

As Prof. William Beane of Princeton has observed, Beane, "The Right to Counsel in American Courts," page 207 (1955):

"[T]he professional criminals, the 'syndicate representatives,' the hired gunmen, and the veteran safecrackers, are well aware of their rights and will say nothing until they see their lawyers. In fact, it is not uncommon in some cities for a 'mouthpiece' to appear at precinct headquarters before the suspect is brought in. The undefended criminals, for the most part, are perpetrators of amateur crime, simple assault, petty larceny, or grand larceny involving slightly more than the statutory sum, or they are first or youthful offenders."

2. A flat "6-hour" rule between arrest and completion of the confession troubles the Chief. "I think," he testified, "a time limitation should be decided by the judge, if it is a reasonable length of time" (p. 741). And he continues (p. 743): "[T]he trial judge can determine whether there was any unnecessary delay." This is what the judges are doing—right now. If the Chief is willing to "leave it to the courts," what has he been complaining about so bitterly all these years?

3. "Under the hampering effect of the *Mallory* ruling and corollary decisions," insists Major Murray, "our rate of offense clearance has decreased" (p. 726). The clearance of crime, he tells us "started down \* \* \* when the *Mallory* decision was handed down" (p. 747). "We feel kind of bad," he reveals, "because our clearance rate is not 58 percent as it has been" (p. 768); and, he promises, it would be "back to 58 percent" if *Mallory* were "corrected" by enacting legislation (ibid.).

The facts—those supplied by Chief Murray's own department—are that the clearance rate dropped 7 full points (from 64.9 to 57.9) in the 2 years before the *Mallory* case; rose two-tenths of 1 point the year after *Mallory*; and rose another 2½ points to 60.7 2 years after that much-maligned case. See House Report 579 (to accompany H.R. 7525) (July 1963) at page 6. What then is the "readily apparent relationship" (p. 726) between *Mallory* and the clearance rate?

At another point (p. 727), Chief Murray seems to point the finger of blame for declining clearance rates (although the Chief nowhere notes this, the clearance rate first began to drop 3 years after the *Mallory* decision) not at *Mallory* after all, but at the "changed policies" on "arrest for investigation," starting from the time the Horsky committee first began its study of this practice. For the reasons I gave in my testimony of October 23, and for the reasons spelled out at length in the Horsky report itself, I doubt this very much. But in any event, there is nothing this committee—or any other—can do about the ban on "arrests for investigation"—and the practice condemned by the Horsky committee was not "field detention" but the actual "booking" and fingerprinting of persons on "investigation."

As you yourself so aptly summed up the situation, Senator (p. 761): "I guess we will just have to give up that idea [of 'arrest for investigation'] because we don't want to do anything that is not constitutional \* \* \*. I don't think there has been one single solitary witness that has appeared before us that has said it was constitutional."

4. Major Murray has made much of the "aggravated assault" category, where the District is No. 1, statistically. The District has always been high in this category. Although there were 470 more cases of aggravated assault in fiscal year 1963 than in fiscal year 1957 (the all-time low for crime under the District's modern reporting system), even with this increase there was still 1,583 fewer cases of aggravated assault in fiscal year 1963 than in fiscal year 1952 (the all-time high for crime in the District under the current reporting system). See House Report 579 at page 5. This hardly suggests the "criminal army" is running rampant in the District.

Why has the incidence of "aggravated assault" always been high in the District? Chief Murray suggested the answer in a recent interview published in U.S. News & World Report, October 21, 1963, pages 92, 97:

"Question. Can you give any reason for Washington being the No. 1 city in assaults?

"Answer. \* \* \* I'll say this: In this list of cities that I mentioned—16 cities of 500,000 to 1 million population—we'll run pretty close with the other cities in homicides. There's no doubt about a homicide—if a person's dead, he's dead—or about stolen cars—you can tabulate those. But in aggravated assault, the figures are way off balance; we're way ahead of the others. Now, whether there is a different system of reporting—

"Question. Different definition, maybe?

"Answer. Could be."