

The WITNESS. I said the detective who said, "Oh, come on, Jacquelyn," to me, when I said there was two boys in the lineup who looked like the ones in the store, he said, "What difference does it make? It's just a couple more niggers."

By Mr. HOGAN:

Q. What detective said this?

A. Do I have to name him?

The COURT. Yes.

The WITNESS. Beltrante.

By Mr. HOGAN:

Q. Now, which detective said, "Oh, come on now, Jacquelyn"?

A. Beltrante.

Q. Is that all he said before you identified that you thought Howard's voice was the one?

A. Uh-huh. This was more or less, that is just an interpretation of mine, my interpretation. He was not so much trying to presume me into it, I think; just his attitude, you know.

This, of course, is an unusual example. There are others. It does not stand alone.

You have got the case similarly of the *United States v. Eugene Evans*, Criminal No. 1062-60.

In that case there was a motion to suppress a *Mallory*-type confession. The police detective testifying sought to justify the confession and evade the *Mallory* rule by the Upshaw route—that is, it was a threshold confession. He testified that the confession was made in the police cruiser right after the arrest on the way down to the police station.

The defense attorney at that point asked for a forthwith subpoena of the police records. They were brought in and they demonstrated that the accused had not even been taken to the station in the cruiser, but in fact had been taken down there by a uniformed officer in a paddy wagon. The uniformed officer was called, he verified the police records, and the case was dismissed.

It seems to me the irony of this case—this was later used at Northwestern University to demonstrate the evil of the *Mallory* rule.

Now, as I suggest, this conviction philosophy may not exist on a very wide scale. I am not aware of how wide it is. I do know it exists. It exists wide enough in my experience to make me feel very uncomfortable when I read in a House report that we should rely upon the discretion and voluntary self-restraint of police.

It may not be significant, but in the *Evans* case the detective who testified about the confession in the cruiser, that did not take place—it may be significant of police attitude that this case was reported in the newspaper, and it is my understanding that the detective was shortly after that promoted to lieutenant.

As I say again, I do not think I can emphasize too strongly that these instances may not in any way be a representative sample. They do illustrate, though, a problem, when we speak about relying upon self-restraint, discretion of police officers. We can make general arguments about the danger of this thing. But it seems to me it would be more profitable, rather in making generalized statements of the danger, to demonstrate by some specific cases what these dangers are.

The other thing that I would like to say, before we leave this clearing concept, and this does relate specifically to the bill, is that we face a rather difficult problem when we attempt to eliminate an arrest record and its stigma.