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Tempered Zeal: A Columbia Law Professor's Year on the Streets with the New York City Police

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TEMPERED ZEAL: A COLUMBIA LAW PROFESSOR'S YEAR ON THE STREETS WITH THE NEW YORK CITY POLICE. By *H. Richard Uviller.* Chicago: Contemporary Books. 1988. Pp. xix, 234. $19.95.

> There was a stickup team doing hotels in the Bronx. They would come in, show a badge and say they were cops, and then hold up the place. . . . Well, we had a description of their car, and one night we saw it and pulled them over. We told them to get out of the car. One of the guys is standing only about four feet away from me and he says, "Hold it, hold it! I'm on the Job!" He reaches into his pocket, and I think he's going for the Shield. He pulls out a gun and starts firing at me. I shoot back. We both miss. . . .
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> . . . .
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> There were a lot of shots fired that night. I still remember, I could see the bullets coming out of the guns. You really can see these little red streaks. . . . This was a crowded street, too . . . children playing and everything. And thank God, the only person who got hit was one of the bad guys.[1]

Tempered Zeal's gritty, anecdotal style makes for quick and engrossing reading. The book describes the experiences of H. Richard Uviller, a Columbia law professor who spent his sabbatical leave accompanying New York City police officers on their rounds. Uviller captures the flavor of the street cop's experience by interspersing their stories with his own observations.

Uviller begins with the well-worn proposition that those individuals who have the most direct impact on the creation of criminal law are often far removed from those who must apply the law in practice. To the average cop on the street, the legal scholar, judge, and even prosecutor seem light-years away. *Tempered Zeal* is Uviller's attempt to bridge the gap between the law on the books and the law on the streets. Although Uviller is successful in communicating the emotional atmosphere that permeates a cop's life, his attempt to integrate academia with the stationhouse ultimately falls short.

Uviller, a former district attorney, had been teaching courses in law enforcement and constitutional law for fourteen years when he became troubled by what he perceived as his lack of familiarity with the way criminal law operates in practice. As he describes it, "I realized I no longer knew how the [Supreme] Court's message sounded in the stationhouse and the squad car" (p. x). Accordingly, Uviller chose to spend eight months of sabbatical leave with New York City's Ninth Precinct Robbery Identification Program. *Tempered Zeal* is an amalgamation of his personal observations and perceptions as he accompa-

1. Pp. 67-68 (quoting New York City Police Officer Joe Dean).

nied police officers on nearly every aspect of their work (which they reverentially refer to as "the Job").[2]

The book vividly describes individual officers, their backgrounds and motivations, their interaction with the public, and their frequent frustration with the imperfections of the system. Uviller's perceptions can be roughly divided into two types: observational axioms about modes of police behavior, and analyses of specific constitutional commands as applied in practice.

One of Uviller's more startling axioms concerns police officers' views of their own discretion. Uviller asserts that police officers in most cases tend to *overestimate* the institutional restraints placed upon their authority (p. 79), noting various instances in which police officers refrain from doing all that the law permits. For example, Ninth Precinct officers generally required that witness identifications from a lineup be ninety-percent certain, a higher standard than is necessary under the legal probable cause standard (pp. 78-80). Similarly, Uviller describes an officer's unwillingness to use false statements to obtain a confession, despite Uviller's questionable assurances that this would be perfectly constitutional.[3]

Another, perhaps less startling axiom involves the "confident misunderstanding of ministerial rules" — the stubborn adherence to a mechanical routine or procedural "rule" in the mistaken belief that it is constitutionally or statutorily required (p. 99). By way of illustration, Uviller describes the precinct's almost comically persistent belief in the "two-hour/two-mile rule" (pp. 107-09). Uviller had protested at the officers' use of a "show-up" (a one-on-one exposure of suspect to victim for identification) instead of a regular line-up. The officers assured Uviller that because the show-up took place within two hours and two miles of the crime, its use was permissible, notwithstanding its suggestiveness and the feasibility of a traditional line-up.[4] When pressed to find the source of the rule, officers could only point to a

2. Uviller's methodology was rudimentary. Granted unlimited access by the New York City police commissioner as a "civilian observer," his data consist of his own observations and the experiences recounted to him by individual officers. Pp. xiv-xv.

3. Uviller does not offer any analytical or judicial support for his assurance to the officer. Apparently, Uviller relies on the *Miranda* Court's failure to establish guidelines for police conduct *after* a suspect freely consents to talk to police. *See* Miranda v. Arizona, 384 U.S. 436 (1966); Y. KAMISAR, W. LAFAVE & J. ISRAEL, MODERN CRIMINAL PROCEDURE 623 (6th. ed. 1986) ("the issue is still largely unresolved"); *see also* Frazier v. Cupp, 394 U.S. 731 (1969) (admitting a pre-*Miranda* confession despite misleading police suggestion); Oregon v. Mathiason, 429 U.S. 492 (1977) (interrogator's false statement to suspect irrelevant to issue of whether suspect was in custody such that *Miranda* warnings were required). However, a strong argument can be made that forms of interrogation that "distort" or "vitiate" a suspect's *Miranda* warnings should be prohibited. *See, e.g.,* White, *Police Trickery in Inducing Confessions,* 127 U. PA. L. REV. 581, 581-90, 599-600 (1979).

4. *See* Stovall v. Denno, 388 U.S. 293 (1967) (confrontation that is "unnecessarily suggestive" could deny a suspect due process of law); *cf.* Neil v. Biggers, 409 U.S. 188 (1972) (show-up did not violate due process standards despite absence of exigent circumstances).

dated departmental memo which stated that under unusual circumstances when a line-up is impracticable, one-on-one identification could be used instead. Uviller's illustration soberly demonstrates how good-faith police compliance with the wrong rule can cost the conviction of an apparently guilty suspect.

Although Uviller's observational maxims make interesting reading, his inability to target a specific audience prevents them from becoming much more than that. It is not clear whether Uviller is using these maxims to dispel popular myths about law enforcement, to provide background material for legal scholars and lawmakers, to criticize the workings of the criminal justice system, or merely to provide entertainment for the police aficionado. Uviller's lack of a focal audience or purpose detracts from the overall impact of his anecdotes.

Moreover, the validity of Uviller's axioms in any broader sense is open to question. Uviller's book is methodologically weak — his "data" consist solely of his own impressions of one precinct in one particular urban area. The reader is left wondering whether police officers in other environments (such as a rural or suburban precinct, or a different part of the country), or of different backgrounds (native New Yorkers versus nonnatives, street cops versus detectives), would function in the same way as the Ninth Precinct officers. The reader may also wonder whether the officers' awareness of an outside observer caused them to alter their behavior, or to what extent Uviller's own viewpoint affected his conclusions.[5]

The legally trained reader will similarly question Uviller's analysis of constitutional issues. Uviller's treatment of the law of police interrogation provides the most glaring example. Although Uviller devotes a fairly substantial portion of his book to *Miranda* doctrine (three chapters), he fails to say anything new or insightful about *Miranda*'s vitality. The first of these three chapters explores the value of obtaining a confession, emphasizing the usefulness of the confession as a tool for obtaining other evidence of the crime (such as a weapon). Interestingly, Uviller downplays the value of a confession as accurate, admissible evidence of guilt, possibly leading the lay reader to question all the furor over the exclusionary rule.

The second of Uviller's chapters devoted to *Miranda* traces the evolution of the doctrine, detailing the assumptions that underlie the Supreme Court's decision. Uviller's position on confessions is some-

5. In the preface, Uviller describes his belief that the primary function of a criminal justice system should be the separation of the guilty from the innocent; he states that he is "rather less concerned than some of my colleagues with such questions as whether the suspect was accorded his full *Miranda* warnings at precisely the appropriate time or whether he received the assistance of counsel as he stood in a lineup." P. xiv. Uviller's own assertion that he was not unduly influenced by his personal beliefs (p. xi) simply begs the question, however, and the loosely structured, anecdotal style of the book makes it difficult for the reader to judge whether Uviller presents a biased view.

what inconsistent: he sharply criticizes the Court's central assumption that all interrogation is inherently coercive, yet seems to share the Court's "unstated mistrust" of confessions as an evidentiary tool (p. 193). He hints that complete abolition of admissible confessions may have been possible or desirable, but fails to make a cogent argument that the Supreme Court should have done so. He concludes with a healthy dose of skepticism about the effectiveness of the warnings (again, nothing new), sarcastically referring to them as "ritual purges of chimerical demons" (p. 197). Once more Uviller fails to use his extensive observation of police behavior to suggest an efficacious alternative.

The third chapter in Uviller's *Miranda* trilogy is ambitiously titled "*Miranda* in the Field." Unfortunately, Uviller's treatment of the daily workings of *Miranda* can only be described as a "cop-out." The only facet of *Miranda* explored is the administration, or rather, nonadministration, of the warnings in the squad car while a suspect is being transported to the stationhouse. Again, Uviller's conclusions are inconsistent. He first explains that the Ninth Precinct officers fail to uniformly "Mirandize" suspects in the squad car for fear the warnings will deter suspects from talking. Yet a few pages later, he suggests that the prevailing view among police is that the *Miranda* warnings "do not make a particle of difference" (p. 208).

Overall, the book's lack of substantive legal analysis is disappointing. Uviller provides many entertaining vignettes about New York City cops, but adds little fresh commentary on the interplay of the law with daily police practices.[6] Uviller fails to weave observation and insight into a coherent whole; the result is no more than a series of loosely related anecdotes relating to criminal procedure.[7]

It is telling that what *Tempered Zeal* does not do can be described more easily than what the book does. For example, *Tempered Zeal* is not a treatise on criminal procedure, nor is it a detailed description of current police practice. It does not give a coherent overview of criminal or constitutional law. It is, rather, a chatty, anecdotal book which illustrates criminal law more than interprets it. While this may be appropriate for a reader unfamiliar with criminal procedure, the legally trained reader will find the book superficial and simplistic in its treatment of such issues as search and seizure law or the rules of evidence.[8]

Moreover, *Tempered Zeal* is not a policy-oriented book. Uviller

6. For example, Uviller's discussion of *Miranda* contributes virtually nothing that a basic criminal procedure course or hornbook would not contain.

7. Uviller used his observations and anecdotes much more effectively in a recent article describing the evidentiary use of "cognitive evidence." *See* Uviller, *Evidence from the Mind of the Criminal Suspect: A Reconsideration of the Current Rules of Access and Restraint*, 87 COLUM. L. REV. 1137, 1141 n.11, 1142 n.14, 1170 n.121 (1987).

8. The reader may also wonder why Uviller felt it necessary to include certain anecdotes at

focuses on the day-to-day operation of one precinct, and except for a few hints, leaves the reader to draw her own conclusions about how the criminal law should function. Furthermore, the book is not a sociological study of police methods. The reader who is searching for tables, variables, and data will be disappointed, as Uviller presents no grand hypothesis or statistical analysis of clearance rates and such.[9] Instead, Uviller presents "[a]necdote and description" — his own brand of "impressionistic reporting" (p. xi). Although Uviller's weak methodology is a major flaw, the book's vivid descriptions of ordinary cops on the beat are the tradeoff.

Nevertheless, the reader who does not entertain any of these expectations may find something to think about in *Tempered Zeal.* For example, the reader hypnotized by the media's glamorous view of police work may gain respect for its difficulty and insight into the imperfect workings of law enforcement. The layperson may acquire a concise, though spotty, briefing on some of the key issues in criminal law. And, despite the lack of substantive legal analysis, the legal reader may come to appreciate the cop-on-the-beat's struggle to balance aggressive crime-fighting and restrained integrity. Had Uviller been able to tighten these strands with a sharper analysis, *Tempered Zeal* might have yielded a more compelling result.

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all, such as an unduly detailed discussion as to whether a male or female officer should strip-search a transvestite suspect. Pp. 105-06.

9. According to Uviller, "I resisted all temptations to formulate a theory to guide my investigation. I was determined to reverse the usual order of scholarship and let my conclusions, if any, follow from my research. . . . Thinking about the criminal justice system means thinking about judges and cops." P. xi; *cf., e.g.,* J. SKOLNICK, JUSTICE WITHOUT TRIAL (2d ed. 1975) (a classic sociological study of police administration and practices).