

"It is disturbing"—it says on page 68:

It is disturbing to find the police engaged in any practice which they are quick to modify when it is questioned. More importantly, the change in volume of "investigation" arrests goes very far, in and of itself, to destroy the argument of "necessity." * * * The decline in volume was not due to the elimination of what might have been considered the "fringe" situations. For example, essentially the same proportion of those arrested for "investigation" were charged in 1960 as in 1961 * * *. Whatever the standard for an "investigation" arrest may be * * * it does not appear to have tightened up in 1961. Rather, the decline was largely due to police forbearance. It has been a matter of concern to the committee that the practice can be curtailed by two-thirds in the space of months, since by the same token it can also be increased by two or three times, if the police conclude that their forbearance has gone too far.

Now, Chief Murray found comfort in the Horsky Committee conclusions that in the case of many arrests for investigation, although the standard of probable cause was not required, such cause actually existed. And if this is so and if nevertheless only 1 person out of 18 so arrested were charged, why should the standard of probable cause be lowered further?

It seems to me that in trying to demonstrate the legality of an investigative arrest as practiced, the Chief has come perilously close to conceding that the practice has little or no utility. And it just seems to me that to read about the ban on these arrests "crippling" the Police Department, to read this over and over and over again, this constant crying, this moaning—we can't go on—in the face of these Horsky Committee statistics—it is unbelievable. And everybody picks up this crying and just repeats it—but it has no meaning.

I don't think that "arrests for investigation" are fruitful or constitutional. It is possible that they are neither; I think they are neither.

Now, if I may get to the prime consideration in this area, and I think this is the big point—what we are doing today we did 5 years ago, we did 20 years ago.

I have got the hearings of 1943 [exhibiting] (hearings before Subcommittee No. 2 of the House Judiciary Committee, 78th Cong., 1st sess. H.R. 3690). Maj. Edward Kelly was then the Chief of Police in Washington, D. C., and you cannot tell him from Chief Murray in 1963.

He is crying, he is screaming, he is saying that there will be utter catastrophe, there will be a complete breakdown if *McNabb* is not repealed, they cannot go on—if *McNabb* is not repealed. *McNabb* was decided in 1943 and the biggest gains that the Police Department ever had they got under the *McNabb* rule.

The great myth is that *Mallory* is something new and different. As Professor Inbau himself said, he said it this morning, the *McNabb* rule was the rule since 1943 and all that *Mallory* did was to reaffirm the rule, and it has been reaffirmed several times.

Now, when you talk about the apparent relationship between the *Mallory* rule and crime—well, since 1943 crime has been going up and it has been going down, it was going up and down, I mean, how can you—what is the apparent relationship between the *McNabb* rule and crime?

It seems to me that there has been a great deal of distortion in the press so that the man in the street has an entirely erroneous concept of the crime situation in the Nation's Capital.