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## Questions and Answers

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# Questions and Answers

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In this issue of *Questions and Answers* a number of inquiries of current interest will be answered. "Under what circumstances may an officer use a deadly weapon in order to make an arrest?" is one of the questions. Another reader wanted to know if the driver of an automobile involved in an accident could be charged with assault with a deadly weapon. A third inquired if a motorist involved in an accident might be charged with assault and battery. Information on the significance of *prima facie* evidence in the enforcement process was the inquiry of a fourth. A fifth requested answer to the allegation that speed is not alone sufficient to sustain the charge of reckless driving. Came another question to ascertain if statutes have been passed recently that permit a police officer to search a person for a deadly weapon and to arrest such person for illegal possession of such a weapon. A seventh question related to the right of a municipality to impound a motor vehicle and to return it to the owner only after payment of the impounding fee. Question eight turns attention to the authority of a police officer to make an arrest without warrant when information disclosed by a teletype message constituted the only source of information. And question nine relates to a fundamental issue in police training, namely: should a good public relations course be required as a part of the training program for police recruits.

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**Question 1:** Under what circumstances may an officer use a deadly weapon to the extent of taking life in order to make an arrest?

**Answer:**

In every instance the arrest statutes of the jurisdiction in which the alleged act occurred must be consulted. In general, an officer may use a deadly weapon even to the extent of taking life if such action is necessary to effect the arrest of a *felon*. Such action is deemed permissible for the reason that a felon at large jeopardizes the safety and security of the public. But the rule by no means holds true in respect to making an arrest for a misdemeanor. By the great weight of authority in this country an officer may not use a deadly weapon either to kill or to stop the misdemeanor's flight even though the offender cannot be taken otherwise. Where the officer's life is endangered, he may, in self defense, use a deadly weapon. For further information see *People v. Klein*, 137 N. E. 145 and consult Miller's *Handbook of Criminal Law*, pp. 191-192.

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**Question 2:** Is an automobile a deadly weapon and can the driver involved in an accident be charged with assault with a deadly weapon?

**Answer:**

It was so held in the interesting case of *State v. Benson*, 152 N. E. 514 (Ill. 1926). A deadly weapon within the meaning of the statute relating to assault refers to any instrument so used as to be likely to produce death or great bodily harm. An automobile may be such a weapon when a person drives in such a manner as to be wholly reckless and indifferent to the safety of others.

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*Question 3:* A pedestrian is run down and seriously injured in a motor vehicle accident. Investigation discloses that the motorist was driving while intoxicated and in such a manner as to endanger the safety of others. Can the driver be charged with assault and battery?

*Answer:*

Statutes in all the states provide for a variety of situations in which the offense of assault and battery may be charged. But threading through all these situations is the proposition that *intent* to accomplish the act must be proved. Seldom, of course, will investigation disclose specific intent on the part of the driver to force the accident or to injure the party at issue. Therefore, if specific intent cannot be proved, then intent must be imputed.

In this respect the courts have held that where the conduct of an individual shows an utter disregard for the safety of others the law may impute to the wrongdoer a willful and malicious intent even though in fact the person may not have entertained such intention. The case of *King v. State*, 157 Tenn. 635 (1928), is specifically to the point. Said the court: "Since driving an automobile while intoxicated is *malum in se*, and since no specific intention to injure any particular person is necessary to constitute an assault . . . , it necessarily follows that where . . . the accused person while under the influence of an intoxicant drove her automobile in such a reckless and dangerous manner as to strike and injure another person, the offense of assault and battery is made out." (See Berry, *The Law of Automobiles*, Secs. 5.379-5.380.)

*Question 4:* What is meant by a *prima facie* case and what is the significance of the term insofar as assisting the police is concerned?

*Answer:*

The term *prima facie* requires explanation first. It is derived from the Latin and can be interpreted as meaning "at first sight," "on the face of it," "so far as can be judged from the first disclosure," "presumably," and so on. The term *prima facie* case, as Wigmore has pointed out, is used in two senses. First, it is employed to describe a situation where the litigating party, having the first duty to produce evidence necessary to establish the case, has fulfilled that duty and may properly claim that the jury be allowed to consider the case. Second, the term is employed to describe a situation in which a litigating party has advanced evidence so sufficiently strong in his favor that it can be overthrown only by the rebutting evidence of the opposition.

It is in this second interpretation that the term has exceptional value to the police. Take, for example, the problem of determining whether or not a person is so intoxicated that his driving ability is lessened. The language of the Indiana statutes is indicative. Chapter 48, section 52 of the Acts of 1939 provides that in determining whether or not the driver was under the influence of intoxicating liquor at the time alleged that "evidence that there was, at the time, fifteen hundredths per cent, or more, by weight of alcohol in his blood, is *prima facie* evidence that the defendant was under the influence of intoxicating liquor sufficiently to lessen his driving ability within the meaning of the statutory definitions of the offenses."

Thus, the state need only show by chemical test that such amount of alcohol per volume was found in the person's blood. No other evidence is necessary. The defendant is then in a precarious situation and must advance an array of evidence of such weight as will overcome that established by the state. From this it follows that the prosecution's burden of proving the case is greatly simplified and there rebounds on the defendant a task of no mean difficulty if he is to escape the case. From the point of view of the law enforcement officer, establishment of *prima facie* limits by no means infers that once evidence is adduced to support the limits that the case is thereby won. The contributing importance of the *prima facie* principle is that once the state has advanced the essential evidence, the case is proved until rebutted by

the defense. While the burden of proof does not shift to the defendant, he assuredly is required to press an amount of evidence not needed where *prima facie* limits are not prescribed.

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*Question 5:* An officer makes an arrest for reckless driving. Basis for the charge is that the motorist was driving at an excessive rate of speed. The question is this: is the allegation of speed alone sufficient to sustain the charge of reckless driving?

*Answer:*

Speed in excess of that allowed by highway law is not sufficient to sustain the charge of reckless driving. One may be guilty of reckless driving without regard to the rate of speed of the driver's machine. While the term "reckless driving" is difficult to define, it may be said in general that a person drives recklessly when he operates an automobile under such circumstances as to show an utter disregard of the consequences of his act. A person may be driving sixty miles per hour and yet not be driving in a manner to endanger the life of others. Conversely, one driving fifteen miles per hour could be driving recklessly. Other factors in addition to speed must be taken into consideration and must be given due weight: the congested nature of the traffic, the time of the alleged violation, availability of road space, weather conditions, and the like. (See *People v. Grogan*, 183 N. E. 273 N. Y. 1932.)

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*Question 6:* Have any statutes been passed recently which specifically permit a police officer to search a person for a deadly weapon and to arrest him for its illegal possession?

*Answer:*

The Virginia legislature recently passed such an act. This is Chapter 335, House Bill 306. It provides as follows: "Searching for weapons.—A peace officer may search for a dangerous weapon any person whom he has stopped or detained to question as provided in section two, whenever he has reasonable ground to believe that he is in danger if the person possesses a dangerous weapon. If the officer finds a weapon, he may take and keep it until the completion of the questioning, when he shall either return it or arrest the person, but the arrest may be for the illegal possession of the weapon." This section must, however, be considered in light of section two of the Act. This empowers any peace officer to stop any person abroad whom he has reasonable ground to suspect is committing, has committed, or is about to commit a crime, and may demand of him his name, address, business abroad and whither he is going.

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*Question 7:* Is not a city ordinance providing for the impounding of an unoccupied vehicle left on the streets and its return to the owner only after payment of an impounding fee a deprivation of due process of law?

*Answer:*

The general rule is that municipalities are empowered to make such reasonable rules and regulations as shall be deemed necessary for the safety, security, health and prosperity of the municipality and its inhabitants. Likewise, it is generally conceded that derelict vehicles may constitute a hazard to the orderly flow of traffic and may contribute to the traffic accident problem. Thus, it has been held that seizure of cars by the police, the storage of such cars, and their return to the owner only upon payment of storage charges is a reasonable exercise of the municipal authority and is valid under the state general welfare provision. Such was the holding in *Means v. American Equitable Assurance Company*, 52 S. W. (2nd) 737 (Ark. 1932).

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*Question 8:* Are there statutes in effect which empower police officers to make an arrest without a warrant if the only basis of arrest is a radio teletype message?

*Answer:*

Recent legislation providing to that effect is Chapter 192, section 4827a of the Virginia statutes. This act relates only to the state police and provides that they may apprehend without a warrant, persons charged with crime, upon receipt of a telegram or radio teletype message from an officer authorized to make arrests, in which telegram or teletype shall be given the name, or a reasonably accurate description, of the person wanted, the crime charged, with an allegation that the person wanted is thought to be fleeing or is likely to flee the jurisdiction of the courts of the state.

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*Question 9:* I should like an explanation of the proposition that a good public relations instruction should be made a part of the training program for police recruits.

*Answer:*

In a country "of the people, by the people, for the people," it is public support or lack of it which determines the ultimate success or failure of any governmental enterprise. How long the public agents continue in office, what they may do, how they shall carry on their activities and their public trusts, are all determined in the final analysis by the measure of public support accorded them. This is particularly true of police agencies for the very nature of their responsibilities is restrictive (and punitive) and tends to make the police vulnerable to public disfavor. The more restrictions on liberty of action are imposed, the greater the possibilities of friction between police and public. As the friction potential develops, the tide of public non-support is likely to set in. This is not to say by any means that effective policing requires the cultivation of as many friends and the making of as few enemies as possible. It simply means that every effort must be made to lubricate points of friction between police and public wherever possible and in a way compatible with the public interest. It is the purpose of effective public relations instruction to accomplish this result.

There appears little doubt that the possibilities of friction have become greatly augmented in recent years. For generations the work of the police has centered primarily in the criminal field and has dealt for the most part with the more lawless and hostile elements who constitute a minor segment of the total population. But the horizon of police activities has broadened greatly in recent years due in principal part to the coming of motor vehicle transportation. The very nature of traffic enforcement requires stationing of police officers on the beat, at intersections, and on the road. Frequent personal contacts between police and public are inevitable. Thus the police must no longer deal with the limited few but are required to direct and control the great mass of citizenry unused to arrest and summons.

Friction between police and public can be reduced. Much of that friction can be overcome by the conduct and activities of the individual police officer and the police department. It is to these ways and means of lessening the friction potential that a good course in public relations can be of great benefit to the recruit. Of the many considerations that should be given attention during the instruction, these should be given especial emphasis: (1) Stress that work well done promotes public confidence and that nothing militates against public respect toward the law as poorly performed work of the "dumb cop." (2) Point out that there is no place in policing for the officer afflicted with "bagittitis" and that a uniform and the authority of the law are no permits for officiousness, cockiness, and know-it-all-ness. (3) Instruction should stress that the acceptance of favors invites trouble and that few favors are offered without expectation of reward. The very nature of policing requires an impartial administration of justice. (4) The authority granted to an officer should not be deemed to grant him the exclusive privilege of breaking the law. It is his responsibility to observe the law to the utmost compatible with effective enforcement. (5) There is no place for the servile police officer. Maintenance of dignity is one of the essentials of a conduct above reproach.

To continue: (6) Confidence begets confidence. Hence the reason why any officer must keep his head and preserve his poise at all costs. (7) Every officer is a potential good will ambassador. An exacting knowledge of his community aids the officer in assisting the inquiring public and does much to promote public trust. (8) Assisting those in distress is a cardinal responsibility of the police. Avoidance of this responsibility has far-reaching consequences. (9) No person should be deprived of his right of action until the officer has advised the violator of the nature of the violation—why, in other words, he is under arrest or is subject to criticism. Effective public relations requires that the officer avoid arguments with the violator and that the officer should conduct himself as a gentleman at all times and at all costs. (10) The officer must never forget that he is dealing with individuals and that no two are alike. Hence, knowledge of the strategy of handling people constitutes a formidable method of reducing friction. (11) Appearance can make or destroy public regard and confidence. Headquarters and stations must be managed as business enterprises. Dirty quarters invite public disrespect for the law. Equipment must be maintained in proper condition. The well-groomed officer is an advertisement of first-rate importance. (12) The importance of answering complaints must never be underestimated. Prompt and courteous service rendered is the essence of good policing.

There are of course many other phases of the public relations problem that require emphatic attention. The few listed above indicate the infinite possibilities of training in the field of public relations—a field which has virgin potentialities in developing policing as a science and as a profession.

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#### President Richard A. McGee of the A.P.A. on Crime Prevention

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“The New Committee on Crime Prevention is recognition of the current need for renewed emphasis on social prophylaxis. The weeds in our social garden cannot be reduced to impotency by collecting the seeds and placing them in a sterile box. We must work on the roots while they are young and relatively harmless. But even with this philosophy the “Man with the Hoe” cannot do the job. He needs the aid of science and the cooperation of his neighbors. More specifically, every community resource must be mobilized to the task of prevention and correction. Now as never before, penology must free itself of its chrysalis and enlist the active aid and understanding of every profession, every organization and every person concerned with problems of human behavior.

“During the coming year I should like to see the many superior minds in our membership apply themselves to the task of re-evaluating our thinking about every phase of our work. After the war we shall need a modified code. Now is the time to begin formulating it.”—From *The Congress Bulletin*, November, 1942.