

his protestations that an impartial eyewitness was in the room to prove his innocence, the police told him that this was a matter for the defense, took him to District of Columbia General Hospital for emergency treatment of his cut from the assault and then placed him in a cell where he had been until I was appointed to represent him. He had been arrested and indicted without further investigation solely upon the word of the complaining witness. Ultimately, I was able to interview the eyewitness named by the defendant. He was found in the presence of the complaining witness and his wife. All readily confirmed the truth of the defendant's story. The complaining witness said that he had made the false charges because he was drunk and angry at the time. Now he was afraid to change his story because he had sworn to the complaint. However, faced with the witness and his own wife, he agreed to tell the truth at trial. When he did, the case was dismissed. By this time the accused had spent over 2 months in jail. My recollection is that the accused's entire police record consisted of one previous charge of assault. The man upon whose word he was charged, in addition to being angry and intoxicated at the time he made the complaint, had a police record showing that he had been convicted of public drunkenness 17 times since 1945, of being disorderly 4 times in the same period, and had a simple assault charge and a charge of assault with a dangerous weapon dismissed for want of prosecution.

Similarly, in *United States v. William Kemp*, Cr. No. 1033-60, a gas station had been broken into, ransacked, and a car stolen. Within a short distance, two men were found in the car. One, William Kemp, stated that he had been picked up a short time before at his home, which was within about a block and a half of the arrest site. He said that numerous witnesses were there to corroborate his story that he could not have been present when the crime occurred. Notwithstanding the close proximity of the home and witnesses a few minutes away, no effort was made to check out the story. Even worse, no attempt was made to take any fingerprints at the scene of the crime. The officers testified that this was a matter for the defense. One can perhaps appreciate that with its limited force the police in the city cannot thoroughly investigate every crime. And if so, this should be clearly understood by the Congress and the public who make up our juries. But more serious in my judgment is the police philosophy that their job is to simply collect enough evidence to get by the committing magistrate's requirement of probable cause and to convict some suspect.

In *United States v. Ernest DuBose*, Cr. No. 152-61, the charge was that of street robbery with a butcher knife. In the early morning hours a powerful young Negro accosted a young white woman on the street, dragged her into an alley, and brandishing a butcher knife, he robbed her of what money she had on her person. In a pretrial motion to suppress the evidence of the girl's lineup identification, the police officer testified that 13 pictures had been taken to the girl's apartment and that from them she selected the picture of the accused. No attempt was made by the police to check out the five alleged alibi witnesses. At trial, the girl testified that she had been shown only one picture, the picture of the accused, and after hearing the five alibi witnesses testify, she drew aside the prosecuting attorney in the corridor and told him that she could no longer be sure of her identification. The case was then dismissed.

In discussing this matter, I wish that my concern were limited to the police "clearance" philosophy. In large part it is, but not entirely so. Among some policemen, I cannot say how many, there also exists what I would call a conviction philosophy. I mention this because of the House report's statement on page 19 that:

"This title will place considerably more reliance upon the voluntary and intelligent self-restraint of the police force than does the *Mallory* rule. The committee feels that such reliance is not misplaced."

For my part, until I am assured that my experience with the "conviction" philosophy is the exception rather than the rule, I must conclude that such reliance is misplaced. The conviction philosophy runs thusly. The policeman sincerely reaches his personal conclusion that the suspect is guilty. Then he feels justified in actively seeking a conviction, sometimes by questionable methods—the self-restraint relied upon by the committee is missing.

Consider for example the charges against two brothers in *United States v. Howard W. Lee and John Thomas Lee*, U.S. Nos. 1113-1117-62. An elderly grocer, along with certain patrons, had been held up in his store at gunpoint. The grocer's age and poor vision weakened his identification of the defendants. His vision was so bad that he sometimes had to feel the coins to determine their denomination. A teenage girl was so frightened at the time that she could afford