

his actions, under the circumstances then existing, are such as to arouse reasonable suspicion that the suspect may have contraband in his possession.

The reasonable arrest privileges mentioned above would facilitate the achievement of objectives in law enforcement desired by all persons except the criminals themselves. The privileges would enable the police to exercise such control over persons in public places as to enhance the peace and security of all citizens.

These privileges do not threaten the lives or health of the innocent; the inconvenience of 6 hours of detention short of arrest is experienced only by the innocent person who inadvertently or by poor judgment is found in a situation that arouses police suspicion and which the suspect is unable or unwilling to explain on the spot.

In view of the present jeopardy to public security, such inconvenience seems a small price to pay for the privilege of living securely and peacefully.

Police abuse of authority with criminal intent resulting in serious offenses must always be dealt with by criminal prosecution and disciplinary action. Establishing safeguards against abuse of authority by the overzealous policeman in the day-to-day performance of his duty presents quite a different problem. Safeguards that weaken law enforcement or free the guilty are socially undesirable; if possible the problem should be solved in some other way.

Civil suits for damages filed against the individual officer have not proved adequately effective in preventing police abuse of authority. Were this procedure effective, however, it would emasculate vigorous police action and law enforcement would be weakened at a time when it needs to be strengthened.

Negating police overzealousness by freeing guilty defendants violates the principle that the guilty should be adjudged guilty, punishes society rather than the policeman, rewards the guilty, and is a miscarriage of justice. Its effectiveness as a control of police abuse of authority has not been demonstrated.

The Committee on Criminal Law and Procedure of the California State Bar proposed that:

* * * the answer might lie in a new kind of civil action, or better, a summary type of proceeding, for a substantial money judgment in favor of the wronged individual, whether innocent or guilty, and against the political subdivision whose enforcement officers violated that person's rights. After not many outlays of public funds the taxpayers and administrative heads would insist upon curbing unlawful police action (29 Cal. St. Bar Jour. 263-64 (1954)).

Prof. Edward L. Barrett, Jr., of the University of California Law School, in commenting on this proposal, stated:

Legislative action along these general lines gives promise of providing a more adequate solution than the exclusionary rule at a smaller social cost * * *. The remedy would be available to the innocent as well as the guilty, for the illegal arrest as well as the illegal search. The courts would have frequent opportunities for ruling on the legality of police action, for enunciating and developing the governing law. If in any community a substantial number of such actions become successful, the financial pressure on the police to conform more closely to judicial standards would doubtless follow.

Finally, if a careful line is drawn between those situations where increased personal liability should be placed upon the individual policeman (basically those involving serious and intentional violations of law) and those where he should be immunized and sole liability placed upon the governmental agency, interference with the efficient functioning of law enforcement would be minimized (43 Calif. L. Rev. 465, 595 (1955)).