

What Is a "Stop"? ^{Part 1/1/66}

The Dec. 17 reply, "ALI Code Explained," by Messrs. Bator and Vorenberg to your Nov. 25 editorial, "Circumvention," is an interesting exercise in logic on, at least, one point. Denying that the code would relax the constitutional requirement of probable or reasonable cause for making an arrest, they state that the code simply authorizes a "stop."

What is a stop? This is explained as a detention by the police of "... persons whom they suspect may be involved in crime or may be able to give information about a crime which there is reasonable cause to believe has taken place. The period of such stop could not exceed more than 20 minutes; the person stopped could not be taken to the station house or any other place; and the stop would not constitute part of the person's arrest record."

The assumption is that such police action does not violate the Fourth Amendment requirement of probable or reasonable cause for making an arrest, because a "stop" is not an "arrest" at all.

If court decisions are a guide, this assumption is incorrect. In *Henry v. United States*, 361 U.S. 98 (1960), FBI agents investigating a theft observed defendants place certain cartons in their car, followed them, and then waved the car to a stop. The Supreme Court of the United States, in reference to the point at which the arrest occurred, which the Government conceded, stated: "When the officers interrupted the two men and restricted their liberty of movement, the arrest,

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for purposes of this case, was complete." (Emphasis supplied)

In *Kelley v. United States*, 111 U.S. App. D.C. 396 (1961), the Court of Appeals for the District of Columbia Circuit stated: "In order for there to be an arrest it is not necessary that there be an application of actual force, or manual touching of the body, or physical restraint which may be visible to the eye, or a formal declaration of arrest. It is sufficient if the person arrested understands that he is in the power of the one arresting, and submits in consequence."

These two opinions, defining what constitutes an arrest, are not from isolated cases. They have been cited by courts throughout the country on numerous occasions.

While reasonable men may differ on the policy of giving law enforcement officers the power to "stop," as defined in the proposed code, it is highly improbable that the courts will be blinded by this ingenious label in enforcing the Fourth Amendment protection against arrests without probable or reasonable cause.

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