How Constitution protects rights of accused

(EDITOR'S NOTE: This is the ninth of 15 articles on crime and justice in America. The series was written for Courses by Newspaper, a program by the University of California, San Diego, and constitutes the textbook for an Oakland University course taught by Prof. Jesse Pitts.)

By DAMON J. KEITH

"Justice," declared Supreme Court Justice Benjamin Cardozo in 1934, "though due to the accused, is due to the accuser also . . . We are to keep the balance true."

Many people frustrated by high crime rates, feel the Supreme Court in recent years has tipped the balance against the police and too far in favor of the accused.

But due process for the accused is an essential safeguard; shortcuts to justice lead only to tyranny.

The criminal law in America is therefore not only a sword with which society strikes those who prey upon it, but also a shield by which an accused defendant is protected from a vengeful public or overzealous police, prosecutors or judges.

The legal system that defines and punishes criminal acts also sets the limits within which the state may investigate and prosecute the criminal.

Thus, a fundamental premise of our criminal law is that a defendant is innocent until proven guilty. And the burden of proof is on the state to show that the defendant is guilty beyond a reasonable doubt, not on the defendant to prove his or her innocence.

THE BASIC procedural or "due process" rights of an accused in a criminal trial are provided for in the Bill of Rights.

Damon J. Keith, now serving on the U.S. Court of Appeals, was a federal district judge in eastern Michigan from 1967-777. Earlier he was chairman of the Michigan Civil Rights Commission. Ebony magazine called him "one of the most influential black Americans" for 1971-75, and the NAACP awarded him its highest honor, the Spingarn medal.

The fourth amendment prohibits unreasonable searches and seizures and directs that warrants shall issue only upon probable cause, while the fifth amendment provides for the use of a grand jury to indict persons accused of serious crimes, and prohibits double jeopardy and self-incrimination.

The right to a speedy, public trial by an impartial jury is provided for in the sixth amendment, which also guarantees the defendant's right to know the charges against him, to be confronted with the witnesses against him, to have defense witnesses summoned and to have counsel.

And the eighth amendment prohibits excessive bail or fines and cruel and unusual punishment.

The Supreme Court, which breathes life into the Constitution, over the years has expanded the scope of these provisions to the benefit of the accused.

Of key importance has been the Supreme Court's extension of federal due process requirements to state courts, in which most criminal cases are tried. The Supreme Court has incorporated, by judicial decision, the relatively specific safeguards for the accused of the Bill of Rights into the due process clause of the 14th amendment, which was applicable to the states. w

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In Powell vs. Alabama (1932), the court held that the right of an indigent defendant to counsel in a capital case was required by due process of law and applicable to the states under the due process clause of the 14th amendment.

Thirty years later, in Gideon vs. Wainwright (1963), the court extended the right to counsel to all cases involving a serious crime.

MORE CONTROVERSIAL has been the court's attempt to modify the actions of law enforcement officers in their search, arrest and interrogation of defendants by excluding illegally seized evidence from trial.

For example, in Weeks vs. United States (1914), the Supreme Court held that the fourth amendment prohibition against unreasonable searches and seizures of persons and property requires a federal court to exclude evidence obtained by federal agents in violation of the amendment.

In 1961, in Mapp vs. Ohio, the court extended this rule to the states.

Critics claim this exclusionary rule penalizes society and rewards the defendant for the mistakes of the police.

Others argue, however, that the police are concerned primarily with the criminal activity rather than with ultimate conviction. Therefore, the police are not deterred from illegal searches and seizures, even if the case is thrown out of court.

But alternative attempts to deter illegal police conduct—such as civil actions for damages brought against the police by victims of illegal searches—have proven largely ineffective. Thus, the dilemma remains.

The exclusionary rule has also been used to exclude as evidence the confessions obtained by police from suspects who had been denied an opportunity to consult with counsel. In 1964, in Escobedo vs. Illinois, the court ruled a confession thus obtained was a violation of the sixth and 14th amendments.

TWO YEARS LATER, in the landmark decision of Miranda vs. Arizona, the court laid done specific guidelines for police interrogation of persons in their custody.

The Miranda ruling required law enforcement officers to warn suspects that they had a right to remain silent, that anything they said could be used against them in a court of law, and that they had a right to counsel before and during the interrogation. Only if a suspect waived these rights could police obtain a valid confession.

The Miranda decision has been severely criticized, not so much for the constitutional principle it enunciated, as for its critical view of police interrogation methods at a time when many police forces were under community pressure for not doing enough to halt the rapid rise in crime.

Also, as Fred Graham, Supreme Court correspondent for CBS News, wrote, the decision smacked of "benevolent authoritarianism" by the judiciary—an attempt to reform society from the top down, by imposing on the police rigid procedural rules.

THE MIRANDA decision came to symbolize the tension in our system of law between the protection we guarantee the accused, and the protection we provide society from crime.

As violence and street crime increased throughout the 1960s, many people felt the criminals were winning the war on crime, not just on the

Ernesto Miranda in 1967 had his convictions for kidnap and rape overthrown by the U.S. Supreme Court because police had obtained his confession without first informing him of his constitutional rights.

street, but in the police station and courtroom as well.

But constitutional adjudication is never static.

In Johnson vs. New Jersey (1966), the Supreme Court held that Miranda was not to be applied retroactively.

In Harris vs. New York (1971), the court held that a defendant's statements to police, made without being informed of his "Miranda rights" nonetheless be used to impeach the defendant's trial testimony.

And in Michigan vs. Taylor (1974), the court held that evidence obtained in pre-Miranda interrogation could still be used against a defendant in a trial beginning after the Miranda decision.

Over time, the balance drawn between the rights of the accused and the interests of the accuser seems sometimes to tip in one direction, sometimes in the other.

BUT TO ASK if the scales of justice have been tipped too far in favor of the accused is, I think, to misstate the question.

We should ask instead if the civil rights of the accused are mandated by constitutional safeguards against potential abuses of power by government. I think they are.

Anger at "permissive" judges obscures the fact that the Bill of Rights was included in our Constitution to protect the citizens of the newly created republic against government abuses of power.

If the government's power to search our property, seize our person, compel our confession, set our bail, direct our trial, and determine our punishment is unchecked, then no one is really safe from the possibility of an unjust arrest and conviction.

The requirements of the due process amendments check the government's discretion and afford various weapons to the accused for his or her own defense.

We extend these safeguards to defendants not because we sympathize with what they may have done, but because in upholding their rights, we protect our own.

In guaranteeing the rights of others to be innocent until proven guilty, and in limiting the methods the state can use to prove them guilty, we affirm our faith in a nation under law, and our confidence in a free society.

Prof. Pitts comments:

'Differential prosecution' is a fact of law, politics

By JESSE PITTS
Oakland University

Concerning Judge Damon Keith's article, I wish to make two points:

1) While judicial activism may have reinforced the guarantees of the accused, it may have weakened the effectiveness and credibility of the judicial process at the moment when the latter had to cope with an explosion of crime in our major cities.

2) Judicial activism has been singularly ineffective in checking the misuse of government power in hounding its political enemies, or simply the critics of its bureaucracy.

IT IS TRUE that when the defense attorney and the judge make sure that the state will follow the legal procedures in the arrest and prosecution of suspects, they are defending the rule of law. And the rule of law protects us all.

If in the process a certain number of guilty defendants cannot be convicted, that is the inevitable price we must pay for the maintenance of the rule of law. But above a certain level the price may become too high.

We have all heard: "It is better that 100 guilty men should go free than a single innocent be punished." This is fine, especially if the 100 guilty men do not live in the neighborhoods where the houses of lawyers and judges are located. But what about 200 guilty men going free?

Past a certain threshhold, the judicial process loses credibility as defender of public order. And another cliche is that people will suffer injustice rather than suffer disorder.

IF WE ADD to this the growing number of civil suits where defendants highjack the insurance companies for the greater benefit of lawyers working on 40-50 per cent contingency fees, the law is seen not as protector of the common man but as a racket. Does this help our society cope with crime and check our tendencies toward vigilantism?

Judge Keith speaks of civil rights, which is like speaking about motherhood. He knows that that civil rights complaints are the stock in trade of pornographers, who use the federal courts to block state obscenity prosecutions.

A look at our downtown movie houses and at newspaper advertising tells us, of course, that civil rights have been preserved and the quality of life definitely improved.

Again, it is a matter of delicate balance. One need not be a man of Neanderthal to wonder whether things have not gone way out of kilter.

Meanwhile, a robber, arrested in England, is more than three times as likely to go to prison as one arrested in New York.

FURTHERMORE, I am not sure that all the guarantees added in the last 17 years to the rights of the defense, have decreased the capacity of the government, whether the executive branch or the civil service, to persecute a citizen who is being obnoxious to them.

I imagine Watergate has put a crimp on the White House, but what prevents a member of the Justice Department or a member of HEW from having lunch with an old classmate in IRS? A few weeks afterwards and the disturber of bureaucratic peace is slapped with an audit. His firm is visited by OHSA. Try to prove there was a connection between the two.

It is conceivable that the increased guarantees for the accused have decreased the likelihood of an innocent being abused.

Yet Gov. Connolly was greatly damaged by a suit concerning milk lobby contributions, a suit that the Justice Department knew very well it could not win. Of course, the real purpose of the suit was to neutralize him politically, and not because he is less honest than "Tip" O'Neil.

PRESIDENT FORD may well have been kept from re-election by an inquiry into 1970 campaign finances that was leaked and allowed to drag on until the end of the 1976 campaign, when he was finally exonerated.

He had to spend the better part of a Sept. 30 press conference to rebut the charges, which for many people merely confirmed them.

Because of the immense growth of governmental controls over the last 45 years, the average citizen is more and more "innocent" by sufferance of the state.

Differential prosecution is a way for the state, for coalitions of bureaucrats and journalists to punish their enemies and reward their friends. If a group in the government wants to "get" a citizen, it can blacken his reputation, and hound him to the grave, even if he is finally acquitted of all charges.

Frankly, I do not think the Trotskyites or the Weathermen Underground are the worst victims. In 1976 the President had more to fear from the Justice Department than did his Democratic opponent.

Royal Oak landlord guilty of discrimination

Federal Judge Ralph Guy has found a Royal Oak apartment owner guilty of racial discrimination for refusing to rent to a black couple.

Mary Shoals and Steven Barnett were awarded the right to occupy the Chateau D'Orleans apartments and $2,500 in damages as a result of Judge Guy's ruling against landlord Conchita Goquiolay and Faustina Calpe, her assistant.

Citing that racial stereotyping exists in the process of selecting tenants for the Chateau D'Orleans, 905 N. Stephenson Highway, Judge Guy said the law prohibits practices which have the "effect of discriminating."

The suit brought by Ms. Shoals and Barnett alleged that they were denied the opportunity to inspect, apply for and rent an apartment at Chateau D'Orleans because they are black.

Representatives of the Fair Housing Center in Detroit testified that apartments were being denied to blacks but made available to whites.

The center, a non-profit group promoting fair housing oportunity in the Detroit area, started investigating the case in October.

A temporary restraining order was issued in November requiring Mrs. Goquiolay, the building owner, to reserve an apartment for the couple, pending outcome of the trial.

Ms. Shoals, a student at Wayne State University and Barnett, executive director of Barnett and Cook Productions, are both Navy veterans.

Travel up, gas use down

Although Americans drove four per cent more miles in 1977 than in 1976, only 2.4 per cent more gasoline was consumed, according to an analysis by the Highway Users Federation.

The Federation based its findings on 1977 statistics of highway travel, compiled by the Federal Highway Administration and the American Petroleum Institute.

The federation estimates that in 1977, 55 billion more highway miles were driven than in 1976. At the same time, average gasoline consumption increased about 170,000 barrels per day (a barrel contains 42 gallons).

The nation's use of all petroleum products was up five per cent in 1977, with gasoline registering the smallest increase at less than half that. The use of petroleum products other than gasoline was up 6.4 per cent. Use of residual fuel oil—a heavy oil used for firing boilers in plants and ships—was up the largest increase of all petroleum products at 8.8 per cent.

Jet fuel use was up about four per cent, and distillate fuel—used for home and commercial heating and diesel engines—was up by 5.5 per cent.

Woodrow W. Rankin, director of the Federation's Transportation and Safety Division which made the analysis, said "These figures show that Americans using automobiles are least responsible for increases in fuel use. The growth in demand for every other petroleum product in 1977 far exceeded the demand for gasoline, even though Americans drove more miles than ever before."