

There are numerous others.

Another one I have suggested here is *United States v. William Kemp*, Criminal No. 1033-60, in which the charge was housebreaking, larceny, and unauthorized use of a motor vehicle. There the car and the two defendants were found within a fairly short distance of the garage some time after the break-in. William Kemp said at the time:

I was picked up in this car only a few minutes ago at my home. There are witnesses there, which is very close by, maybe a block and a half away, who will tell you that I could not have been present when this crime was committed.

But they were in possession, they were in the car, there was enough to make a charge.

The police did not expend the few minutes to go to the home to check out these alibi witnesses. They did not even take fingerprints at the garage to see if Kemp's prints were there. They had enough to get by the requirement of probable cause. They had enough, probably, to convict unless evidence came forward.

The defendant's evidence did come forward, I might add. And when the question as to this investigation was propounded at the trial, the officer said, "This is a matter for the defense."

Now, we heard the discussion or the suggestion about the street robbery, how this could not be solved without police interrogation. I would add my own remarks, that this is really the area where we have the most difficulty. There is no question about it. This fleeting glimpse of the back of the head that takes the purse and runs down the street, or as in the case of *United States v. Earnest DuBose*, Criminal No. 152-61, where the young white woman was dragged into the alley and the powerful young Negro, brandishing a butcher knife, robbed her of what money she had on her person. In this case, the police testified at the trial that they had gone to the girl's apartment and shown her 13 pictures from which she selected the picture of the accused. Later—this was at the pretrial hearing on a motion to suppress.

Later on the girl testified she had been shown one picture, the picture of the accused. After she heard the testimony of five alibi witnesses, she drew aside the prosecuting attorney and said she was no longer certain about her identification. These alibi witnesses had not been checked out by the police. Again in my judgment that illustrates what I have labeled the clearance philosophy.

Now, it is true with the volume of crime that we have, and the number of policemen we have, that there is a limit to the amount of investigation that the police can conduct, and maybe they cannot check out the defense story. But if so, let's acknowledge that this is the case, and let's let Congress and the public, and I might add the public who make up our juries, know that that is the case—that these matters of defense are not investigated by the police, they do not have the men nor the time. And it is either done by the defense attorney or it is not done at all.

Now, in discussing this matter of reliance upon police discretion, which the House committee report—and self-restraint—which the House committee report says is not misplaced—I refer you to the quotation from page 19 of that report:

This title will place considerable 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.