overbearing and officious. Be sympathetic to a victim who thinks he is in distress even if you do not feel the situation is serious.

You should consider the emotional state of the people questioned, particularly where crimes of violence have been

committed. Their observations may be partial and imperfect because of excitement and tension. Try to obtain an accurate account of the circumstances that existed immediately before, during and after the incident.

The person being questioned should be permitted to give an uninterrupted account while you make mental notes of omissions, inconsistencies and discrepancies that require clarification by later questioning. The talkative person should be allowed to speak freely and to use his own expressions, but should be confined to the subject by appropriate questions. You should attempt to put uneducated witnesses at ease and help them to express themselves as best they can, but should not put words into their mouths.

Questioning Possible Suspects

Some of the rules concerning questioning of witnesses and victims also apply to questioning possible suspects who have been stopped on the street or found at crime scenes. Again, identify yourself before any questioning. You may then request the suspect to identify himself and explain his presence or suspicious activity. You have no power to compel an answer, however, and should not attempt to do so. In ascertaining the person's name, you may request (but not order) verification of his identity. The person's response to your questions may be an element in determining whether or not probable cause to arrest exists. However, his refusal to answer your questions cannot form the sole basis of an arrest. If a suspect attempts to flee, his flight may also be an element in determining whether or not probable cause to arrest exists, but don't jump to conclusions; frightened witnesses sometimes run too.

Warning of Rights

The Fifth Amendment to the Federal Constitution provides that no person "shall be compelled in a criminal case to be a witness against himself." Thus, under our system of law, a person has a constitutional right not to answer questions if the answers might be used against him in a criminal trial.

In the famous case of *Miranda v. Arizona*,[7] the Supreme Court held that certain safeguards were necessary to protect this constitutional right during interrogation of a suspect in custody at a police station. These safeguards are necessary to insure that a person being interrogated knows he has a right not to speak, and that he speaks voluntarily and not from police pressure.

The major focus of the Supreme Court in the *Miranda* case was on station house interrogation. Such interrogation is the job of Detectives not patrolling officers. Yet, we are digressing a bit here for two reasons: (1) *Miranda* does have an effect on patrol; (2) the question of the legal restraints on interrogation is of interest to everyone associated with law enforcement.

The basic holding of *Miranda* is that whenever a person in custody is interrogated he has the right to have a lawyer present in order to safeguard his right not to be compelled to incriminate himself. If he can't afford to hire a lawyer, he must be provided with a free one. Thus, prior to interrogating someone in custody, a person must be given the following warnings, as recommended by the District Attorney's office:

(i) You have a right to remain silent and do not have to say anything at all.

(ii) Anything you say can and will be used against you in court.

(iii) You have a right to talk to a lawyer of your own choice before we ask you any questions and also to have a lawyer here with you while we ask questions.

(iv) If you cannot afford to hire a lawyer, and you want one, we will see that you have a lawyer provided to you before we ask you any questions.

The usual expectation is that after these warnings, a person will request a lawyer and then no interrogation can take place until the lawyer is present. The Supreme Court, however, did state that after these warnings a person might waive his right to have a lawyer present and proceed to answer questions. But, if a statement is made without the

presence of a lawyer, there is a heavy burden on the Commonwealth to demonstrate that the accused did in fact knowingly and intelligently waive his right to counsel.

We then come to the effect of *Miranda* on the officer on patrol. Although principally concerned with stationhouse interrogation, the Supreme Court stated that the *Miranda* rules apply beyond that to all "interrogations" of people "in custody." A person is in custody whenever he has been arrested or "deprived of his freedom of action in any significant way." This raises two questions as to the application of *Miranda* to questioning of a suspect on the street:

(i) Does simple on the street questioning concerning identity and activities constitute "interrogation"; and

(ii) Is a person "in custody" when he has not been arrested, but only stopped on the street?

The courts have not yet definitely answered these questions. Pending clarification on these points:

(i) You do not have to warn of constitutional rights if you are talking to a person whom you have not stopped by using stop and frisk authority described earlier;

(ii) You do not have to warn of constitutional rights even if you exert authority and stop a person if your questioning consists only of a few, direct preliminary questions such as "Who are you? What are you doing here?";

(iii) If your questioning of a stopped suspect becomes more extensive than (ii), the safest course is to give the *Miranda* warnings.

(iv) Interrogation designed to break down a person's story or to induce a reluctant person to talk should not be done at all on the street. That is not the job of patrolling officers. If you have probable cause to arrest a person, you should do so and bring him immediately to the station house. If not, you should take notes on his identity and answers to your general questions, and then allow him to leave.

(v) The *Miranda* warnings should always be given before any questioning of an arrested person on his way to the station house. Again, interrogation designed to break down a person's story or to pressure a reluctant person to talk should not be engaged in.

(vi) If a suspect indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, questioning must cease. If the suspect states that he wants a lawyer, questioning must cease until a lawyer is present. If the *Miranda* warning must be given, then no questioning can take place in the absence of a lawyer unless the suspect waives his rights.

3. Arrest

A. GENERAL

Most police officers consider an arrest to occur only when a suspect is "booked." Yet, for legal purposes, an arrest takes place whenever a person is detained beyond the very short period of time involved in an on-the-street stop, discussed above. The decision whether or not to arrest a suspect is one of the most important decisions a patrolling officer has to make. An illegal arrest may destroy an otherwise good case by making later obtained evidence inadmissable or by prematurely tipping off a suspect. Moreover, while arresting people may be all in the day's work for an officer, it is a very serious incident for the person arrested, particularly if he is innocent. An arrest is a major interference with a man's basic right of liberty. It also has the very practical effect of damaging his reputation and costing him valuable time and money. On the other hand, an arrest delayed too long may result in a suspect escaping or destroying evidence.

The law, balancing these considerations, declares that a police officer may arrest a suspect when the officer has "probable cause" to believe the suspect has committed a felony, or when he himself observes a minor crime being committed in his presence. We will shortly discuss in detail the meaning of this term "probable cause," but first let us turn to the need for arrest warrants.

B. ARREST WARRANTS

Felonies

In Pennsylvania a police officer can arrest for a felony without a warrant, if he has the requisite probable cause. In fact, in Philadelphia the great majority of arrests for felonies are made without warrants. The courts, however, have indicated that in a doubtful case an arrest under a warrant may be upheld where an arrest without warrant would be declared unlawful. PGM No. 5 on Search and Seizure details the historic preference of our society for the use of warrants.

Misdemeanors

Pennsylvania still follows the rule that, although an officer can arrest without a warrant for all felonies, he can arrest without a warrant for a misdemeanor only if the misdemeanor was committed in his presence. If the misdemeanor was not committed in the presence of an officer, an arrest can be made only *with* a warrant. In such a case, the complaining party must swear out an affidavit on which a warrant is then issued.

Of course, in many misdemeanor cases, it is advisable not to arrest at all. A warning or other action may be more appropriate. The need for a warrant in misdemeanor cases may be an effective way to justify to a complainant not making an arrest where one is not appropriate. A summons procedure, like that presently used for traffic offenses also might be a useful alternative to arrest. The extension of the summons procedure to other minor offenses is under consideration by the lawmakers in Philadelphia and throughout the country.

EXAMPLE

Facts: *A domestic fight has occurred and the wife is screaming for the arrest of her husband. You are certain, however, that the incident is minor and that she will want to forget the whole thing when she calms down.*

Action: *A patient explanation that you cannot make an arrest (since the fight did not occur in your presence), unless she comes down and swears out a warrant might be a tactful way of handling the matter.*

The distinction between misdemeanors and felonies is not an easy one to make in general terms. Basically, misdemeanors are crimes which are considered to be of a less serious nature than felonies. A definite determination, however, of whether a particular crime is a felony or a misdemeanor can only be obtained by looking at the appropriate section of the Penal Code. Frequently occurring misdemeanors are gambling offenses, most liquor offenses, prostitution (but "pandering" is a felony), operation of a disorderly house, possession of burglary tools, various forms of malicious mischief, assault and battery, aggravated assault and battery consisting of inflicting grievous bodily harm or cutting, stabbing, or wounding (but assault with intent to kill and assault with intent to maim are felonies), and involuntary manslaughter. To repeat, for these offenses and other misdemeanors an arrest without a warrant is lawful only if the offense occurs within the presence of the arresting officer.

The "presence" of the arresting officer includes situations where the officer sees, hears or smells the offense being committed.

EXAMPLE

Facts: *You are in the hall of an apartment building and smell the odor of fermenting mash in one of the apartments.*

Action: *You can arrest the occupant without a warrant. The offense was being committed in your presence since you smelled the fermenting mash. The same would be true if you heard the rolling of dice together*

with typical conversation that goes with betting in a crap game.

Obtaining an Arrest Warrant

The procedure for obtaining an arrest warrant (sometimes called a "body" warrant) is similar to that for obtaining a search warrant. The officer, or complainant, must fill out a complaint and affidavit stating in detail the facts that show that there is probable cause to believe that a crime has been committed and that the suspect named in the warrant has committed it. Since search warrants are used more frequently than arrest warrants, the complaint and affidavit are covered in PGM No. 5 on Search and Seizure and an officer should refer to that material when he is considering obtaining an arrest warrant.

C. "PROBABLE CAUSE" FOR ARREST

Probable cause to arrest exists where the facts and surrounding circumstances of which the arresting officer has reasonably trustworthy information would justify a man of reasonable caution in believing that an offense has been committed and that the person to be arrested has committed it.

Probable cause requires *"belief"*; suspicion is not enough. This is a higher degree of certainty than is required for a stop. On the other hand, the evidence required is less than would be necessary to convict the person.

This belief must be based on the facts and surrounding circumstances known to the arresting officer *at the time of the arrest.* An arrest cannot be justified by the results of a search after the arrest. Nor is the lawfulness of an arrest affected by the fact that the arrested person may later be found innocent.

The determination of "probable cause" does not have to rest upon evidence which could be introduced in a criminal trial. A police officer may and should consider all information available to him which has any bearing on whether a crime has been committed and whether the suspect committed it. He may consider the past record of the suspect and hearsay concerning the commission of a crime even though they might not be admissable at trial. Standing alone, however, such evidence would not be enough; you cannot arrest a man just because he has once been convicted and someone tells you he has committed a crime again.

Expert Knowledge

While the definition of probable cause quoted above speaks in terms of an ordinary man, a police officer is an expert in law enforcement and should use all his training, skill and experience in determining whether or not probable cause exists. Courts have recognized that a trained police officer may often have probable cause to arrest for a crime based on facts and circumstances which would not produce probable cause in the mind of an untrained layman.

EXAMPLE

Facts: *You smell an odor coming from a particular apartment. Because of your experience, you can identify the odor as being that of burning opium.*

Action: *You have probable cause to arrest the occupant of the apartment. This is true even though an untrained layman would not recognize the odor as that of burning opium. Keep in mind, however, that when later explaining the basis for this arrest to a judge, you are not explaining it to a trained law enforcement of-*

ficer. Also, he cannot just accept the statement that you have probable cause, but he must make his own conclusion that you had smelled the odor of opium. You must state fully the basis for your trained judgment. You must provide the judge with the aspects of your training and experience that led to this conclusion. You must state how you determined the facts and how these facts produced your conclusion. The same would be true if you were filling out an affidavit for an arrest or search warrant. See PGM No. 5.

Informants

A recurring problem of probable cause concerns how much an officer can rely on an informant's statement to justify an arrest. The main problem here is establishing the reliability of the informant. Going back to the test of the "reasonably cautious man," it seems obvious that such a man would not believe that A has committed a crime merely because he received an uncorroborated, anonymous phone call saying A had committed the crime. There are also serious problems of reliability with known informants. People who act as informants are sometimes not the most reliable members of the community and may themselves be engaged in criminal conduct. Many may be narcotic users or mentally retarded. Police are used to getting information, often false, from people who have been arrested and hope to get favorable treatment by talking. Paid informants may make up stories in order to get paid.

Nevertheless, reliable information is often received from informants. The difficulty lies in determining what information is reliable. Information, even from anonymous sources, should not be ignored. But such information must be further investigated before a decision to arrest can be made. Such investigation should include checking the background and prior reliability of the informant, attempting to corroborate the informant's story by personal observations, putting the suspect under surveillance, and checking out the record and background of the suspect.

EXAMPLE

Facts: *You are told by an informant whom you know that a particular worker in an automobile plant would bring narcotics into the plant on a given date in an automobile of a particular description with a particular license number. This informant had provided tips on previous occasions and his information had been found reliable. A stakeout is set up and the suspect appears at the time predicted in the described vehicle.*

Action: *You have probable cause to arrest the suspect. You knew the informant and he had provided reliable information in the past. You had no reason here, such as a personal quarrel between the informant and suspect, to think that this information was less reliable than that given by the informant in the past. This is the crucial factor in finding probable cause here. A reasonably cautious man would rely on information given by one who was previously reliable where there is no reason to think that this information would be less reliable than that given in the past. Here also the informant told you that the suspect would be at the plant at a given date in a car of a given description and you found that these things were true. Such correlations have been said to indicate that the further crucial information given by the informant—that the suspect would have narcotics with him—is also true. Nonetheless corroboration of reliability by observing innocent, predicted events should not be relied on too heavily. For example, if the suspect who worked at this plant usually drove the described car to work, these occurrences on the predicted date would show nothing. They clearly could not alone be relied upon to find probable cause.*

Previous Record

A person's previous record can be considered, along with other information in determining if there is probable cause to arrest him for a particular crime. However, a prior

criminal record can almost never be the primary factor in finding probable cause. The fact that a crime has been committed in an area does not mean that you can arrest everyone in the area with a previous record for such offenses. Such dragnet arrests are clearly illegal. However, some other information may be combined with a person's record to give probable cause. See the example of the burglary suspect discussed under Stop and Frisk above.

D. CONFRONTING THE PERSON ARRESTED

As soon as practicable, the arresting officer should tell the suspect that he is a police officer (if this is not clear from his uniform) and that the suspect is under arrest. If the officer is executing an arrest warrant, the suspect should be told that and shown the warrant if he asks to see it.

E. USE OF FORCE TO ARREST

The basic premise of the law concerning the use of force to arrest is quite simple: our society is against the use of unnecessary force; thus, force may be used to make an arrest only where it is necessary to use it. Whenever the suspect offers no resistance there is no necessity for any use of force by the officer and, therefore, the use of *any* force is illegal. Usually an arrest is made by words or a simple touching of the suspect.

A common complaint against the police relates to the use of unnecessary force. Riots, disturbances and extreme community tensions have often had their immediate cause in the shooting and killing of suspects. The taking of a human life is an act which our society authorizes only upon the greatest necessity and for the most important of reasons. Thus, the utmost caution is required in using firearms. It is the job of a police officer to protect life, not destroy it.

With this background of basic principles, the following rules should be adhered to in using force to arrest:

(i) Do not use blackjacks, nightsticks or similar equipment unless it is absolutely necessary to subdue a person resisting arrest. Under no circumstances should use of

this equipment be continued after the suspect stops resisting.

(ii) You may use firearms as a last resort where it is absolutely necessary to protect yourself or other persons against death or serious bodily harm.

(iii) Where there is no immediate threat to yourself or other persons, do not use your firearm to make an arrest unless all of the following facts are present:

a. There is no alternative way to make the arrest.

b. There is no substantial danger of your hitting innocent bystanders.

c. The person escaping has used or threatened the use of killing force in the commission of his crime, or you believe that, if not immediately arrested, there is a substantial chance that he will kill or seriously injure someone.[8]

d. You have seen the actual commission of the crime or have sufficient information to know, as a virtual certainty, that the escaping person committed it. It is obviously one thing to have sufficient probable cause to arrest a suspect. It is quite another to have sufficient basis to risk killing him.

F. ENTRY INTO A BUILDING TO MAKE AN ARREST

Assume an officer has probable cause to arrest a person and knows that the person is in his home. How should he make the arrest? First, it is clear that he should not just break down the door. Even though the person is subject to arrest, he still has the right not to have the door to his home unnecessarily broken. He also has the right not to have strangers come into his house without advance warning. Finally, unannounced entry into the house might result in unnecessary injury to the police officer by an occupant who believed he was exercising his right to protect his house from an unlawful entry.

Thus, except in the special circumstances which will be discussed below, when making an arrest of a person in a

building, an officer should knock on the door, announce that he is a police officer there to make an arrest and demand that the person inside open the door. Only if there is a refusal or no answer after a normal period of time to open the door, should the officer enter without the door being opened for him from the inside.[9] Even when he does enter on his own, the officer should try to do as little physical damage as possible.

The only exceptions to the rule discussed above operate where the arresting officer has good reason to believe that making the announcement might help the suspect to escape, constitute a source of danger to other persons (such as hostages) inside the house or to the arresting officer himself, or help the suspect destroy evidence.[10] When you do

enter without announcement and demand, it is imperative that you carefully record in detail in your report the surrounding circumstances and the reasons for this kind of entry so that you are later prepared to testify in court about it.

Failure to follow the rule generally requiring announcement before entry may turn an otherwise valid arrest into an invalid one. This may result in the exclusion of evidence as well as the civil or criminal liability of the arresting officer.

4. Search Incident to Arrest

The basic rule governing searches, as more fully explained in PGM No. 5, is that a search requires a search warrant. The most important exception to the need for a search warrant, however, is the search incident to an arrest. The courts have held that police officers have the power, without a search warrant, to make an immediate search of an arrested person and things under his immediate control. This power to search incident to arrest exists whether the arrest itself is made with or without an arrest warrant. The courts have justified this exception to the rule requiring search warrants by the need to seize weapons and other things which might be used to attack an arresting officer or to make an escape, and the need to prevent destruction of evidence of the crime. Both use of weapons and destruction of evidence could, of course, occur only when the weapon or evidence is on the accused's person or under his immediate control.

The statement of this exception and its basis clearly suggest its three basic limitations. First, since the search is premised upon an arrest there must be a *lawful arrest,* an arrest which satisfies the Constitutional and other legal requirements we have discussed. *When a search incident to an arrest is challenged in court, the court will review the legality of the arrest.*

The second basic limitation is that the search really must be *incident* to this lawful arrest. The basis for the search

is the arrest. *Thus, under the prevailing view, the arrest must precede the search.*[11] *Further, the search must be closely connected in time, place and purpose to the arrest.*[12] Clearly, a search remote in time or place from the arrest, cannot be justified on the basis of preventing the use of weapons or destruction of evidence by the person arrested.

EXAMPLES

I

Facts: *You arrest a man in his apartment and bring him to the station house. A few hours later, you decide to search the apartment.*

Action: *Get a warrant. A search at this later time would not be incident to the earlier arrest and would be unlawful.*

II

Facts: *You arrest a person on the street a few blocks from his apartment. You want to search the apartment.*

Action: *Do not search without a warrant. The arrest did not take place in the apartment and thus a search of the apartment would not be incident to the arrest and would be unlawful. The same would be true if you arrested him right outside the house or in the apartment house hallway. If you had arrested him in the apartment, you could have searched it, providing the other requirements of a search incident to an arrest were present. But you should not delay a possible arrest on the street so that you can search the apartment by waiting and making the arrest there. Remember we are talking about an incidental search. The primary thing must be the arrest, not the search.*

This second example raises the question of the area that can be searched incident to an arrest. There is no question that when an individual is lawfully arrested, his person may be searched. Some judges have pointed out that, since the

rationale for this warrantless search is the protection of the officer and the prevention of the destruction of evidence by the suspect, there is no basis for searching the surrounding area at all once the suspect is under control.[13] On the other hand courts have consistently held that things directly under a suspect's control, such as goods he is holding and the car he is driving, can be searched incident to his arrest, provided, of course, the search is properly one for weapons or implements, fruits, or evidence of the crime. There is a dispute, however, as to how much of the indoor premises in which a person is arrested can be searched.

EXAMPLES

I

Facts: *You arrest a person in his one-room apartment.*

Action: *You can search the room incident to the arrest, assuming you have a basis for thinking that weapons or implements, fruits or evidence of the crime are in the room. Courts have also upheld the search of all the contiguous rooms in a three or four room apartment.*[14]

II

Facts: *You arrest a person in one room of his eight room two-story house.*

Action: *The law is not clear as to whether you can search the whole house in such a case even if you have a basis for believing that weapons or implements, fruits, or evidence of the crime are elsewhere in the house. While some courts have upheld such searches, others have not.*[15] *For example, a court held a search invalid where police officers arrested a man for possession of narcotics in a first floor room of his house, and then searched a locked room on the second floor.*[16] *Under these circumstances, do not search without a warrant beyond readily accessible, contiguous rooms on the floor on which the arrest is made. Get a warrant if you want to search the rest of the house.*

The third basic limitation on search incident to arrest is that searches can extend only to places in which the arresting officer reasonably believes there may be proper objects of this type of search. These are, you will recall, weapons that may be used against the officer or to escape, and implements, fruits or evidence of the crime for which the person is arrested. The reasonable likelihood that fruits, implements or evidence might be present would, of course, depend on the nature of the crime and on the nature of the object sought.

EXAMPLES

I

Facts: *You arrest a person for a traffic violation.*

Action: *Do not search the person or the car. You have no basis at all to believe a traffic offender has a weapon. There are no implements, fruits, or evidence of this crime.*

II

Facts: *You make an arrest pursuant to a warrant issued on the complaint of the victim that the named person committed a battery, without a weapon, on the victim a few days earlier. The suspect is arrested in his apartment.*

Action: *You may conduct a search of the suspect's person for your protection and to prevent escape, as there was a relatively serious crime here (unlike the traffic violation above). On these facts, however, you should not search further. Since the suspect is in custody, weapons elsewhere in the room present no danger. Only when the suspect must move around the room, e.g., to get a coat from the closet, may you search a part of the premises, such as the closet, in which the suspect could get a weapon. Since this was a battery, without a weapon, there are no implements or fruits of the crime for which there could be a search. Nor is it likely that there will be physical evidence of the crime on the premises.*

Usually connected with a search incident to an arrest is the question of use of force or other means on a person's body to get objects from him. A police officer may use reasonable force to prevent the destruction of evidence, but our sense of decency puts a limit on this force.[17] Acts which threaten the suspect's life or so invade his body that they "shock the conscience" cannot be employed.[18]

EXAMPLE

Facts: *You arrest a person for possession of narcotics and he tries to swallow them.*

Action: *You may, using only as much force as necessary, prevent him from putting them in his mouth. If he gets it into his mouth, you may try to prevent him from swallowing it by force so long as you do not cut off his breathing. Once he swallows it, there is nothing more you can do to get it. It is unlawful for a police officer to use a stomach pump or any means of forced vomiting.*[19]

5. Conclusion

This concludes the manual on Patrol. It must be emphasized that this is not a complete guide to all aspects of patrol, or even to all the legal problems involved in patrol. Yet familiarity with and sensitivity to the concepts discussed here are essential to the proper performance of patrol. In the words of the International Association of Chiefs of Police:

> The police officer in a modern, democratic society must go far beyond the routine of providing basic preventive and investigative services. The task of preserving and extending those fundamental rights embodied in the great documents of freedom stands as the challenge and the reward of law enforcement. Achieving balance between public protection and personal freedom continues to involve the world's greatest intellects in an on-going debate.[20]

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FOOTNOTES

1. Payton, Patrol Procedure 54-55 (1966).

2. Terry v. Ohio, 88 S.Ct. 1868 (1968); Sibron v. New York, 88 S.Ct. 1889 (1968).

3. *Cf.* United States v. McMann, 370 F.2d 757 (2nd Cir. 1967).

4. *Ibid.*

5. *Cf.* Terry v. Ohio, 88 S.Ct. 1868 (1968).

6. *Cf.* Commonwealth v. Brayboy, 209 Pa. Super 1, 223 A.2d 878 (1966).

7. 384 U. S. 436 (1966).

8. This requirement represents sound law enforcement policy as advocated by the President's Commission on Law Enforcement and Administration of Justice (National Crime Commission), Task Force Report: The Police 189-90 (1967). This policy goes beyond the current law. Pennsylvania still adheres to the old rule that prohibits shooting to prevent the escape of a misdemeanant, but allows an officer to shoot to prevent the escape of any felon regardless of the nature of the felony. This rule developed when many felonies were punished by death. Our society has a greater respect for human life and takes it only under the most severe circumstances. Consistent with this change in society's attitude, it is now good law enforcement policy to shoot only when the situation is such that failure to apprehend the felon immediately would present a real danger to the lives of others.

9. See United States ex rel. Manduchi v. Tracey, 233 F.Supp. 423 (E.D. Pa), *aff'd*, 350 F.2d 658 (3d Cir. 1965), *cert denied*, 382 U. S. 943 (1965); Commonwealth v. Ametrane, 422 Pa. 83, 221 A.2d 296 (1966); Commonwealth v. Newman, 210 Pa. Super 34, 232 A.2d 1 (1967).

10. See Commonwealth v. Newman, *supra* note 9.

11. See Sibron v. New York, 88 S.Ct. 1889, 1902 (1968).

12. See Preston v. United States, 376 U. S. 364 (1964); James v. Louisiana, 382 U. S. 36 (1965).

13. United States v. Rabinowitz, 339 U. S. 56 (1950) (Frankfurter, J. dissenting).

14. See Harris v. United States, 331 U. S. 145 (1947); United States v. Garnes, 258 F.2d 530 (2d Cir. 1958).

15. *Compare* Drayton v. United States, 205 F.2d 35 (5th Cir. 1953) *with* Smith v. United States, 254 F.2d 751 (D. C. Cir. 1958).

16. Drayton v. United States, *supra* note 15.

17. See Rochin v. California, 342, U. S. 165 (1952); Commonwealth v. Tunstall, 78 Pa. Super. 359 115 A.2d 914 (1955); People v. Martinez, 130 Cal. App. 2d 54, 278 P.2d 26 (1955); People v. Sanchez, 11 Cal. Rptr. 407, 189 Cal. App. 2d 720 (1961); People v. Redding, 28 Ill. 2d, 305, 192 N.E.2d 341 (1963).

18. Rochin v. California, *supra* note 17.

19. See cases cited at note 17, *supra.*

20. Professional Standards Division of the International Association of Chiefs of Police, Training Key #61 (1966).