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Reader Comment

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Dear Editor:

After reading the recent articles by Professor Fred Inbau and Professor Yale Kamisar and the other comments appearing in your "Notes and Announcements" section, I was constrained to comment on the controversy raging in your *Journal*.* I should like to pose the question: *Is public dialogue without recrimination possible?*

The liberty of the individual versus the needs of society is a constant source of concern in any civilization. Unbridled individual liberty degenerates into anarchy; unbridled societal controls develop into oppression. Can it not be recognized that we are faced with a continuum; that neither the alpha of unmitigated liberty nor the omega of unrestrained control are desirable? Where then shall the balance indicator come to equilibrium? Clearly it shifts with time. Cultural heritage, form of government, historical developments—as totalitarianism—in other countries, internal stress (as during the Civil War when Lincoln suspended Habeas Corpus), pressures of special interest groups, and other influences contribute to displacement of the equilibrium balance point.

For the past quarter of a century or so we have had a trend in the United States, hastened by the Supreme Court in its decisions, toward the individual liberty end of the spectrum. In the past few years it has been particularly noticeable. *Benanti, Mallory, Mapp, et al.*, have placed further restrictions and limitations on the investigator. Law enforcement officers must, of course, comply with them. They need not, however, surrender their right to discuss them; to indicate their dissatisfaction with decisions that seem unrealistic; to suggest that the cumulative impact, if the trend continues, may well result in something akin to unbridled liberty. This may sound like an indefensible extrapolation. It certainly is a strong statement. It is intended to be. For this is the nature of our public dialogue relative to this question of liberty: individual versus society.

Detached discussion seems impossible. The law enforcement position has had few expository champions. Many of those who have expressed themselves often have done so intemperately, certainly inadequately, and seemingly quite ineffectively. Rebuttal dialogue by our legal brethren has not always reflected the calm consideration expected of judicious temperment. For example almost vitriolic replies to Professor Fred E. Inbau's article in this *Journal*, "Public Safety versus Individual Civil Liberties: The Prosecutor's Stand," were forthcoming so soon that it seems apparent their authors had little time for reflective analysis. Rather it seems they hoisted their lance and charged to kill off any expression of the law enforcement position.

The dispassionate discourse necessary for intelligent airing of this problem—its significance for the individual and society—would seem to require the calm conditions of an academic atmosphere in a non-urban setting. Surely the problem is too important to ignore. If the dichotomous viewpoint of the legal fraternity and police officials is not reconciled, serious distrust of each other's sincerity and dedication to the commonwealth will grow.

Many law enforcement officers with whom I have spoken consider that the legal profession is completely defense oriented. They suggest that the very limited law school credit requirements for training in the criminal law indicates the lack of importance attached to this phase of legal activity. Evidence courses are seldom presented from a prosecution viewpoint. A balanced study should include both defense and prosecution outlooks. Law students graduate with the same idealism as science students. The latter desire to be great research scientists; the former desire to champion the case of the underdog, usually the defendant in a criminal case, if they should ever "descend" to criminal practice; or they aim to create the ringing phrase in a decision, if they should ever ascend to the bench.

Polar views such as these do not contribute to mutual understanding and the satisfactory administration of justice. Only when each side thoroughly sets aside its stereotypes and mis-

* For citations to the articles and comments related to this exchange of viewpoint, see the introduction to a comment appearing in the current issue of the *Journal* by Professor Yale Kamisar entitled, "Some Reflections on Criticizing the Courts and 'Policing the Police.' "—EDITOR.

conceptions and seriously undertakes to understand completely the other's views, only then can we have the reconciliation so desperately needed.

Very truly yours,
James W. Osterburg
Associate Professor
Department of Police Administration
Indiana University
Bloomington, Indiana

Dear Editor:

I would like to express my appreciation of the very enlightening article, "Public Safety v. Individual Liberties," by Professor Yale Kamisar in the June, 1962, issue of the Journal.

As a law enforcement officer, needless to say, I recognize that United States Supreme Court decisions such as the *McNabb* and *Mallory* cases leave their mark on police activities in the law enforcement field, in that there is a sudden halting of established practices and procedures which have become a part of law enforcement, although without legal sanction.

This, of course, brings to mind that there are two ways of doing something, a right way and a wrong way, making it possible that sides be taken, either pro or con.

In his article, Professor Kamisar has, to my mind, very ably made quite clear just what *McNabb* and *Mallory* mean to law enforcement, that is, that practices and customs which were long ago established in the development of the law of arrest must give way to legal procedures, though in many instances courts have gone along on lines contrary to the principles established by *McNabb* and *Mallory*.

Quite true, Professor Fred E. Inbau, who has made many fine contributions in writing and otherwise towards developing the standards of law enforcement, is entitled to his "day in court." But Professor Kamisar's article certainly bears out that much of the early uneasiness among law enforcement officers because of *McNabb* and *Mallory* is gradually disappearing by an acceptance of and conformance with those principles.

In conclusion, I might say that there is a very simple solution to these highly controversial questions of exclusion and delayed arraignment, and that is: give the police officer a uniform statutory law of arrest, so that he will have something to guide him in his highly important and exceedingly dangerous task of law enforcement.

In this matter, he has no choice. He must depend entirely upon the whims of the law makers for his authority to arrest and related procedures, which are not too good at their best.

Asking the police officer to employ the tools of trade he has in hand today relative to arrest, is like asking him to expedite the flow of traffic on any principal traffic artery today by compelling him to maintain a single file of vehicles, merely because that particular traffic artery was built upon what was many years ago a winding cow path which would accomodate only one single line of cows.

Medical science looks ahead—through research, etc.; incurable diseases are not treated today by applying a poultice made of herbs from the fields. Not so with the science of law; it seems to look back, not ahead—and, it seems, the further back the better.

Give the law enforcement officer a working plan, something stable, and he will understand what to do with it and how to make use of it to the best interests of the public which he serves and to which he has dedicated his life.

Very truly yours,
Lieutenant Otto A. Urban
Baltimore City Police Department