

Because of the deep emotion involved, I suggest that the Congress cannot rely upon opinions even of experts. The testimony of law enforcement officials before Congress has been so conflicting as to strain the credence of the most gullible. For example, Police Chief Murray told Congress in 1957¹ "if the *Mallory* decision stands, it will result in complete breakdown in law enforcement in the District of Columbia * * * an overwhelming majority of these major crime cases, and maybe as much as 90 percent, are solved after the subject has been brought in and questioned."

And in 1958, the Chief stated to Congress² that "most of the murders, the rapes, and robberies that I have come in contact with would have gone unsolved and unpunished under the *Mallory* decision."

These frightening predictions did not move the Congress to legislation either year. Furthermore, they did not prevent the Chief from testifying at an appropriations hearing in 1961 that the police had improved their solution rate of criminal homicide and other major crimes between 1958 and 1959; and that in fact the Washington police solved twice as many of these crimes as the national average.³

Supporting the Chief's appropriations testimony are statements from former U.S. attorney, Mr. Oliver Gasch, and the present U.S. attorney, Mr. David Acheson. In 1960, the Washington Post⁴ reported Mr. Gasch as stating in a speech that *Mallory* questions were of controlling importance in less than 5 percent of the criminal prosecutions. And U.S. Attorney Acheson, Mr. Gasch's successor, indicated in a 1962 television interview⁵ that in only two cases per year did his Office drop a prosecution or lose a conviction because of the *Mallory* rule. Finally, even upon the executive hearings concerning the present bill, when presented with a letter critical of the police by Mr. Whitener, we find Chief Murray stating defensively:

"I would like to make a couple of comments. I have been appearing before committees of Congress for a number of years, and no one has ever heard me minimize the crime problems in the District of Columbia, but all large cities have these crime problems too * * *. And I think if you check the records, you will find our Department is second to none in the Nation in the clearance of crimes."⁶

I believe that this series of quotations alone should lead us to the conclusion that Congress must insofar as possible supplement such opinions with fact, and not to confuse the one with the other.

The factual evidence at my disposal indicates that the House report premises are false. Briefly, I should like to attempt to establish three points:

1. Measures allowing arrest without probable cause and subsequent detention and interrogation without the presence of counsel or presentment before a magistrate would not significantly aid the police in securing convictions of the guilty;

2. At the same time such measure would not result in the thorough investigation necessary to clear innocent persons faced with suspicious circumstances; and

3. The only telegraphic message to the underworld that Washington is soft on crime and that our courts mollycoddle criminals has been sent by anti-*Mallory* propagandists who transmit a false message.

With reference to the first point, the statistics from the Police Department's own files conclusively show the futility of allowing unfettered interrogation. In 1960, the so-called investigative arrest was in full flower. The police could arrest and detain for indeterminate periods without regard to the presence or absence of probable cause. And one legitimately asks how successful were these

¹ Hearings before the Special Subcommittee To Study Decisions of the Supreme Court of the United States of the House Committee on the Judiciary, 85th Cong., 2d sess., pt. 1, at 42-43, as reported in Kamisar, *Public Safety v. Individual Liberties*, 53 Jour. Crim. Law and Criminol. 190 (1962).

² Hearings before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, 85th Cong., 2d sess., p. 124.

³ Hearings on the District of Columbia appropriations for 1961 at pp. 619-620 as reported by Kamisar, *supra*, note 1, at p. 191.

⁴ See Kamisar, *supra*, note 1, at p. 192.

⁵ See report and recommendations of the Commissioners' Committee on Police Arrest for Investigations, July 1962, p. 17, which states that "the information was supplied by the U.S. attorney in a television interview. 'Dimension 4,' WRC-TV, Apr. 1, 1962, and was subsequently confirmed to the committee."

⁶ Joint hearing before the District of Columbia Committees of the Senate and the House of Representatives on the increasingly serious crime situation in the District of Columbia, Feb. 6, 1963, p. 52.