

7th in housebreaking, 12th in larceny, and 9th in auto theft. It is also true that overall crime in the District of Columbia is now about average in comparison with other large American cities.

On the other hand, it is important to remember that our crime rate has increased by 56 percent since 1957 to an alltime high as of last month, that our ranking among cities in our population group has increased from 12th place in 1957 to 8th place for this year, and that the rate of increase of our crimes since 1957 has steadily outstripped that of other American cities and is still rising sharply. I would ask this committee and the opponents of this legislation: "Must we wait until the District of Columbia is first in crime before providing the Metropolitan policemen with statutory tools already possessed by other police officers throughout the United States?"

Mr. Chairman, some time ago I wrote to most of the major cities throughout the Nation to inquire regarding the rules of arrest under which they operate. I have brought with me today copies of the replies from those cities which I will make available for study by this committee. I can assure this committee that none of those cities is hampered in crime investigations by a restriction even nearly approaching the stringency of the *Mallory* rule.

Mr. Chairman, I have been repeatedly advised by legal experts that no constitutional question is involved in the *Mallory* ruling. Its proponents claim that it is needed to protect the guilty from the police. Mr. Chairman, I submit that the innocent also deserve protection from the predatory and that, if more protection of the criminal is needed than existed in 1957, which I doubt, then some other device, which strikes a better balance between the rights of the criminal and the rights of the law-abiding citizen, should be found.

One of the opponents to a change of the *Mallory* rule, in his appearance before the House District Committee, called upon a quotation from Professor Wigmore to support the *Mallory* rule. He quoted Wigmore as saying:

Any system of admission which permits the prosecution to trust habitually to compulsory self-disclosure as a source of proof must itself suffer morally thereby. The inclination develops to rely mainly on such evidence and to be satisfied with an incomplete investigation of the other sources.

Actually, that quotation did not deal specifically with exclusionary rules such as *Mallory*, but Professor Wigmore did elsewhere write forcefully on the subject of such exclusions. In "Wigmore on Evidence," third edition, section 851, he discussed at length the need for questioning of criminals under arrest and also referred to the potential abuses which can conceivably occur as an outgrowth of such questioning. As an alternative, he suggested that private questioning of suspects under arrest might be done by a prosecutor or a magistrate, an alternative I do not now specifically propose, but one which I acknowledge would merit consideration. My point at this time, in referring to that writing, is to quote his concluding paragraph. Professor Wigmore wrote:

* * * it follows that the attempts, legislative and judicial, to exclude entirely confessions obtained by questioning of persons arrested and in seclusion represent simply a misguided solution.