

BASIC COURSE UNIT GUIDE

16

LAWS OF ARREST

This unit guide covers the following learning goals contained in the POST Basic Course performance objective document:

- 3.6.0 Detention
- 3.38.0 Laws of Arrest

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**THE COMMISSION
ON PEACE OFFICER STANDARDS AND TRAINING
STATE OF CALIFORNIA**

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This unit of instruction is designed as a *guideline* for Performance Objective-based law enforcement basic training. This unit is part of the POST Basic Course Guidelines system developed by California law enforcement trainers and criminal justice educators for the California Commission on Peace Officer Standards and Training.

This Guide is designed to assist the instructor in developing an appropriate lesson plan to cover the performance objectives, which are required as minimum content of the Basic Course.

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Learning Goals and Performance Objectives

3.6.0 PROBABLE CAUSE

Learning Goal: The student will understand and have a working knowledge of the concept of "reasonable suspicion" and "probable cause."

3.6.1 The student will identify the following elements of "reasonable suspicion" as those required to lawfully stop, detain or investigate a person:

- A. Specific and articulable facts
- B. Crime-related activity that has occurred, is occurring, or is about to occur
- C. Involvement by the person to be detained in a crime-related activity.

3.6.2 Given word-pictures or audio-visual presentations depicting instances where "probable cause" for police action may or may not exist, the student will identify its presence or absence and reasons behind the decision.

3.38.0 LAWS OF ARREST

Learning Goal: The student will understand and have a working knowledge of the laws of arrest.

3.38.1 Given word-pictures or audio-visual presentations depicting arrest situations the student will identify when the officer has the authority to arrest. (Penal Code Section 836 and Vehicle Code Section 40302 through 40300.5)

3.38.2 The student will identify the elements of an arrest. (Penal Code Sections 834 and 835)

3.38.3 Given word-pictures or audio-visual presentations depicting differing arrest situations, the student will identify the amount of force that may be used when effecting an arrest. (Penal Code Sections 835(a) and 843)

3.38.4 Given word-pictures or audio-visual presentations depicting arrest situations, the student will identify the information the person arrested must be provided and at what time it must be provided. (Penal Code Section 841)

3.38.5 Given word-pictures or audio-visual presentations depicting an arrest to be made, the student will identify the time of day or night that an arrest may be made. (Penal Code Section 840)

Learning Goals and Performance Objectives

- 3.38.6 Given word-pictures or audio-visual presentations depicting arrest situations, the student will identify what the peace officer is required to do with the person arrested. (Penal Code Sections 825, 848, 849, 851.5, 853.5, and 853.6)
- 3.38.7 Given word-pictures or audio-visual presentations depicting an officer(s) entering the premises to make an arrest, the student will identify those situations where the legal requirements of such entry were fulfilled by the officer(s). (Penal Code Section 844)
- 3.38.8 The student will identify the requirements placed upon a private person making an arrest of another. (Penal Code Section 847)
- 3.38.9 Given word-pictures or audio-visual presentations depicting "private person" arrests, the student will determine if the arrest is legal. (Penal Code Section 837)
- 3.38.12 The student will identify the instances where a peace officer is not civilly liable for false arrest or false imprisonment arising out of an arrest. (Penal Code Sections 836.5, and 847)
- 3.38.13 Given word-pictures or audio-visual presentations depicting situations where legal exceptions to an arrest may be present, the student will identify where legal exceptions exist preventing an arrest and the nature of the exception.
- A. Diplomatic immunity (22 U.S. Const. 252)
 - B. "Stale misdemeanor" rule (Hill v. Levy, 117 C.A. 2nd, 667) (Roynin v. Battin, 55 CA 2nd 861))
 - C. "Congressional exceptions" (Art. 1, Section 6, U.S. Const. and (Art. 4, Section 2, Cal. Const.)

Material/Equipment

Each training institution should develop its own list of equipment and materials for each unit. This list is dependent upon the instructional strategies methods/media considerations.

1. Penal Code
2. Vehicle Code

Learning Goal 3.38.0: The student will understand and have a working knowledge of the laws of arrest.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>I. LAWS OF ARREST (3.38.0)</p> <p>A. Contract/Consensual Encounters</p> <p>The key element to a "contact" or "consensual encounter" is that the person remains totally free to leave or not to cooperate with the law enforcement officer. The officer must not restrain the person or exert any authority over the person.</p> <ol style="list-style-type: none"> 1. Generally, no problem arises when dealing with a <u>nonsuspect</u> (e.g., informing relatives about a death; warning persons partying in a parked van that it's illegal to spend the night there; interviewing witnesses). 2. However, when dealing with a <u>suspect</u>, it is much more difficult - but still possible - to convince a court there was only a contact, i.e., that the person was truly free to leave. (<u>Mendenhall</u> (1980) 446 U.S. 544.) <p>B. Detention/Stops</p> <ol style="list-style-type: none"> 1. Reasonable suspicion <ol style="list-style-type: none"> a. Crime related activity has occurred, is occurring or is about to occur. 2. Frisk/Pat Down <ol style="list-style-type: none"> a. Reason to believe the person may have a weapon. <p>C. Arrest</p> <ol style="list-style-type: none"> 1. P.C. 834 defines arrest: <ol style="list-style-type: none"> a. An arrest is taking a person into custody in a case and manner authorized by law. b. An arrest may be made by a peace officer or by a private person. 	<p>Note: This is an introduction to the objectives. It establishes certain basic principles of power and arrest.</p> <p>Note: State powers. Demonstrate simple approach of suspect and define each move made by the officer; i.e., stop-frisk-detain question.</p> <p>Note: Refer to Handout #1.</p> <p>3.38.2 The student will identify the elements of an arrest. (Penal Code Sections 834 and 835)</p>

Reference Notes

Situational enforcement for the police officer initially involves considering the relevant elements in a situation which lead to a decision to enforce or not to enforce the law. It is the application of individual judgment which enables the police officer to decide if formal enforcement (e.g., arrest, citation) or some other course will have the most productive result.

Situational enforcement does involve activities such as giving warnings, advice, referral or information to persons in apparent or potential violation of the law. However, these activities come after the decision has been made.

For the police officer, situational enforcement does not involve activities properly under the jurisdiction of the courts or corrections (e.g., whether to file a complaint, accept a plea, dismiss a charge, defer a sentence, sentence to probation in lieu of custody, interpretation of probation or parole conditions).

Learning Goal 3.38.0: The student will understand and have a working knowledge of the laws of arrest.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>2. P.C. 835 defines the method of making arrest and amount of restraint:</p> <ul style="list-style-type: none"> a. "An arrest is made by an actual restraint of the person, or by submission to the custody of the officer." b. The person arrested may be subjected to such restraint as is reasonable for the arrest and detention. <p>3. Elements of an Arrest</p> <ul style="list-style-type: none"> a. In any arrest there are four distinct elements that must coexist to constitute a legal arrest: <ul style="list-style-type: none"> (1) An <u>intent</u> by a peace officer to make an arrest, (2) Real or pretended <u>authority</u> to make an arrest, (3) <u>Seizure</u> or <u>restraint</u>, actual or constructive, (4) <u>Understanding</u> by person being seized that he is being arrested. <p>4. Definitions</p> <ul style="list-style-type: none"> a. Custody <ul style="list-style-type: none"> (1) The suspect must, in fact, have been deprived of his freedom in a significant way (generally meaning that he is not free to leave and; (2) The suspect must personally be aware of this lack of freedom, or reasonably believe that it exists. b. Probable Cause <ul style="list-style-type: none"> (1) "Probable cause" to arrest is usually defined as a set of facts which would 	

Reference Notes

FACTORS SUPPORTING PROBABLE CAUSE

In People v. Rhinehart, 9 C3 139, the Court held there was probable cause to arrest defendant in a murder case where a citizen informant who saw the crime being committed gave information describing the suspect and his vehicle. This was corroborated by the otherwise insufficient statements of the defendant's acquaintance, Leo, that defendant was the only person he could think of who would kill the victim.

In People v. Martin, 9 C3 687, the Court held there was probable cause to arrest defendant where: Officer A, while on routine patrol, observed an Oldsmobile station wagon heavily laden with unidentified object; A recognized defendant on basis of prior information obtained from a police intelligence card as a known receiver of stolen goods who had been arrested for such activity; where A had initially reviewed the card after being alerted by another officer that defendant was actively receiving stolen property; A followed defendant into an underground garage and saw him as he parked the station wagon and drive off in a second vehicle; A looked through the windows of station wagon and observed several business machines, along with some bulky covered items; a half-hour later, defendant returned in a vehicle driven by B; defendant unlocked the station wagon and removed one machine and transferred it to B's car.

Example

A ring of burglars is operating in a residential neighborhood on your beat. You get a radio call that a burglary-in-progress has been reported by a neighbor. Approaching the scene, you spot a man standing on the sidewalk who appears to be a look-out. When he sees you, he says, "Good evening, officer," while holding what seems to be a walkie-talkie close to his mouth. As fellow officers surround the house reportedly being burglarized, you question the suspect. He states that his name is Ed and that he is just out for a walk, but he will not give his address. The other officers apprehend two burglars. One of the burglars has a walkie-talkie with him.

Probable cause exists.

Learning Goal 3.38.0 : The student will understand and have a working knowledge of the laws of arrest.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>cause a person of ordinary care and prudence to honestly believe and strongly suspect that the person to be arrested is guilty of a crime. In other words, the officer need enough factual information to make an average, reasonable person - who has the same <u>training</u> and <u>experience</u> - believe or strongly suspect that the individual is guilty of a crime.</p> <p>5. Routine traffic stops</p> <p>a. During a routine traffic stop, even though the suspect may be "technically arrested" prior to signing the citation, the court has held this to be a detention and not an arrest.</p> <p>6. Penal Code Section 836 - Peace Officers; Arrest Under Warrant, Grounds for Arrest Without Warrant</p> <p>a. "A peace officer may make an arrest in obedience to a warrant or may, pursuant to the authority granted him by the provisions of Chapter 4.5 (commencing with Section 830) of Title 3 of part 2, without a warrant, arrest a person:</p> <p>(1) Whenever the officer has reasonable cause to believe that the person to be arrested has committed a public offense in the officer's presence;</p> <p>(2) When a person arrested has committed a felony, although not in the officer's presence;</p> <p>(3) Whenever the officer has reasonable cause to believe that the person to be arrested has committed a felony, whether or not a felony has in fact been committed."</p>	<p>3.38.1 Given word-pictures or audio-visual presentations depicting arrest situations, the student will identify when the officer has the authority to arrest. (Penal Code Sections 836 and Vehicle Code Sections 40302 through 40300.5)</p> <p>Vehicle Code Sections 40300-40305).</p> <p><u>People v. Ramey</u> California Supreme Court 16 C3 263</p>

Learning Goal 3.38.0: The student will understand and have a working knowledge of the laws of arrest.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>(4) These rules require a misdemeanor to have been committed in the officer's presence before he/she can make a warrantless arrest for it.</p> <p>(a) "In the presence" generally includes occurring within the perception of any of the five senses.</p> <p>(b) There are a number of exceptions to this rule; for example, misdemeanors committed by juveniles (W & I 625); battery committed on school grounds (P.C. 243.5); a felony (P.C. 273.5); and either having a traffic accident or being in or about a vehicle blocking the roadway <u>and</u> being under the influence (C.V.C. 40300.5).</p> <p>(c) An arrest without a warrant can only be legally made if the person arrested has committed a public offense in presence of arresting officer or if arresting officer has reasonable cause to believe that person arrested has committed a felony. (<u>People v. Holmes</u> 237 CA2 795; <u>People v. Tenney</u> 25 CA3 16)</p> <p>(d) Arrest without a warrant upon information given by a reliable informer is valid. (<u>People v. Prewitt</u> 52 C2 330; <u>Aguilar v. Texas</u> 378 US 108; <u>Illinois v. Gates</u> 103 S. Ct. 2317)</p> <p>(e) Mere furtive gesture alone is not sufficient to justify arrest or search without warrant. (<u>People v. Superior Court (Kiefer)</u> 3 C3 807)</p>	<p>Refer to Handout #1</p>

Learning Goal 3.38.0: The student will understand and have a working knowledge of the laws of arrest.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>7. Penal Code Section 840</p> <p>a. Time of arrest; felony; misdemeanor. "An arrest for the commission of a felony may be made on any day and at any time of the day or night. An arrest for the commission of a misdemeanor or an infraction cannot be made between the hours of 10 p.m. of any day and 6 a.m. of the succeeding day, unless:</p> <ol style="list-style-type: none"> (1) The arrest is made without a warrant, pursuant to Section 836 or 837 of the Penal Code; (2) The arrest is made in a public place; (3) The arrest is made when the person is in custody pursuant to their lawful arrest; (such as in jail and another charge is laid before the person). (4) The arrest is made pursuant to a warrant which, for good cause shown, directs that it may be served at any time of the day or night." <p>b. Case law mandates that some felony warrants must be endorsed.</p> 	<p>3.38.5 Given word-pictures or audio-visual presentations depicting an arrest to be made, the student will identify the time of day or night that an arrest may be made. (Penal Code Section 840)</p> <p><u>People v. Ramey</u> Cal Supreme Ct. 16 C3 263</p>
<p>8. Penal Code Section 841</p> <p>a. Formalities in making arrest, exceptions.</p> <p>"The person making an arrest must inform the person to be arrested of the intention to arrest him, of the cause of the arrest, and the authority to make it, except when the person making the arrest has reasonable cause to believe that the person to be arrested is actually engaged in the commission of or an attempt to commit an offense, or the person to be arrested is pursued immediately after its commission, or after an escape."</p>	<p>3.38.4 Given word-pictures or audio-visual presentations depicting arrest situations, the student will identify the information the person arrested must be provided and at what time it must be provided. (Penal Code Section 841)</p>

Learning Goal 3.38.0: The student will understand and have a working knowledge of the laws of arrest.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>b. "The person making the arrest must, on request of the person he is arresting, inform the latter of the offense for which he is being arrested."</p> <p>c. Point: Not applicable if suspect apprehended in the commission of an offense. (<u>People v. Kelley</u>, 3 CA3 146)</p>	
<p>9. Penal Code Section 835a (Reasonable Force)</p> <p>a. Use of force to effect arrest, prevent escape, or overcome resistance.</p> <p>(1) Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect an arrest, to prevent escape, or to overcome resistance.</p> <p>(2) A peace officer who makes or attempts to make an arrest need not retreat or desist from the efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose the right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.</p>	<p>3.38.3 Given word-pictures or audio-visual presentations depicting differing arrest situations, the student will identify the amount of force that may be used when effecting an arrest. (Penal Code Sections 835a and 843)</p>
<p>10. Penal Code Section 837 - Private Persons, Authority to Arrest</p> <p>a. A private person may arrest another:</p> <p>(1) For a public offense committed or attempted in the person's presence.</p> <p>(2) When the person arrested has committed a felony, although not in the person's presence.</p>	<p>NOTE: <u>Kortum v. Alkire</u> (1977) 69 CA3 325; <u>Peterson v. Long Beach</u>, 24 C.3d 238 <u>Tennessee v. Gardner</u> 105 F. Ct. 1694 (1985)</p> <p>3.38.9 Given word-pictures or audio-visual presentations depicting "private person" arrests, the student will determine if the arrest is legal. (Penal Code Section 837)</p>

Reference Notes

P.C. 836.5

Public officers and employees; arrest without warrant; grounds for civil liability; notice to appear; officers and employees of local agencies.

- a. A public officer or employee, when authorized by ordinance, may arrest a person without a warrant whenever he has reasonable cause to believe that the person to be arrested has committed a misdemeanor in his presence which is a violation of a statute or ordinance which such officer or employee has the duty to enforce.
- b. There shall be no civil liability on the part of, and no cause of action shall arise against, any public officer or employee acting pursuant to subdivision (a) and within the scope of his authority for false arrest or false imprisonment arising out of any arrest which is lawful or which the public officer or employee, at the time of the arrest, had reasonable cause to believe was lawful. No such officer or employee shall be deemed an aggressor or lose his right of self-defense by the use of reasonable force to effect the arrest, prevent escape, or overcome resistance.

P.C. 836.3 Arrest of Escapees

A peace officer may make an arrest in obedience to a warrant delivered to him, or may, without a warrant, arrest a person who, while charged with or convicted of a misdemeanor, has escaped from any county or city jail, prison, industrial farm or industrial road camp or from the custody of the officer or person in charge of him while returning from such county road or other county work or from the custody of any officer or person in whose lawful custody he is when such escape is not by force or violence. Note: ". . . not by force or violence." This would otherwise constitute a felony and could be grounds for justifiable homicide if weapons were used in overtaking.

Learning Goal 3.38.0: The student will understand and have a working knowledge of the laws of arrest.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>(3) When a felony has been in fact committed, and the person has reasonable cause for believing the individual arrested committed it.</p> <p>11. Penal Code Section 847 and 836.5</p> <p>a. Arrest by private person, duty to take prisoner before magistrate or deliver the person to peace officer; liability for false arrest. A private person who has arrested another for the commission of a public offense must, without unnecessary delay, take the person arrested before a magistrate or deliver him to a peace officer, (847).</p> <p>(1) If the arresting private person is adamant, the officer must accept custody of the arrestee even if the officer feels it is an illegal arrest. Failure to do so is a felony. (P.C. 142). However the officer may then release the person pursuant to P.C. 849(b)(1) or issue a citation in lieu of booking the arrestee.</p> <p>b. There shall be no civil liability on the part of, and no cause for action shall arise against, any peace officer acting within the scope of authority for false arrest or false imprisonment arising out of any arrest when (836.5):</p> <p>(1) Such arrest was lawful or when such peace officer at the time of such arrest had reasonable cause to believe such arrest was lawful; or,</p> <p>(2) When such arrest was made pursuant to a charge made, upon reasonable cause, of the commission of a felony by the person to be arrested; or</p> <p>(3) When such arrest was made pursuant to the requirements of Penal Code Sections 142 or 838.</p>	<p>3.38.8 The student will identify the requirements placed upon a person making an arrest of another. (Penal Code Section 847)</p> <p>3.38.12 The student will identify the instances where a peace officer is not civilly liable for false arrest or false imprisonment arising out of an arrest. (Penal Code Sections 847 and 836.5)</p> <p>P.C. 836.5-Protection from civil liability as a result of a legal arrest.</p>

Reference Notes

People vs. Ramey (16 Cal 3rd 263) states that entry into a dwelling to make an arrest requires prior judicial approval (warrant). Fortunately there are exceptions to Ramey.

I. Exigent Circumstances

- A. Hot pursuit of a fleeing felon.
- B. A delay in the arrest would allow the suspect to flee or escape.
- C. A delay would result in destruction of evidence or contraband.
- D. A delay would result in danger to persons or property.
- E. An officer lawfully on the premises subsequently develops probable cause to arrest.

II. Authorized Presence

- A. Entry to an officer who wishes to interview or investigate.
- B. Entry in response to a request for service.
- C. Entry with consent for the purpose of arrest.
- D. Entry under authority of a valid search or arrest warrant or probable cause.
- E. When the citizen makes the arrest and the officer enters to take custody.

III. Emergency Doctrine

- A. Entry to protect life or property.

IV. Grave Felony Rule

- A. Entry to make the arrest.
- B. Entry to look for the suspect's identification.
- C. Entry to pick up the trail and expedite the pursuit.

Ramey (16 Cal 3rd 263)
Parrison (137 CA3 529)
Escudero (23 C3 800)
Superior Court (Gadwin) (68 CA3 780)
Brooks (73 CA3 65)
Zuckerman (75 CA3 846)
Hill (12 Cal 3rd 731)
Sirhan (7 Cal 3rd 357)
Bravo (43 Cal 3rd 600 1987)

Learning Goal 3.38.0: The student will understand and have a working knowledge of the laws of arrest.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>12. Penal Code Section 844</p> <p>a. Breaking open door or window to effect arrest; demand for admittance, explanation of purpose.</p> <p>(1) To make an arrest, a private person, if the offense be a felony, and in all cases 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 having demanded admittance and explained the purpose for which admission is desired.</p> <p>b. Points:</p> <p>(1) House is different than business open to public.</p> <p>(2) Officer must knock, identify the authority and purpose, demand entry, and wait a reasonable time before entering. This includes any closed interior door.</p> <p>(a) Undercover agent may enter to seek suspects and return to tell officers. (<u>People v. Ambrozic</u>, 8 CA3 867)</p> <p>(b) A break-in can occur when entering through an opened exterior door. (<u>People v. Hayko</u>, 7 CA3 604)</p> <p>(c) Purpose of arrest. Different than investigation of reported violation.</p> <p>(d) Unannounced and unidentified entry must be supported by good faith belief that;</p>	<p>3.38.7 Given word-pictures or audio-visual presentations depicting an officer(s) entering the premises to make an arrest, the student will identify those situations where the legal requirements of such entry were fulfilled by the officer(s). (Penal Code Sections 844)</p> <p>Refer to Handout #1.</p>

Learning Goal 3.38.0: The student will understand and have a working knowledge of the laws of arrest.

Unit Outline & Presentation	Objectives & Instructional Cues
<ul style="list-style-type: none"> 1) Evidence will be destroyed (<u>People v. Negrete</u>, 82 CA3 328) 2) Increased peril (danger) to officer/citizen (<u>People v. Clay</u>, 273 CA2 279) 3) Frustrate arrest (<u>People v. Gann</u>, 267 CA2 811) 4) Immediate departure of suspect (escape). <p>(e) Uniform is sufficient for identification. (In re <u>William C.</u>, 70 CA3 570)</p>	
<p>13. Disposition of Arrested Person</p> <ul style="list-style-type: none"> a. The Penal Code requires that a person arrested for infractions or misdemeanors <u>shall</u> be released on a citation in the absence of certain conditions specified in Penal Code Section 853.5 and 853.6. b. P.C. 825. Appearance before magistrate; unnecessary delay; maximum time; right of attorney to visit prisoner; officer refusing to permit visit, offense, forfeiture. <ul style="list-style-type: none"> (1) The defendant must in all cases be taken before the magistrate without unnecessary delay and, in any event, within two days after his arrest, excluding Sundays and holidays; provided, however, that when the two days prescribed herein expire at a time when the court in which the magistrate is sitting is not in session, such time shall be extended to include the duration of the next regular court session on the judicial day immediately following. 	<p>3.38.6 Given word-pictures or audio-visual presentations depicting arrest situations, the student will identify what the peace officer is required to do with the person arrested. (Penal Code Sections 825, 848, 849, 851.5, 853.5, and 853.6)</p> <p>Note: 825 P. C. is a reinforcement of previous unit, "Prisoners' Right To Have Attorney Visit."</p>

Learning Goal 3.38.0: The student will understand and have a working knowledge of the laws of arrest.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>(2) After such arrest, any attorney at law entitled to practice in the courts of record in California may, at the request of the prisoner or any relative of such prisoner, visit the person so arrested, any time of the day or night.</p> <p>(3) Any officer having charge of the prisoner so arrested who willfully refuses to allow such attorney to visit a prisoner is guilty of a misdemeanor.</p> <p>(4) Any officer having a prisoner in charge, who refuses to allow any attorney to visit the prisoner when proper application is made therefore, shall forfeit and pay to the party aggrieved the sum of five hundred dollars (\$500) to be recovered by action in any court of competent jurisdiction.</p> <p>(5) Any physician and surgeon, including a psychiatrist, licensed to practice in this state, who is employed by the prisoner or his attorney to assist in the preparation of the defense, shall be permitted to visit the prisoner while he is in custody. (825.5 P.C.)</p> <p>c. P.C. 848 - Arrest by officer; compliance with warrant</p> <p>(1) Duty of officer arresting with a warrant. An officer making an arrest, in obedience to a warrant, must proceed with the person arrested as commanded by the warrant, or as provided by law.</p> <p>d. P.C. 849(a) - Arrest without warrant; duty to take prisoner before magistrate and file complaint; release from custody.</p>	

Learning Goal 3.38.0: The student will understand and have a working knowledge of the laws of arrest.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>(1) When an arrest is made without a warrant by a peace officer or private person, the person arrested, if not otherwise released, shall, without unnecessary delay, be taken before the nearest or most accessible magistrate in the county in which the offense is triable, and a complaint stating the charge against the arrested person shall be laid before such magistrate.</p> <p>e. Release from custody - P.C. 849(b)</p> <p>(1) Any peace officer may release from custody, instead of taking such person before a magistrate, any person arrested without a warrant whenever:</p> <p>(a) The officer is satisfied that there are insufficient grounds for making a criminal complaint against the person arrested. (P.C. 849 (b)(1))</p> <p>(b) The person arrested was arrested for intoxication only, and no further proceedings are desirable. (P.C. 849 (b)(2))</p> <p>(c) The person was arrested only for being under the influence of a controlled substance drug and such person is delivered to a facility or hospital for treatment and no further proceedings are desirable. (P.C. 849 (b)(3))</p> <p>f. Record of release - 849(c)</p> <p>(1) Any record of arrest of a person released pursuant to paragraphs (1) and (3) of subdivision (b) shall include a record of release. Thereafter, such arrest shall not be deemed an arrest, but a detention only. (849c P.C., 851.6 P.C.)</p>	

Learning Goal 3.38.0: The student will understand and have a working knowledge of the laws of arrest.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>g. P.C. 851.5 - Right of arrested person to make telephone call; posting sign:</p> <ul style="list-style-type: none"> (1) Immediately upon being booked and, except where physically impossible, no later than three hours after arrest, an arrested person has the right to make at least three completed telephone calls. (2) Free if within local dialing area. (3) At own expense if outside the local area. (P.C. 851.5 (a)) (4) At any police facility or place where an arrestee is detained, a sign containing the following information in bold, block-type letters shall be posted in conspicuous place: (P.C. 851.5 (b)) <ul style="list-style-type: none"> a) That the arrestee has the right to free telephone calls within the local dialing area, or at own expense, if outside the local area, to three of the following: (P.C. 851.5 (b)) <ul style="list-style-type: none"> 1) An attorney of choice or, if the person has no funds, the public defender or other attorney assigned by the court to assist indigents, whose telephone number shall be posted. This phone call shall not be monitored, eavesdropped upon, or recorded. Attorney-client privilege) (P.C. 851.5 (1)) 2) A bailbondsman (P.C. 851.5 (2)) 3) A relative or other person (P.C. 851.5 (3)) 	

Reference Notes

Reasonable Suspicion

In order for an investigative stop or detention to be valid, you must have a "reasonable suspicion" that:

- Something relating to crime has just happened (or is happening or is about to happen); and
- the person you are about to detain is connected with that activity. (Loewen (1983) 35 Cal.3d 117.)

Remember, you must have specific facts which you can articulate to a court; the court will then decide if these facts - together with your training and experience - were enough to make your suspicion objectively reasonable. (Johns (1983) 145 Cal.App.3d 281.) You cannot make a valid detention based on a hunch, rumor, intuition, instinct or curiosity. (Tony C. (1978) 21 Cal.3d 888.)

Example: Officers saw two males loading a TV set into the trunk of their car at 7:30 p.m., when most nearby businesses were closed. There were no television shops nearby, and the neighborhood had been plagued by burglaries. When they saw the officers, the men looked "shocked," slammed down the trunk lid, and walked swiftly toward a bar. They ignored the officers' requests to talk and had to be forcibly detained. The court ruled there were enough specific facts to make the detention valid. (Garcia (1981) 121 Cal.App.3d 239.)

Example: A veteran officer drove past another driver who was waiting at a red light at 9:00 p.m. The man's hair was disheveled, his eyes were closed, and his head was resting against the window. By the time the officer turned around the man had executed a legal left turn and was driving normally. The officer stopped him "to see if there was something wrong" and eventually arrested him for driving under the influence. The court upheld the detention as reasonably within the officer's duty to protect life and property. (Bellomo (1984) 157 Cal.App.3d 193.)

Example: Officers saw two men walk away from each other in an alley in an area with a lot of drug trafficking. They believed the men would have met each other if the police hadn't been there. This "looked suspicious" to the officers, so they stopped one of the men and asked for identification. When he refused, they arrested him. The court held that the fact that the men were in a neighborhood frequented by drug users was not enough to justify a reasonable suspicion. Therefore the detention was bad. (Brown (1979) 443 U.S. 47.)

Learning Goal 3.38.0: The student will understand and have a working knowledge of the laws of arrest.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>(b) These telephone calls shall be given immediately upon request, or as soon as practicable. (P.C. 851.5 (c))</p> <p>(c) This provision shall not abrogate a law enforcement officer's duty to advise a suspect of the right to counsel or of any other right. (P.C. 851.5 (d))</p> <p>(d) Any public officer or employee who willfully deprives an arrested person of any right granted by this section is guilty of a misdemeanor. (P.C. 851.5 (e))</p>	<p>Note: See agency policies regarding diplomatic immunity, and pertinent CPOA publication.</p>
<p>14. Exemption from Arrest</p> <p>a. "Diplomatic Immunity"</p> <p>(1) In general, persons who are covered under diplomatic immunity are not prosecutable for any crime or tort they commit. An officer who arrests such a person would be guilty of a federal felony (22 U.S.C. 252, 253).</p> <p>(2) In a violent crime, officers will <u>detain</u> the offender, and contact the U.S. State Department.</p> <p>b. "Stale Misdemeanor" Rule</p> <p>(1) Not only must the misdemeanor be committed in the presence of the officer, but the officer must make the arrest at the time the crime occurred or within a "reasonable time thereafter." (<u>Hill v. Levy</u>, 117 CA2d 667) The words "reasonable time thereafter" means fresh pursuit; i.e. didn't stop looking for the suspect until found.</p>	<p>3.38.13 Given word-pictures or audio-visual presentations depicting situations where legal exceptions to an arrest may be present, the student will identify where legal exceptions exist preventing an arrest and the nature of the exception.</p> <p>A. Diplomatic immunity (22 U.C.S. 252)</p> <p>B. "Stale misdemeanor" rule (<u>Hill v. Levy</u>, 117 C.A.2d, 667 (<u>Royin v. Battin</u>, 55 C.A. 2 861)) <u>People v. Hamilton</u>, C.A.3d, 86</p> <p>C. "Congressional exceptions" (Art. 11 Section 6, U.S. Const.) & Art. 4, Section 2, Cal. Const.)</p>

Learning Goal 3.38.0: The student will understand and have a working knowledge of the laws of arrest.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>(a) Example: Officer sees a petty theft in progress. The officer chases, but loses the suspect. Two days later the officer sees the suspect on the street. The officer may <u>not</u> arrest, but could get an arrest <u>warrant</u>, and then cause the suspect to answer for the crime.</p> <p>(b) The suspect may be detained for identification purposes, then released.</p> <p>c. "Congressional" Exceptions</p> <p>Although the California and U.S. Constitution seem to indicate that a State or U.S. Legislator may not be arrested for a misdemeanor, such is <u>not</u> the case. The case of In Re Emmett, 120 CA 349 (1937), indicated these officers have no immunity from arrest.</p>	

Learning Goal 3.6.0 : The student will understand and have a working knowledge of the concept of "reasonable suspicion" and "probable cause."

Unit Outline & Presentation	Objectives & Instructional Cues
<p>II. DETENTION</p> <p>A. The Legal Standard - Reasonable Suspicion:</p> <ol style="list-style-type: none"> 1. Circumstances known or apparent to an officer must include specific and articulable facts causing the officer to suspect: <ol style="list-style-type: none"> a. Some activity related to crime has occurred, is occurring, or is about to occur, and b. The person to be detained is involved in that activity. <p>Not only must an officer subjectively entertain such a suspicion, but it must be objectively reasonable for the officer to do so.</p> <p>The facts must be such to cause any reasonable police officer, in a like position, drawing when appropriate on his/her training and experience, to suspect the same criminal activity and the same involvement by the person in question. In Re Tony C, 21 C3 888.</p> <p>B. Points:</p> <ol style="list-style-type: none"> 1. Any and all facts and/or apparent facts constitute the elements of reasonable suspicion and should be adequately articulated. 2. Reasonable suspicion must be present to institute investigative powers. 3. Reasonable suspicion to detain is determined by the totality of the attendant circumstances, even though no single such circumstance would justify the detention. (<u>People v. Rosenfeld</u>, 16 CA3 619) An officer's decision to detain cannot be predicated on a mere "hunch", or where there is nothing to distinguish the defendant from an ordinary citizen conducting himself lawfully. 	<p>3.6.1 The student will identify the following elements of "reasonable suspicion" as those required to stop, detain, or investigate a person:</p> <ol style="list-style-type: none"> A. Specific and articulable facts. B. Crime-related activity that has occurred or is about to occur and C. Involvement by the person to be detained in a crime-related activity.

Reference Notes

The following checklist presents guilt-laden facts which courts throughout the country have recognized as solid building blocks of reasonable suspicion and; however, any one of these facts may not stand alone.

1. Flight
2. Furtive movement (very weak one)
3. Hiding
4. Attempt to destroy evidence
5. Resistance to officers
6. Admission or confessions
7. Evasive answers
8. Unreasonable explanations
9. Fingerprint ID
10. Hair follicle ID
11. Handwriting comparisons
12. Fabric comparisons
13. ID of suspects by witnesses
14. The emergency setting - crime zone
15. The emergency setting - automobile
16. Ballistics
17. Contraband or weapons in plain view
18. Criminal record

Learning Goal 3.6.0 : The student will understand and have a working knowledge of the concept of "reasonable suspicion" and "probable cause."

Unit Outline & Presentation	Objectives & Instructional Cues
<p>Sources of reasonable suspicion to detain may include the officer's observation, the officer's particular expertise, or through informational sources. The officer may use any of these sources or a combination of them to determine if crime has, or is about to occur, and whether there is sufficient cause to detain the suspect. An officer needs fewer facts to detain than to arrest.</p> <p>4. There is no set time on a detention, but only that amount of time that is reasonable and necessary to satisfy the objective of the detention will be considered lawful.</p> <p>The length and scope of an officer's detention authority increases in direct proportion to the number and caliber of facts developed by the officer as he conducts the investigation. Generally speaking, a detention may continue as long as the investigation is actively progressing. If the officer develops sufficient probable cause, the officer will arrest the suspect(s). If not, or if the investigation stagnates, the officer must release the suspect(s).</p> <p>5. Temporary detentions, predicated on reasonable suspicion may be based on the following factors:</p> <ol style="list-style-type: none"> a. Resemblance of suspect to person sought: <u>People v. Heard</u>, 266 CA2d 747. b. Resemblance to vehicle sought: <u>People v. Stephenson</u>, 268 CA2d 908. c. Resemblance of vehicle and suspects: <u>People v. Flores</u>, 12 C3d 85. d. Proximity to crime: <u>People v. Minjares</u>, 24 C3d 410. e. Casing an area: <u>Terry v. Ohio</u>, 392 US 1. f. Driver's condition: <u>People v. Manning</u> 33 CA2d 586. 	<p>Note: At this point in instruction you are establishing or introducing the concepts through giving the incidents of when reasonable suspicion justify detention.</p> <p>Practice viewing and discussing reasonable suspicion situations.</p> <p>A. The student should be permitted to discuss various incidents so he can identify reasonable suspicion.</p>

Reference Notes

The validity of detention is governed by duration, scope, and purpose. People v. McGuaghran 25 C3 577. Once the purpose of the detention has been met, (Example: traffic citation stop) the officer may not detain further unless more facts have developed to justify lengthening the detention.

Learning Goal 3.6.0 : The student will understand and have a working knowledge of the concept of "reasonable suspicion" and "probable cause."

Unit Outline & Presentation	Objectives & Instructional Cues
<p>3. The key element to a "contact" or "consensual encounter" is that the person remains totally free to leave or not to cooperate with you. You must not restrain the person or exert any authority over him/her.</p> <p>a. Generally, no problem arises if you are dealing with a <u>nonsuspect</u> (e.g., informing relatives about a death; warning persons partying in a parked van that it's illegal to spend the night there; interviewing witnesses).</p> <p>b. However, when you are dealing with a <u>suspect</u>, it is much more difficult - but still possible - to convince a court that there was only a contact, i.e., that the person was truly free to leave. (Mendenhall (1980) 446 U.S. 544.)</p> <p>c. "In People vs. Bailey, a Court of Appeal held that because an officer who was driving up to a parked car to investigate turned on his red light, he created an unjustified "detention." Normally, it is not a "detention" merely to drive up to anything. However, when it appears to the citizen that he is not free to leave the consensual encounter becomes a detention, and a detention requires reasonable suspicion based on specific facts that the person being investigated is involved in criminal behavior.</p>	

SUPPORTING MATERIAL

AND

REFERENCES

SUBJECT

Warrantless arrests made in the home.

SYNOPSIS

The Court held that, absent "exigent circumstances," the California and United States Constitutions require an officer to have a warrant to make an arrest within the home. "Exigent circumstances" were described as "an emergency situation requiring swift action to prevent imminent danger to life or serious damage to property, or to forestall the imminent escape of a subject or destruction of evidence." The warrant requirement will apply to all arrests made after the decision becomes final (March 26, 1976).

FACTS

Relying on information received from a citizen-victim informant (which the court found to be reliable and to constitute probable cause), police officers went to defendant's home to make an arrest for receiving stolen property (a .38 caliber pistol). The information, which included statements that there were at least three subjects at the residence and at least two loaded guns, came to the officers about three hours prior to the actual arrest.

When the officers reached the residence, they drew their weapons and knocked on the door. Defendant answered and the officer in charge identified himself and displayed his badge. At this point, defendant immediately backed into his residence and began to reach for something behind a portable bar. His arm was seized by one officer and he was handcuffed and placed under arrest. Behind the bar was found a loaded .45 handgun and some illegal narcotics. Other contraband was located in plain view in the living room area of the residence. The stolen property alleged to have been received by defendant was not found. However, he was arrested for possession of the narcotics. When his suppression motion was denied, he pleaded guilty to possession of marijuana.

ISSUE

Should the evidence have been suppressed because it was seized incident to an in-home arrest which was illegal due to lack of an arrest warrant?¹

Attorney General's Peace Officer Law Review

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1. The Supreme Court also addressed itself to an issue regarding the informant's reliability. However, no change in existing rule emerged from the court's holding thereon, so that issue will not be discussed here.

HELD

Yes. The California Supreme Court held the warrantless entry to arrest was invalid because the record did not indicate any "exigent circumstances" which justified the officers' failure to obtain an arrest warrant. Citing dicta in the plurality opinion in Coolidge v. New Hampshire, 403 U.S. 403 (1971), the majority overturned "numerous prior decisions of this court and the California Courts of Appeal" by prohibiting warrantless arrests in the home. Also cited by the majority were several federal cases² and a recent decision of the Massachusetts Supreme Court³ which have required warrants for nonemergency arrests in the home.

The basic rationale relied upon by the majority, and expressed in the other cases which have reached the same decision on this question, is that if the Fourth Amendment (and article I, section 13 of the California Constitution) requires a search warrant to enter a home to look for property, then at least that much protection should be provided against entries to look for and/or seize a person.

The majority then proceeded to explain that the term "exigent circumstances," which the police have the burden of demonstrating in the absence of a warrant, means "an emergency situation requiring swift action to prevent imminent danger to life or serious damage to property, or to forestall the imminent escape of a suspect or destruction of evidence." In short, if one of the above cannot be shown, then there is no legitimate reason for the police not to take the time to obtain an arrest warrant. The majority concluded by finding no exigent circumstances in the present case. The new requirement is applicable to arrests made after the decision becomes final (March 26, 1976).

COMMENT

The rule adopted in this case will have substantial effect on law enforcement practice in California. One major problem is that the police are never sure where they will be able to apprehend a suspect. Usually, the search begins at his residence. Thus, officers must always be prepared for the possibility that they might be required to enter the suspect's residence to effect the arrest. This means getting an arrest warrant or being able to make an affirmative showing of specific facts which led them to believe that a bona fide emergency, as explained above, existed which precluded them from taking the time to obtain a warrant.

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2. Dorman v. United States, 435, F.2d 385 (D.C. Cir. (1970)
Vance v. North Carolina, 432 F.2d 984 (4th Cir. 1970)
United States v. Shye, 492 F.2d 886 (6th Cir. 1970)
United States v. Phillips, 497 F.2d 1131 (9th Cir. 1974)
Salvadore v. United States, 505 F.2d 1348 (8th Cir. 1974)
 3. Commonwealth v. Forde, 329 N.E. 2d 717 (1975)

NOTE

The "exigent circumstances" referred to in this case are to be distinguished from those which permit noncompliance with Penal Code Section 844 (knock and notice). The circumstances in the latter situation arise or become known after the officers reach the residence and just prior to the entry. On the other hand, to excuse obtaining an arrest warrant, exigent circumstances would consist of facts known to the police beforehand, which would render the time period needed to obtain a warrant fatal to the arrest and/or prosecution of the suspect, or dangerous to the person or property of another.

J. Robert Jibson
Deputy Attorney General

ARREST IN A DWELLING --APPLICATION OF RAMEY DECISION

*CASE: In re: Johnny V. (1978)
85 CA3 120

SUBJECT

In the Los Angeles area, simple consent to enter a dwelling to talk to the suspect is not consent to arrest the suspect inside that dwelling.

FACTS

Officers, coming upon the scene of a gang fight, pursued a group of juveniles who left a victim covered with blood on the pavement. The officers stopped a speeding vehicle leaving the immediate scene of the fight and observed the hands of the driver to have blood. A knife was recovered from the vehicle that also had fresh blood stains on it. The minor, Johnny V., was in the back seat and was placed under arrest.

After speaking with one of the occupants of the vehicle, officers discovered that another minor, Jimmy A., was also involved and had been identified as one of the persons who assaulted the victim with a bottle.

The officers proceeded to the residence of Jimmy A. and knocked on the door. The door was opened by the owner of the residence, and the officers stated that they were looking for Jimmy A. The owner said he could be found in a bedroom, and gave the officers permission to go there. Jimmy A. was arrested as he was found lying on a bed and asked to get dressed. Also taken during the arrest were bloodstained shoes which were later analyzed to have the same blood type as that of the victim. Jimmy A.'s blood type was found to be type O, the victim's blood was found to be type A. The shoes were indicated by a co-occupant of the room to belong to Jimmy A.

At the juvenile hearing the court found that both minors had committed the offense of assault by means of force likely to produce great bodily injury, in violation of Penal Code Section 245(a), as a lesser and necessarily included offense within the original murder charge filed in the petition.

Jimmy A. appealed the findings of the court on the grounds that the arrest in his home was in violation of Ramey.

RULES AND REASONING

The Court of Appeal (2nd District, Division 4, Jefferson, Bernard J.) agreed with all off the defendants' contentions, reversed the order of the Juvenile Court, and prohibited any further prosecutions against the minors.

ARREST IN A DWELLING--APPLICATION OF RAMEY DECISION

Johnny V. (continued)

The arrest of Jimmy A. was in violation of Ramey. Referring to an earlier case decided by this same Court of Appeal (People v. Superior Court (Kenner) 73 CA3 65, 2 LELR, Number 1, Page 5), the court ruled again that consent to enter to talk to a suspect does not include consent to enter to arrest a suspect, the arrest of the suspect was beyond the scope of the officer's consent to enter, and was therefore invalid.

APPLICATION TO POLICE WORK:

It does not appear that this Court of Appeal is going to budge from this position. Even though the common thread of understanding the case of People vs. Ramey (1976) 16 C. 3d 263, is that a justifiable invasion of a person's house either through emergency or consent permits an arrest therein, this court is unwilling to accept such an interpretation. As a result, this court has "sought" and "found" that consent to enter, first, may be a questionable basis justifying a subsequent arrest, and secondly even if it is a permissible basis justifying an arrest inside a dwelling, the consent must be for specific purpose of arresting a suspect inside.

The Second District, Division 4 reviews cases arising out of the Los Angeles area. The Third District Court of Appeal has recently chosen not to adopt this position in the case of People v. Peterson (1978) 85 CA3 163 (in this issue). In any respect, this case has not been granted a hearing by the California Supreme Court, and therefore it would appear that the ruling in this case is in accord with the philosophy of at least the majority of the members of the California Supreme Court.

*This case analysis was presented in The Law Enforcement Reporter Incorporated, Volume 3, No. 3, March 1979; Elliott E. Aldaheff, Editor. It has been edited for sake of brevity.

ARREST IN A DWELLING--APPLICATION OF RAMEY DECISION

CASE: People v. Peterson (1978)
 85 CA3 163

SUBJECT

In all areas of the state except the Los Angeles area, simple consent to enter a dwelling is sufficient to effect an arrest inside of that dwelling.

FACTS

After officers received information which tended to connect two suspects with several robberies, rapes and kidnaps in the area, they placed a surveillance at the residence of Sights, one of the suspects. When two men fitting the description of the suspects were seen to enter the residence, an officer approached the front of the house, knocked, but did not announce himself or his purpose. However he and his partner were both in uniform.

Sights opened the door. The officers asked and were granted permission to enter. Sights' mother gave the officers permission to search the house for other suspects.

After other defendants were implicated in the crimes, the officers returned to the residence and were admitted by Sights' mother. They advised her of the implication of the other defendant in the crimes and proceeded to arrest him in the residence. A third defendant was arrested in his residence after his sister gave consent for the officers to enter.

The defendants were tried and convicted. They appealed on several grounds, one of which was that the arrests inside the dwelling were unlawful.

RULES AND REASONING

The Court of Appeal rejected the defendants' contention. It concluded that the arrests of the defendants were justified on the grounds of consent. The Court stated, "The entry into each residence for the purposes of making a warrantless arrest was in each instance consensual, and consent is an exception to the warrant requirement. Under those circumstances, the necessity for exigent circumstances to justify the arrest is vitiated."

APPLICATION TO POLICE WORK

This Court of Appeal (Third District, reviewing cases for Sacramento County) appears to have placed itself now in direct conflict with the Court of Appeal of the Second District, Division Four, (Los Angeles County). The Court of Appeal in the case of In re: Johnny V. (see previous analysis) ruled that a

ARREST IN A DWELLING--APPLICATION OF RAMEY DECISION

People v. Peterson (continued)

general consent to enter did not include a consent to arrest, and ruled the subsequent arrest invalid. On the other hand, the Court in this case (Peterson) ruled that a general consent is valid for purposes of conducting an arrest within a person's home and appears to be based on sound judgment.

Officers outside the Los Angeles area therefore are encouraged to proceed on the basis of the Third District's ruling that a general consent to enter permits an arrest of a suspect inside of a dwelling. Officers within the Los Angeles area, on the other hand, should proceed with caution. Until a resolution of this issue is made by the California Supreme Court, cases appealed to the Second District, Division Four on the grounds of an arrest made pursuant to a general consent within a dwelling may be reversed, and it therefore may be necessary to get a specific consent to enter to arrest in order to insure the validity of the arrest.

ARREST IN A DWELLING--APPLICATION OF RAMEY DECISION

CASE: People v. Escudero (1979)
 23 C3 800

SUBJECT

Arrest of suspect inside his home is valid if officers were in hot pursuit of suspect.

FACTS

At 12:40 a.m., defendant was surprised in the act of committing a burglary in a home by an occupant who pursued defendant first on foot and then by automobile. After losing sight of defendant, the occupant took the registration card from defendant's automobile and called the police at 12:53 a.m., giving them the registration information and a description of defendant including his distinctively designed shirt. That information in turn produced defendant's address which was then broadcast over police radio. Officers who were already actively following the leads in the case heard the broadcast at approximately 1:25 a.m., and went directly to defendant's residence. Defendant had reached the premises only a short time earlier. The officers entered, observed defendant's distinctive shirt, and after brief questioning, placed him under arrest for the burglary. The entire sequence of events took approximately one hour.

ISSUE

Was defendant's warrantless arrest inside his place of residence legal?

HOLDING

Yes. In a unanimous decision, the Supreme Court held that the failure of the police officers to obtain a warrant was justified by the fact that they were in hot pursuit of defendant, and thus his arrest was legal and the evidence seized incident to his arrest was properly admitted into evidence. Thus, the court noted the fresh pursuit of a fleeing felon may constitute a sufficiently grave emergency to justify an exception to the warrant requirement and make it constitutionally reasonable for the police to enter a private dwelling without prior authorization of a magistrate. The court reasoned that although fresh pursuit of a fleeing felon must be substantially continuous and afford the law enforcement authorities no reasonable opportunity to obtain a warrant, it is not necessary that the suspect be kept physically in view at all times. It was irrelevant that defendant was not in possession of readily disposable evidence such as narcotics because the fresh pursuit doctrine is designed to prevent the escape of fleeing felons. In addition, defendant's return to his house after burglary did not negate inference of flight. Finally, the officers had reason to believe that defendant was armed and dangerous because he had committed burglary, a serious crime, with an ever-present potential for exploding into violent confrontation.

ARREST IN A DWELLING--APPLICATION OF RAMEY DECISION

People v. Escudero (continued)

APPLICATION TO POLICE WORK

The arrest of a defendant inside a dwelling may take place without a warrant if there is either consent to enter (or consent to enter and arrest in the Los Angeles area) or there are exigent circumstances justifying the arrest. A unanimous California Supreme Court has confirmed that hot pursuit of the defendant is one of the exigent circumstances justifying a warrantless arrest inside a home.

ARREST IN A DWELLING--APPLICATION OF RAMEY DECISION

CASE: James v. Superior Court (1978)
 87 CA3 958

SUBJECT

Officers may conduct a warrantless arrest inside of a home whenever there is probable cause to believe that the defendant used or was armed with a deadly weapon during the commission of a crime and presumably still has the weapon at the residence.

FACTS

On May 30, 1978, shortly after midnight, the defendant and an accomplice robbed the victim's food store of a package of Kool cigarettes and two bags, one containing coins and the other containing "money."

The defendant was recognized by one of the victims who knew the defendant by his nickname "Fish." The victim also described the defendant as wearing a blue and yellow tank top and pair of blue slack type trousers and an earring, "post type."

The police officers were able to contact a reliable confidential informant concerning the nickname "Fish" and obtained "a possible name" and location to go with the nickname.

With the description, officers were able to prepare a mugshot lineup and the victims of the robbery were able to identify the defendant as one of the two robbers. The officers also had an address of the suspect. They proceeded to the location arriving there at approximately 1:44 a.m. of the same day.

The officers knocked on the door several times and stated in a loud voice their identification. Rummaging could be heard from inside the room. After several moments the defendant opened the door and he was asked, "Are you Carl?" The defendant responded "Yes, Carl James." The officer noticed an earring in the defendant's ear matching the description given by the victim and asked the defendant to step into the hall to talk to the officer. The defendant did not comply and the officer took hold of the defendant's arm and pulled him out into the hallway and effected the arrest.

The defendant at the time was clothed only in undershorts and asked to get some pants. He was asked if his clothes were in his room and the defendant replied that they were. The defendant and two officers went into the room where they observed in plain sight a package of Kool cigarettes on the table,

ARREST IN A DWELLING--APPLICATION OF RAMEY DECISION

James v. Superior Court (continued)

a yellow and blue tank top, a pair of blue plaid pants and a pair of blue denim pants. Money was removed from the pair of pants found in the room totaling approximately \$87.00.

At the time of arriving at the location the officers did not obtain an arrest or a search warrant. There was testimony that it would have taken between six and eight hours to get these warrants.

The officer knocking on the door was aware of the strong arm nature of the robbery. It was committed by the defendant threatening the victim with a bottle of wine and pot of boiling water. There were, however, no injuries to any of the victims. The officer was also aware of information concerning threats of armed robbery in convenience stores and threats to kill proprietors received by the police department.

The question on appeal was whether the arrest of the defendant was valid under Ramey and whether the evidence seized was the product of a lawful arrest and therefore admissible.

RULES AND REASONING

The Court of Appeal ruled that the arrest under Ramey was not valid and the evidence seized was inadmissible. However, the defendant could be prosecuted on the robbery charges based on the identification evidence.

The People argued that Ramey did not apply because the officers did not have probable cause to arrest the defendant at the time they approached the door. The People said that probable cause existed only after the officers were able to match the description of the defendant with the person answering the door.

The court disagreed and ruled that the officers did have probable cause to arrest the defendant at the time they approached to door. The court found

that, under the circumstances, the officers had sufficient probable cause to obtain an arrest warrant based on the description given by the victims and their identification of the suspect.

The People also argued that exigent circumstances existed which permitted the arrest in the home as a valid exception to the Ramey requirement. The Court of Appeal disagreed and ruled that exigent circumstances did not exist.

ARREST IN A DWELLING--APPLICATION OF RAMEY DECISION

James v. Superior Court (continued)

Quoting from the Ramey decision the court stated "... 'exigent circumstances' means an emergency situation requiring swift action to prevent imminent escape of a suspect or destruction of evidence. There is no ready litmus test for determining whether such circumstances exist, and in each case the claim of extraordinary must be measured by the facts known to the officers. (People v. Ramey, (1976) 16 C. 3d 263)." (*italics added by the Court of Appeal*).

The court said there were four reasons why exigent circumstances did not apply. First, the case was not one where the police were in hot pursuit. Second, there was an insufficient showing that there was imminent danger to life. None of the officers testified that they believed the defendant was armed in the conventional use of the term i.e., with a firearm or knife. The boiling water and wine bottle, both discarded or abandoned upon flight of the suspects, did not fall within the framework of one of Ramey's exigent circumstances. Third, there was no showing that escape was imminent in this case. ... There is nothing in the record to indicate that James was preparing to escape before the door was opened. Thus, the warrant could have been obtained before James even opened the door. Certainly the "imminent" escape which would authorize a warrantless arrest cannot be created by officers alerting the suspect to the fact of the presence of the officer. From all the circumstances in this case, it appears that James thought he had successfully evaded capture and had, therefore, gone to bed with little, if any, effort to escape. Simply stated, "there were not specific or articulatable facts suggesting that escape was about to take place." Finally, the court said that there was no imminent danger of destruction of evidence. Although the officers testified that preventing destruction of property was a reason for the arrest, they testified "but that wasn't the main reason." The court stated, "If James was going to destroy money, the clothes worn during the commission of the crime and the pack of cigarettes, he had more than adequate time to do so before the arrival of the police. If James was not going to destroy the items then he had gone to sleep and the possible destruction was not imminent. In either event, swift action to forestall imminent destruction of possible evidence was not necessary." The court then explained, "There must be activity from within the residence to lead the police to reasonably conclude the occupants are then engaged in the destruction of evidence. As in the knock-notice situations, the particular circumstances of the case must give rise to a reasonable belief that immediate action is necessary."

The court was also critical of the warrant procedures of which the officers testified in this case. The court stated, "We recognize that there may be practical considerations making the obtaining of a warrant in an unmetropolitan area more difficult than in a metropolitan area. However, the favored

ARREST IN A DWELLING--APPLICATION OF RAMEY DECISION

James v. Superior Court (continued)

approach under our system of justice is to obtain a warrant. We are unable to understand why issuance should be so time-consuming. ... In any event, we reject any view that excuses the seeking of a warrant because the hour is late and there may be difficulty in finding a judge to issue the warrant."

APPLICATION TO POLICE WORK:

In this case, we have lost the evidence but we'll probably win the conviction.

To begin with, the court stated that the officers could have staked out the location while a warrant was being obtained and the defendant arrested if he left the apartment before the warrant was issued. The court stated, "We see no reason why, in this case, rather than initially going to the door, the police could not have sent one of their members (or called in for assistance) to obtain a warrant to arrest James (if he left the apartment before the warrant was issued). Ramey of course, does not prohibit a warrantless arrest outside the residence."

Next, the court stated that the defendant could have been arrested if there was information he was armed with a deadly weapons" ... this holding does not preclude a warrantless arrest in a residence ... Where robbers are armed with deadly weapons when they leave the scene of a robbery and presumably still have those weapons at the residence. Such conditions come within the exigent circumstances described in Ramey." (emphasis added)

Furthermore, the court said that if the officers did not have probable cause at the time they approached the residence, the defendant could have been arrested in his residence if they discovered the necessary probable cause at the time they observed the defendant. In this regard, the court stated, "We wish to make it clear that this holding does not preclude a warrantless arrest in a residence ... Where the officers do not clearly have probable cause to arrest and the officers approach the residence to further obtain such probable cause and such probable cause then arises after the suspect opens the door and refuses to come out. Under such conditions the police may then enter to prevent the imminent destruction of evidence triggered by the realization of the suspect that the police are there." (emphasis added)

Finally, the court ruled that although the evidence seized would be inadmissible, the defendant would still be prosecuted for the robbery based on identification evidence by the victims. In this regard the court stated, "Such a ruling, of course, does not in any way prohibit the prosecution of

ARREST IN A DWELLING--APPLICATION OF RAMEY DECISION

James v. Superior Court (continued)

James on the robbery charges ... The prosecution is not precluded from relying on the identification evidence."

This is an excellent case for law enforcement officers! The court has gone out of its way to assist officers in applying the Ramey decision to their advantage.

This case answers the following: Suppose the officers went to the location to seek a "consent-to-arrest" the defendant, and were denied such consent. Would the officers then be permitted to enter to prevent the imminent destruction of evidence triggered by the "realization of the suspect" that the police are there? The answer is no. The officers would not be permitted to effect an arrest inside the residence under such circumstances. The reason is that such an emergency "... which would authorize the warrantless arrest cannot be created by the officers alerting the suspect to the fact of the presence of the officers."

Is the use of weapons during the commission of a crime a sufficient "exigent circumstance" to permit an arrest inside a residence? The answer by this court is yes. Officers therefore may conduct a warrantless arrest inside of a home whenever there is a probable cause to believe that the defendant used or was armed with a deadly weapon during the commission of a crime and presumably still has the weapon at the residence.

Finally, this case clarifies a common misconception of Ramey. That is: Does Ramey prevent the prosecution of a suspect if the arrest is illegal? The answer is no. Only the evidence seized during the illegal arrest is suppressed. If there is other evidence independent of the illegal arrest which is admissible against the defendant then the prosecution may nevertheless go forward.

Again, this case is extremely helpful to law enforcement agencies in the application of Ramey. It is hoped that it will be studied and applied to assist officers in overcoming some of the obstacles created by the Ramey decision.

*This case analysis was presented in The Law Enforcement Reporter Incorporated, Volume 3, No. 5, May 1979; Elliott E. Aldaheff, Editor.

ARREST IN A DWELLING--APPLICATION OF RAMEY DECISION

*CASE: People v. De La Plane (1978)
88 CA3 223

SUBJECT: Use of weapon during commission of offenses excuses compliance with Penal Code Section 844.

FACTS

On February 23, 1976, a McDonald's restaurant was robbed by two persons.

During the robbery, officers were alerted and they captured Kevin Pfaffl. Kevin admitted his participation in the robbery and named the defendant as his accomplice. Kevin told the police that the robbery was committed by the defendant using a gun, wearing a green ski mask over his face, and rubber gloves covering his hands. Kevin also made a tape recording in which he implicated the defendant in three other robberies. Kevin said that he would testify against the defendant and the District Attorney agreed to allow Kevin to plead guilty to one count of Grand Theft in exchange for his testimony.

At the time Kevin was arrested for the robbery he consented to a search of his apartment. The defendant was a temporary guest there but Kevin said he doubted whether the defendant would be there if the officers proceeded immediately to the apartment.

An officer was directed to go to Kevin's apartment to search for the defendant. He and his partner obtained a key from the landlady. The officers knocked on the door but did not announce their identity. Receiving no response to the knock, they used the key and entered the apartment.

Once inside the apartment, the officers observed a pair of green rubber gloves in an open suitcase on the floor, along with a wallet. The officers left, changed into civilian clothes and returned to the apartment. Again they knocked but did not announce their identity as police officers. The landlady's key was again used to enter the apartment. Again the defendant was not found but the officers seized rubber gloves and the wallet which contained the defendant's identification.

In the early morning hours of December 11, 1976, Karen Beck was in the parking lot of the apartment building complex. In the complex also lived Kevin with his father. From one of the buildings she heard noises and observed the defendant holding a stick in his hand. She heard a person say, "I had to do it." Then she heard the defendant say, "You didn't have to." She hurried to

ARREST IN DWELLING--APPLICATION OF RAMEY DECISION

People v. De La Plane (continued)

her apartment in a different building. Shortly thereafter, she heard several shots ring out. Moments later Kevin appeared in his father's apartment mortally wounded and having suffered two blows to the head from a blunt instrument.

The gloves and the wallet were used at trial to convict the defendant of robbery and murder. Of the many grounds the defendant alleged in appealing his conviction, he questioned the legality of the officer's entry under Penal Code Section 844.

RULES AND REASONING:

The Court of Appeal ruled the entry by the police officers was legal under Penal Code Section 844. The defendant's conviction was sustained.

Penal Code Section 844 permits forcible entry only after an officer has identified himself, stated the purpose of his presence and demanded admittance. Compliance with Penal Code Section 844 is excused, however, if compliance will increase the officer's peril, frustrate the arrest or permit the destruction of evidence.

APPLICATION TO POLICE WORK:

In an earlier case of James v. Superior Court 87 CA3 985, 3 LELR, the Court of Appeal ruled that knowledge that the defendant used a weapon in the commission of an offense excused compliance with Ramey and permitted the arrest of a Unit defendant in his home without an arrest warrant. This case follows that rule. It permits forced entry into a home when a defendant is known to have used a weapon in the commission of an offense and it is reasonable to believe he remains armed at the time of entry. In this case the offense was robbery, but there seems no reason to distinguish the application of the rule merely because of the crime charged. If the defendant is known to have used a weapon (i.e. knife, gun, etc.) during the commission of any offense then forced entry should be permitted.

*This case analysis was presented in The Law Enforcement Reporter Incorporated, Volume 3, No. 7, July 1979; Elliot E. Aldaheff, Editor.

PROBABLE CAUSE

Facts or apparent facts that would lead a reasonable man to believe that someone has committed a crime.

Probable cause is the oldest and certainly one of the most important concepts in criminal law. Actually, from a practical point of view, the words "probable cause" are and have been for more than two thousand years the two most important words in criminal law. Probable cause provides for the citizen as well as for the police a fixed and predetermined standard in the critical areas of arrest and search.

While in some countries, such as the Soviet Union, a citizen may be arrested and held indefinitely without the police justifying the arrest by a single fact, the Fourth Amendment demands that citizens in this country be arrested only for cause based upon facts. This concept of probable cause has acquired its legal potency in the United States because it has constitutional dimensions and because it is interpreted in the final analysis by impartial judges rather than by the police. The severe penalty that the courts impose on police who fail to abide by the spirit of the Fourth Amendment is to declare the evidence they gathered inadmissible.

The law enforcement officer who does not thoroughly understand the standard of probable cause is in the unenviable position of a man who doesn't know what he is doing. For in order to make a valid arrest, with or without a warrant, or to make a search, a police officer must have probable cause. In order to prepare arrest and search warrants, the officer must know how to articulate probable cause. Equally important to the law enforcement officer, particularly at this time, is the fact that if he is sued civilly for false arrest or false imprisonment, the most important issue at trial is the probable cause upon which he acted. In a civil rights criminal prosecution against an officer, for instance, the critical issue at trial is the officer's probable cause. Obviously, a thorough knowledge and understanding of the standard of probable cause is essential for all law enforcement officers.

Definition

Probable cause for an arrest is defined as a combination of facts or apparent facts, viewed through the eyes of an experienced police officer, which would lead a man of reasonable caution to believe that a crime is being or has been committed. Probable cause for the issuance of a search warrant is defined as facts or apparent facts, viewed through the eyes of an experienced police officer, which would lead a man of reasonable caution to believe that there is something connected with a violation of law on the premises to be searched.

The Law of Arrest, Search and Seizure by J. Shane Creamer, Holt Rinehart and Winston, pages 8-19.

These definitions of probable cause are not new; they have always been the law in this country. Not only are these definitions an accurate statement of the federal law relating to probable cause, but they are also an accurate statement of the law of each of the fifty states. Probable cause is truly a uniform national constitutional standard. It is the magic formula that provides most of the answers to legal questions under the Fourth Amendment.

The law of probable cause is such that while there is no restriction on the police with regard to the kinds of facts that they may use to justify an arrest, there is nonetheless an absolute necessity to justify the use of the police arrest power.

Court decisions in the probable cause area are based on the justification for an arrest by the combination of circumstances known to the officer at the time he makes an arrest. If the combination of circumstances is strong enough to make it seem reasonable that a crime has been committed and that the officer is arresting the likely culprit, the arrest will be lawful. It is only when the police act without cause that courts punish their conduct by ruling that the evidence they gathered while questioning the suspect during arrest or while searching a premises is not admissible as evidence.

"The substance of all definitions of 'probable cause' is a reasonable ground for belief in guilt," wrote Mr. Justice Rutledge in 1949 in the Brinegar case.

In Smith v. United States, probable cause was defined as:

The sum total of layers of information and the synthesis of what the police have heard, what they know, and what they observe as trained officers. We (the courts) weigh not individual layers but the laminated total.

On various occasions, the Supreme Court has examined and re-examined this plastic legal doctrine:

In dealing with probable cause...as the very name implies, we deal with probabilities. These are not technical, they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act....

"Probable" cause is more than suspicion but it is far less than the evidence sufficient to justify the conviction.

There is no crime known as "suspicion." ...The Fourth Amendment allows only searches for probable cause.

We are dealing with a threshold of proof that is more than suspicion but far less than certainty.

Significance

...and no warrants shall issue, but upon probable cause...

These nine words from the Fourth Amendment to the Constitution have given the concept of probable cause its greatest power -- its constitutional dimensions. This means, of course, that because the Constitution and the Bill of Rights are the most important laws in our nation, probable cause must be treated with the highest priority by our courts. Of all the sacred constitutional rights that a citizen enjoys in this country, none is more precious than this right under the Fourth Amendment. It gives the citizen protection in this area of a police arrest or a police search. The fact that the concept of probable cause has constitutional dimensions assures uniform interpretation in every court in the United States.

It is essential to realize that according to the philosophy of probable cause, the courts throughout our country have the primary responsibility of determining whether or not a person is to be arrested or a home is to be searched. This primary responsibility of the courts assures the citizen that his rights will not be violated by overzealous law enforcement officers. Of course, there are countless emergencies in which the police officer must act and act immediately. In practical law enforcement, it is impossible to go to the courts for evaluation of the probable cause involved in every contemplated arrest. But it is important to remember with the courts and not with the police. The police frequently must act on their own, but when they do, it is essential for the courts to scrutinize the facts and circumstances surrounding the arrest. There is no other way to maintain the delicate balance between individual rights and police necessity.

Essential Concepts

Probable, Not Actual, Cause. The stronger the combinations of facts and circumstances showing guilt, the stronger the probable cause to make an arrest. It is essential to realize that the term "probable" means exactly that. If the police officer, acting in an emergency, gathers facts or apparent facts in good faith, he will be judged on those facts regardless of whether or not they are actually true. So long as the officer accepts his facts in good faith, he may rely on them even if they subsequently turn out to be wrong.

Cause, Not Suspicion. The concept of probable cause unequivocally demands that an arrest or a search be made for cause, not for suspicion. A police officer may not arrest on a hunch, or on a guess, or on mere suspicion. A police officer may arrest only if he has a reasonable belief, based on the facts confronting him, that someone has committed a crime. Consequently, under the constitutional standard of probable cause,

the dragnet arrest, the arrest for suspicion, the arrest for protective custody, are all illegal and unconstitutional. This standard of probable cause prevents the police officer from arresting now and finding the crime later.

Facts Viewed Through the Eyes of the Experienced Officer. The courts evaluate the facts as viewed by the experienced officer rather than as they would be viewed by the average layman. Law enforcement, particularly in more recent times, has become more and more complex. For example, the factual patterns of a gambling enterprise are virtually unknown to the average layman. The police, on the contrary, are sensitively attuned to the recurring patterns of a numbers operation. For this reason, facts constituting probable cause are reviewed by the courts as seen by the experienced officer. This allows the officer the necessary latitude to explain the full significance of certain material facts. It would be basically unfair and impractical to strait jacket the police officer by restricting him to a layman's view of the facts.

Facts Taken in Good Faith. The standard of probable cause is a versatile one. It is versatile in that virtually any kind of fact may be an element of showing someone's guilt. The only limitation at all, as far as facts are concerned, is that they must be taken in good faith. Any fact may be taken from any source so long as the law enforcement officer believes the fact to be true. If an officer knowingly attempts to use a false fact as part of his probable cause, any action that he takes will be unlawful. The purpose of gathering facts to establish probable cause is for the law enforcement officer, by facts, to establish a personal belief in guilt. If the officer knows his facts are not true, he is not only committing fraud but he is also placing himself in a position where he can be sued civilly or criminally for misconduct in office. Because the constitutional concept of probable cause is facts under oath, an officer who knowingly embraces falsehood is toying with perjury. The purpose of the oath is to assure that the facts are true. Consequently, the only limitation on a law enforcement officer in this area of probable cause is that he must gather only such facts as he personally believes are true. It is not material if at a later date the officer's judgment proves to be wrong. In other words, if an officer accepts a fact that he believes to be true but it subsequently develops that it is not true, the fact will be accepted by the court as part of the probable cause for an arrest, so long as the officer accepted the fact in good faith. The good faith of an officer is particularly critical in a civil or criminal suit for false arrest or for false imprisonment, because his good faith and the reasonableness of the facts upon which he acted are the crucial determinates of whether or not he will be held liable.

Facts That Constitute Probable Cause. Any and all facts accepted in good faith by a law enforcement officer may constitute elements of probable cause. There is virtually no limitation on the type of fact that an officer may gather as probable cause to justify an arrest.

Likewise, there is no restriction on the manner in which these facts are presented by the police officer at the probable cause hearing. In other words, in the realm of probable cause, there are no rules of evidence. An officer is not strait jacketed by the traditional rules of evidence in presenting his probable cause and, therefore, that probable cause does not have to be made up of legally admissible factual evidence. It is difficult for the professional law enforcement officer who has schooled himself and who knows the rules of evidence to suddenly find an area in law where they are to be totally disregarding. A police officer should not be inhibited at the probable cause inquiry by adhering to the strict rules of evidence.

Sources of Facts. An officer may receive information from an informant, from a citizen, or from a fellow-officer, and that information, regardless of its source, may be considered as part of the probable cause justification for an arrest or a search can be hearsay or secondhand information. In Aguilar v. Texas, 378 U.S. 108 (1964), the Supreme Court said:

In fact, the evidence (to arrest or to search) may consist entirely of hearsay or otherwise incompetent evidence.

"Hearsay," as used in the rules of evidence, means facts not within the personal knowledge of the witness testifying. It generally refers to facts that have been relayed from one person to another. A probable cause inquiry is not held in the presence of the jury and, therefore, the court is not concerned with the rules of evidence. The court is concerned instead with inquiring into the state of mind of the arresting officer to discover all the facts that he acted upon.

Facts are the essence of probable cause -- particularly sinister, guilt-edged, or guilt-laden facts. What makes probable cause persuasive is a combination of facts that leads to a reasonable belief of guilt. The need for gathering these combinations of facts is absolute, because they can lay an invincible constitutional basis for an arrest or search.

Burdens of Proof. The basic reason why none of the rules of evidence applies in the probable cause stage of a criminal proceeding is that the burden of proof is entirely different. There are three distinct burdens of proof required at the three distinct stages of criminal prosecutions, and it is important that they not be confused. The first stage of a criminal proceeding is the arrest for probable cause. The burden of proof at this probable cause stage is to establish a reasonable ground for belief in guilt. At the probable cause stage, courts do not place any emphasis on the admissibility of evidence. The second stage of a criminal proceeding is the preliminary arraignment or hearing before a judicial officer, which immediately follows the arrest. Here the prosecution must make out a prima facie case in order to have the court hold the accused to answer the charge. This is the level where the rules of evidence first appear and the court must determine whether there are sufficient grounds to believe that an offense has been committed and that the accused person committed it. If a prima facie case (assuming all of

the prosecution's evidence is true) is made out, the accused is held to answer to higher authority. The third stage of a criminal proceeding is the trial, where the burden of proof on the prosecution is to prove the defendant guilty beyond a reasonable doubt. Here the rules of evidence are enforced with the utmost vigilance and only evidence in admissible form may be presented by the jury.

Ambiguous Facts - Caution. An equivocal or ambiguous fact has frequently been relied upon by law enforcement officers to establish probable cause. The courts, however, have generally held that equivocal or ambiguous facts cannot of themselves create a reasonable belief of guilt. Consequently, facts that are not clothed in suspicion strong enough to imply criminality cannot independently establish probable cause. Only incriminating or guilt-laden facts are strong enough to satisfy the standard of probable cause. Equivocal, ambiguous, or neutral facts are dangerous to the law enforcement officer because he can be lulled into a false sense of security by them. There is a need for objectivity here. The police officer should determine whether his facts are those that demonstrate guilt, such as flight or furtive movements or whether they are ambiguous facts that, in and of themselves, do not demonstrate guilt, such as a man unloading a car or a man tipping his hat. Over-reliance on ambiguous, non-guilt-producing facts can be hazardous.

Hearsay Information. The ultimate weapon of law enforcement, particularly with regard to probable cause, is hearsay information. Hearsay information is defined as a communication of facts from someone to the police officer in action. That someone can be an anonymous person, an informant, a citizen, a fellow police officer, a judge, or anyone. That someone can be a child or an adult, a saint or a sinner. That someone -- no matter who he is -- is commonly referred to in law as the "source" of the information. Of course, the Hearsay Rule does not bar the presentation of hearsay information at probable cause inquiries. All that is required is that the law enforcement officer accept whatever information is given to him in good faith.

One indestructible constitutional safeguard in regard to probable cause is that the facts setting forth probable cause must be taken under oath. That is, whoever takes the affidavit must swear -- in good faith -- that he believes all the facts are true. This constitutional safeguard applies in full strength to hearsay information, even though it comes from a source other than the law enforcement officer who is testifying at a suppression hearing or who is taking out warrants. This is the one great constitutional limitation on probable cause facts generally, and on relayed information specifically. Because the officer himself has no firsthand knowledge of facts relayed to him, courts insist on knowing as much as can possibly be revealed about the source of the information. If the source is a con man, or an unreliable person, or an anonymous person, courts are reluctant to place much reliance or value on the information. In contrast, if the source of the information is particularly credible,

such as a reliable informant or another police officer, courts generally place more confidence in the relayed facts. This is just a matter of common sense. The stronger and more credible the source of the information, the more reliable that information generally is. So the reliability of the person who gives the information is vital, for the court must evaluate the truth of the facts advanced by hearsay information. The difficult determination for the court is whether or not the hearsay facts are true. Speculation, rumor, or the chance of false facts is abhorred by the courts. Arrests or searches based solely on undisclosed informants' accusations have rarely been upheld by the courts. To allow such arrests or searches would be a death blow to the essential "facts under oath" constitutional requirement. The pursuit of any court inquiry is after truth. Although the hearsay barrier has been removed by the courts in the probable cause hearing, the court is still in quest of truth. Therefore, when hearsay information is used to establish probable cause, the source of the information is one vital measuring rod of the truth of the information. Since the officer who takes an affidavit or testified as a suppression hearing cannot swear to the truth of the hearsay information from his own direct personal observations, the reliability of the information is only as strong as its source.

In addition to identifying the source, there is another technique of demonstrating the truth of hearsay information that must be fully understood. This technique is called corroboration. To "corroborate" means to make more certain or to confirm. The professional police officer should attempt in any way possible to corroborate hearsay information that is relayed to him from any source. Each time information is corroborated by independent police investigation, the loud echo of truth resounds.

No one can dispute that in modern police work, hearsay information plays a dominant role. That is why an officer must know how the courts evaluate hearsay information.

CHECKLIST OF PROBABLE CAUSE*

With no intention to be all inclusive, the following checklist presents guilt-laden facts which courts throughout the country have recongized as solid building blocks of probable cause:

1. Flight
2. Furtive movements
3. Hiding
4. Attempt to destroy evidence
5. Resistance to officers
6. Admissions or confessions
7. Evasive answers
8. Unreasonable explanations
9. Fingerprint identifications
10. Hair follicle identifications
11. Handwriting comparisons
12. Fabric comparisons
13. Identification of suspects by witnesses
14. The emergency setting -- crime zone
15. The emergency setting -- automobile
16. Ballistics evidence
17. Contraband or weapons in plain view
18. Criminal record
19. Hearsay information -- informant
20. Hearsay information -- fellow officer
21. Hearsay information -- general
22. Expert police opinion
23. Police corroboration
24. Unusual or suspicious conduct
25. Fact of crime or felony
26. Police computerized information (NCIC, etc.)
27. Police radio broadcasts
28. Use of drug-detecting dogs
29. Voice print identifications
30. Blood tests
31. Electronically obtained evidence

*Search and Seizure Checklists by Clark Boardman Company, Ltd., page 7

Probable Cause: The arrest must be based on probable cause.

1. "Probable cause exists where the facts and circumstances within the arresting officers' knowledge and of which they had reasonable trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed." Draper v. United States, 358 U.S. 307, 313 (1959)
2. "[G]ood faith on the part of the arresting officers is not enough. Probable cause exists if the facts and circumstances known to the officer warrant a prudent man in believing that the offense has been committed." Henry v. United States, 361 U.S. 98, 102 (1959).
3. "[T]he question to be decided is whether prudent men in the shoes of these officers would have seen enough to permit them to believe that petitioner was violating or has violated the law." United States v. Wysocki, 457 F.2d 1155, 1159 (5th Cir.), cert. denied 409 U.S. 859 (1972).
4. "In order for an officer to have probable cause to make an arrest without a warrant it is not necessary that he have personal knowledge of all items of information which taken together constitute probable cause. The court looks to the collective knowledge and information of all of the officers involved." United States v. Rose, 541 F.2d 750, 756, (1976), cert. denied 430 U.S. 908 (1977).
5. "The threshold issue...is whether that quantum of reliable information known to the officers...was sufficient to warrant a prudent person to reasonably believe that (the defendant) had committed or was in process of committing an offense." United States v. Mayer, 552 F.2d 729, 731-32 (6th Cir. 1977).

Police Powers

In a free society, police are subject to the rule of law just as citizens are. Regrettably, under totalitarian rule the police are the law. But police in the United States, while enforcing the law, must rigidly follow the first principle of our constitutional law by obeying it themselves.

This principle is that the citizen must be left alone by the police unless there is specific cause for police investigation or police confrontation of the citizen. Police power cannot be used indiscriminately or arbitrarily on the citizen, even if that power is minimal. For every ounce of police power deployed against the citizen there must be clear justification for its use. In brief, police may:

1. Investigate when there are reasons to investigate.
2. Stop a citizen when there is a reason or when the citizen is acting in a suspicious manner.
3. Frisk the citizen when the officer reasonably fears for his safety.
4. Detain and question the citizen when there is cause and necessity based on facts.
5. Arrest when there are sufficient facts to believe the citizen has committed a crime.
6. Search incident to an arrest to protect the officer and to prevent the destruction of evidence.
7. Seize any evidence of the crime.

Police powers to arrest evolved centuries ago from common law and are:

1. The right to arrest for a present or past felony.
2. The right to arrest for a present misdemeanor (one committed in the officer's presence).

Police powers to search are nonexistent. That is, the only law enforcement officer in this country who ever had the power to search on his own was the British redcoat. According to Samuel Adams, that devastating search power of the English soldiers was one of the principal causes of the American Revolution. Essentially, therefore, police have no independent power to search. They can, however, search (1) when it is necessary to protect themselves in emergencies -- such as when they frisk or arrest; (2) when ordered to by courts under the authority of a search warrant; and (3) when the citizen consents to being searched.

Under our balanced design, police powers, when invoked, are carefully scrutinized by the courts to see that they have been exercised within constitutional limits so that every ounce of police power exercised is justified.

Citizen's Rights

Under the Fourth Amendment, a citizen has the right:

1. Not to be investigated by police without reasonable suspicion.
2. Not to be stopped, detained, or questioned by the police without reasonable suspicion.
3. Not to be arrested unless there are sufficient facts to generate a reasonable belief that he has committed a crime.
4. Not to be searched unless he is validly arrested, or a search warrant has been issued, or he consents to the search.

Affirmatively under the Fourth Amendment, the citizen has the right:

1. To be left alone by government -- particularly the police -- unless there is specific justifiable reason to investigate him.
2. To full protection of his privacy from police scrutiny.
3. To full protection of his person and property from police seizure.

According to the protections of the Fifth Amendment, a citizen has the right:

1. To remain silent when accused of something by the police.
2. To refuse to be interrogated by police.
3. To refuse in any way to incriminate himself by his own testimony when questioned by police.

Citizen Protections

Since probable cause is probable, not actual, the burden of proof on the police is merely "a reasonable belief that someone has committed a crime" and not "guilt beyond a reasonable doubt." All evidence is admissible to prove probable cause. Probable cause is a plastic concept for effective police encounters with the criminal. On balance, however, there are three additional features of probable cause that protect and insulate the citizen from overzealous police activity under the guise of probable cause. They are the necessity for police to supply particularity, adequacy, and reliability of probable cause facts.

Particularity. In the realm of probable cause police may act only on specific facts, not speculation. There must be a particular crime suspected on definite facts. Justification for police action must also be specific and particular. In cases of search warrants, police not only must set forth specific facts to justify the search but also must state the actual crime involved, what specifically they are looking for, and exactly where they want to look and why -- all prior to the actual search. The particularity requirement of probable cause prevents police from engaging in fishing expeditions at the citizen's expense.

The Fourth Amendment specifically dictates this requirement of particularity:

...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.

In one case, authorities generalized that they were searching for and seizing "books, records, pamphlets, cards, receipts, lists, memoranda, pictures, recordings, and other written instruments concerning the Communist Party of Texas, and the operations of the Communist Party."

The authorities actually seized hundreds of books under this warrant, one of which was written by Pope John XXIII and another by Mr. Justice Hugo Black. The Supreme Court of the United States held in Stanford v. Texas, 379 U.S. 476 (1965), this language was too vague and classified the warrant as an invalid "general warrant" and emphasized that:

The requirement that warrants must particularly describe the "things to be seized" is to be accorded the most scrupulous exactitude when the "things" are books, and the basis for their seizure is the ideas which they contain.

Adequacy. A second probable cause safeguard for the citizen is that police must establish adequate facts to generate a reasonable belief that someone has committed a crime. Mere assertions, conclusions, or generalizations cannot be substituted for probable cause facts. In Aguilar v. Texas, 378 U.S. 108 (1964), Houston police merely recited:

Affiants have received reliable information from a credible person and do believe that heroin, marijuana, barbiturates, and other narcotics and narcotics paraphernalia are being kept at the above premises for the purpose of sale and use contrary to the provisions of the law.

The Supreme Court held that the mere assertion of "information" without supplying any factual basis for it was fatally defective since the judicial officer who issued the warrant had no probable cause facts upon which to base his order. The essential facts justifying the search must be set forth in detail or, as in Aguilar, the warrant will be declared invalid.

The issue is clear when police present no facts under oath to the judge as was the case in Aguilar, but the same result occurs when some facts are presented by police but not enough solid facts to generate a reasonable belief that someone has committed a crime. In Beck v. Ohio, 379 U.S. 89 (1964), the Court stated:

When the constitutional validity of an arrest is challenged, it is the function of a court to determine whether the facts available to the officers at the moment of arrest would "warrant a man of reasonable caution in the belief" that an offense has been committed. ...If the court is not informed of the facts upon which the arresting officers acted, it cannot properly discharge that function. All that the trial court was told in this case was that the officers knew what the petitioner looked like and knew that he had a previous record of arrests or convictions for violations of clearing house law. Beyond that, the arresting officer who testified said no more than that someone (he did not say who) had told him something (he did not say what) about the petitioner. We do not hold that the officer's knowledge of the petitioner's physical appearance and previous record were either inadmissible or entirely irrelevant upon the issue of probable cause.... But to hold that these two facts, alone or in combination, of themselves constituted probable cause would be to hold that anyone with a previous criminal record could be arrested at will.

Beck v. Ohio demonstrates that the essential facts known to the officer that justify the arrest or the search must be presented under oath to the judicial officer and must adequately support the assertion that a crime has been committed or that a search should be made.

Reliability. The third and final probable cause safeguard for the citizen requires that the facts supporting the arrest or search be reliable. Facts, particularly secondhand, hearsay facts, must be trustworthy. To assure the truthfulness of secondhand information, courts require either corroboration of the information by independent police investigation or disclosure by the police as to how the informer got the information. In Spinelli v. United States, 393 U.S. 410 (1969), Mr. Justice Harlan indicated both the need for investigative corroboration of the informant's secondhand assertions and the necessity for showing how the informant gathered the information:

The tip does not contain a sufficient statement of the underlying circumstances from which the informer concluded that Spinelli was running a bookmaking operation. We are not told how the FBI's source received his information -- it is not alleged that the informant personally observed Spinelli at work or had ever placed a bet with him. Moreover, if the informant came by the information indirectly, he did not explain why his sources were reliable... This meager report could easily have been obtained from an off-hand remark heard at a neighborhood bar.

Facts, then, to count as probable cause must be reliable, particularly when they come secondhand to the officer. The reliability factor in probable cause protects the citizen against having unreliable facts ever become the basis for police action against him.

Reference Materials

This section is set up as reference information for use by training institutions. These materials can be utilized for prime instruction; remediation, additional reading, viewing or for planning local units of instruction. They are presented here as instructional materials that may assist the learner or the academy staff in the teaching-learning process. Each training institution is encouraged to expand this list but only after careful viewing and reading to determine its acceptability.

California Digest, West Publishing Company, St. Paul Minnesota.

California Penal Code, Legal Book Corporation, Los Angeles.

California Reporter, West Publishing Company, St. Paul,
Minnesota.

Kamm, Ernest, Juvenile Law and Procedure in California, Glencoe Press, Beverly Hills.

"Laws of Arrest," Module 92.01, Project MILE, Los Angeles Police Department.

Lundgren, R. F. California Arrest, Search and Seizure Rules,
Legal Book Corp., Los Angeles

Supreme Court Reporter, West Publishing Company, St. Paul,
Minnesota.

In no way is this list an endorsement of any author, publisher, producer, or presentation. Each training institution must read or view these materials, and others to establish their own list of reference materials.