
Debate on Crime

The exchange of letters between Attorney General Katzenbach and Judge Bazelon reflects the soul-searching that is going on in the whole legal profession over the means of achieving better enforcement of the law without jeopardizing the constitutional rights of accused persons.

Three of Judge Bazelon's specific criticisms of the proposed American Law Institute Model Code of Pre-Arrest Procedure seem to this newspaper to be very pertinent and persuasive. The proposals for detention and questioning of citizens and dragnet arrests, the approval of police questioning from four to 24 hours, the suggested banning of counsel from preliminary interrogation—all these seem unwarranted departures from previous practices hitherto regarded by the courts as essential to the rights of the accused.

These revisions are objectionable on their general merits but we think the Judge has weakened his case by relating his own objections so narrowly and specifically to the disadvantage they work upon the poor. The perfect equality we seek is not often attained when individuals of disparate means, intelligence, appearance, reputation and ability are arrayed against the state. There is an inequality, as Anatole France long ago pointed out, even in laws providing that neither the rich nor the poor may sleep under bridges or steal bread. General Katzenbach rightly argues that the courts cannot confer equality on the citizens who appear before them, but the debate has trapped him into an appearance of indifference about the desirability of diminishing the disadvantages of the poor that does not do justice to his usual fairness and compassion.

It is good to have the Attorney General expressly acknowledge that it is "entirely proper to limit what the police may do in the course of an investigation, even if those limitations result in some of the guilty avoiding conviction," but of course, it is precisely at the point of how much limitation is appropriate that the argument begins. And here he and Judge Bazelon clearly differ. The nub of the argument concerns how much limitation is appropriate and how many guilty may escape before police must be given more latitude than hitherto thought safe in a free society.

When this is accepted as the issue we then must proceed to examine the state of law enforcement. Is the menace of lawlessness, and the inability of the police and courts as presently constituted, so great as to warrant the abandonment of safeguards long thought essential to the preservation of individual rights? And, to go a step further, are we assured that such a relaxation of historic guaranties will have the effect upon law enforcement that we wish? In spite of the seriousness of the situation we think the answer to

both propositions is "no."

The limitations upon police power of which much complaint is made do not derive from the idiosyncracies of individual courts or judges (and the Attorney General was unwise to attack one court) but from the protections of the Constitution. They require, essentially, that the Government and the police make their own case against an accused person and that they do not rely primarily upon the accused to make the case against himself. And this requirement, in turn, imposes upon society the necessity of having more police, better-trained police and better-equipped police.

Members of the bench and bar are properly concerned about the functioning of the police and the courts in an age of so much crime. The Bazelon-Katzenbach discussion is a useful one and should help citizens resolve some of the issues in their own minds. One must hope it will not eclipse appropriate attention for the serious work to be done before crime cases reach the courts and after they leave the courts. Society already has failed when the accused stands in the dock; and its efforts to reform and rehabilitate the convicted is a dismal record of almost unbroken failure. There is a great deal that might be done to prevent crime and to cure the criminal impulse of the known offender. If there is to be a great national debate on the problems of crime it ought to go beyond the functioning of the police and the courts. And certainly, a more serious attack upon aspects of crime that lie wholly outside the legal process ought to precede any forfeiture of protections with which this country historically has surrounded the accused.