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INVESTIGATING THE LAW OF ARREST†

Sam Bass Warner*

Last spring Judge Richard Hartshorne and a number of other officials of the Interstate Commission on Crime discussed at length the present status of the law of arrest. They believed that the law of arrest was antiquated. It certainly is old, for it has undergone practically no revision since its formulation in England in the seventeenth and eighteenth centuries. They expressed the opinion that in nearly all, and probably in all, American cities the police regularly violated the law in making arrests, and they hazarded the guess that over 75% of all arrests are illegal in some particular. They wondered if this was not necessarily so, because strict compliance with the law would hamstring the police in their efforts to protect society.

How This Project Began

If the police are, practically speaking, forced continually to violate the law of arrest, that would seem to be an explanation of the serious violations of personal liberty which they occasionally commit as well as of much of the public hostility toward the police. Continual violation of law, even in unimportant details, is calculated to breed disrespect for law and to create a standard of conduct based on other principles. Once any person, particularly a person subject to the tempta-

tions to violate the law which confront a police officer, adopts as a standard of conduct something other than the law of the land, the chances are greatly enhanced that in an emergency he will fail to draw accurately the line between the fundamental and the unessential attributes of personal liberty and will violate the former along with the latter. Further, if the police are engaging in lawless practices, that fact sets the ordinary citizen a bad example and is likely to arouse in him hostility toward the police. Hence it was concluded that it was important to make a study of the law of arrest to ascertain whether the police did, or could, operate within its limitations and, if not, what changes were necessary to make it both a practical standard of police conduct and a safeguard of personal liberty. The writer was asked to undertake that investigation.

Origin of the Police Department

The conditions in England during the centuries in which the law of arrest was being cast into its present shape, the seventeenth and eighteenth, were very different from those prevailing today in either England or the United States. Police departments were unknown for it was not until 1829 that Sir Robert Peel persuaded the English Parliament to pass an act creating a police force

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permission was obtained for its present reproduction.]

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for the city of London. In his honor the policemen were called "Bobbies," a nickname which London policemen still bear. Of course, Peel's idea was not entirely new; if it had been, Parliament would probably not have enacted it. For some years previously, various experiments had been tried and different sections of London had attempted to maintain groups of watchmen, but these men were usually ill-trained and always too few in number to provide satisfactory police protection. Outside of London, there were virtually no police officers, though in some places small groups of men undertook without compensation to keep the peace. There was thus nothing at all comparable to police departments, as we know them, before 1829.¹

Up to the time of Sir Robert Peel the methods of policing England differed little from those used in the days of the Norman kings. The Crown appointed sheriffs and constables among whose manifold duties was that of arresting wrongdoers, but the principal burden of keeping the peace lay on the community as a whole. Hence arose the institutions of the posse comitatus and the hue and cry. When a serious crime was committed and the offender could

be tracked, the hue and cry was raised. It was then the duty of all the neighbors to seize their weapons and aid in the pursuit, which continued from county to county until the offender was captured or escaped. Furthermore, sheriffs and constables often called upon ordinary citizens to form a posse comitatus and assist in making arrests.² This practice is still common in the more sparsely settled parts of this country where police officers are few and hundreds of citizens sometimes take part in man-hunts, the modern equivalent of the hue and cry.

Right of Private Persons to Make Arrests

For the most part, however, victims of crimes were supposed, with the aid of their relatives and neighbors, to do their own detective work and themselves to arrest and prosecute offenders.³ In fact the right of private persons to make arrests was in nearly all respects equal to that of sheriffs and constables. So adequate did it seem, that when the "Bobbies" were created they were given no additional powers. They differed from private persons only in being employed to do that which the latter could do if so inclined.⁴

¹ See W. L. Melville Lee, *A History of Police in England* (London, 1905), chs. 10-12.

² See *A History of Police in England* (London, 1905), pp. 7, 34, 45.

³ Bracton states that it was the duty of all persons over fifteen to give whatever information they might have concerning criminals, to cause them to be arrested and, if necessary, to assist in the arrest. *De Legibus et Consuetudinibus*, fol. 115 b, 2 Woodbine's ed., 327.

Sir James F. Stephen describes appeal or accusation by a private person, the process by which private persons informed against and prosecuted persons who had injured them by a criminal act. 1 *History of the Criminal Law of England* (Macmillan, 1883), 244 et seq.

⁴ In one important respect the rights of police officers exceeded those of private persons. The latter were not justified in arresting a person on a reasonable belief that he had committed a felony, unless a felony had in fact been committed. The case of *Beckwith v. Philby*, 6 B. & C. 635 (K. B. 1827), decided that a police officer was justified under such circumstances even though no felony was in fact committed. Up to 1839 there were few exceptions to the rule that neither officers nor private persons had the right to arrest for a misdemeanor not amounting to a breach of the peace. In that year Parliament passed the first of a long series of statutes extending the right of police officers, and often of private persons also, to make arrests for misdemeanors. As a result of these statutes Eng-

When a suspect was apprehended, he found himself in a sorry plight. Persons charged with serious offenses were rarely granted their freedom on bail. For example, even as late as 1800, the highly respectable Mrs. Leigh Perrot, aunt of Jane Austen, was unable to persuade the judges to admit her to bail, though she was accused merely of shoplifting. She had to spend the winter in jail in spite of her wealth, the absurdity of the charge, and the special trip her husband took to London in an effort to persuade the Court of King's Bench to release her on bail.⁵

In 1823 Sir Robert Peel also started the great reform which transformed prisons from business enterprises operated for the benefit of the keepers into liabilities of the taxpayers. Everywhere prior to that date and in some places until recently, jailers had been able to make a profit out of their unfortunate charges. Dickens' account of Mr. Pickwick's experiences in prison indicates some of the more legitimate ways in which this was done. Every incident of prison life, from admission to discharge, was made the occasion for levying fees. Fees were charged for the privilege of detention in this or that part of the prison, for a separate room, for a bed, for a mat-

trass, for the use of bed-clothes, etc., etc. When a prisoner was acquitted, he was not released until he paid all the fees due, including a fee for discharge.⁶ What happened to prisoners unable to pay their fees depended upon the century and the humanitarian instincts of the jailer. In Massachusetts at the end of the seventeenth century such unfortunates might be sold for life or a period of years into the service of anybody willing to pay their fees.⁷

Sufferings of Persons in Jail Awaiting Trial

Since jailers were held responsible for escapes and many jails were constructed for some other purpose and hence easy to break out of, prisoners were often kept in irons. Those without means to buy better accommodations were frequently huddled together in dark, filthy rooms, in close proximity to depravity and disease. Under such conditions imprisonment until the next term of court was often equivalent to a death sentence, especially during the frequent periods when the prisons were swept by a malignant form of typhus known as "gaol fever." In 1759 an English authority estimated that each year a fourth of the people in prison died there.⁸

lish police officers may today arrest for most misdemeanors committed in their presence and for many not so committed provided they have reasonable cause to believe in the guilt of the person to be arrested. The statutes are listed in 9 Halsbury's Laws of England (London, (2d) ed., 1933), p. 89, notes, esp. note (h) on p. 93. For an account of the common law rules of arrest without a warrant see 1 Stephen, A History of the Common Law of England (Macmillan, 1883), p. 193, 9 Halsbury's Laws of England (London, (2d) ed., 1933), §§ 112-117, and Bishop, New Criminal Procedure (Flood, (2d) ed., 1913), §§ 164-184. For an excellent article on the development of the law see Hall, Legal

and Social Aspects of Arrest without a Warrant, 49 Harv. L. R., (935-36), p. 566.

⁵ MacKinnon, Grand Larceny: The Trial of Jane Leigh Perrot (Oxford, 1937).

⁶ Webb, English Prisons under Local Government (Longmans, 1922), pp. 5 et seq.; Felt, Annals of Salem (Salem, 1849), p. 481.

⁷ In 1692 Tituba, an Indian woman who had been in jail in Boston for 13 months, was sold into slavery to pay her prison charges (Drake, Annals of Witchcraft in New England (Boston, 1869), p. 190).

⁸ Gentleman's Magazine, January, 1759, as reported in Webb, English Prisons under Local Government (Longmans, 1922), p. 21 n.

These misfortunes awaited persons thrown into prison pending trial, but an even worse fate, if that were possible, might result from arrest. During the centuries when the law of arrest was developing, kidnaping was much more prevalent than at present. As arrests were commonly made by private persons, the victim must often have been in doubt whether he was being arrested for crime, seized for ransom, or perhaps shanghaied for service as an English seaman or even as a slave on a foreign galley.

Arrests With and Without a Warrant

Such a state of affairs naturally developed a law strictly circumscribing the right to arrest and prescribing the disposition of the prisoner after arrest, with little distinction between the right of private citizens and public officials to make arrests. It was expected that most arrests would be made after the issuance of a warrant, whereas today the vast majority of arrests are made without a warrant. Hence, the right to arrest for a misdemeanor was with a few exceptions limited to misdemeanors amounting to a breach of the peace and then only when committed in the presence of the person making the arrest. This is still the law in many states, but in the majority police officers, and sometimes even private citizens, have been given the right to arrest for any misdemeanor committed in their pres-

ence.⁹ Illinois has gone further and allows an officer to arrest when a misdemeanor has in fact been committed and he has reasonable cause to believe that the person to be arrested committed it.¹⁰

Either an officer or a private person could, and still can, arrest for a felony actually committed either when it was committed in his presence or he has reasonable cause to believe that the person to be arrested committed it. There also developed at the beginning of the nineteenth century the rule prevailing in many American states, that an officer may arrest whenever he has reasonable cause to believe that the person to be arrested has committed a felony, even though no felony has in fact been committed. However, no guesses are permitted. A man who is unable to satisfy the judge that at the time he made the arrest he had reasonable cause to believe that the person he was arresting had committed a felony for which the arrest was made, cannot justify his action by proving the actual guilt of the person arrested or that he has committed other felonies or even that he is Public Enemy No. 1.¹¹

If the arrest is to be made by virtue of a warrant, its legality depends on that of the warrant and many are the technicalities which had to be complied with to make the warrant legal. Any officer arresting by virtue of a

⁹ The power of the police officer to make a legal arrest without a warrant has been extended by statute in 38 states to all misdemeanors committed in his presence. Further, "in his presence" is being given an expanded construction by the courts. (Code of Criminal Procedure, official draft (A. L. I., 1930), pp. 232 et seq.).

¹⁰ Ill. Rev. Stat. 1939. c. 38, § 657. See also

Wilgus, Arrest without a Warrant, 22 Mich. L. R. (1924), pp. 673, 706.

¹¹ In a number of states statutes permit an officer to defend on the ground that the person arrested is in fact guilty, though he did not have reasonable cause so to believe at the time of the arrest. (Code of Criminal Procedure, official draft (A. L. I., 1930), §21(b), pp. 28 and 234). See also Waite, Public Policy and the Arrest of Felons, 31 Mich. L. R. (1933), pp. 749, 751.

warrant has to have the warrant with him. This was a sensible rule in seventeenth century England, but one scarcely suitable to present-day Chicago, where orders to pick up a man for whose arrest a warrant has been issued may go over to six thousand police officers.¹²

The Writer Sees the Law of Arrest in Actual Operation

For the purpose of determining how the law of arrest works in present-day American cities, I made inquiries of many judges, prosecutors and police officers and spent about a week each in Boston, Chicago, Los Angeles, San Francisco and Portland, Oregon, riding around in squad cars and watching the police at work. I observed very few police practices that did not seem to have a good deal of practical justification, but a large number that were illegal.

Probably the most common illegal police practice connected with arrest is "frisking" suspects; that is, passing one's hands over their outer clothing to ascertain whether they are carrying any deadly weapons. For example, late one night as the squad car in which I was riding passed an alley, a man ducked back into the shadow and seemed to give a signal. As we jumped out of the car the stranger stepped out of the shadow with his hands in his pockets. The officers suspected him of being a lookout for a gang of loft burglars who had been operating in the vicinity. If their suspicions were correct, it would be suicidal to question him while he held perhaps a gun in

each hand; nevertheless he had done nothing to justify arrest. Hence, before asking him to explain his unusual actions, the officers told him to throw up his hands and "frisked" him. On another occasion we got a radio call that a negro with a gun was in a certain saloon. We lined up all the negro customers, "frisked" them and arrested those whom we found illegally armed. Still again, we observed two men walking down the street with huge bulges where the breast pockets of their coats ought to be. We jumped out, announced that we were police officers, and asked them to throw open their coats to show what they had inside. When it appeared that each had a quart of Scotch, we wished them a happy new year! They replied that they certainly intended to have one, and both groups went on their way in a good humor.

Illegal Search of the Person

In each of these cases there was an illegal search, because an officer has no right to search a suspect before arresting him. The legal rule antedates hoodlums with four-inch pistols. In the first two cases it is possible that a court might say that there were sufficient suspicious circumstances to justify an arrest and so hold the search authorized as one following a lawful arrest, but certainly not in the third case. It seems reasonable, in these cases, for the law not to justify the serious interference with personal liberty involved in arresting a person merely suspected of illegally carrying a concealed weapon, but to permit the much lesser interference occasioned by a "frisk." If this

¹² For a list of the statutes and a recommendation that the law should be changed, see Code of

Criminal Procedure, official draft (A. L. I., 1930), §24, pp. 29 and 244-47.

is so, a statute ought to be passed legalizing "frisking" in such cases, for otherwise, if a gun is found, it is inadmissible in evidence in many states, because procured by an illegal search.

By the law of many states, including that of the state in which two of the "frisks" were made, stopping and "frisking" a person is arresting him. Thus it was the duty of an officer to take to the police station a man "frisked" and found to be unarmed, to charge him with carrying a gun, disorderly conduct or some similar offense, and then explain to the judge that though there was reasonable cause to believe the man guilty when he was arrested, the "frisking" had proved his innocence. It would seem to me outrageous to have so treated the unarmed negroes in the saloon or the two men bent on celebrating the new year with Scotch. A jury with such a viewpoint would doubtless have mulcted the officers in damages. By disregarding the law the officers did the decent thing, and, though opening themselves wide to suits for damages, made it extremely unlikely that anybody would feel sufficiently abused to bring one or could persuade a jury to give more than nominal damages if he did. Clearly, stopping and "frisking" ought not to constitute an arrest.

Breaking Open a Door

Officers seldom have occasion to break into dwelling houses, because nearly everybody will open the door for them, especially if they make it perfectly clear that they will break in

if the door is not opened. If the officers' senses tell them that a breach of the peace or a felony is being committed in a house, the law allows them to smash in the door and make an arrest, but only after they have announced their official character and demanded admittance.¹³ It often happens, however, that the officers have no personal knowledge of what has occurred or is occurring in the house. They have merely heard a radio call like the following: "Car 3—Woman screaming on first floor at 406 Main Street." When they get there, the house may be dark. In that event the approved practice is to pound on the door and inquire of the neighbors. If the officers find no reason to believe that anybody is in the house, they do not break in, but assume that the person sending in the call gave the wrong address, a thing which often happens.

Suppose that when the officers arrive, there is no noise of any disturbance emanating from the house and the person who answers the doorbell says that he did not call the officers, does not want them and will not let them in. That they have no right to break in was settled in England when not police officers, but neighbors, would have arrived to quell the disturbance. The latter doubtless would have known whether the person denying them admission was the householder or a burglar. Had it been the former, they would not have thought of violating his castle or interfering with his method of ruling his household. Such considerations seem to most police offi-

¹³ For an analysis of the authorities, see Code of Criminal Procedure, official draft (A. L. I.,

1930), commentary to sec. 28, pp. 253-255.

cers antiquated and unsuited to modern urban conditions. They are convinced that the law should allow them to break in and argue that if no crime is being committed in the house, their entry will occasion little inconvenience, while if one is, it may prevent death or serious harm. On the only occasion in which a householder objected to the entry of officers with whom I was riding, a negro had a white girl in a closet.

In states like Massachusetts in which officers have no right to arrest without a warrant for a misdemeanor not amounting to a breach of the peace, even though it is committed in their presence, they regularly violate the law by arresting everybody whom they see committing petit larceny.

Suppose that an officer sees a thief take an overcoat out of a parked automobile. The law of Massachusetts allows him to take the coat away from the thief, but unless the coat is worth over \$100, he has no right to arrest the thief without first obtaining a warrant. Yet I have seldom met an officer who said he would obey the law or that he did not think that he would deserve to be punished by his superiors, if he did. Clearly, the creation of police departments, sanitary jails, facilities for bail and even for release on one's own recognizance, have eliminated the justification for limiting arrests for misdemeanors to those involving a breach of the peace.

Whether a Misdemeanor or a Felony Has Been Committed

In nearly all states, the law distinguishes between the right of an officer to arrest without a warrant for a

crime not committed in his presence, depending on whether the crime is a misdemeanor or a felony. The police officers with whom I have talked were unanimous, even in Illinois where they have the right in such cases to arrest for misdemeanors, in believing that the law should not authorize them to arrest without a warrant for misdemeanors not committed in their presence, and that, even if it did, they should not make such arrests. They are convinced that the public feels very differently about felonies and about misdemeanors. If a felony has been committed, the witnesses will nearly always stick to their stories and see the prosecution through. On the other hand, if the crime is only a misdemeanor, the parties are likely to patch up their differences. The complainant may not even appear in court, or if the officer brings him in, may tell a very different story on the stand from that which he originally related to the officer. Many are the stories of embarrassing moments experienced by police officers who themselves signed the complaint for a misdemeanor they had not witnessed and discovered that they were left holding the bag.

It is particularly dangerous for an officer to arrest on his own initiative a husband for wife-beating, even when he sees the crime being committed. For example, one night we entered a room in response to a call from other boarders. The wife was still lying on the floor and the drunken husband had his foot raised to kick her again. The wife was unwilling to sign the complaint, but she had so obviously been beaten, the other boarders were so insistent

and the husband's language was so vile, that the officer booked him for assault instead of for the usual charge of being drunk and disorderly. In court the wife denied that her husband had beaten her. True, she was on the floor when we entered, but that was because she had slipped. Her dear husband was in the act of stepping over her, so he could pick her up more easily. The husband has started a suit for false arrest. If the other boarders are still in town when the case comes to trial, their testimony should enable the officer to win, but he will still be out his attorney's fee.

Cases do occasionally arise, however, in which an officer needs the right to arrest for a misdemeanor not committed in his presence. For example, one evening the radio called: "Car three—prisoner at railway signal tower near bridge." When we arrived, the yardmen were holding a young man who admitted that he had stolen the fog lamps from two automobiles parked under the bridge. A brakeman had arrested the thief, after watching him detach the lamps and put them into a sack, taken him to the tower and after telling the story to the yardmen, departed with his train. As the automobile owners had not yet returned, we were without any witness who could swear to a complaint. Thus we lacked any legal justification for taking the prisoner into custody, but very few officers would release a confessed thief on such a technicality. Had the theft occurred in Massachusetts, the thief

could have been legally arrested as a suspicious person.¹⁴

The law on the right of a police officer to shoot and kill a person resisting or fleeing from arrest needs clarifying, but not changing. Among its broad outlines is the rule that an officer may not kill any person who resists arrest, except in self-defense. He may never shoot a fleeing misdemeanor, but as a last resort he may shoot a fleeing felon, provided he is endeavoring to make a lawful arrest for a felony dangerous to human life. The tendency of recent cases in a number of states is to class felonies not dangerous to life with misdemeanors as far as concerns the right of the officer to kill in effecting arrest.

Resisting Unlawful Arrest

Not so satisfactory, unfortunately, are the provisions relating to resisting unlawful arrest. Police officers often make illegal arrests. Perhaps an officer has not the warrant with him or is too suspicious and so arrests a suspect without a warrant when a judge would say that a reasonable man would not do so. Whatever the cause of its illegality, if the arrest is in fact illegal, the law permits the person being arrested to resist by force. To be sure, the law does not justify a man in killing a police officer merely to escape a few hours of unjust detention in jail, but it does allow him to kill the officer if he is reasonable in believing that this is necessary to protect himself from death or severe bodily harm.

In the old days of swords or quarter-staves such a law may have been work-

¹⁴ Mass. G. L. (1932), c. 41, §98. Another helpful

statute not found in most states is Mass. G. L. (1932), c. 272, §68-9.

able. Perhaps in view of the terrible suffering which was likely to accompany arrest, whether legal or illegal, it was reasonable to permit a man threatened with illegal arrest to stand on guard with his sword or staff or to endeavor to hold off his antagonist with one of these weapons while he beat a retreat. If the arrest was being made by a constable or sheriff, the chance that these officers would attack with such vigor as to require killing them to escape death was small, if we may judge by popular accounts of their usual age and military prowess.

Today, on the contrary, a successful resistance to arrest is likely to result in the death or wounding of the officer. Unless the person whom the officer is arresting has a gun and is willing to use it, he must anticipate that eventually he will be overpowered and will be fortunate not to land in the hospital instead of in the jail. The officer will not desist from attempting to make an arrest, if he thinks he is in the right, and, as he always carries a pistol, he is in a position to make his will effective. Further, as criminals often carry pistols, small ones which can be shot from the pocket, an officer encountering resistance is foolhardy to wait and weigh nicely its exact nature and extent. Thus the right to resist by force an illegal arrest by a man known to be a police officer is a right which is calculated, if exercised under modern conditions, to increase rather than alleviate the mass of human suffering. Another consideration is who will exercise the right. Only criminals are likely to have both the will and the weapons to make effective resistance.

Case of the Seven Young Men in Blue Sweaters

I witnessed many cases in which officers illegally released persons they had arrested. Typical is the case of seven young men in blue sweaters. I was half dozing in a squad car shortly after midnight when startled by what I took for an automobile backfiring behind us. Instantly the driver wheeled around the car and there stood an officer pointing his gun down an alley. He had come upon two burglars opening a cash register. They had fired at him and, when he returned the fire, fled down the alley. The best description he could give us of them was they were both young—not valuable information as nearly all gunmen are young—and that one wore a dark blue sweater and the other a light blue sweater. The sergeant at once called headquarters over the two-way radio in our car and asked that a cordon be thrown around the area and that two cars be sent to assist us in our search. We had gone a little over a block when we spied a young man with a blue sweater standing in the shadow of a doorway. Two officers jumped out, “frisked” him and ordered him into the back seat of the car. “Why?” he asked. “Never mind, we’ll explain later. Jump in quickly.” And he jumped. A couple of blocks further and there was a young man in a blue sweater walking along the sidewalk. Into the back seat he was hustled. When we had collected a third, the car was full and to the nearest station we went. The other cars had brought in four more young men. I was amazed that there were so many young men in blue sweaters on the streets within

four blocks of the shooting at that time in the morning. The seven young men were lined up and the officer who had been fired at said: "It's this one and this one!" pointing out two, both of whom turned out to be wanted for other crimes.

Five Are Innocent

Now we had five innocent young men on our hands. The legal way to dispose of them was to charge them with burglary or assault with intent to kill, lock them up for the rest of the night and then in court the next morning explain to the judge what had happened. Instead of obeying the law, the sergeant explained the situation to the young men, thanked them for their cooperation in solving the burglary and offered to drive them home, an invitation which three accepted. As they were leaving they were asked to sign, and apparently did so without objection, a printed release of their right to sue the police for their arrest and discharge.

As between the method of discharge provided by law and that used by the police, I infinitely prefer the latter, but the latter does not completely satisfy me. The young men ought not to have been asked to sign away any rights as a condition to receiving decent treatment. Further, from the point of view of protecting the police from civil suits for false arrest, including unlawful release from arrest, it would be much better for the law to authorize release by the police rather than to have the men sign releases, for it is always possible to contend that the releases were signed under compulsion. Consider,

therefore, whether the law ought not to be changed to authorize the officer in charge of each police station to release arrested persons as soon as their innocence is established.

Right of Officer to Release Person Arrested

A far more doubtful question is whether the officer in charge of the station should ever have the right to release, without bringing him before a magistrate, a man who is guilty of the crime for which he is arrested. The law recognizes no such right, but it is commonly exercised in many cities. For example, the officers see a drunk lying on the sidewalk. If they leave him there, somebody is likely not only to rifle his pockets, but to make off with his coat and shoes. There is also the chance that he may crawl into the street and be run over. By five or six in the morning he will be sober and wild to get out so as not to lose his job. In Massachusetts a statute permits the probation officers to release such men and they commonly visit the lockup early in the morning for that purpose.¹⁵ In many cities the police perform this function. If statutes authorized the police or the probation officers to make releases, it would end one more situation in which the police are required to act illegally in order to make up for the failure of the law to keep abreast of modern needs.

Civil Damage Suits Against Police Officers

From the point of view of the police, the various changes in the law which

¹⁵ Mass. G. L. (1932), c. 272, §45-6.

have been suggested bulk large, for they would afford protection against what the police consider unconscionable civil suits for damages. Seldom have I talked to five or six police officers without finding that one of them had at some time in his career been sued for false arrest. Some lost the action, others bought off the plaintiff and still more had to hire an attorney. All harbor a feeling of injustice because the law does not protect those who risk their lives to maintain it.

Abolishing "Shake-Downs" and the "Third Degree"

To the public all questions of legality of police action may seem picayune beside those of how to eliminate "shake-downs" and the "third degree." No mention has been made in this article

of either of these problems, yet the matters considered have an important bearing on them. Certainly one way to make the police more law-abiding than those members of the general public who seek to "fix" traffic violations and encourage the use of force to discover the whereabouts of property which has been stolen from them, is to instill in police officers a strong feeling that they, as guardians of the law, should obey it. The development of such a sentiment presupposes respect for law. This feeling cannot easily be instilled in officers who find that in many of the ways in which the law touches their duties, it is ridiculous, and that they cannot both follow it and protect the public. Hence legalizing proper police practices should prove a great help in eliminating improper ones and in building up an esprit de corps in police departments.