

The police were given 6 weeks to answer that report. They filed a lengthy answer. They did not contest a single finding, at least along these lines. They did not challenge these findings. And this shows you the longer they hold a person, the less fruitful it is. If they hold him up to 4 hours, they charge 5 percent. If they hold more than 8 hours or 10 hours, they charge 1.2 percent; 1960 is a typical year. As a matter of fact, that really is what they are trying to do in title III—get that back in, get back to “investigative arrests.”

This disturbs me because I think there has been a great deal of distortion about the ban on “arrests for investigation” in the press. For example this article in *Look*, “Portrait of a Sick City—Washington, D.C.” (June 4, 1963, p. 15). It says:

A new city rule imposes additional restraints on Washington police. Arrests for “investigation,” a fruitful source of information on crime, are now banned (p. 19).

Now, of course, the fourth amendment has always imposed this restraint on District of Columbia police. Legally they have never had the leeway to arrest on less than probable cause. And it seems to me that—if I may read a couple of paragraphs from the Horsky report. The Horsky Committee says this on page 68:

When we permit arrests on the basis of probable cause, we balance the unfortunate consequences to an individual as to whom this is probable cause—even though he may be innocent—against the consequences to society if such a person is not made available to stand trial for the offense of which there is probable cause to believe he is guilty. This balance has been struck, and the citizen is prepared to pay the price in individual hardship. And this is the balance which the Police Department should recognize. Where they have probable cause, they may arrest; they need not, of course, if they believe further investigation will change the picture. Where they do not have probable cause, they may not arrest, for “investigation” or anything else.

Now, the President of the Board of District of Columbia Commissioners, Mr. Tobriner, said this was a compelling, persuasive, and classic document. He said there was no doubt in any of the Commissioners’ minds that arrests for investigation are unconstitutional.

The Corporation Counsel for the District of Columbia, Chester H. Gray, characterized the report as an exhaustive and excellent study of the problem, and he agreed that the conclusions that arrest for investigation are unconstitutional is founded on a longstanding and well-settled proposition of law. And I venture to say that I doubt that there is a lawyer on the Washington, D.C., District Attorney’s staff, or any lawyer in the Department of Justice, who will argue to the contrary.

Those arrests for investigation, the men were brought down to headquarters, fingerprinted, booked almost invariably. To say that you can arrest for investigation on less than probable cause—and that this—fingerprinting, booking, and all that—is not really like an arrest—is unbelievable.

I would like to establish that “arrests for investigation” are not needed. As soon as the Horsky Committee was formed, the police cut back their arrests for investigation very drastically because they were afraid of publicity and when they cut back the rate for arrests for investigation drastically, they were still charging the same 5 or 6 percent, which is—and this is pointed out by the Horsky Committee.