

Are We Really Protected Against No-Warrant Searches?

by Robert Walters

WASHINGTON, D.C.

Donald Askew remembers vividly the events of that balmy evening in the spring of last year. After closing his service station in East St. Louis, Ill., he returned to his home in nearby Collinsville at about 9:30 p.m. to have dinner with his wife and son. "We were just sitting down and starting to fill our plates up," he recalls, when the family dog began barking and Mrs. Askew saw a man standing on the back porch.

"So I pulled the kitchen curtains back and there were two men standing there

with guns—sawed-off shotguns or riot guns," he later told newspaper reporters and a Congressional subcommittee. Within moments, the two men had kicked down the back door and stormed into the house. "I thought they were some sort of motorcycle gang," said Askew. "All the while they pointed guns at us, and my wife fainted."

Without any explanation, four men entered and searched the house, then interrogated its occupants. Only after they failed to find what they were seek-

government, we're all in trouble."

A nationwide problem

Those two raids touched off a national debate over the methods used by federal, state and local drug investigators. Soon there were reports from cities across the country—Winthrop, Mass.; Rochester N.Y.; Eureka, Calif.; Norfolk, Va., and others—of innocent citizens being subjected to sometimes violent raids in which intruders entered homes without a warning or a search warrant.

Earlier this year, Congress moved to curb one of the abuses involved: It repealed the controversial provision of a 1970 drug-control law which allowed federal narcotics agents to engage in "no-knock" raids—to break into a home or apartment without any notice whatever. (The law was originally approved in the belief that a knock on the door and the standard warning, "Open up, it's the police," could provide sufficient time and warning for drug users or dealers inside to destroy the sought-after narcotics.)

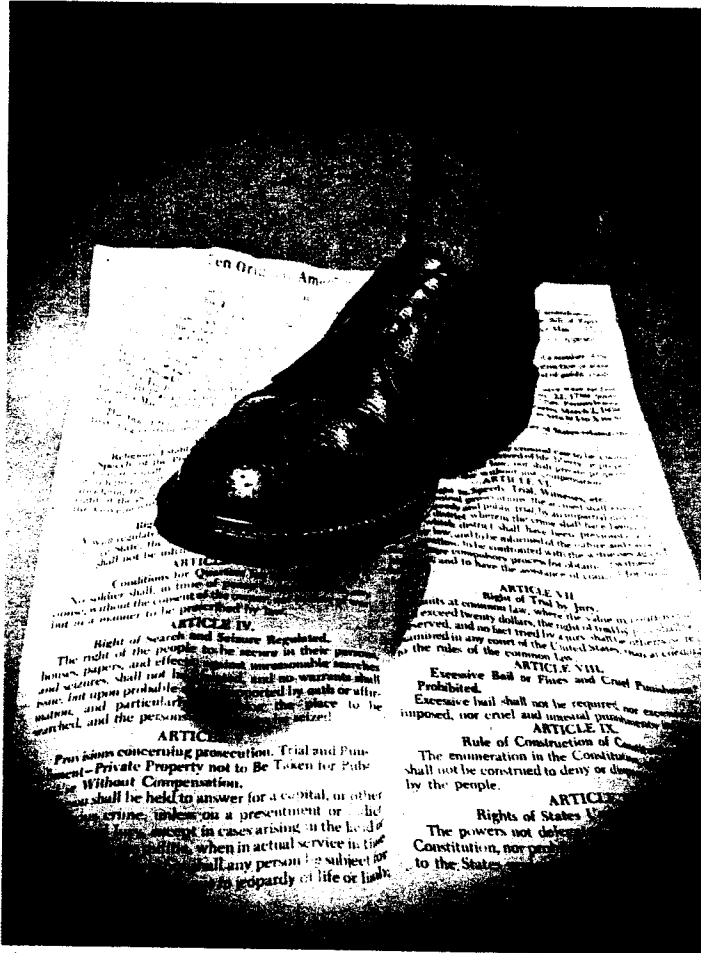
200 years of tradition

Virtually unnoticed, however,

ing—illicit drugs—did the intruders identify themselves as federal narcotics agents engaged in a no-knock, no-warrant raid. Realizing they'd broken into the wrong house, the raiders left, without apology, almost as quickly as they had arrived.

On that same evening, a team of narcotics agents also raided the home of Mr. and Mrs. Herbert Giglotto, another innocent Collinsville couple. "They came into the bedroom and put a gun to my head and said they were going to shoot us," recounted Giglotto. "My hands were handcuffed behind my back. My wife was handcuffed like I was and made to lie down on the floor like an animal. They acted like animals... If they were representatives of the federal

*Parade
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Are your Constitutional rights being trampled? At least 380 federal drug agents can now search you and your belongings without a warrant.

throughout the debate during the past year on the no-knock issue has been a related development: There is an effort underway to grant hundreds—and perhaps thousands—of federal law enforcement officers the extraordinary authority to search you, your automobile and even your home without ever obtaining the search warrant which has been legally required for almost two centuries.

Under pressure from the White House in the final year of President Richard M. Nixon's Administration, the power to make such no-warrant searches already has been given to at least 380 investigative agents of the Drug Enforcement Administration on

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SEARCHES CONTINUED

the grounds that the government needs expanded authority to deal effectively with the never-ending flow of illegal narcotics into this country.

Moreover, officials of DEA, the latest in a long succession of federal agencies established in recent years to combat the illicit narcotics traffic, initially sought no-warrant search authority for all 3600 DEA investigators. Only fierce opposition from other government agencies held the number to about one-tenth of that total, and those familiar with the situation say the number could be expanded in the future.

DEA executives insist that numerous safeguards have been established to protect innocent citizens against improper raids and searches, but the plan already has come under fire from high-ranking officials in Congress and the Treasury Department, who argue that the new approach has the effect of creating a "loophole" in one of the most important provisions of the Bill of Rights, the Fourth Amendment to the Constitution.

The statement

That Amendment provides this guarantee to all Americans: "The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated; and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be searched."

In other words, any law enforcement officer who wants to search an individual's property for evidence of criminal activity must first swear out an application for a warrant and convince a judge to issue it on the grounds that there is "probable cause" to believe



Mr. and Mrs. Herbert Giglotto clean up after federal drug agents raided their Collinsville, Ill., home in 1973, under the government's "no-knock" authority, since repealed. The agents were searching the wrong house. Now bureaucrats have managed to bypass Congress and extend "no-warrant" search powers to narcotics agents.

such illegal activity or evidence exists.

Not generally known is the fact that the First Congress, which drafted the Bill of Rights in 1789, also established the Customs Service as the first agency of the federal government and passed a law which gave the newly created Customs organization an exemption from the Fourth Amendment.

To catch smugglers

Recognizing the need to detect and prevent the smuggling of contraband goods into the country and to enforce the federal laws relating to the payment of duties on legal imports, the initial Congress approved a statute giving Customs officials "full power and authority" to search ships if they had "reason to suspect" that goods subject to duty were hidden aboard.

The effort to greatly expand the no-warrant search authority began in mid-1973, when the White House was reorganizing its drive to stem the flow of illegal drugs under the umbrella of the DEA, a newly formed agency under the Justice Department. On June 21, Vernon D. Acree, the Commissioner of Customs, received a terse two-paragraph letter from Myles J. Ambrose, a special assistant attorney general in charge of the new drug program.

Ambrose's letter called on Acree to

sign an equally brief order which said: "I hereby designate those Special Agents of the Drug Enforcement Administration having Civil Service job classification 1811 to serve as Customs officers... with all powers and authority attendant to that position."

In other words, 3600 DEA agents—the organization's entire force of investigators—would have been "sworn in" and "cross-designated" as Customs officers, with the power to execute no-warrant searches. Although almost all

such Customs searches are made at ports of entry, federal regulations extend that authority—under certain circumstances—to homes, offices and individuals already in the country.

Ambrose's letter touched off an intense six-month struggle within the federal bureaucracy. Acree refused to sign the "cross-designation" order, and immediately referred the matter to his superiors in the Treasury Department. Among those vigorously opposing the plan were then-Treasury Secretary George P. Shultz and Rep. Tom Steed, an influential Oklahoma Democrat who is chairman of the House subcommittee which appropriates all operating funds for the Treasury Department and White House as well as other agencies and departments.

Bureaucratic war

The Office of Management and Bud-

get, the White House's management arm headed by Roy L. Ash, intervened in the fierce feud last autumn. Siding with the Justice Department and DEA, it ordered officials at the Treasury Department and the Customs Service to comply promptly with the "cross-designation" scheme. But Acree still refused to capitulate, insisting that DEA was seeking no-warrant search authority for far too many federal narcotics agents without adequate safeguards.

In an unusually strong letter written last Jan. 9 to John R. Bartels Jr., DEA's administrator, Acree talked candidly about "a breakdown in communication" between the heads of two federal agencies supposedly united in the government's campaign to stem international narcotics traffic. In addition, Acree accused Bartels of taking action which "only tends to further exacer-

bate an already overheated emotional issue."

Two days later, on Jan. 11, the Office of Management and Budget brought the two men together and hammered out a final agreement. As a result, DEA officials say that the 380 agents empowered during the Nixon Administration will retain search authority. Other sources within the government say the actual number is closer to 500 and they predict it will grow larger.

How many exceptions?

A DEA spokesman says the power to conduct searches without prior judicial approval "isn't to be used in homes, it's only to be used in ports of entry." However, he concedes there might be some exceptions to that rule, and Bartels emphasized in a letter last autumn that his agency did not intend to duplicate the Customs Service's work at those ports of entry.

At the insistence of the Customs Service, a number of rigid restrictions have been imposed on the narcotics investigators who enjoy the no-warrant search authority: A search can be conducted at an inland point only if an agent has followed a suspect from a port of entry, the Customs Service must be notified in advance "whenever possible" of each case in which a DEA agent plans to use the special search power and full written reports must be submitted afterward. Hopefully, these restrictions will provide a needed safeguard.

A DEA spokesman emphasizes that his agency is concerned about the civil liberties problems involved but believes the new authority to make no-warrant searches "is a perfectly logical extension of the power which Congress granted to the Customs Service."



Another error: Donald Askew and son Michael testify about the night federal drug agents wrongly invaded their house. They said the agents never even apologized.