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SOME TRENDS IN THE LAW OF ARREST*

Roy Moreland**

One of the encouraging things about the law is the fact that it does move—although often too slowly—in attempting to adjust itself to the needs of a changing society. The criminal law, in particular, has made tremendous strides in the past fifty years, especially in the substantive field. Previously, little progress had been made in three or four hundred years. And now, especial and marked improvement is to be hoped for in the new Model Penal Code on the substantive criminal law being prepared under the auspices of the American Law Institute.

It should be emphasized that this project of the Institute, unlike practically all of the others, is to be, not a restatement, but a model criminal code framed to fit the times.

When the usual speaker or writer discusses the Law of Arrest, he rehearses the procedural or adjective phase of the subject. This is quite natural since that is where the great majority of the practical problems lie and where improvement needs most to be made. But, since this is true, one is apt to overlook evolving principles or needed changes on the substantive side. Encouragingly, instances where improvements have already been made, or are in the process of being made, may be found there too. A few instances of these will be mentioned before the discussion turns to the procedural phase of the law of arrest.

One of the substantive rules having to do with the law of arrest has been so much criticised and so nearly repudiated that it may be said to be already out of the law for all practical purposes. This is the historic rule that if one kills an officer while resisting arrest, it is murder. Sometimes, the old rule has been justified as necessary to maintain the “justice of the realm”; sometimes, it is stated that

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*A substantial portion of the materials in this paper was used by the author as a member of the panel which discussed “The Law of Arrest” at the Round Table on Torts and Criminal Law at the 1954 meeting of the Association of American Law Schools held in New York City in December, 1954. A part of these materials will appear in a forthcoming book.

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1. Tent. Draft No. 1 of this new project of the American Law Institute is dated May 1, 1953. A second Tent. Draft is dated May 3, 1954. Broadly speaking, General Principles of Liability, Property Crimes, and Sentencing and Probation are the only topics covered in these two tentative drafts. The Reporters are Herbert Wechsler, Chief Reporter, and Morris Ploscowe, Louis Schwartz, and Paul Tappan, Associate Reporters.

it is necessary to protect arresting officers in the exercise of their duties. But, while modern decisions often assert the doctrine, a study of the cases reveals that the defendant would be guilty of murder on another ground, such as the use of a dangerous weapon. At any rate, resistance to lawful arrest was only a misdemeanor at common law and it is generally placed in the same category under modern penal codes, so the offense, at most, should be no more than manslaughter. And, to take one further step, since the misdemeanor-manslaughter rule has broken down, except where the misdemeanor is dangerous in itself, the rule, as baldly stated, should be outlawed. Otherwise, a defendant may be convicted for the resistance to arrest rather than for the killing. Livingston Hall administered the coup de grace to the old rule, let us hope, when, in his article in the *Harvard Law Review* on “Fifty Years of the Substantive Law of Crimes,” he said:

“The ancient doctrine that a murder conviction could be founded upon a death . . . occasioned by resistance to lawful arrest is being limited. [The doctrine], supported for centuries on dicta, is at last recognized as nonexistent. ‘Constructive crime’ is no longer favored.”

A second decided improvement in the substantive law of arrest is now going on as to the ancient rule that an officer may do all that is reasonably necessary to effectuate the arrest and thus prevent the escape of a felon—even to the taking of his life. The rule was largely grounded, originally, on the reasoning that the felon’s life was already forfeited by the felony which he had committed, since all felonies were punishable by death in the early days. The rationalization today is more difficult. Fundamentally, it is based upon the belief that such a person should not escape trial for his crime. Furthermore, there is the additional factor that in many of these cases the arrestee, a felon, would be dangerous to the community if he were allowed to escape into it. And finally, the rule is based partly on the reasoning that an officer is expected to

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3. Foster, *Crown Law* 308 (2d ed. 1791); see State v. M’Mullen, 2 Ir. R. 9, 21.
5. See id. at 388.
accomplish his lawful mission of arrest, and this he should be permitted to do where the arrestee is a felon, even though it necessitates the taking of the felon's life.

At any rate, the rule has been as stated. However, although the rule still stands as to major, atrocious felonies, an increasing opposition has arisen to it where the felony is but a minor, non-atrocious one. A mountain boy is discovered carrying a jar of moonshine whiskey, a statutory felony. The officer attempts to make an arrest but the lad flees toward a nearby forest. He is about to get away, so the officer shoots him in the back to prevent his escape. Such an act on the part of the officer should not be excusable, and there is a trend in that direction. The statutory offense, although a felony, is but a minor one. It is non-violent, non-atrocious, and not too serious socially. Certainly its seriousness is not comparable to the value of the boy's life, thus taken suddenly, without trial. If tried and convicted, the statutory punishment would have been far less than death. The officer, as judge and jury, has inflicted a punishment far, far in excess of that provided by law. Furthermore, and this is also important, the boy could probably have been found in his bed that same night and the arrest peacefully consummated. But, even if he had fled the jurisdiction, it is better that he should have escaped than that his life should have been taken for such an offense.

Fortunately, the American Law Institute Restatement of Torts has taken the view that neither an officer nor a private person, with or without a warrant, is privileged to use deadly force merely to stop the flight of one whose arrest is sought for the commission of a non-dangerous felony. Rollin Perkins, pointing out that case authority does not support this position as far as it concerns peace officers, is of the opinion that the prestige of the Restatement of

10. See the discussion, Moreland, The Use of Force in Effecting or Resisting Arrest, 33 Neb. L. Rev. 408-412 (1954).
12. Fortunately, there is positive case authority for the Restatement rule as to private persons. For example, in the following case, which involved the theft of a hog, a statutory felony, the court said:
"It must be, however, that the powers of arresting, and the means used must be enlarged or modified by the character of the felony. The importance to society of having felons arrested in cases of capital felonies—such as murder and rape—must be much greater than in cases of inferior felonies, such as larceny. . . . Extreme measures, therefore, which might be resorted to in capital felonies, would shock us if resorted to in inferior felonies." State v. Bryant, 65 N. C. 327, 328 (1871).
Torts will do much to further its acceptance on the criminal side.\textsuperscript{13}

Perhaps the most persuasive and most vigorous argument for the proposed modification of the rule was made by Professor Mikell in a debate at the annual meeting of the Council of the American Law Institute in 1931 on a proposed provision in the Model Code of Criminal Procedure to limit an officer's right to kill to effect an arrest to cases where "...the offense for which the arrest is being made or attempted is treason, murder, voluntary manslaughter, mayhem, arson, robbery, common law rape, kidnapping, burglary, or an assault with intent to murder, rape, or rob."\textsuperscript{14} Professor Mikell argued, in part, as follows:

"It has been said, 'Why should not this man be shot down, the man who is running away with an automobile? Why not kill him if you cannot arrest him?' We answer: because, assuming that the man is making no resistance to the officer, he does not deserve death. If we catch him . . . what do we do to him? Put him before a policeman and have a policeman shoot him? Of course not. We give him three years in the penitentiary . . . Is it for fleeing that we kill him? Fleeing from arrest is also a common law offense and is punishable by a light penalty, a penalty much less than for stealing the automobile. If we are not killing him for stealing the automobile and not killing him for fleeing, what are we killing him for?"\textsuperscript{15}

However, the proposed provision encountered so much opposition that it does not appear in the Official Draft of the Model Code of Criminal Procedure.

Nevertheless, it may be concluded that there is considerable secondary authority and occasional vigorous dicta\textsuperscript{16} in decisions that an officer cannot kill to prevent the escape of one who has committed a minor felony, non-violent in character, the Restatement of Torts supports that view, and the trend seems to be in that direction.

The two trends in the substantive law of arrest which have been discussed favor the defendant; the one to be mentioned now presents the other side of the shield in that it favors the prosecution. One of the most interesting jurisprudential propositions in the criminal law is that of provocation which reduces or mitigates an intentional unlawful killing from murder to voluntary manslaughter. In such cases the law might well, since the homicide is neither

\textsuperscript{15} 9 Proceedings A. L. I. 187-188 (1943).
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justifiable nor excusable, hold the defendant guilty of murder; it might, on the other hand, since he acted in hot blood under compelling circumstances, excuse him; it does neither—in effect it compromises with him and holds him guilty of a middle offense—voluntary manslaughter.\(^1\)

One of the provocations, which will reduce an intentional unlawful killing from murder to voluntary manslaughter is an illegal arrest. Should this provocation operate automatically in favor of the defendant? In other words, in a case where the defendant has no heat of passion in fact should he, nevertheless, be guilty of voluntary manslaughter, if the arrest is illegal and the unlawful killing intentional? A minority group of states hold that the rule of reduction operates automatically,\(^1\) in the absence of "express malice."\(^2\) Jurisdictions which follow this rule base their reasoning fundamentally, not upon the doctrine of provocation, but upon a social policy of protecting the liberty of the individual citizen against the unlawful enforcement of the law. One must not make light of such reasoning—it is important to preserve the liberty of the citizen and to encourage the love of freedom in every heart. And the unlawful encroachment upon individual liberty should be resisted no matter from what source it comes. On the other hand, even the most ardent lover of individual liberty would find it difficult to maintain that one should \textit{kill} an officer to prevent an illegal arrest. But suppose the arrestee \textit{does} kill the officer under such circumstances? The law may well, under ordinary principles of provocation, reduce the offense to voluntary manslaughter, if the defendant acted under heat of passion caused by the illegal arrest. But, if the rule operates automatically, it will result in many cases in reducing the offense for defendants who did not even know that the arrest was illegal,\(^2\) and so in fact had no legal heat of passion. For example, the arrest

\(^1\) See the discussion, Moreland, The Law of Homicide 67 (1952).

\(^2\) Commonwealth v. Carey, 66 Mass. (12 Cush.) 246 (1853); Commonwealth v. Drew, 4 Mass. 391 (1808); Jones v. State, 170 Miss. 581, 155 So. 430 (1934); Dickey, supra note 4, at 379-382. For cases holding that the rule does not operate automatically in the case of express malice, see Rafferty v. People, 72 Ill. 37 (1885).

\(^3\) The term "express malice" is an unhappy one in this connection. This is because the use of the word "express" is redundant. Malice (intent) alone is sufficient to support a conviction of murder under commonly accepted principles. But the cases use the phrase, "express malice." About all that can be said is that in the cases which have applied the "express malice" rule, the party who committed the unlawful killing has made it clear that he was not acting from a passion provoked by the illegality of the arrest. See the discussion, Dickey, supra note 4, at 381.

\(^4\) For an illustration, see Regina v. Tooley, 2 Ld. Raym. 1296, 92 Eng. Rep. 349 (1709), "They saw a woman, for aught appears, a perfect stranger to them, led to the roundhouse under a charge of a criminal nature.
may have been illegal because of some technical defect unknown to the defendant. That means that so far as his knowledge went the arrest was legal. In such a case the real incentive for the killing was something other than the illegality of the arrest. To permit a defendant to seize upon the rule of reduction under the guise of protecting individual freedom under such circumstances is not a wise public policy, it is believed. Moreover, it is at variance with the usual rule of reduction which does not operate automatically but only if there is heat of passion in fact. And the trend seems to be toward the view that the reduction does not operate automatically, and it is already the rule in the majority of states.21

Let us turn now to some trends on the procedural side of The Law of Arrest. It is here that one finds most of the criticism of the law and of its administration. Criticism runs in two more or less divergent directions: (1) The police do not enforce the law adequately, (2) The police continually, repeatedly and flagrantly disregard the constitutional rights of those who come under their jurisdiction.

This divergence leads one at the very outset of any discussion of criminal procedure to face that fact of life, so well pointed out by Jerome Hall,22 that in this field there is bound to be a continual conflict between the great desire of the public for security and protection from those who commit crime on the one hand and the strong political and social insistence on the personal liberty of the individual and protection from physical and/or mental pressures by those who enforce the criminal law on the other. Necessarily, there must be a continual compromise between these two public desires, which leads one naturally and logically to the conclusion that, all factors considered, "... the ideal police force [is] the one which affords a maximum of protection at the cost of a minimum of interference with the lawful liberty of the subject."23

This upon evidence at the Old Bailey, a month or two afterwards, cometh out to be an illegal arrest and imprisonment, a violation of magna charta; and these ruffians are presumed to have been seized, all of a sudden, with a strong zeal for magna charta and the laws, and in this frenzy to have drawn upon the constable and stabbed his assistant. It is extremely difficult to conceive, that the violation of magna charta, a fact of which they were totally ignorant at that time, could be the provocation that led them to this outrage.” Foster, Crown Law 316 (2d ed. 1791).
The procedural trends to be discussed in this paper will have to do with only the second common criticism of the police—that they repeatedly and flagrantly disregard the constitutional rights of those who come under their jurisdiction. There are many phases of this unlawful enforcement of the law by the police. The one to be discussed first is one of their worst offenses—physical and/or mental pressures exerted on those in their custody in order to obtain confessions or information. Such cases fall broadly under the well known heading, "The Third Degree."

One does not have to make out a case to show the use of the Third Degree by the police. The papers are full of instances of it. Repeatedly, cases involving it get into the courts, sometimes going all the way to the Supreme Court of the United States. Periodically, individual police officers, here and there, admit its use, justifying it on the ground that it is necessary to get evidence. One of the strongest indictments of the practice on a high level, indicating its wide use throughout the country, is found in the Report of the Wickersham Commission which, after a thorough investigation, concluded:

"After reviewing the evidence obtainable the authors of this report reach the conclusion that the third degree—that is the use of physical brutality, or other forms of cruelty, to obtain involuntary confessions or admissions—is widespread. Protracted questioning of prisoners is commonly employed. Threats and methods of intimidation, adjusted to the age or mentality of the victim, are frequently used, either by themselves or in combination with some of the other practices mentioned. Physical brutality, illegal detention, and refusal to allow access of counsel to the prisoner is common."\(^\text{24}\)

That was in 1931. Conditions are little better today, it is believed. Most alarming, is the fact that it is becoming standard procedure in many cities. As stated by Sam Bass Warner, "Everywhere the formula for successful detective work is that laid down by former Captain Fiaschetti of the New York City police: 'You get a bit of information, and then you grab the suspect and break him down. That is how detective work is done—a general formula.'\(^\text{25}\) Several months ago an attorney whose name is well-known all over Kentucky made a public address. He was recounting his experiences in his first criminal case as a young lawyer. His client was a Negro and the prosecution had a full confession. The Negro told him


\(^{25}\) Warner, How Can the Third Degree Be Eliminated, 1 Bill of Rights Rev. 24, 25 (1940).
that it had been beat out of him, but how could the lawyer prove it? It happened that the lawyer recounted his problem to a young newspaper man—who it happens has since become a national figure. The young reporter flush with friendship—and several drinks—told the attorney that he had witnessed the beating of the Negro and the obtaining of the confession. According to the reporter the Negro had been brought into a room with a policeman holding each arm. A third policeman asked the Negro for a confession. The man remained mute. The policeman hit him with his fist. Then again the question and, then again, a blow. This went on until the Negro was upon his knees and had consented to sign a confession. Also present in the room, as the fourth policeman, was a sergeant, a man who later obtained high position in police circles and in politics—a man of high reputation for integrity in the community—the type of person who would not be expected to countenance such proceedings.

The following day the young lawyer went to the reporter and asked him if he would testify to the beating when the case came to trial and the confession was introduced in evidence. The reporter refused—he was a newspaper man and this would be a violation of confidence—and besides he would then be at odds with the police and never be able to get another story from them. But another young reporter who saw the beating did testify at the trial—he had obtained another job, was leaving town, and so was free to testify! The first reporter was also subpoenaed to corroborate the testimony and when asked at the trial whether he had seen the alleged beating simply replied, “I was looking out of the window at the time.” The reporter had kept faith but the jury had heard enough and they set aside the confession!

This historiette is recited for several purposes. First, the third degree is not limited to Chicago and other large cities—it happens in many places. Second, it is often practiced by authority of, or at least under the condonation of, police officials who are otherwise practically above reproach. Third, if this Negro or anyone else who has suffered the third degree (whether guilty or innocent) wishes to prosecute an action, he will find himself without relief. He has no witnesses. Furthermore, the officer is practically always personally execution proof and his bonding company will insist that he acted outside his authority in resorting to duress.26

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There are those who consider that it will remain impossible to stop the practice so long as there remains a need for the police to question suspects in order to get confessions or information. To satisfy this need for questioning by the police by providing for it elsewhere and by others than the police, there has developed a trend toward allowing the judicial officer who holds the preliminary examination to question—at length if desired—at that time. It is the argument of Sam Bass Warner, one of the leading advocates of this procedure, that it will do away with most of the need for questioning by the police and that, consequently, such questioning by them will then come to an end. If it persisted on occasion, then, there being no longer a public policy or interest to be served by leniency toward such unlawful conduct by the police, they could be, and probably would be, vigorously prosecuted and convicted.

The writer does not believe this, since it is practically impossible to obtain prosecution and/or convictions of the police for any acts arising out of and in the course of duty, and so he does not believe such a procedure would stop police questioning. But the primary objection to such a procedure is of a more fundamental nature. Such a procedure, being inquisitorial, would be in direct conflict with the American accusatorial form of criminal procedure. And, while it is true that the examination would be in public, the preparation of the accused for the public appearance might well be made in private. The Russians have shown how efficient private grooming for a public hearing can be. It is concluded, then, that the introduction of this inquisitorial procedure would not achieve its purpose and, more importantly, would lead to evils more serious than the one it would attempt to prevent. Indeed, it would be in violation of the constitutional privilege against self-incrimination.

27. At the Round Table where this paper was presented, along with four others, it was stated two or three times in the discussion that the third degree is seldom used today. It is the writer's opinion from his reading of the newspapers, professional materials, and a number of contacts with professional law enforcement officers that it is true that extreme physical brutality as a part of third degree procedure is now unusual. On the other hand, it is believed from the evidence at hand that the infliction of mental suffering by such practices as long, persistent questioning under strong lights by changing shifts of police officers with the denial of sufficient sleep is on the increase. It is now becoming standard practice for the police to question suspects at length. What is the reader's opinion as to the use of the third degree today?

28. See Warner, supra note 25.


30. Orfield, Criminal Procedure from Arrest to Appeal 68 (1947). It has been suggested that the constitutional issue could be evaded by having the magistrate warn the accused that he did not have to answer the questions, if he did not wish to do so. Would it be constitutional to provide that in case
The second procedural trend to be discussed may not be a trend at all but only wishful thinking. At any rate, if it is not a trend it should be—an increasing tendency to question the reason for, and the wisdom of, the rude and hostile manner which the police so often use toward those other members of society with whom they come in contact.

What the writer has in mind, fundamentally, is that the police have bad public relations which should be improved, if possible. Almost every citizen has come in contact with some example of the over-bearing attitude which the police manifest so often in the ordinary administration of their work. A simple example, encountered periodically by many people, is the case of the motorcycle cop who pulls up along-side the motorist and sarcastically inquires: “Hey, Bub, where’s the fire?” This sort of opening remark naturally raises a certain amount of heat in the motorist. Surely, it does not take much wisdom to know that the public should be dealt with in a professional manner by the police, a criterion which does not include sarcasm or brow-beating.

Of course, the example given raises the problem in a minor situation. Those who travel the road frequently have had a number of experiences involving greater rudeness and creating a higher degree of heat. About fifteen years ago a motorist was returning to Kentucky from the east with his wife and baby son. Suddenly, a police car forced them over to the curb. Surprised and incensed, for the rate of speed had been very moderate, an inquiry was made as to the occasion for the interruption. Without replying to the question the State Policeman ordered the driver out of the car and told him to open the rear compartment. When questioned as to the reason for the demand the officer became menacing. When the compartment was opened, a demand was made that several suitcases therein be opened. This was done and the officer turned the contents of the luggage out on the ground. He made no attempt to keep from disarranging the materials; he threw them out in confused heaps. Not finding anything, he ordered the driver to put the contents back in the suitcases and to drive on. Questioned again as to the reason for the search no reply whatever was given. There is no excuse for such conduct. What was the officer searching for?

of a refusal to answer, after such admonition, this might be called to the attention of the jury? The writer is of the opinion that this would be an evasion of the constitutional privilege against self-incrimination. See A. L. I. Code of Crim. Proc. Dr. No. 1, 27 (1928); 3 Cooley, Constitutional Limitations 658-661 (8th ed. 1927). For a contra view, see Kauper, supra note 26, at 1239.
Was he looking for diseased fruit? Smuggled goods? Had someone robbed a bank? Or was he simply taking advantage of an out-of-state motorist who could not even answer back?23

These are traffic cases and it is in traffic situations that most contacts of the public with the police occur. The automobile has caused many ordinary citizens, who might otherwise not have active contact with the police in a long lifetime, to become subject to the abuse and invective which they so often exercise over the defenseless individuals who come within their jurisdiction. Previously, little attention was paid to abuse by the police—it was inflicted on a segment of society that did not count anyway—"poor white and poor black trash." But when the ordinary citizen is subjected to it a couple of times in the course of traffic violations, he becomes articulate. It is such people who are beginning to wonder whether better treatment should not be demanded from the police.

It is desired to turn now from the traffic cases to situations which point up far more serious abuse by the police and lead inevitably to distrust and hatred on the part of those who have received such treatment. The following extract from the autobiography of one who spent his early life as a young ruffian will illustrate this category:

"The cops kept on our tails 24 hours a day, always looking to get one of us alone in a dark place so they could beat us with their night sticks. They tried to break our legs, so we couldn't run for a while or—even better—end up crippled. Every time the cops nabbed us, they tried to sucker us into running so they would have an excuse to fire at us, but we never fell for this trick....

"My own personal enemy was Casey the Cop. He caught me in a hallway, after I had clipped a bag of coal. I remember laying in this dark corner, my legs battered and without any feeling, my teeth scraping against the tile of the floor, blood coming out of my mouth, blood running down my forehead, and Casey the Cop standing over me, laughing, and saying, 'You dirty, thievin' little Guinea greaseball. Maybe now you'll think twice before you steal on my beat again.'24

That was Rocky Graziano who was speaking. And, it must be admitted that Rocky was a pretty tough kid. But, such treatment

31. This incident, while rather extreme, has its parallels. The author is in possession of the accounts of others, just as outrageous. Motorists who travel the roads a great deal know of similar incidents, which, while they differ as to their facts, show an equal degree of rudeness. Many traffic policemen and constables are uniformly courteous, others are not, or are not on occasion. The out-of-county or out-of-state motorist is the one most likely to experience such conduct.
on the part of the police is not only unlawful—it defeats its own purpose. It breeds hatred. It puts the law on one side and the kids on the other. Such police-hating kids grow into adults who despise the law—and fight it all their lives.

Admittedly, there is much to be said on the other side. Many of those with whom the police deal are armed and hard to handle. That is part of the problem; the law should deal more severely with those who carry firearms without valid reason! But many of those with whom the police deal are not criminals, they are ordinary citizens or boys. The trouble is that the police have a set pattern of being tough and rude and over-bearing. There are, of course, exceptions, but they simply point up the pattern.

Of course, the problem is not an easy one. Naturally, it is hard to create an atmosphere of sweetness and light while warning an individual that he is breaking the law or while making an arrest. But others than the police have similar tasks and do a better job—judges, teachers, those who employ labor. The point is that while the problem is not an easy one, it can be handled better than the police, as a profession, are handling it now. It is handled much better in England.

What are some constructive measures to improve the situation? The first suggestion that is always made when this subject is discussed is to improve the caliber of those persons who serve as police. This immediately leads to the second suggestion, which is, “The Police Should Be Better Paid.” There is merit in both suggestions, it is hardly debatable that the police are poorly paid considering the responsibility of the position they occupy. Of course, the modern solution to all problems is to collect and spend more tax money! In this case, it is believed very justifiable.

But the problem is deeper than personnel. There is something wrong with the fundamental attitude of the police toward the public and, partly as a consequence, in the attitude of the public toward the police. The defect is a professional one. After all, the police, al-

33. “From the viewpoint of efficiency, police lawlessness is the worst possible practice. It builds the wall between police and public higher than ever. It stops channels of information and blocks the sources of evidence. Realization that the police are a mere handful, impotent to control by sheer physical force, as is demonstrated when rioting breaks out in a large city, makes it evident that the usurpation by the police of judicial or executive functions comes at a high price in a civilized community. If the police are educated to understand the rules of law which define their particular job, and if they function impartially within the limits of those laws, they will preserve democratic procedures and win the public support that is essential to police efficiency.” Hall, Police and Law in a Democratic Society, 28 Ind. L. J. 133, 156 (1953).
though occupying an official position, are people and citizens too, trying to do a job, just as those in other professions. They should not be swept away with the authority temporarily handed to them, they are not on one side and the public on the other. Other citizens have potential points of conflict with the public too; they resolve them without unreasonable heat and friction; otherwise they lose their jobs. The same should be true of the police.

It is believed that the problem should be recognized and remedied by the police themselves. Zechariah Chafee voiced this thought when he said in discussing remedies for the unlawful enforcement of the law by the police: “The best solution must come from within the police department itself.” It would be well if individual police departments would develop an esprit de corps based upon courtesy and efficient firmness rather than upon rudeness and brutality. But it is increasingly apparent that such a change will not come about without pressure from without. Let us hope, then, that there is a trend on the part of the public toward applying that pressure by way of demanding more considerate and humane treatment at the hands of the police who are, after all, professional employees, not the masters, of the people.

Lest this language sound unfriendly, let us hasten to say that such is not its design. It is intended rather to focus attention upon an unfortunate condition that exists in the administration of the criminal law in the hope that something will be done about it. And there are many things that can be done to improve the public relations of the police. For example, Halloween was always a time of deep conflict between the police and a certain segment of the public in Lexington, Kentucky. Repeatedly, the tension and hostility between the two groups culminated in the use of night sticks and arrests. Always there was more than a considerable destruction of property. But, beginning around 1950, the police have run a Police Festival on Halloween Night, which has completely cleared up the situation. They use hill-billy music, boxing, tumbling, and other free exhibition acts and distribute donated candies and such. The program has been a tremendous success from the beginning. Now in its fourth year it has grown to such an extent that thousands of youngsters attend and it has become necessary to run it simultaneously in two sections in opposite ends of the city. When the event is over, around 11:00 p.m., the youngsters go home. Believe it or not, destruction and rowdism have practically ceased. For one

night the police are on the side of the kids. And likewise, the kids
are on the side of the police! Similar remarkable success has been
achieved in Lexington with local police administration of the
Golden Gloves boxing eliminations. Such instances are but a start
in a program which would make the police, like other citizens, a part
of an interlocking, co-operative society.35

35. The author has felt for years that the public relations of the police
should be improved. He wondered why others did not have the same idea but
found practically nothing in the periodicals on the subject. Inquiries have
developed the fact, however, that a number of individual police departments
have been working quietly on the problem. State police, particularly, are
giving attention to this phase of their professional relationship with the
public. Recently there was handed to the author by a state policeman a small
pamphlet, written by a policeman for police, which handles the problem in a
very persuasive way. This booklet, Rocks in the Roadway, written by Dan
Hollingsworth, contains a Foreward by Franklin Kreml, Director, The
Traffic Institute, Northwestern University and The Traffic Division, Inter-
national Association of Chiefs of Police.