

Handling Encounters With Law Enforcement

This handout was written in 2001 and is valid in the United States in general. Remember, however, that laws change over time, so legal information *must* be regularly updated.

When dealing with the police or with any other law enforcement agents, keep your hands in view and don't make sudden movements. Also, avoid passing behind them. Never touch the police or their equipment (vehicles, flashlights, animals, etc.)

When we are involved in or observing an interaction with the police, we should always note what is said and by whom. Record the officers' names and badge numbers. Immediately after the police interaction, make a copy of the Police Misconduct Report and fill it out. Do it promptly so you can remember important details clearly. Familiarize yourself with the Police Misconduct Report in advance so you'll know what to look for.

Questioning

Interrogation isn't all bright lights and rubber hoses—more often than not it's a casual conversation. Whenever law enforcement officers ask us anything besides name and address, it's legally safest to say these Magic Words: *"I am going to remain silent. I want a lawyer."* These phrases invoke the constitutional rights which protect you from police interrogation.¹

Generally speaking, engaging in dialogue with law enforcement personnel is appropriate only if we are reporting a crime. If we find ourselves unexpectedly in a situation which could conceivably lead to arrest, we must choose our words very carefully. Once we say the Magic Words, the authorities are supposed to stop questioning us. If they don't stop, we just keep repeating the formula like a mantra.

Remember, anything we say to the authorities can and *will* be used against us and our friends in court. There's no way to predict what the police might try to use or how they'd use it. Plus, the police might misquote us or lie altogether about what was said. So it's good to make a habit of saying *only* the Magic Words and letting everyone know that this is our policy.

Be aware that the authorities are legally allowed to lie when they're investigating, and they are trained to be manipulative. Insist upon speaking with friends and lawyers before you answer any questions or produce any documents.

If you don't think you'll remember the Magic Words when you need them, write them on your forearm, preferably with something that won't wash off too easily (permanent markers work well.) Make sure that when you're arrested with other people, the rest of the group knows the Magic Words and promises to use them.

¹ You have the right, under the Fifth Amendment to the U.S. Constitution, not to be forced to say anything which would incriminate you (help prove you guilty). You also have the right, under the Sixth Amendment, to have a lawyer present when the police are questioning you if you've been arrested. If you invoke either of these rights, the police have to stop questioning you. You have these rights even if you are a minor or non-U.S. citizen.

The Miranda Warnings

Just because the police didn't read you your rights doesn't mean you can beat your case. Police are only required to read you your rights if both:

- (1) you're under arrest, *and*
- (2) they want to ask you questions

So if the police ask you questions but haven't arrested you, they don't have to read you your rights and your statements will be used against you. More important, if the police arrest you and don't ask questions, they don't have to read you your rights; but if *you* go ahead and say things to them, your statements *will* be used against you.

If you've been arrested and realize that you accidentally started answering questions, don't panic. As soon as you remember that you're supposed to be remaining silent, say the Magic Words: "*I am going to remain silent. I want a lawyer.*" Just because you've answered some questions doesn't mean you have to answer all of them. Stopping can't hurt, and it may help.

Police Encounters

There are three levels of police-initiated encounters. The second two—which are more serious—require a certain level of proof before the police can engage in them.

ENCOUNTER	LEVEL OF PROOF
(1) conversation	none
(2) detention	reasonable suspicion
(3) arrest	probable cause

Conversation: When the police are conducting an investigation, but do not have enough evidence to detain or arrest us, they will try to engage us in conversation or get consent to search. They may call this a "casual encounter" or a "friendly conversation," etc. If we cooperate, we're likely to give them the very facts they need to arrest us. Instead, we should refuse their request (even though their request may sound more like an order). Always state your refusal in words, as opposed to just shaking your head.

Detention: Police are only allowed to detain you if they have a **reasonable suspicion** that you are involved in a crime—that reasonable suspicion must be more than a mere hunch. *The police must be able to put their reasonable suspicion into words.* That is why it's sometimes called an **articulable suspicion**. For example, if an officer stops an individual, it's not enough for the officer to say, "He looked like he was up to something." The officer has to be more specific, giving details, such as, "He kept looking in the window of the jewelry store, then walking away, then coming back and peering into the store again. And he wasn't from the neighborhood. He seemed nervous and agitated, so I thought he might be planning a burglary." Detention is supposed to last only a short time and should not involve changing location, such as going to the

local precinct. Though not as serious as an arrest, detention still means that you are not free to leave and are subject to limited search during the brief time of the encounter.

During a detention, the police are entitled to pat the outer surface of your clothing and to look into your bags to check for guns or knives. *A detention search is conducted only to assure that the detainee has no weapon(s) that could endanger an officer.* For example, once the police have patted you and have not felt anything that could be a weapon, they cannot then examine the contents of your pockets.

Arrest: When the police have **probable cause** to believe that you are involved in a crime, they can arrest you. (They don't need an arrest warrant as long as they have probable cause.) Probable cause is more than a reasonable suspicion, but less than the level of proof required to convict you at trial. Probable cause varies, according to the facts of the case. Say, for example, the police received a call from a store owner that someone had just spraypainted graffiti on his store. The police drive to the area and notice you running down the street, about a block from the store, holding a can of spray paint in your hand. Under these circumstances, the police would have probable cause to arrest you.

A detention can easily turn into an arrest. Even gently touching a police officer during a detention can justify arrest for "battery upon a peace officer." If the police find a weapon or see drugs while detaining you, it is likely to provide the probable cause necessary to arrest you. For instance, the police might detain you for questioning and then discover a knife while pat searching you or they might be detaining you to write you a ticket and then spot an open alcoholic beverage container in your car.

When making an arrest, the police are allowed to search to the skin and to go through your bag and/or car. An officer searching your body must be of your own gender.

Sample Conversations With Law Enforcement

(1) Cop: Can I ask you a couple of questions?

You: Are you detaining me or am I free to go?

Cop: No, I'm not detaining you, I just want to talk to you.

You: I don't choose to talk to you. (walk away)

☞ Remain silent. Walk away.

(2) Cop: You're not going anywhere. Hands against the wall, feet back and spread 'em.

You: Can you explain why I'm being detained?

☞ Memorize the officer's response. The officer may be unable to state a reasonable suspicion, and that fact could help you win your case later on. Don't go telling the cop that s/he doesn't have reasonable suspicion. That will just remind him/her to come up with a better story before writing the report.

(3) Cop: You're under arrest.

You: I am going to remain silent. I want a lawyer.

☞ Do not wait for the police to read you your rights. They may not do it (and they're not required to unless they want to question you). Once you say that you don't want to answer questions or that you want a lawyer, the police are not allowed to question you. However, the police do get to ask your name, address and to see valid picture identification. It's okay to give them that information if you want to be **released on citation** (the citation is a ticket telling you when to come to court). However, sometimes we refuse to give our names or **cite out** as a solidarity tactic.

(4) Cop: Can I look in your backpack (purse, pockets, wallet, glove compartment)?

You: No. I do not consent to a search.

Searches and Warrants

If police come to the door with an **arrest warrant**, step outside and lock the door. Police are allowed to search any room you go into, so don't go back into your home to get your wallet or use the bathroom. If they *do* have an arrest warrant, hiding inside isn't likely to help, because police are allowed to force their way in if they believe you are there. So you might as well go, without letting them in to search.

Do not consent when the police ask to enter and search your home without a **search warrant**. Don't let them invite themselves in. Stand in the doorway and refuse to give them permission:

Cop: Mind if I come in?

You: I do not consent to your entering.

The police are quite likely to tell you they don't need a warrant. It's always safest to reply: "I do not consent to this search." This statement cannot harm you, and it will be helpful in court if the police are wrong or lying. If the police tell you they're coming in anyway, make sure to say, "I do not consent to this search." If police say they do have a search warrant, ask them to give it to you so you can read it to see that it's signed and has your correct address and a reasonably recent date (not more than a couple of weeks). If you point out a flaw in a warrant, the police may ask you to let them in anyway. Just say no. (The police may threaten to tear your home apart if they have to go back and get another warrant, but the search will be destructive anyway, even if you let the police in immediately.) Whether or not the police have a warrant which looks perfectly okay to you, it still makes sense to say "I do not consent to this search," because it's possible that there's a hidden flaw in the warrant which your lawyer may be able to find later on.

Do not physically resist the police when refusing consent because you're likely to get hurt and charged with resisting or assaulting an officer. If the police insist on coming in after you've refused consent, stand aside and let them through the door—but remind them that you still don't consent to the search.

Saying "I do not consent" may seem a little formal, but it helps keep the police from claiming that they thought you gave them permission. Many cases have been lost because the suspect was too polite or intimidated to refuse consent clearly. For example, if you said, "I'd

rather you didn't search," it could be argued that you were reluctantly allowing them to proceed.

CAUTION!

There are a lot of ways the police will try to trick you into talking. It's always safest just to say the Magic Words: "*I am going to remain silent. I want a lawyer.*" The following are common lines the police use when they're trying to get you to talk:

- You're not a suspect. We're simply investigating here. Just help us understand what happened and then you can go.
- If you don't answer my questions, I won't have any choice but to take you to jail.
- Your friends have all cooperated and we let them go home. You're the only one left. Do you *want* to go to jail?
- If you don't answer these questions, you'll be charged with resisting arrest.

Good-Cop, Bad-Cop Routine: Don't get taken in by a "good cop" just because s/he is someone of your own race or gender.

Rat Jacket Routine: Don't believe police who insist that your buddy has snitched you off—never roll over on her/him. The police will often be telling your buddy that *you're* a snitch in the hope that each of you will snitch off the other.

George Washington Routine: The police will claim that they have all the evidence they need to convict you, and your best bet is to "take responsibility" and confess right away. They'll argue that if you confess promptly, the judge will be impressed and go easier on you. When the police say they have all the evidence they need, what they really mean is: We don't have enough evidence yet, and that's why we need you to confess.

If you're arrested with friends, make an agreement that no one will make statements to the police until everyone's been able to talk to a lawyer and calmly decide what to do. Be aware of the paranoia which tends to set in after people have been separated.

Be particularly suspicious if you are in custody and an officer (or an unfamiliar person claiming to be a lawyer) comes and tells you that everyone else has agreed to a particular deal or to leave jail. Demand to see a trusted lawyer or another activist to verify this information.

When you're in jail, don't talk to your cell-mates about what happened to you, who was with you or even whom you know. Stick to safe topics such as movies, music, sports, sex, etc.

Above all, do not ask for or accept legal advice from the officers who have stopped you. They are not there to act as your advocates. Remember that they've been trained to put you at ease, to get you to trust them. Their job is to find, arrest and help convict the suspect. And that suspect is you.

Infiltrators and Informants

Law enforcement officers may infiltrate our organizations. Undercover officers are allowed to lie if we ask whether they're law enforcement personnel. It does no good to ask, "Are you a cop?" Police are allowed to lie about being police. Narcs are allowed to do drugs. Legally, this is not considered **entrapment**.

Also, law enforcement agencies often use informants. Informants are usually people who have criminal charges pending against them; the authorities promise to let them off the hook if they'll snitch. Informants can be very deceptive since they don't look or talk like cops. In fact, an informant can be an old friend or acquaintance who just recently happened to fall under police control.