■ An examination of illegal arrests and detention in Detroit, which often involve Negroes

Arrests Without Warrant

By Harold Norris

IN OUR rightful concern over the present state of civil rights and liberties inadequate attention is being paid to a day-to-day practice that threatens the liberties of large numbers of people. I refer to the encrusted practice of many metropolitan police departments of making mass arrests for the purpose of investigation only and of detaining citizens without warrants.

A significant case in point, typical of many if not most metropolitan communities, is the situation prevailing in the City of Detroit. Let us survey the facts as compiled by the Michigan Bar Association and the Detroit Police Department.

A large number of arrests, constituting over one-third of all non-traffic arrests made by the Detroit police department in any one year, are made without warrants being issued; that is, the arrest is made for investigation only. Warrants are never issued or even sought in a very large number of these cases. Out of a total of 67,301 arrests in the year 1956, no warrant was ever issued in 26,696 of these cases. An arrest is defined in law as "taking a person into custody so that he may be held to answer for a crime."

The present practice of many courts in habeas corpus proceedings of granting the police department adjournment of the hearing on the writ for 24, 48, and 72 hours to permit the holding of the arrested person for continued investigation has sapped the ancient writ of *habeas corpus* of much of its vitality as a protection against unlawful deprivation of freedom.

The State Bar of Michigan found in 1948 that "it is the settled policy of the Police Department for the City of Detroit to make arrests and detain citizens "for investigation"

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without warrants." The Bar condemned the "practice of arresting and detaining persons merely for investigation and without probable cause" and urged that statutes requiring the swearing in of witnesses and a full explanation of the arrest and detention on the hearing of the writ of habeas corpus "be fully followed."

The annual statistical reports of the Detroit police department indicates that the settled practice of arresting and detaining citizens without warrant and without probable cause persists with no appreciable change. In the nine-year period of 1947 through 1956 there were each year approximately 60,000 arrests with over 20,000 arrests for investigation. The ratio of investigative arrests to total arrests continues unchanged. Donald S. Leonard, a former police commissioner in Detroit, has stated this is a "weak spot" in police procedure.

UNCONSTITUTIONAL PRACTICES

The consequence of these practices is that thousands of citizens spend thousand of days in jail illegally and with little opportunity for release because of the writ-hearing adjournment practice. Other thousands of citizens are forced by the same practice to pay out thousands of dollars in bond money, as a kind of ransom, to regain the freedom of which they have been wrongfully deprived.

What makes this deprivation of fundamental liberty the more insidious is that it seems to have no basis in law; in fact, is in direct contravention to both the letter and the spirit of the law.

The United States and Michigan constitutions, providing that no person shall be deprived of his liberties without due process of law, have been interpreted in relation to arrests by the following rule:

> It has been settled for centuries . . . that except in cases of reasonable belief of treason or felony, or breach of the peace committed in the presence of an officer, there is no due process of law without a warrant issued by a Court or Magistrate upon a proper showing or finding."
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> Mere general suspicion that, perhaps, a crime is being committed by defendants does not justify an arrest.

Although the courts have been urged to relax this constitutional protection, they have recognized that in a democratic society, in sharp contradistinction to a police state, this fundamental immunity to arbitrary arrest has been guaranteed by the federal and state constitutions. State statutes, as well as decisions, do not permit arrests for investigation only or on suspision. It would appear, from constitutional and statutory provisions, that upon the hearing of a writ of habeas corpus and the production of the prisoner in court it becomes the duty of the court to examine immediately into the facts of the arrest and detention and to dispose of the case accordingly.

Under the procedure at present followed, in many if not most instances, the court fails to make the required inquiry into the legality of the arrest and detention. The courts appear to have abdicated this judicial function to the police officer whose name appears on the return. The officer is usually asked no more than what the prisoner is being held for (e.g. "investigation of grand larceny") and how much time the police want for further investigation. The only questions receiving more that the most cursory attention concern the length of the adjournment to be granted and the amount of the bond, if any.

NO ADEQUATE CAUSE

Under this procedure a person may be, and frequently is, arrested on the barest suspicion, held for investigation, fingerprinted, and put through the "show-up process" and thereby deprived of his liberty for a period of several days, despite the fact that the arrest and detention are without adequate cause and are therefore illegal. The possibility of false accusation, false identification, and miscarriage of justice is increased under these circumstances. Such a procedure is contrary to the Anglo-Saxon concept of personal liberty upon which the American system of government and law enforcement is theoretically based. It is an illegal expedient for the convenience of the police, who are thereby encouraged to arrest without adequate reason, to investigate *after* arrest instead of before, and to become generally "sloppy" and apathetic in their concern for fundamental personal rights. The practice becomes one of arrest first and then make out a case, if possible—if not, well, what difference does a few days in jail make, especially if the person's racial or economic status makes opposition to these practices impossible? Many of the victims of such abuses are friendless, unlettered persons, unaware of their rights, and unable to challenge those who have violated those rights. Many thus believe that the courts, by permitting this policy to continue, leave to the police the judicial function of determining the legality of the detention, at least for the period of adjournment of the writ generally granted on mere request of the police officer.

Moreover, many students of the problem believe that where illegal arrest and detention are found in volume there is likewise a greater propensity to the use of threats, protracted questioning, the third degree, physical brutality, the practice of holding persons incommunicado, the obtaining of involuntary confessions and the deprivation of the right to counsel and advice as to constitutional rights, The report of the National Commission on Law Observance and Enforcement, the "Wickersham Report," found in 1931 that "prolonged illegal detention is a common practice. The law requires prompt production of a prisoner beforc a magistrate. In a large majority of cities we have investigated this rule is constantly violated." In 1947, President Truman's Committee on Civil Rights stated that civil rights violations at times appear in "unwarranted arrests, unduly prolonged detention before arraignment and abuse of search and seizure power. . . . The frequency with which such cases arise is proof that improper police conduct is still widespread." The attitude of the police, of lawless enforcement of the law, in regard to arrest and detention, does not win respect for constitutional rights or processes.

Illegal arrest and detention violate

the underlying principle in our enforcement of the criminal law. Ours is the accusatorial as opposed to the inquisitorial system. This has been the characteristic of Anglo-American criminal justice since it freed itself through long struggles from the arbitrary and excessive power of English kings and from practices borrowed by the Star Chamber from the continent. Under our system the police carry the burden of proving their case not by interrogation of the accused, even under judicial safeguards, but by evidence independently secured through skillful examination and investigation. The requirement of specific charges, their proof beyond a reasonable doubt, the protection of the accused from pressure and involuntary confession, the right to a prompt hearing before a magistrate, the right to assistance of counsel, the duty to advise an accused of his constitutional rights—these are the characteristics of the accusatorial system and its demands.

The right to security of the person includes immunity from arbitrary arrest and detention. It is thus the duty of the police to investigate first and then arrest, and not to make arrests for the purpose of investigation. It might be argued that police officers are overworked, that their habits, practices and procedures are induced by situations beyond the control of the individual officer. A great deal of constructive study should be undertaken in this area. But a people conscious of the components of liberty should not be led to accept the development of procedures that reflect a steady corrosion of the basic right to security of the person. Judge Frankfurter has remarked that "the history of American freedom is, in no small measure, the history of procedure." The lawful procedure regarding arrests, detention and the writ of habeas corpus is intrinsic to the basic liberty of the individual. These procedures and safeguards are the more imperative when increasingly the individual citizen finds himself at a serious disadvantage when confronted by the overwhelming power, prestige and resources of the state.

PROCEDURAL RIGHTS

The courts have observed that procedural rights characteristic of Anglo-American law are based upon the principle not only that innocent and guilty alike are necessarily entitled to share the protections, but that fairness to the innocent will inevitably result in some of the guilty escaping punishment. However, society can best protect itself against anti-social conduct by the observance of procedures that promote respect and confidence in law and law enforcement. This confidence is more strategic to the security of a democratic society protecting the rights of all than is the concern over those whose anti-social acts go unpunished for injuries to the person and property of some. The late Justice Brandeis observed:

Decency, security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizens. In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, the omnipresent teacher. For good or ill, it teaches the whole people by its example. Crime is contagious. If the government becomes a law-breaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means—to declare that the Government may commit crimes in order to secure the conviction of a private criminal . . . would bring terrible retribution. Against that pernicious doctrine this Court should resolutely set its face.

An improvement in the present practices of many metropolitan communities in relation to arrests and detention without warrant could be implemented if at least the following recommendations were increasingly acted upon. First, the policies of police departments of arresting first and then investigating should be changed to a policy of investigating first and arresting later, if the facts justify an arrest. Second, upon the hearing on a writ of habeas corpus and the production of the prisoner in court, the court should require a setting forth by the detaining officer, under oath and on the record, of the facts in summary form upon which he seeks to justify the challenged detention. A member of the prosecutor's staff should be present at such hearing and if the facts elicited do not legally justify the detention, the prisoner should be released forthwith, and the prosecutor should so recommend. Third, a night court should be established, where not in existence, which would materially assist in securing compliance with constitutional and statutory law regarding writ of habeas corpus, thus reducing the deprivation of liberty of many persons forced to stay in jail overnight and over entire week-ends, and reducing the volume of arrests for investigation only and without probable cause.

The American Bar Association has recently shifted from the planning stage to the operating stage on a five-year, nation-wide study of the administration of criminal justice. Assisted by a grant from the Ford Foundation, and under the chairmanship of General William J. Donovan, selected to replace Justice Jackson after the latter's untimely death, pilot studies are being conducted in Kansas, Wisconsin, and Michigan. Attention is to be focused on four major areas of our criminal justice system: the police function, the prosecution and defense of crimes, the criminal courts and probation, sentence and parole. An objective and "undistorted picture of actual law enforcement problems, revealing the strengths as well as the weaknesses of existing criminal procedures" as a basis for remedial measures to protect both society and the individual is being sought. While many civil libertarians have qualified enthusiasm for the contributions of the American Bar Association in the field of civil liberties, it is to be hoped that its study will help to narrow the gap between the conduct of many metropolitan law enforcement agencies, and the requirements of the law as to habeas corpus, detention and arrest. Affirmative help from any quarter in this large neglected area of civil liberties deserves public approbation.

TABLE 1.—ARRESTS IN DETROIT FOR TEN YEAR PERIOD, BY YEAR, 1947 THROUGH 1956*

Arrests	*1* 1947	*2* 1948	*3* 1949	*4* 1950	*5* 1951	*6* 1952	*7* 1953	*8* 1954	*9* 1955	*10* 1956
ARRESTS RESULTING IN PROSECUTION (TAKEN TO COURT)	26,577	24,140	30,074	26,939	27,464	28,145	28,124	28,386	28,732	27,396
ARRESTS ON FORMAL CHARGE-DISMISSED BY POLICE	2,452	3,593	2,529	3,685	4,129	3,985	3,943	4,362	4,620	4,608
MISCELLANEOUS ARRESTS Turned over to Federal, State, or County Authorities, Circuit Court, Juvenile Dept., Probation Dept., Discharged on Writ of Habeas Corpus	1,618	1,837	2,490	2,415	2,927	2,717	2,683	2,818	2,720	2,736
ARRESTS FOR INVESTIGATION	18,110	20,169	22,823	23,092	21,152	18,917	22,437	23,180	22,477	26,696
ARRESTS FOR "DRUNK GOLDEN-RULE"	13,600	14,162	13,625	12,187	9,303	8,064	8,592	7,249	6,626	5,865
TOTAL ARRESTS	62,357	63,901	71,541	68,318	65,975	60,827	65,779	65,995	64,814	67,301

* These data do not include arrests for violation of road and driving laws, parking violations, or other traffic or motor vehicles laws, but do include arrests for driving while intoxicated. These data do not include traffic ordinance violations or ordinance violations other than traffic.