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## CRIMINAL LAW IN ACTION- CARRYING CONCEALED WEAPONS - CHICAGO STATISTICS

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CRIMINAL LAW IN ACTION — CARRYING CONCEALED WEAPONS — CHICAGO STATISTICS — Lawyers are beginning to recognize, though slowly, that enforcement and administration of law are affected more by the psychological conditioning and the character of its administrators than by the content of the law itself. This basis of difference is well demonstrated by some data of Chicago criminal court operations as compared with similar proceedings before Detroit judges.

In an article on "Public Policy and the Arrest of Felons" in the April, 1933, issue of this Review,<sup>1</sup> the writer called attention to the shocking number of prosecutions for carrying concealed weapons which were dismissed by the Detroit courts not because the accused was innocent, but because the arrests had been "unreasonable" and, in consequence, the evidence of guilt could not be used.

In Detroit, of 237 prosecutions for carrying concealed weapons begun during 1931, 103 failed of conviction. Neither the court records nor the police records showed the reasons for the failures. Police Commissioner Watkins therefore directed a letter to each police officer who had instituted such a prosecution, asking his explanation of the failure. Of the 101 replies, 38 stated that the action had been dismissed by the trial judge because the arrest had been unlawful and the evidence obtained thereby could not be used. The following report is fairly characteristic:

"Regarding the above arrest, beg to advise on Jan. 24, 1931, stopped a car at Kirby and Tillman Avenues for reckless driving with two men in same and upon questioning and searching found a 32 caliber revolver on the above named person, who was arrested charged C. C. W. and taken to court as charged. The case was dismissed by the judge at examination on the grounds of illegal search."

A similar reason was indicated, though not explicitly stated, in 3 more replies. In 3 more, no reason was given. In several instances the defendants had jumped bail. Three had been sent to insane asylums. In still others, prosecution failed because the weapon had been found on the floor and not on the person of the accused. Various other reasons accounted for the other discharges or acquittals.

<sup>1</sup> 31 MICH. L. REV. 749 (1933).

Only four of these Detroit discharges were attributed to extenuating circumstances in the violation of the law, or to the good character of the accused.

Through the courtesy of Police Commissioner James P. Allman and Mr. L. S. Timmerman, assistant director of the police department Survey Committee, the writer recently received some comparable data concerning Chicago prosecutions for carrying concealed weapons.

The Chicago record shows 149 prosecutions during approximately 6 months of 1933. Of these, 49 were noted as "discharged." To inquiry by the Commissioner as to the reasons for these discharges, 46 replies were received. They are as different from the Detroit explanations as can well be imagined.

While 40 per cent of the evasions of conviction in Detroit were attributed to the unusability of the evidence, only 6 per cent of the Chicago discharges were so accounted for. On the other hand, the good character of Detroit defendants procured their discharge in only 4 per cent of the cases, while Chicago judges made 56 per cent of their discharges on that ground.

A few of the Chicago policemen's replies seem worth quoting, for various reasons.

"The above arrest was made by Ptlmn Arthur Ristig who was on his way home from the Detective Bureau. The case was arraigned in Branch 27 and the defendant's excuse for having this revolver in his possession was that the taxi drivers around the corner of Sheffield and Belmont were playing a game called "The Brakeman's Daughter" and the defendant was the victim. Judge McGarry, in lieu [sic] of the fact that the defendant had no previous record and his character was vouched for by several business people, was inclined to believe the defendant and the case was discharged."

"About 10:30 P.M., March 29, 1933, while directing traffic at the intersection of 79th St., and Stony Island Ave., I was informed by a citizen that there was a man with a gun in the White Castle restaurant at 79th St., and East End Ave. I immediately proceeded there and found the above named with a loaded 32 calibre automatic pistol on his person. I placed him under arrest and brought him into the 8th district station. Upon being interrogated, he related a story of the banks in Michigan being closed due to a bank holiday, and inasmuch as he carries large sums of money he thought that it would be proper to carry a gun for his own protection. He also added that the Sheriff of the County in which he resided gave him the gun and told him that it could be carried in Illinois without him being deputized. He further stated

that his wife and child had accompanied him into Chicago and were visiting friends at 78th St., and Luella Ave. This was verified by us. This man appeared before Judge Padden in the Gun Court on March 29, 1933. He was represented by counsel and told the Judge substantially the same story as he told us. He was discharged by Judge Padden with a warning to discontinue carrying a gun. The Judge turned the gun over to the defendant's lawyer."

"At 79th St. and Ashland Ave. May 6th, 1933, about 12:30 A.M. we arrested John Polulock, 8158 S. Honore St., riding in a Lincoln Sedan, with a loaded 45-Cal automatic, laying on the seat beside him. On May 7th he was sent to Branch 27 and asked for a continuance, to May 16th, 1933. James Kelly, brother of the Mayor, testified for him as a character witness, saying he was in the wholesale meat business at 809 Exchange Ave. and usually carried a large sum of money at all times, and he hoped to get him a permit in a few days. Sergt. Kerian Phelan also testified in this case."

"The above defendant was arrested at 10:30 P.M. July 5th, 1933, in front of 300 E. 31st St., with a blue steel revolver in his possession, and a badge marked Will Hill Detective Assn. He stated he worked for a Mr. Will Hill, 3621 S. State St. The defendant asked for a continuance as he had no attorney, and case was continued until July 19, 1933, and when case came up on this date, it was continued by the state to bring in Mr. Hill, until July 22nd, 1933. On this date Mr. Hill appeared and testified that this man, Joseph Griffen, was hired by him as an investigator, for the past two months, and he was discharged by the court, and the gun confiscated."

"On August 3rd, we arrested Robert Boyce, 7310 Peoria St., and Richard Hodgman, 6321 S. Francisco Ave., and Anthony Kamalick, 6509 S. Oakley Ave., an engineer at the World's Fair. A. Kamalick was released. On August 4th they went to Branch 27, and took a change of venue, sent to Jury Court, from there it was sent to Branch 43, Judge Holland. William McGovern of 740 W. 79th St. said that he was the owner of the gun, he had a currency exchange at the above address. Both men worked for him for five and a half years, both are married and have families."

The explanation of these differences between the Detroit and Chicago causes of non-conviction is not apparent from the data available.

Certainly it is not to be found in differences of fundamental law. The Illinois Constitution, like that of Michigan, declares the right of the people to be secure against unreasonable searches and seizures.<sup>2</sup> The Illinois courts, like those of Michigan, have interpreted this provision as precluding the use in court of evidence procured by the police through unreasonable search or seizure.<sup>3</sup> The offense of carrying concealed weapons without a permit is only a misdemeanor in Illinois, instead of a felony as in Michigan. But this fact could not logically account for the greater liberality of Illinois trial judges in permitting use of evidence, because the limits of lawful arrest as established by both judicial rule and legislation are narrower in the case of misdemeanor than in the case of felony.<sup>4</sup>

Neither can the differences be explained on the ground that both courts, though by diverse means, attain the object of exonerating those persons who do not deserve punishment. The matter of deserts may have been the motivation in the Chicago cases, but the Detroit practice is no respecter of persons; the rule of preclusion applies and is applied regardless of the defendant's reason for carrying his gun.

It is possible that Chicago's criminal lawyers have not yet awakened to the potentialities in the State's rule of exclusion as fully as have the practitioners in Detroit. Or it may be that Chicago trial judges maintain a more liberal attitude as to what is reasonable in the making of arrests than do their compeers in Detroit. But whatever the explanation, it must be something in the attitude of the law's administrators rather than in the law itself.

John Barker Waite

<sup>2</sup> Const. of Ill. of 1870, Art. II, sec. 6, "The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, shall not be violated. . . ." Const. of Mich. of 1850, Art. VI, sec. 26, "The person, houses, papers and possessions of every person shall be secure from unreasonable searches and seizures."

<sup>3</sup> Harno, "Evidence Obtained by Illegal Search and Seizure," 19 ILL. L. REV. 303 (1925).

*People v. Macklin*, (Ill., June 1933) 186 N. E. 531, "Accused, on trial for carrying concealed weapon, was entitled to have revolver found on his person excluded from evidence under facts showing that he was unlawfully arrested. (Syl. 5.) Discovery of revolver after arrest could not relate back to and justify arrest without warrant." (Syl. 3.)

<sup>4</sup> Mich. Comp. Laws 1929, sec. 17149: "Any peace officer may, without a warrant, arrest a person — (a) For the commission of any felony or misdemeanor committed in his presence; (b) When such person has committed a felony although not in the presence of the officer; (c) When a felony has in fact been committed and he has reasonable cause to believe such person has committed it. . . ." *Cook v. Hastings*, 150 Mich. 289, 114 N. W. 71 (1907).

*Cahill*, Ill. Rev. Stat. 1929, c. 38, sec. 681. *North v. People*, 139 Ill. 81, 28 N. E. 966 (1891).