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Detention Power and No-Knock Warrants Used Little in Capital; Other Steps Effective

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WASHINGTON, Sept. 26—In the nation's first experiment with preventive detention and no-knock police warrants, prosecutors, judges and police officials here are making scant use of either one of the controversial crime control measures.

But other less widely discussed changes—an increase in judges, an extension of felony jurisdiction, a shift of some juvenile cases to adult court, the "decriminalization" of some family offenses—are having a major impact.

It has been seven months since the comprehensive law providing for those changes went into effect, over strong constitutionalist objections, but with the Nixon Administration's hope that it would serve as a model for the nation.

In that period three no-knock warrants have been issued and seven individuals have been held under preventive detention.

The police say they are intentionally limiting the use of no-knock warrants to necessary and important cases. But preventive detention has been found to involve so complex and time-consuming a process that it is being widely avoided.

In its place magistrates appear to be detaining defendants they consider dangerous by setting high money bail, an expedient that is not uncommon elsewhere but that here deprives the accused of precisely the due process hearing that preventive detention would call for.

Finding the 'Easy Way'

"We have between one and four cases a week that we consider are proper for preventive detention," John F. Rudy 2d, an assistant United States attorney said in an interview. "But usually in those cases high money bond is set."

In setting bond, magistrates are not supposed to weigh a defendant's possible danger to the community, as they would do at a preventive detention hearing; their sole criterion should be whether they think he will flee.

But faced with a prosecutor reluctant to ask for detention and a three- to six-hour hearing if he does ask for it, high bond of $10,000 or more is, in the words of someone who is involved in the system every day, "the easy way."

The single most important element in the crime control package, it is generally agreed, is the reorganization of the district's courts.

Among other things, the law has extended the Superior Court's jurisdiction to include some felonies, increased the number of judges on the court by 10 to 37, and created the job of court administrator to handle the budget, hire nonjudicial personnel, and schedule staff and supplies for court sessions.

Chief Judge Harold H. Greene is proud of the results. "Felony indictments are doubling this year," he said. "For the last 20 years, there have been about 2,000 cases. What happened was the District Court was not capable of trying more than 2,000 felonies, so the others were broken down to misdemeanors."

Backlog Cleared

Since taking over jurisdiction in some juvenile cases, Superior Court has succeeded in clearing up a backlog of 5,000 juvenile cases. Judge Greene says juveniles are now being tried within 45 days. Previously, there were delays of up to a year or more.

Under the act, the United States attorney may determine which juveniles he wants to try in adult court. In the past a hearing before a judge was required before a juvenile could be tried in adult court.

Now, in cases involving rape, homicide, armed felony and some burglaries, the decision is made by the prosecutor. That discretion is now under challenge in appeals court.

Lawrence H. Schwartz of the Public Defender Service estimates that "about 60 per cent of the juveniles are now tried in adult courts."

Under another provision of the act, juveniles' jury trials have been eliminated. This, Mr. Schwartz says, "means kids can't get fair trials. We were winning at least half or better of our cases with jury trial. With court trials, I can count on one hand the number we've won."

In a recent challenge, the Supreme Court ruled that juveniles need not be tried by a jury.

The crime control act also created a Commission on Judicial Disabilities, heartening those critics who think that judicial laziness and irresponsibility have reached scandalous proportions.

The commission, made up of a Federal judge, two lawyers and two laymen, investigates complaints of misconduct by judges and can impose a range of punishments up to removal, subject to higher review. It has already taken a number of complaints under consideration.

The lawyer for the D.C. police department, Gerald M. Caplan, explained the value of the commission this way:

Shift on Family Offenses

"We have judges that feel like playing golf on Friday or come into court at 11 o'clock instead of 9:30. And sometimes a policeman avoids making an arrest to avoid getting into some crazy judge's court. This is important symbolically, and because it will temper intemperate judges."

Another important provision of the court reorganization allows intra-family offenses to be handled by social workers or through a civil relief order telling the husband to stay away from the wife.

There have been an average of 200 such cases a month since the law went into effect. Of those, more than 350 either have been or will be before full court hearings, with the rest handled by social workes.

Despite the wide impact of such court changes, by far the most attention was devoted to the new law's preventive detention and no-knock warrant provisions as it was progressing through Congress.

When the omnibus crime control bill was introduced, Attorney General John N. Mitchell said it would "point the way for the entire nation at a time when crime and fear of crime are forcing us to alter the pattern of our lives."

Senator Sam J. Ervin, a North Carolina Democrat and civil libertarian, said the bill was "as full of unconstitutional, unjust and unwise provisions as a mangy hound dog is full of fleas."

Despite Mr. Ervin's protests, the crime bill passed. The President signed the bill last July, and no knock and preventive detention have been available to the police and prosecutors since February.

Other Reasons Cited

Aside from the fact that preventive detention hearings sometimes take as long as the trial itself would, there are a number of other reasons why the Government has not sought preventive detention:

¶The bill provides for holding for five days anyone on parole or probation while the authorities decide if the new charge against him warrants revocation of his freedom. Mr. Rudy explained that "generally when we get a person we would consider for preventive detention, he is on probation or parole and generally the probation officer or the parole board will move for revocation."

¶The Government must reveal a good part of its case to the defense to prove to the magistrate or judge that the man it wants detained is likely to be found guilty.

¶The Government attorneys do not feel they gain much from holding a man for only 60 days. As one of them said, "Offer me 120 days for all that effort, and we'll talk about it."

¶The Government has been waiting for strong cases.

One challenge to preventive detention is already before an appeals court. Citing the Eighth Amendment and the Due Process clause, as well as other parts of the Constitution, it asks that the preventive detention section of the law be struck down.

As an example of how preventive detention works, two of the seven defendants detained so far were alleged to have robbed a supemarket. According to the prosecutor, they were found about 20 minutes after the robbery in a car with the money, a gun and their accomplices. He said they were both narcotics addicts. The two were detained, and while they were in D.C. jail awaiting trial pleaded guilty.

Given the problems associated with preventive detention, why has the Administration already proposed a bill that would make

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COMMENTS ON STATUTE: Judge Harold H. Greene in his chambers in Washington. He called the no-knock statute "the antiperjury bill of 1970—it excuses the officers from saying they knocked. Statue of Justice is at the left.

it apply in Federal courts in all the states?

According to Donald E. Santarelli, an associate deputy attorney general and self-proclaimed "captain" of the Government's preventive detention team, "because we hadn't enough experience with it before we put it in again."

Mr. Santarelli blames the peculiarities of the district for the limited use of preventive detention. "In this jurisdiction," he said, "they want to take six days to do it. In other jurisdictions, it needs six hours. It's treated too complexly and it doesn't need to be. The United States Court of Appeals sets the tone and it's clearly a liberal court."

Use of No-Knock Clause

The no-knock statute, under which the police may apply to a magistrate for a warrant that lets them enter a house without announcing their authority and purpose, has not been stymied by the courts, however. Mr. Caplan, the lawyer for the D.C. police department, explained why it has been so sparingly used this way:

"We've been reserving it for only the most important cases. Everything the police is given is subject to abuse. We never intended to use it routinely. It was always viewed as an extraordinary law enforcement need."

To try to make sure it stays extraordinary, Jerry V. Wilson the chief of the D.C. police, has issued an order requiring that he personally approve all requests for no-knock warrants.

Two of the warrants used so far have been for gambling raids. The third was issued in a narcotics case, but on the ground that the suspect was armed.

In the first gambling case, the police said they needed to burst into the apartment because it was on the third floor and if they announced themselves downstairs the suspect might have destroyed the gambling paraphernalia. They got their man—on his way to an adjoining room.

In the second case, the man had been arrested before, but had been able to throw all of his betting slips, which were water-soluble, into a bucket of water. He was still able to destroy some of them when the police burst in unannounced, apparently because it took them some time to knock down his well-buttressed door.

In the third case, the police were after an alleged narcotics distributor whose nickname was "yellow" but who reportedly carried a gun. They made the arrest, and he did have a pistol.

'Creature of the Press'

Mr. Caplan contends the no-knock issue was "a creature of the press."

"Every jurisdiction has no-knock," he said. "We've always had no-knock. The law never says how long a policeman has to wait after knocking—what, five second? ten seconds?"

Judge Greene calls the no-knock statute "the anti-perjury bill of 1970—it excuses the officers from saying they knocked."

In the end, Mr. Santarelli and his colleagues in the Justice Department argue that it is not any one of these specific provisions that really count.

"The biggest significance of the act," Mr. Santarelli said, "is that it has focused public attention on improving the system. Money is being broken off for every level."

"In the fall of 1968 there was almost a hysterical despair about crime here," he continued. "The climate now has not returned to the gay 'nineties, but it 's a lot better than it was."

Others agree, like the prosecutor who said, "Psychologically, at least, people are beginning to feel it's not all geared to protecting the defendant."

Some, like Senator Ervin, remain very worried about what they see as an impairment of constitutional rights. Others argue that the bill does nothing about the economic and social causes of crime. And others point out that the streets of downtown Washington are still empty at night.

When all the results are in, however, even Mr. Santarelli does not hope for too much.

"The bill," he pointed out, "was a comprehensive approach to the whole criminal justice system." But, he acknowledged, "There's so much cumbersomeness in the whole damn system that no matter how and where you tinker with it, the thing manages to elude you."