



Expatriate Counsel

By James Finch and Nilobon Tangprasit

Here's a more difficult example that illustrates another circumstance under which a policeman can arrest without a warrant because it's a flagrant offence. Let's say a police officer is walking down the street and comes upon the victim of an attack by some heavy instrument, bleeding and unconscious on the pavement.

Witnesses tell the officer the direction in which the perpetrator headed and the police officer runs off in pursuit. A block away, the officer encounters Suspect A holding a tyre iron and walking quickly in the direction away from the crime, looking as though he is fleeing the scene. The officer arrests Suspect A.

This brings us to another ground for arrest in the flagrant category in which a police officer can, under Thai law, arrest without a warrant. This is where a suspect is arrested near the site of the crime and has with him the spoils of the crime or items used in its commission or there is clear indication that he committed the crime on his body or clothes. The tyre iron could have been used in the commission of the crime, because the victim's injuries

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Part VI: Being arrested without a warrant — the wrong man

generally fit those of a heavy instrument such as a tyre iron.

Let's say, however, that hours later, when the dust on all of this settles, Suspect A with the tyre iron can prove he had nothing to do with the attack on the victim and had just borrowed the tyre iron from his bartender to fix a flat tyre incurred as a result of running over a whiskey bottle he'd mistakenly left under the car.

Was this arrest proper? In this case, the Suspect A was carrying the tyre iron, which could easily have been the item used to attack the victim. Although it turned out that Suspect A was innocent and should be released, the police officer was probably not guilty of improper conduct in arresting Suspect A.

We say "probably" because a judge making the decision would have wide discretion in deciding what was reasonable on the part of the officer in a case like this. The judge might look to see if the police officer had seen some clear indication that Suspect A had committed the crime on his body or clothes, because, as mentioned above, this is an alternative possibility for this category of arrest without a warrant.

But let's change the facts in the case again, as lawyers often do to explain legal issues. Let's say instead the Suspect A hadn't been carrying a tyre iron or appearing to flee. Instead, he had simply been a man in the street, a block away from the attack, walking normally in a direction away from the incident. If the officer arrested this

man, there was no obvious flagrant offence, and the officer could be guilty of improper arrest. What you must do when you're improperly arrested will be covered later.

For now, we'll continue with our explanation of what is and isn't proper arrest. There are additional grounds upon which a police officer can arrest without a warrant and we'll cover these next. ■

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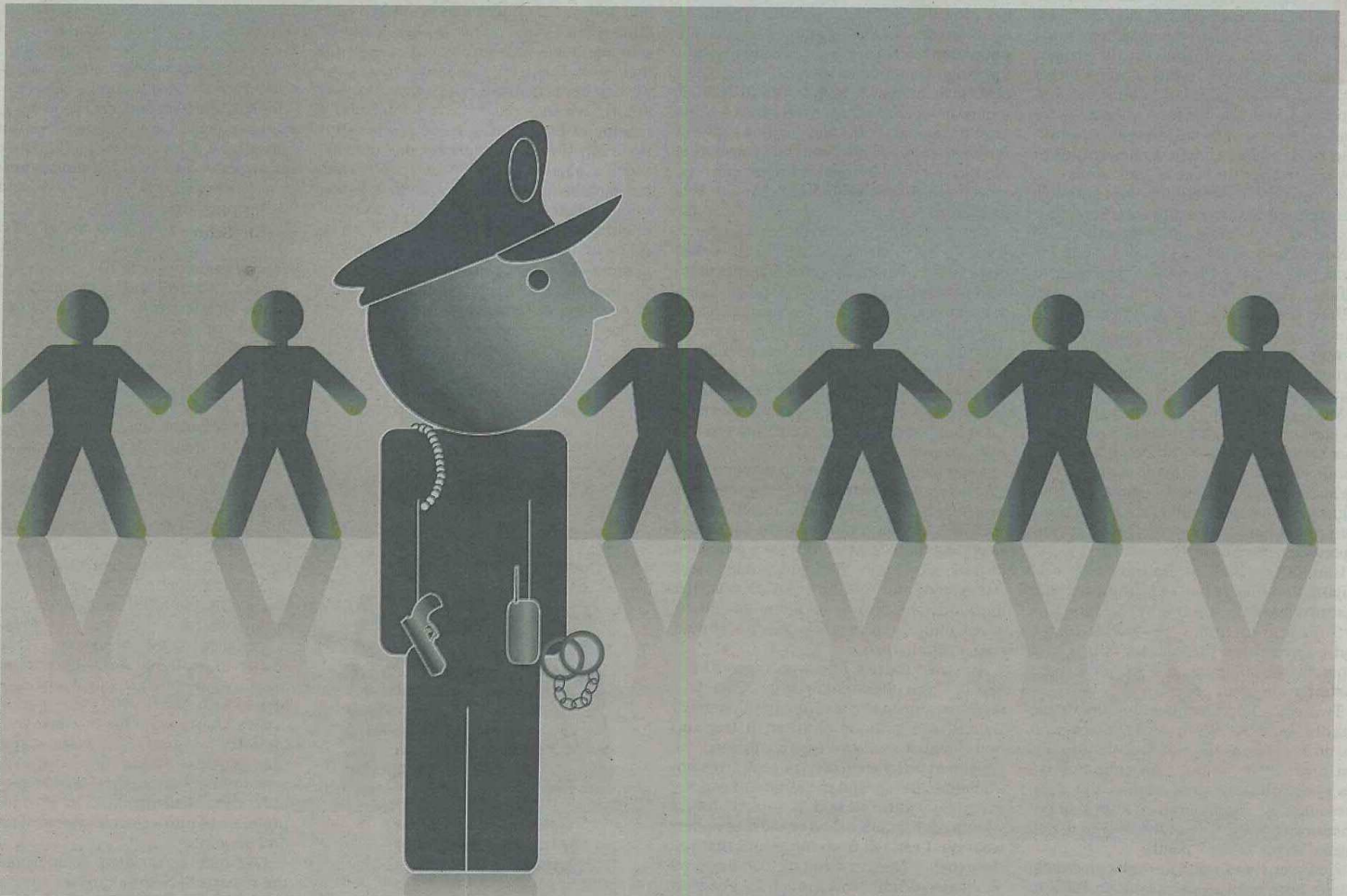


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