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## POST WAR INFLUENCE UPON CRIMINAL INVESTIGATION

**Don L. Kooken**

(As Lt. Kooken points out in his article, the war has done much to arouse in the American public a recognition of our American way of life and an increasing awareness of rights and privileges under the Constitution. It is this awareness factor which he considers must be kept in mind by the police in post war criminal investigation. A veteran of the First World War (he served as First Lieutenant with the 369 U. S. Infantry) he has since held such positions as: Special Agent of the Intelligence Unit of the Department of Treasury, Assistant Director of the "Secret Six" sponsored by the Chicago Association of Commerce, Superintendent of Public Works of the City of Omaha, Nebraska, member of the faculty of Indiana University, and since 1935 Supervising Lieutenant, Indiana State Police, in charge of training and personnel.—Editor.)

Police administrators have recently shown increased concern in the police problems that probably will arise during the post war period. The consensus is that an alarming increase in criminal activity is expected to follow close in the wake of the war, and that the gravest problem facing law enforcement, at that time, will be that of coping with a crime wave. There is little doubt but that an upsurge in criminal activities will be experienced during the period of readjustment at the close of hostilities. Any critical disturbance of normal social life is almost certain to stimulate anti-social behavior during the period of readjustment. If our post war police problem is only one of an increase in traditional offenses, however, then its solution should not be particularly troublesome. Theoretically, at least, the solution would lie in increasing the facilities of enforcement in direct ratio to the increase in the criminal activities.

We can logically expect that new patterns of criminal behavior will be encountered after the war. Behavior patterns will likely be developed, as a result of war service, that will present perplexing problems of control. What these behavior patterns may be or what form of expression they may take is unpredictable. Nor can we anticipate in advance their nature with sufficient certainty as to permit the preparations of effective methods of correction. But we can discern from present trends a grave problem of more than subtle implication which the police service is most certain to face in the near future. This is a problem involving a change in attitude of the public towards law enforcement; an attitude that has become particularly critical in recent months.

A recent decision of the United States Supreme Court severely condemned the methods employed by the police in their investigation. In this instance a confession was secured from the accused by a group of police officers working in relays who continuously questioned the accused over a period of thirty-six hours. The court held, in this instance, that mere questioning of a suspected

violator for an extended period is "so inherently coercive that its very existence is irreconcilable with the possession of mental freedom by a lone suspect."<sup>1</sup>

The foregoing is but one of many instances where law enforcement officers have been severely criticized for pursuing procedures that were in violation of the constitutional safeguards of personal liberty. Scarcely a day passes that the press does not release one or more stories relating to illegal or questionable practices of law enforcement officers. This wave of public criticism is not indicative of a sudden breakdown in law enforcement nor does it indicate a situation that has arisen as a result of the war. It is a belated public recognition of a condition that has existed since the beginning of our police service; a condition that, in the past, was fully apprehended, but not sufficiently resented.

The records of our courts disclose innumerable instances of law enforcement officers exceeding the scope of their authority. Many civil suits have been instituted seeking redress for wrongs suffered at the hands of over-zealous police officers. In some instances police oppression has been condemned but in many others it has gone unchallenged.

The war has fully aroused the public from an apathetic slumber and has focused its attention upon the fundamental principles of the American Way of Life. The Constitution of the United States has been read and reread by countless citizens who heretofore were but passively interested in its existence and were only vaguely aware of its content. The interest of the public in government is being greatly stimulated and a new and vigorous appreciation of the wisdom of the authors of the Constitution prevails.

As our fighting men return from the battlefields of the world they will bring vivid and indelible remembrances of the horrible effects that denial of personal liberty can produce. They will be keenly aware of the importance of our freedom and will be insistent that our personal rights be fully protected from any threat of harm or destruction. A leading danger to individual freedom, from the viewpoint of criminal law administration, is the police officer who loses sight of the fact that his sworn duty is to protect the rights and privileges of the citizens as well as to protect their lives and properties.

Policing is a practical down-to-earth task. Law enforcement officers must, by necessity, deal with the violent side of life. In their eagerness to solve crimes and apprehend criminals, policemen are apt to become imbued with their power and authority;

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<sup>1</sup>64 U. S. S. Ct. 921.

they are likely to lose sight of the importance of the separation of governmental functions as a safeguard of civil liberty, and are wont, at times, to usurp the function of the judiciary and seek to fix the guilt or innocence of the suspected criminal. In an eagerness to exert a power they do not actually possess, policemen will frequently resort to practices that are at least questionable if not actually illegal. Questionable practices are more frequently encountered in connection with the investigation of major criminal offenses than in any other phase of police work.

Why have police administrators and executives permitted the continuation of these improper practices? Why have they failed to follow the lead of honored professions who have established ethical standards of procedure and conduct for their members? Police executives have in most instances relied upon the threat of departmental regulations forbidding questionable procedures. They failed to realize that the improper practices are a product of faulty investigative techniques. In a few instances the administrators assume a defensive attitude in order to justify their departments' indulgence in irregular procedures. They are inclined to look upon the constitutional provisions not as measures protecting the liberties of the citizen, but more as obstacles to confound and obstruct the law enforcement officer in his daily tasks.

The faulty techniques that lead to questionable procedures are those that focus the attention of the investigator upon likely suspects instead of upon the task of gathering facts to support a criminal charge against an individual. The factors that are usually found to be responsible for the conditions are preconceived theories, professional jealousy, and convenience. Invariably, in instances where improper tactics have occurred, careful analysis of the situation will disclose one or more of the above factors as basically responsible for the questionable procedures.

The most perplexing situation encountered in a criminal inquiry is to know the exact moment when the investigator can form a definite opinion; an opinion that will be based upon facts. If a conclusion is reached too soon, or before sufficient facts have been disclosed to logically support it, a preconceived opinion will be formed and it will be influenced by many questionable and unsound factors. This preconceived theory will firmly and persistently affect the future progress of the investigation. If, on the other hand, the proper moment for a definite opinion is passed by undetected then the inquiry is apt to evolve into an aimless groping in the dark; a search that is devoid of reasonable direction. Preconceived theories are particularly troublesome because it is the zealous or intensely interested investigator who is most exposed to them.

Once an investigator entertains a theory as to what has happened in a particular incident, then the investigation shifts, at least temporarily, from an open minded search for clues and facts either to a search for suspected persons, or it becomes a restricted search for facts to support the theory.

Once an investigation has been shifted it is difficult to return to an open minded investigation even tho the theory may have been abandoned. The influence of the theory will remain long after its abandonment and the tendency will be to continue the investigation with direct interest centered in a search for new suspects with only a passive interest directed toward a search for new facts or toward further examination of the scene of the incident.

Professional jealousy may be equally as troublesome as preconceived theories in diverting an investigator's attention from an open minded investigation. The most thrilling moment that comes to a recruit police officer is that time when he has successfully concluded his first criminal investigation. It is then that he begins to reckon time, not by calendar date, but as before or after the John Doe case. It is at this moment that he recognizes in himself a finished police investigator and he is imbued with the importance of protecting his reputation. He is likely to enter into subsequent investigations with his interest divided between the task at hand and with concern over the probability of some other agency solving the case ahead of him. The fear of loss of prestige often expedites the formulation of theories and results in shifting the investigation to the premature consideration of likely suspects.

Occasionally investigations are centered upon suspects for no other reason than the convenience of the investigator and before there are facts to support logical suspicion. In some instances the faulty practice may be because of lack of training or because the investigator's superiors are pressing him for a quick solution of the case. In most cases, the practice is indulged in solely because it is more convenient.

New hazards instantly appear when an investigation has prematurely shifted or centered upon suspects, the principle hazard being that of premature arrests. These arrests are not made upon logical analysis of supporting facts, but because of the influence of preconceived theory, of the fear that the suspect may be arrested by some other agency, that he may escape the immediate jurisdiction, or, as in some instances, where it is believed that the suspect may, under severe grilling, help convict himself.

In every instance of premature arrest, eventually it becomes apparent that there is not sufficient real evidence to support a specific charge. This condition leads to further compromising

situations and the troublesome factors are forestalled or postponed by further questionable procedures such as concentration upon wresting a confession from the subject, filing vagrancy charges, and setting exorbitant bail in order to hold the suspect long enough to permit the development of sufficient facts to warrant the filing of a proper charge. Thus we find that many of the condemned practices such as unreasonable detention, excessive bail, coercive grilling, third degree, etc., arise from a failure to heed the warning against preconceived theory and the effect of professional jealousy.

It is believed that if we are to survive the criticism brought about by the public, because of an awakened interest in the importance of personal liberty, we must accept, without question, the fact that to support, protect and defend the Constitution and laws of the United States of America is a primary obligation of a law enforcement officer. It is one which he solemnly swears to discharge. The police investigator must fully realize that no greater power and no higher honor can be bestowed upon him than the sacred obligation to uphold and defend our American Way of Life.

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