

# **Your Rights in Dealing With Police**

From The SF National Lawyers Guild and Midnight Special Collective

## **The National Lawyers Guild:**

558 Capp St. San Francisco, CA 94110 415-285-5067 www.nlgf.org

**Legal Defense and Support for protests and Direct Actions, referrals for civil rights abuses: (\*This information is no substitute for specialized legal advice from an attorney about your situation. )**

Contact NLG online in advance of protest actions where you anticipate arrests if you would like legal support with your arrest process, including legal observers during the event.

## **In General**

You never have to give any information to the police. If police try to speak to you, do not answer any questions.

You do not have to reveal your immigration status.

When dealing with the police, keep your hands in view and don't make sudden movements. Avoid passing behind them. Nervous cops are dangerous cops. Also, never touch the police or their equipment (vehicles, flashlights, animals, etc.) — you can get beat up and charged with assault.

The police do not decide your charges; they can only make recommendations. The prosecutor is the only person who can actually charge you. Remember this the next time the cops start rattling off all the charges they're supposedly "going to give you."

If you are arrested for a non-violent misdemeanor police are required by California law to cite and release you if you identify yourself (usually by showing picture ID, but they can accept less).

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## **Questioning**

Interrogation isn't always bright lights and rubber hoses — usually it's just a conversation. Whenever the cops ask you anything besides your name and address, it's legally safest to say these Magic Words:

***“Am I being detained or am I free to go?”***

***I do not consent to a search.***

***I am going to remain silent.***

***I want to see a lawyer.”***

This invokes the rights which protect you from interrogation. When you say this, the cops (and all other law enforcement officials) are legally required to stop asking you questions. They probably won't stop, so just repeat the Magic Words or remain silent until they catch on. If you are not under arrest and not being detained (see below) you are free to leave and may walk away, though they will try to keep you from realizing that it is your right to walk away.

Remember, anything you say to the authorities can and will be used against you and your friends in court. There's no way to predict what information the police might try to use or how they'd use it. Plus, the police often misquote or lie altogether about what was said. So say only the Magic Words and let all the cops and witnesses know that this is your policy. Make sure that when you're arrested with other people, the rest of the group knows the Magic Words and promises to use them.

One of the jobs of cops is to get information out of people, and they usually don't have any scruples about how they do it. Cops are **legally allowed to lie** when they're investigating, and they are trained to be manipulative. The only thing you should say to cops, other than identifying yourself, is the Magic Words: *“I am going to remain silent. I want to see a lawyer.”*

Here are some lies they will tell you:

- “You’re not a suspect — just help us understand what happened here and then you can go.”
- “If you don’t answer my questions, I’ll have no choice but to arrest you. Do you want to go to jail?”
- “If you don’t answer my questions, I’m going to charge you with resisting arrest.”
- “All of your friends have cooperated and we let them go home. You’re the only one left.”

Cops are sneaky and there are lots of ways they can trick you into talking. Here are some scams they’ll pull:

- Good Cop/ Bad Cop: Bad cop is aggressive and menacing, while good cop is nice, friendly, and familiar (usually good cop is the same race and gender as you). The idea is bad cop scares you so bad you are desperately looking for a friend. Good cop is that friend.
- The cops will tell you that your friends ratted on you so that you will snitch on them. Meanwhile, they tell your friends the same thing. If anyone breaks and talks, you all go down.
- The cops will tell you that they have all the evidence they need to convict you and that if you “take responsibility” and confess the judge will be impressed by your honesty and go easy on you. What they really mean is: “we don’t have enough evidence yet, please confess.”

Jail is a very isolating and intimidating place. It is really easy to believe what the cops tell you. Insist upon speaking with a lawyer before you answer any questions or sign anything.

***The Golden Rule: Never trust a cop.***

## **The Miranda Warnings**

The police do not have to read you your rights (also known as the *Miranda* warnings). *Miranda* applies only when there is (a) an interrogation (b) by a police officer or other agent of law enforcement (c) while the suspect is in police custody (you do not have to be formally arrested to be “in custody”). Even when all these conditions are met, the police intentionally violate *Miranda*. And though your rights have been violated, what you say can be used against you. For this reason, it is better not to wait for the cops – you know what your rights are, so you can invoke them by saying the Magic Words, “*I am going to remain silent. I want to see a lawyer.*”

If you’ve been arrested and realize that you have started answering questions, don’t panic. Just re-invoke your rights by saying the Magic Words again. Don’t let them trick you into thinking that because you answered some of their questions, you have to answer all of them.

## **Police Encounters**

There are three basic types of encounters with the police: Conversation, Detention, and Arrest.

### **Conversation:**

When the cops are trying to get information, but don’t have enough evidence to detain or arrest you, they’ll try to weasel some information out of you. They may call this a “casual encounter” or a “friendly conversation”. If you talk to them, you may unintentionally give them the information they need to arrest you or your friends. In most situations, it’s better and safer not to talk to cops.

### **Detention:**

Police can detain you only if they have *reasonable suspicion* (see below) that you are involved in a crime. Detention means that, though you aren’t arrested, you can’t leave. Detention is supposed to last a short time and they aren’t supposed to move you. During detention, the police can pat you down and go into your bag to make sure you don’t have any weapons. They aren’t supposed to go into your pockets unless they feel a weapon.

If the police are asking questions, ask if you are being detained. If not, leave and say nothing else to them. If you are being detained, you may want to ask why. Then you should say the Magic Words: “*I am going to remain silent. I want a lawyer*” and nothing else.

A detention can easily turn into arrest. If the police are detaining you and they get information that you are involved in a crime, they will arrest you, even if it has nothing to do with your detention. For example, if someone gets pulled over for speeding (detained) and the cop sees drugs in the car, the cops will arrest her for possession of the drugs even though it has nothing to do with her getting pulled over. Cops have two reasons to detain you: 1) they are writing you a citation (a traffic ticket, for example), or 2) they want to arrest you but they don’t have enough information yet to do so.

### **Arrest:**

Police can arrest you only if they have *probable cause* (see below) that you are involved in a crime. When you are arrested, the cops can search you to the skin and go through your car and any belongings. By law, an officer strip searching you must be the same gender as you.

If the police come to your door with an arrest warrant, go outside and lock the door behind you. Cops are allowed to search any room you go into, so don’t go back into the house for any reason. If they have an arrest warrant, hiding won’t help because they are allowed to force their way in if they know you are there. It’s usually better to just go with them without giving them an opportunity to search.

Your right to remain silent does not include booking questions, which include your address, date of birth, etc. Answering these questions may get you out of jail more quickly. However, talking about the details of why you were arrested can easily incriminate you and your friends.

### **Reasonable Suspicion vs. Probable Cause**

Reasonable suspicion must be based on more than a hunch — cops must be able to put their suspicion into words. For example, cops can’t just stop someone and say, “She looked like she was up to something.” They need to be more specific, like, “She was standing under the overpass staring up at some graffiti that hadn’t been there 2 hours ago. She had the same graffiti pattern written on her backpack. I suspected that she had put up the graffiti.”

Cops need more proof to say they have a probable cause than to say they have a reasonable suspicion. For example, “A store owner called to report someone matching her description tagging a wall across the street. As I drove up to the store, I saw her running away spattered with paint and carrying a spray can in her hand.”

### **Searches**

Never consent to a search! If the police try to search your house, car, backpack, pockets, etc. say the Magic Words 2: “*I do not consent to this search.*” This may not stop them from forcing their way in and searching anyway, but **if they search you illegally, they probably won’t be able to use the evidence against you in court.** You have nothing to lose from refusing to consent to a search and lots to gain. Do not physically resist cops when they are trying to search because you could get hurt and charged with resisting arrest or assault. Just keep repeating the Magic Words 2 so that the cops and all witnesses know that this is your policy.

Be careful about casual consent. That is, if you are stopped by the cops and you get out of the car but don’t close the door, they can search the car and claim that they thought you were indicating consent by leaving the door ajar. [The same goes for house parties—if you decide to talk to them, always greet the police outside the door and close it behind you.] Also, if you say, “I’d rather you didn’t search,” they can claim that you were reluctantly giving them permission to search. Always just say the Magic Words: “*I do not consent to this search.*”

If the cops have a search warrant, nothing changes — it’s legally safest to just say the Magic Words.

Again, you have nothing to lose from refusing to consent to a search, and lots to gain if the search warrant is incorrect or invalid in some way. If they do have a search warrant, ask to read it. A valid warrant must have a recent date (usually not more than a couple of weeks), the correct address, and a judge's or magistrate's signature; some warrants indicate the time of day the cops can search. You should say the Magic Words whether or not the search warrant appears correct. The same goes for any government official who tries to search you, your belongings, or your house.

### **Infiltrators and Informants**

Undercover cops sometimes infiltrate political organizations. They can lie about being cops even if asked directly. Undercover cops can even break the law (narcs get hazard pay for doing drugs as part of their cover) and encourage others to do so as well. This is not legally entrapment.

### **FBI and other government agents**

The essence of the Magic Words – I'm keeping my mouth shut until I talk to a lawyer – not only applies to police but also to the FBI, ICE, CIA, even IRS. If you want to be nice and polite, tell them that you don't wish to speak with them until you've spoken with your lawyer, or that you won't answer questions without a lawyer present. If you are being investigated as a result of your political activity, you can call the **National Lawyers Guild at (415) 285-1055**; they will help you find a lawyer you can talk to.

### **Taking Notes**

Whenever you interact with or observe the police, **always write down what is said and who said it. Write down the cops' names and badge numbers and the names and contact information of any witnesses. Record everything that happens.** If you are expecting a lot of police contact, get in the habit of carrying a small tape recorder and a **camera** with you. Be careful — cops don't like people taking notes, especially if the cops are planning on doing something illegal. Observing them and documenting their actions may have very different results; for example, it may cause them to respond aggressively, or it may prevent them from abusing you or your friends.

### **Other issues:**

#### **Free Speech**

- You do not need a permit to exercise your rights to freedom of speech and assembly.
- The bigger, louder, and more obstructive your event is, the more the police will hassle you if you don't have a permit. Contact the NLG for details.
- If you believe your rights may have been violated, write a detailed account of what happened, take pictures of any injuries, then contact the NLG.

#### **Arrest Warnings**

- The police are usually required to give audible warnings and let you leave before arresting for unlawful assembly. They often don't. Also, they can arrest you for other offenses without a warning.

### **Conclusion**

People deal with police in all kinds of circumstances. You must make an individual decision about how you will interact with law enforcement. It is important to know your legal rights, but it is also important for you to decide when and how to use them in order to best protect yourself.

## **More on NLG and Midnight Special: Start your own Cop-watch!**

The NLG Legal Support Hotline for mass demonstration arrests: **415-285-1011**

If you have been arrested at a protest, march or demonstration, call this number from jail. We will do our best to find a lawyer who will take your case for free. This number is not staffed 24 hours a day unless you make arrangements in advance.

### **Midnight Special L@w Collective**

<http://www.midnightspecial.net> (510) 761-MSLC

MSLC Legal Trainings for activists: <http://www.midnightspecial.net/trainings>

The Midnight Special Law Collective is an independent non-profit organization dedicated to providing legal trainings and legal support to activists participating in the struggle for social change.

We also foster the formation of community-based legal teams and law collectives nationally to achieve these goals on a larger scale by helping activists network with lawyers and by sharing our knowledge and practical experience.

By sharing information and refusing to allow the legal system to separate and silence us, we become wrenches in the wheels of the machine. Also, as activists demystifying the law we shatter the accepted limitations on learning - we assert everyone's right to access and everyone's ability to understand the law.

If you have any comments, questions, or concerns, we would love to hear from you. Email us at [mslc@midnightspecial.net](mailto:mslc@midnightspecial.net) or call us at (510) 261-4843.

Additional resources:

Your Rights with FBI investigations: "If an Agent knocks" <http://security.resist.ca/personal/pdfs/IfanAgentKnocks.pdf>