

Since the *McNabb* case approximately 20 years ago, interest and emphasis on the part of lawyers and judges has shifted to the rights of the individual accused of crime. Mr. Justice Frankfurter, who wrote the opinion of the Court in *Mallory*, recognized the importance of safeguarding both the rights of the individual and the balancing need for doing so in such a way as not to impair effective and intelligent law enforcement.

It is not that I am less interested than others in safeguarding the rights of the individual, it is only because I am convinced this aspect of the balance will be dealt with effectively by the courts that I should like to emphasize in this communication my views respecting the maintenance of effective and intelligent law enforcement. It is important to recall the admonition of the Supreme Court in the *Berger* case that the prime objective of the prosecutor should be to see that justice is done and that he should regard himself as the servant of the law, the twofold aim of which is that guilt should not escape nor innocence suffer (295 U.S. 78, 88).

Since the *Wan* case¹ in the early 1920's, courts and lawyers have been haunted by the fear of coercion exercised by unscrupulous police officers to the extent that there are some today who would do away with all interrogation.²

Interrogation is a vitally necessary tool in the solution of the most difficult types of crime; for instance, murders, rapes, yoke robberies, and crimes of violence in which the victim is either killed or so badly beaten as to be unable to assist in identifying the perpetrator of the crime. If a description is furnished at all, that description is likely to be meager and general. If the police are deprived of the opportunity of interrogation, our rising crime rate will certainly not be curtailed. On the other hand, it seems logical to conclude that if felons learn that they cannot lawfully be interrogated, it will have a devastating effect on law enforcement. The Supreme Court recognized this in *Crooker v. California* (357 U.S. 433, 441).

The stake of the innocent victim of violent crime is not alone his personal stake. It is closely akin to the rights of the people, generally, to use the streets in safety. We tend to lose sight of the rights of the people, generally, in our desire to safeguard the rights of those accused of crime. As Mr. Justice Frankfurter emphasized in the *Mallory* case, the delicate and difficult balance between safeguarding the rights of the individual without hampering effective and intelligent law enforcement is part of the procedure devised by Congress.

In the years directly following the *Mallory* decision, the U.S. attorney's office gave a series of lectures to the Police Department at the request of the Chief of Police on the effect of this decision on police procedures. These lectures are printed in the hearings before Senator O'Mahoney's subcommittee of the Judiciary Committee of the Senate: S. 2970 at page 396 (1958). Also filed by the Chief of Police with the House Committee on Appropriations on January 18, 1960, was a memorandum which I prepared for him setting forth the importance of increasing the size and training of the Police Department. A copy of that memorandum is attached hereto.

These detailed suggestions have conscientiously been followed but serious crime, particularly robbery and aggravated assault, has increased to the point that Washington either leads or is second in cities of comparable size in the Nation.

Whether there is a direct relationship between the restrictions imposed by the *Mallory* decision and the sharp increase in crime requires a wiser judgment than I am competent to make. Some of the other factors that have entered into the picture are: the unusual backlog of cases in the juvenile court which precluded the effective functioning of that court as a crime prevention agency; the closing of the Police Boys Club; the aggravated overcrowding in other sections of the city due to the Southwest redevelopment project; vast population shifts in and out of the city and the job dislocations incident thereto. It is also noted that nationally crime rates have risen.

The swiftness and the certainty of punishment has long been regarded as a crime deterrent. This more likely to be an acceptable conclusion insofar as robbery and assault are concerned than in the case of crimes of passion. The imposition of restrictions on police work which prevent interrogation or limit the extent to which it can be used do little or nothing to make law enforcement more efficient or effective. In some instance, particularly insofar as street

¹ *Wan v. U.S.*, 226 U.S. 1.

² *Trilling v. U.S.*, dissenting opinion, 260 F. 2d 667, 686.