

What to do (and not to do) if you are arrested

*If you are arrested it is your liberty on the line,
and the food in jail is bad.*

BY BRADLEY J. WOODWORTH, Esq.

Are you being "stopped" or "arrested"? In general, the police can "stop" anyone they reasonably suspect has committed or may very soon commit a crime. Such a stop is not an arrest (though it may lead to one), and usually consists only of a few questions. You do not have to answer any such questions, but whether it is a good idea in a particular situation depends on many factors. If you are sure you have done nothing wrong, it may be easier to answer a few questions and be on your way. If the questioning

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is about a serious crime, or you are not sure if you might have done something wrong, you may not want to answer any questions except to identify yourself. As you might guess, people who won't answer any questions during a "stop" sometimes appear suspicious to the police, who might decide to take you into custody.

An "arrest" occurs when the police take you into custody and will not let you leave. If you are in doubt, always ask the officer if you are under arrest. If you are not under arrest, then you are free to leave. If you are under arrest, you have a nearly absolute right to remain silent. This is one bit of legal advice on which most all lawyers agree: do not give up your right to remain silent until you have talked with a lawyer! When you are arrested the police will almost always "read you your rights" (the *Miranda* warnings we all learned from TV). Your right to remain silent can be invoked by you at any time. Even if you have given up the right by talking with the police, you can — and should — stop talking at any time. Simply state: "I have nothing further to say until I consult an attorney." The police *must* then stop questioning you. But if you keep talking, you have again given up your right to silence. The law says that if you instigate conversation about the crime you're accused of, then the police can question you, and use whatever you say against you. In one case, a defendant had stopped talking until he saw a lawyer, but gave up his silence rights when he asked the police, "What's going to happen to me next?" There is only one way to remain silent: say nothing, ask nothing.

The reasons to remain silent are many: most important, you can end up convicting yourself by your own words. I have seen very many cases where the police had probable cause to arrest, but just did not have the proof beyond a reasonable doubt needed to convict. Time and again, the missing pieces were provided by the defendant's own statements. If you make statements to the police after being told you can be silent, the police can and will use those statements against you.

At the risk of sounding cynical, you should know that even the "friendly" police officer will use your statements against you. Some police will adopt a very friendly attitude toward you, and give you the feeling that if you just explain what went on, they will understand and let you go. **DON'T FALL FOR IT.** I recently had a client who pleaded guilty to a prostitution charge (he was the "john") because, after being advised of his rights, he told the "friendly" officer exactly what he was looking for, how much he expected to pay for it, where it was going to take place and blah, blah, blah. He could never have been convicted without his own statements, but certainly would have been with them. Remain silent. It is not in your interests to chat with police when you are arrested. Also, don't talk about your charges with



anyone else in the jail — what you say to a cellmate or anyone can be used against you. Sometimes prisoners can trade information they get from you to the prosecutor for favors or plea bargaining, or other people in the jail could be police informants. If all this sounds a bit paranoid, just remember that when you are arrested it is your liberty on the line, and the food in jail is bad.

The law of search and seizure is fantastically complex, so just a few general words can be said about it here. Usually, to search your home the police must have a warrant. Sometimes police will ask permission to search. Unless you are positive there is no reason not to show them your home, do not consent to any search. Merely state: "I do not consent to any search of my (home, person, automobile)." Do not explain your refusal, or be tricked into consenting by the cop who says, "If you have nothing to hide you should let us search" or, "If you don't consent we'll just be back with a warrant." Fine, let them come back with a warrant, if they can get a judge to issue one. If your car is stopped, the police can look around the plain view areas. Do not consent to any search of the glove box, trunk, under seats, or any closed containers in the car or on your person. A closed container might be a purse, briefcase, luggage, film canister. If you open your briefcase and it contains closed containers, do not consent to a search of the containers within the container. Never actively resist a search, even if you think it is wrong. Simply state and repeat as needed that you do not consent to any search. If the search is illegal, the evidence probably cannot be used against you.

One exception to the rule requiring a warrant is a "pat down" search of a person being stopped or questioned. Police do have the right to frisk for weapons to help ensure their safety. If you are arrested, the police can search your person, but again, object to any search of a closed container they find.

It can be very hard to follow these suggestion when you are nervous, afraid, and faced with the awesome authority of police who want to arrest you. Practice saying the key phrases out loud (no kidding). "I do not consent to any search of my car/house/person." "I have nothing to say until I consult a lawyer." "I do not want to make any further statement." "I want a lawyer." Imagine being in the situation where you might need to say them, and find the right words for you. In this way, hopefully, you can avoid making nervous comments that are not in your interests, or waiving your important rights under the Constitution.

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The author is an attorney in private and maintains offices in the Lloyd Center area. •

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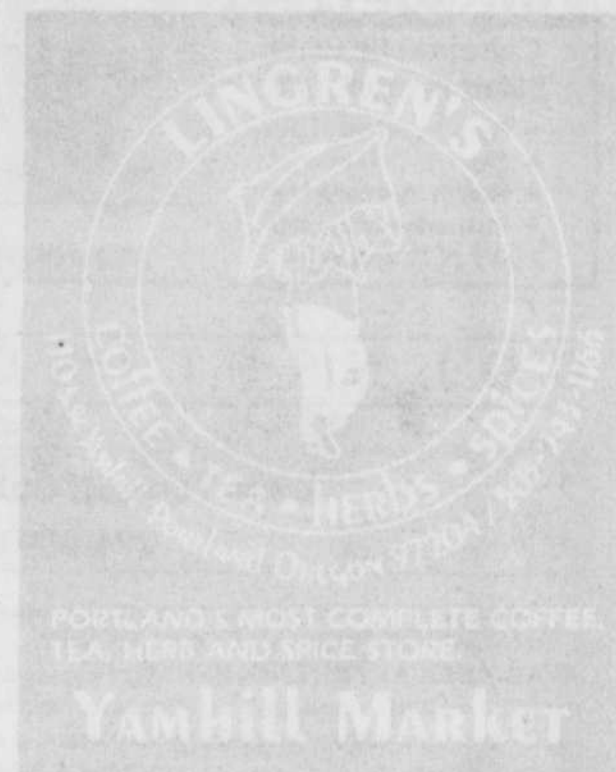
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