unfettered interrogations? The police statistics anwer the question, and as far as I know their answer cannot be controverted.[7]

These statistics show that in 1960 one-third of all felony arrests were for investigation. That year, 1,356 people were detained for investigation for 8 hours or more. Of these 1,340 or all but 16, were ultimately released without charge of any crime. That means that only 1.2 percent were even charged with a crime. The same year, 690 persons were detained for more than 12 hours. Of these, only seven were ever charged with a crime. Again, in only 1 percent of the cases did detention and interrogation yield any measure of success to the police.

But what about the major categories of vicious crime for which detention and interrogation is said to be essential? In 1960, 221 persons were arrested for investigation of homicide—all but 1 were released. During the same period, 120 persons were arrested for investigation of rape—all but 3 were released without charge. And so it goes. Let me say again that so far as I have been able to determine, these facts are not subject to dispute. But police officials and others who must know of their existence have chosen to sluff over or ignore them in the widespread public hysteria of the day. Another point which officials have chosen to ignore is that the great majority of these so-called investigations occurred in secret without knowledge on the part of anyone that the arrested person was in custody.

Second, I would like to comment upon the bill's proponents' solicitude for the innocent suspect. They say that unless the police are allowed to detain and interrogate, many innocent persons will be charged with crime, and thus given a police criminal record, and also spend at least some time in jail before the case is kicked out of court. I may note parenthetically that the proponents' concern does not reach so far as to advise the suspect of his right to counsel nor to require an opportunity to contact counsel. Similarly, contrary to other recent legislative proposals, no provision for a verbatim recording of the interrogation is included. We are told that we can rely upon the discretion and self-restraint of the police to conduct a thorough investigation to clear the innocent and convict the guilty.

I must state initially that so far as I know it is true that alibis and identifications are checked out in the sensational cases. My remarks will relate to the run-of-the-mill armed robbery, street robbery, and aggravated assault which really make up our frightening statistics. In these cases my conclusion is that the common police approach is simply to get enough evidence to satisfy the prosecutor's and the committing magistrate's requirement of probable cause, and hopefully, enough evidence to convict. At that point the police investigation stops and the case is marked "solved" or "cleared" so far as their records are concerned. Any investigation thereafter is a matter for defense concern—and cooperation with the defense attorney's investigation is limited in most cases. Fairness requires the caveat that my conclusions are limited by my experience, which though fairly wide, cannot carry the weight of statistical fact. However, I am confident that my remarks would not be challenged by any knowledgeable attorney who has frequent occasion to defend persons accused of crime. Even in the short time since I received the unexpected invitation to appear here, I had no difficulty in recalling enough instances within my own experience to illustrate my remarks.

An example of the police "clearance" or "solution" philosophy may be found in the occasional lament of an assistant U.S. attorney that his case rests upon the "race to the hospital." Contrary to the pessimistic dictum of Ecclesiastes, apparently the Metropolitan Police do award the race to the swift. The injured party who first reaches the hospital is asked who cut or shot him and the named person is arrested and charged. No further investigation is conducted as this is "a matter for the defense."

An excellent example of the "race to the hospital" and the police clearance concept is found in the case of *United States* v. *Joseph Taylor*, Cr. No. 198–61. The charge was assault with a dangerous weapon. The complaining witness had been severely cut about the face with a broken bottle. When I first interviewed the defendant, he had already been in jail over a month since his arrest because of his inability to make bail. He told me that he had acted in self-defense against a drunken and unprovoked attack with what appeared to be a knife. The complaining witness fled the scene after being hit with a bottle which broke and cut his face. Shortly thereafter, the police arrived and despite

[7] See the analysis of the police records reported in the report and recommendations of the Commissioners' Committee on Police Arrest for Investigations, July 1962, pp. 39–40.