

CRIME IN THE DISTRICT OF COLUMBIA

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HEARINGS
BEFORE THE
COMMITTEE ON
THE DISTRICT OF COLUMBIA
UNITED STATES SENATE
EIGHTY-NINTH CONGRESS
FIRST SESSION
ON
H.R. 5688 and S. 1526
RELATING TO CRIME AND CRIMINAL PROCEDURE IN THE
DISTRICT OF COLUMBIA

PART 2

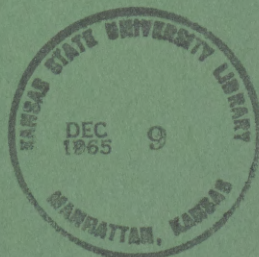
JULY 15 AND AUGUST 5, 1965

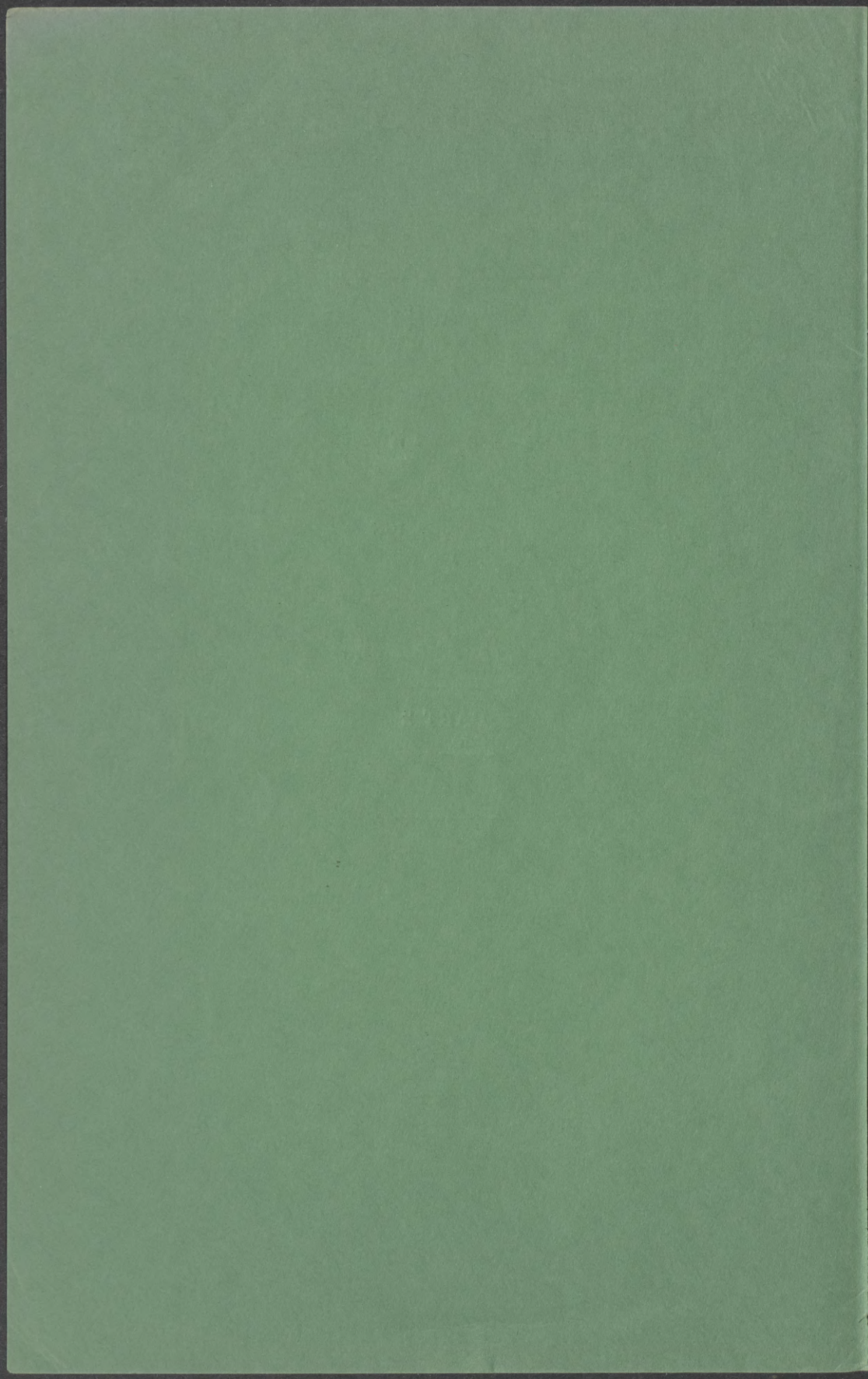
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Printed for the use of the Committee on the District of Columbia



U. S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1964

1965

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CRIME IN THE DISTRICT OF COLUMBIA

THURSDAY, JULY 15, 1965

U.S. SENATE,
COMMITTEE ON THE DISTRICT OF COLUMBIA,
Washington, D.C.

The committee met at 10 a.m., pursuant to recess, in room 6226, New Senate Office Building, Senator Alan Bible (chairman of the committee) presiding.

Present: Senators Bible, McIntyre, Tydings, and Dominick.

Also present: Chester H. Smith, staff director; Fred L. McIntyre, counsel; Robert T. Hall, assistant counsel; Richard E. Judd, professional staff member.

The CHAIRMAN. The committee will come to order.

Before we begin our formal testimony this morning, I think it might be helpful if we try to put in proper context the purpose of the hearing. It will be recalled that when the Deputy Attorney General of the United States, Mr. Ramsey Clark; Director of the Office of Criminal Justice, Department of Justice, Mr. Vorenberg; the U.S. attorney for the District of Columbia, Mr. Acheson, were before this committee on April 27, the hope was expressed that the session of advisers to the American Law Institute's prearraignment procedures project in Atlantic City on June 4, 5, and 6, might develop some concrete proposals for your Department to make to this committee with respect to what I might call the *Mallory* rule problem.

I believe that the Deputy Attorney General indicated that fact studies were being conducted by the Office of Criminal Justice to develop conclusions that might warrant a firm legislative proposal to this committee.

I further recall that Deputy Attorney General indicated that a stay of a few months from the April date might afford an opportunity to the Justice Department to come up with some constructive suggestions.

I believe the record will show that the Department chose to oppose the title I or *Mallory* provisions of H.R. 5688, the House passed omnibus crime bill, and desired not to support the title I provisions of S. 1526, as approved by this committee 1 year ago in H.R. 7525 and as supported by the now Attorney General of the United States, Mr. Katzenbach, in testimony before this committee 3 years ago.

In the intervening 3 months the crime rate has continued to climb in the District of Columbia and I for one am hopeful something affirmative can be accomplished at the earliest time if legislation is needed to help make the streets of the Nation's Capital City a little safer and remove the city of Washington from its infamous rank

as first among the 16 cities of its size in this country in the rate of aggravated assault and robbery.

I realize that President Johnson proposed through the District Commissioners a crash program to help reduce crime. The committee is working on the only two legislative proposals contained therein. The District budget for the 1966 fiscal year approved by the Congress this week contains money to implement other areas of that request.

I feel that that is going to be of some assistance in this very difficult field. I plan to call hearings on the two bills introduced by myself and the senior Senator from Oregon, Senator Morse, very soon, in the next week after that, to increase the District of Columbia court of general sessions by three judges.

In his case, he indicates five judges, I believe. This should help clear the criminal calendar and bring those with criminal inclinations to swifter justice.

Our first witness this morning, unless the distinguished Senator from Colorado has any observations to make—the Chair will be very happy to yield to the Senator from Colorado for any observations he might make.

Senator DOMINICK. I just want to make one comment, Mr. Chairman. Recent statistics which have been obtained from the police, I guess, indicate that our crime rate is still going up. While we wait for recommendations from various executive agencies, crime keeps soaring in the District. It seems that it is time that we took steps, either administratively or legislatively, or preferably both, to try to do something to solve this problem.

The CHAIRMAN. I am in accord with the sentiments of the gentleman from Colorado. After we have heard the witnesses today, after they have presented their case, I propose to have an executive session of the committee at the very earliest moment, either tomorrow or early next week. I assume I will not have it tomorrow.

I better correct that. I believe there are to be services for Adlai Stevenson tomorrow. So I will not attempt to set a hearing tomorrow morning. But I will attempt to set an executive session at the earliest moment next week.

Our first witness is Mr. Ramsey Clark, the Deputy Attorney General of the United States, accompanied by Mr. Acheson.

**STATEMENT OF RAMSEY CLARK, DEPUTY ATTORNEY GENERAL;
ACCOMPANIED BY DAVID C. ACHESON, U.S. ATTORNEY FOR THE
DISTRICT OF COLUMBIA**

Mr. CLARK. I have a brief prepared statement, Mr. Chairman.

The CHAIRMAN. It appears to be very short. I think you should read it in full, Mr. Attorney General, if you will. You may proceed.

Mr. CLARK. Thank you, sir.

The Department of Justice has been asked for its recommendation for a legislative resolution of the problems in the investigation of crime which have resulted from certain interpretations of *United States v. Mallory* (354 U.S. 449 (1957)).

Before addressing that subject, and without minimizing its importance it should be noted that there is no single formula that can appreciably lessen the incidence of crime in the District of Columbia and there is no evidence that the *Mallory* interpretations are a direct causative factor in crime or its increase. At the same time, it is clear that *Mallory* as applied has impaired effective police investigation.

Mallory addressed itself to police questioning and the admissibility of confessions in trial. Involved is a most delicate balance between the security of society on the one hand and the liberty of the individual on the other. Care and understanding are essential to perfection of this balance.

In other theaters of the war on crime, there is clear and present opportunity for legislation to reduce the incidence of crime and protect the citizen in the streets.

We are particularly happy with the committee's action recently in these fields.

One example would be passage of Senator Tydings' bill S. 1632, to tighten the law in the District relating to the possession of firearms. Another is approval for additional judges in the court of general sessions for which Senators Bible and Morse have asked. A third is provision of the data processing equipment and the Planning and Development Bureau for which the Police Department seeks. A fourth would be immediate expansion of the Department of Recreation's roving leader program. Others include increases in police manpower, training compensation, and career incentive. More adequate laws dealing with alcoholism, narcotics addiction, and rehabilitation are essential to success.

The approaches afford immediate protection from crime and the opportunity to attack its underlying causes; poverty, ignorance, unequal opportunities, and moral erosion.

As for the problems raised by the *Mallory* rule in the District, our further study since your hearing of April 27 has led us to a plan which affords an immediate opportunity for a fairer and more effective police investigation and adequate protection of the rights of the suspects, while permitting the police to develop facts and avoid a premature test of the constitutionality of proposed procedures. The plan has been implemented by a letter of July 14, 1965, from U.S. Attorney Acheson to Chief Layton. Copies of this letter have been provided the committee.

Under this plan, after an arrest based upon probable cause and prior to the filing of a charge, a suspect may be questioned concerning his knowledge of a crime. As a prerequisite to questioning he must be clearly advised that he need not answer any question, that any statement given may be used against him, that he may consult counsel, a relative, or a friend, and that if he is charged and cannot afford a lawyer the court will appoint one for him.

Police officers are instructed to keep records of the time, duration, and circumstances of all questioning. Questioning will be sound recorded or otherwise preserved where possible, and steps will be taken to improve technology in this area. Any questioning will be of limited duration and should not exceed 3 hours in total. It will not, of course, be coercive or oppressive in manner; and will be avoided where it does not advance the investigation of crime.

The arraignment of suspects who are charged after arrest will not be delayed except in unusual circumstances. Committing magistrates have arraigned at 10 a.m., on weekdays in the District for decades. This is typical of most jurisdictions. Any questioning of a suspect will be done, and the decision whether and what to charge will be made, between the time of arrest and the time next available for arraignment except when the time and circumstances make this unfair or inadequate.

In no event will questioning cause "an unreasonable delay" in presentation to a committing magistrate.

While we cannot be certain that statements made in compliance with this procedure will be admitted in evidence by every judge in every case, the courts will be given the opportunity to pass upon statements made under such conditions and may well find that *Mallory* does not require their exclusion. Careful police implementation and sound prosecutorial discretion will assure the development of a solid basis for legislation.

The plan starts with the proposition that "questioning is often indispensable to crime detection" *Culombe v. Connecticut*, 367 U.S. 568, 571 (1960). It simultaneously demands full and effective recognition of the rights of the suspect: to remain silent; to be warned that his statements may be used against him; to consult relative, friend, or lawyer; to be released or charged and arraigned without unreasonable delay.

It seeks to preserve a record of questioning so that it can be determined whether it is free from coercion.

Questioning will be avoided where it does not advance the investigation of crime.

Persons who are charged will be presented to a committing magistrate at the next available session. This is at least as prompt as has ever been the case in our jurisdiction.

Chief Layton and his staff have participated in the formulation of this procedure and fully concur in it. The U.S. attorney believes that it will best serve his needs for the present. It will be improved by detailed police regulations based on experience and can take into account the work of the American Law Institute and the American Bar Association as it becomes available.

It is more useful at this time than legislation incorporating the same features. It does not run the risk of constitutional invalidation of the standards involved, as would a statute. Most important, while affording the police the opportunity for questioning which we deem essential, it is flexible and permits the development of facts, technology, and comprehensible language to guide police and courts through the complex, varied, and critical processes of criminal investigation in a large city such as Washington.

Accordingly, the Department urges this committee to act upon the specific measures outlined at the beginning of this statement which strike at the occurrence of crime, and to refrain from action in the *Mallory* area pending a review of experience under the police procedures initiated yesterday.

There is attached a copy of Mr. Acheson's letter to the Chief of Police. I think it would be most helpful to the committee if I read it at this time.

The CHAIRMAN. I agree with you. I think we should know exactly what this letter says, Mr. Attorney General.

Mr. CLARK. It is a three-page letter dated July 14, 1965, addressed to:

Hon. JOHN B. LAYTON,
Chief of Police, Metropolitan Police Department,
Washington, D.C.

DEAR CHIEF LAYTON: This letter is intended to summarize the understandings we reached in our recent discussion to outline the practices which we believe should be followed in questioning persons arrested on probable cause and brought to a station house. Of course, the starting point is rule (5) (a) of the Federal Rules of Criminal Procedure requiring judicial appearance "without unnecessary delay"; the purpose of this letter is to specify practices with respect to questioning pending the time when such appearances take place.

In our judgment, some station house questioning of such persons is urgently required by the demands of fair and effective law enforcement and is not inconsistent with the present state of the law, provided that the safeguards discussed herein are observed and there is no unnecessary delay in arraignment. Before setting forth the proposed specific guidelines which we recommend to you, it may be worthwhile to refer to developments in recent months which make the formulation of such guidelines at this time particularly appropriate.

First, the Office of Criminal Justice, in collaboration with your Department and my office, has again made a careful analysis of police questioning, its purposes, circumstances, limitations, and methods. It is clear from this study that some questioning to determine whether to proceed with a criminal charge and precisely what crime to charge is essential to law enforcement and consistent with the legitimate interests of the person under arrest. Concurrently the American Law Institute and the American Bar Association project on minimum standards of criminal justice have commenced intensive studies of police questioning, its legal framework and relation to a fair administration of the criminal law.

Second, there are several legislative proposals before the Congress at present which are designed to give the police affirmative statutory authority to question persons under arrest. In analyzing these proposals, it has become clear to the Department of Justice that safeguards of the sort proposed in this letter should be part of any procedure whether or not governed by statute.

The CHAIRMAN. What statutes are you referring to there? Is that the bill that was introduced by Senator Dominick, the omnibus crime bill?

Mr. CLARK. Yes, sir; that would be quite particularly S. 1526, Senator Dominick's bill, and any future legislation that might be proposed which would contain similar statements.

Third, recent court decisions in our own circuit and other circuits have further emphasized the division of view among judges as to what time limitations and other circumstances make questioning permissible under the *Mallory* decision. It is particularly difficult to find any consensus on these matters in a reading of the opinions in the *Spriggs*, *Ricks*, *Perry*, *Copeland*, and *Alston* cases.

On the other hand, there appears to be a wider judicial agreement on the necessity of a careful and complete warning of the rights to silence and to counsel before a person under arrest at a station house is questioned. We think, therefore, that questioning procedures may be formulated which make use of judicial guidance where it exists and which leave procedures flexible in the phases where such guidance from the courts or the Congress is not now available.

In short, we think that the public responsibilities of our respective departments require an affirmative formulation of police questioning procedures, and that this may be done consistently with constitutional requirements of voluntariness of statements and notice to arrested persons of their legal rights. These views are not only our own. They are supported by the Department of Justice, which has carefully considered the problem and authorized this letter. Accordingly, we recommend to you the following guidelines:

1. Consistent with what we understand to be your Department's general practice, persons arrested and brought to a station house should there be clearly

warned before any questioning that they may remain silent and that they may consult with a lawyer, a relative, or friend. A recommended form of warning is attached.

2. One under arrest should be permitted to communicate with a lawyer, relative, or friend and such persons should be given access to him. Such communication or access should not, however, be allowed where there is reason to believe it is sought for the purpose of concealing or destroying evidence or otherwise defeating the ends of justice.

3. Police officers should regularly keep records relating to frequency and duration of questioning. These records would not only be helpful as evidence of disputed facts in a criminal case, but should be of great help as a factual experience background for legislation. In addition, I understand that you will explore the possibilities of making sound recordings of questioning, and that these possibilities will be pursued with persistence and every effort made to devise a practical method of preserving questioning.

4. Questioning should be of limited duration and should, of course, be reasonable and unoppressive in manner. While it is impossible in the present state of the case law in the District of Columbia to ascertain a specific permissible time limit for questioning, I believe it would be advisable to avoid having the aggregate period of questioning, exclusive of interruptions, exceed 3 hours.

Interruptions will inevitably occur, for the purpose of verifying facts stated by the arrested person, questioning the complainant or other witnesses, checking out evidence and records which may indicate the truth or falsity of statements, and confronting persons making statements with inconsistent facts.

And in the case where a suspect requests a polygraph examination it may occasionally be impracticable to operate within the suggested limitation on questioning time. The time taken for the whole investigation should, of course, not be such as to conflict with the requirement of rule 5(a) calling for appearance before a magistrate without unnecessary delay.

The shorter it is, the better. Questioning should be avoided where it is without investigative purpose or is likely to weaken a case by exposing it to legal challenges.

It is difficult at best to devise a procedure which will insure the admissibility at trial of every incriminating statement made by persons under arrest. But, pending legislative or judicial clarification of the governing law, I believe that our public responsibilities will best be served if the course outlined herein is followed. As we have discussed, representatives of my office and your Department will continue to work closely together to insure fair implementation of these guidelines, and hopefully, as we see how these procedures work in practice, to develop more detailed operating provisions for the guidance of your personnel.

Sincerely,

DAVID C. ACHESON,
U.S. Attorney.

[Attachment]

PROPOSED WARNING

1. You have been placed under arrest. You are not required to say anything to us at any time or to answer any questions. Anything you say may be used as evidence in court.

2. You have a right to call a lawyer, relative, or friend. He may be present here and you have a right to talk to him.

3. If you cannot afford a lawyer, one may be appointed for you when you first go to court.

The CHAIRMAN. Thank you, Mr. Attorney General. You have attached to that the proposed warning that you referred to in the letter.

Mr. CLARK. Yes, sir.

(Subsequent to U.S. Attorney David Acheson's letter of July 14, 1965, to Metropolitan Police Chief John B. Layton, General Order No. 9-B was issued by Chief Layton on Aug. 11, 1965, to conform

police questioning of persons arrested on felony charges to the U.S. attorney's letter of instruction. The general order follows:)

GOVERNMENT OF THE
DISTRICT OF COLUMBIA,
METROPOLITAN POLICE DEPARTMENT,
August 11, 1965.

General Order No. 9-B, series 1964.

Subject: Questioning of persons arrested on felony charges.

To the Force:

Under date of July 14, 1965, a letter was received from the U.S. attorney in which he concluded that some "station house questioning" of persons arrested on probable cause is often necessary and desirable for effective law enforcement and for fair treatment of an arrested person and is not inconsistent with the present state of the law, provided that certain safeguards are taken, proper warning of constitutional rights is given, and no unnecessary delay occurs between arrest and arraignment.

In accordance with the recommendations of the U.S. attorney, members of the force are directed that—

A. After an arrested person is brought to a precinct station or to headquarters and prior to questioning there about alleged criminal offenses, he shall be clearly warned in the following terms:

1. You have been placed under arrest. You are not required to say anything to us at any time or to answer any questions. Anything you say may be used as evidence in court.
2. You may call a lawyer, or a relative, or a friend. Your lawyer may be present here and you may talk with him.
3. If you cannot obtain a lawyer, one may be appointed for you when you first go to court.

If necessary, this warning will then be given in writing or explained in language which the arrested person can readily understand. If the arrested person is incapable of understanding any warning, by reason of alcohol, drugs, injury, or other reason, the warning may be postponed until the arrested person is capable of understanding the warning and questions put to him. A notation shall be made of the fact that the warning was given.

B. In accordance with provisions of chapter VI, sections 8, 9, and 10 of the manual, every reasonable effort shall be made to communicate with the person or persons whom the arrested person wishes to notify of his arrest, including use of the telephone. A record shall be made of any request of an arrested person to communicate with another person. If there is no request, the officer shall so note.

If a lawyer requested by the arrested person comes to the precinct station or headquarters, the arrested person shall be afforded every reasonable opportunity for confidential consultation consistent with safeguards against escape or the commission of an unlawful act. If no lawyer appears, and if a relative or friend requested by the arrested person comes to the precinct station or headquarters, it is advisable that one such person be permitted to talk for a reasonable time with the arrested person, though officers, in their discretion, may admit others.

Communication and access to an arrested person by a person other than a lawyer may be denied or postponed where there is a reason to believe that it is sought for the purpose of destroying evidence, concealing stolen property, intimidating witnesses, warning an accomplice, or arming or facilitating escape by the arrested person. If such communication or access is denied, a record shall be made stating the reason.

C. Members of the force are reminded that a person may be arrested only on probable cause to believe he has committed one or more offenses. Arrested persons may be questioned in a reasonable and noncoercive manner concerning their knowledge of any alleged offense. The total period of actual questioning, exclusive of interruptions, should be limited to 3 hours except where an arrested person consents in writing to a polygraph examination. In pursuing an investigation, members of the force have a duty not only to ascertain the facts of alleged offenses (beyond the level of probable cause required for arrest) but also to protect arrested persons from false, mistaken, or exaggerated accusations of crime. Investigating officers should keep in mind that frequently these purposes can be fulfilled before the end of 3 hours of questioning and that in any event questioning should be as brief as is consistent with these objectives.

D. Members of the force are also reminded that they are required to take arrested persons before a committing magistrate, without unnecessary delay, for the proceedings prescribed by rule 5(a) of the Federal Rules of Criminal Procedure. This Department has been advised that presentment should conform to the business hours of the District of Columbia Court of General Sessions and the U.S. commissioner. A person arrested before the end of such business hours should normally be presented to a judge in the court of general sessions or the U.S. commissioner at a regular sitting of such magistrate on the same day, but where it appears likely that presentment will not take place before the end of such sitting, the officers involved should consult an assistant U.S. attorney.

E. It is important that records be kept to show times of commencement and ending of any administrative or investigative procedure involving the presence of the arrested person (lineups, fingerprinting, etc.), the time, circumstances, and duration of any questioning of the arrested person and of any statement made by him, whether or not persons other than police are present, and whether any warning, questioning, or statement is sound recorded.

Close cooperation and consultation with the Office of the U.S. Attorney and representatives of the Department of Justice will continue including review and examination of records and directives in the implementation and development of these procedures.

JOHN B. LAYTON, *Chief of Police.*

The CHAIRMAN. I think it might be helpful before we start our questions, if you would have any additional statement that the U.S. attorney might care to add to what you have said, Mr. Attorney General.

Mr. ACHESON. I don't have a statement, Mr. Chairman. I am here primarily to answer any questions the committee may have.

The CHAIRMAN. Very well.

Could one or the other of you point out in what respects the method that you are proposing to this committee at this time differs from the legislation which this particular committee passed out in the bill of last year?

It seems to me that they are somewhat similar. I would like to have you distinguish between them.

The reason for the questioning, Mr. Attorney General and Mr. Acheson, is that the bill that we reported out in our last session of Congress was one which had the endorsement and which was designed primarily by the U.S. attorney here in the District of Columbia, with the approval of the present Attorney General of the United States, Mr. Katzenbach.

He said that he thought this would take care of the title 1, the so-called *Mallory* rule. How does your statement and the directive to the Chief of Police differ from the title 1 of S. 1526 or H.R. 7525 of the last Congress?

Mr. CLARK. The apparent differences in language are not great. We think the advantages of the administrative procedure are substantial. In terms of the specific language, the proposal administratively that we are operating under today is substantially more flexible as to the period of questioning. We have provided for a period of questioning up to 3 hours. Then it need not be continuous. This questioning could take place between the time of arrest and the time of arraignment, the time that the suspect is taken before the committing magistrate in the normal course.

On matters such as sound recording, we have found from experience that the technology of that is extremely difficult. This was a matter

that was discussed at the ALI meeting where members of your staff were present.

While I was not there, I understand that the almost unanimous view was that the technological difficulties of transcription were such that we needed to go forward carefully in that area. If we had a specific requirement that a transcription be made in every case this might be a very severe limitation, both upon the police investigators and also upon the rights of the individual who is in police custody.

The administrative procedure has other advantages. It has an immediate effectiveness. It can be implemented today. It can be modified as experience indicates is necessary. And it avoids the risk of a constitutional test on the broad standards that a statute would face.

As we view a review by a court of this procedure, the standard would still be under rule 5(a) and we would not risk, at a time when our experience may be inadequate to fully resolve all the questions, a holding that this is an unconstitutional approach.

It is in those areas that we feel the administrative procedure is better.

The CHAIRMAN. Insofar as title 1 is concerned in S. 1526, it provides that immediately prior to any such questioning the defendant is plainly advised by the officers having custody of him, in addition to a previous warning, that he is not required to make a statement at any time, and that any statement made by him may be used against him.

Is there any difference between this and your proposal?

Mr. CLARK. I think they are essentially the same.

The CHAIRMAN. Paragraph No. 2 of section 103 of title 1 of S. 1526 and also of H.R. 7525 (88th Cong.) provides:

Prior to any such questioning the arrested person was advised by the officers having custody of him that he would be afforded reasonable opportunity to notify a relative or friend and consult with counsel of his choosing, and was in fact afforded such opportunity.

How does your directive compare with this provision?

Mr. ACHESON. That is essentially the same provision as in the bill.

Senator DOMINICK. Could I interrupt there?

The CHAIRMAN. Certainly.

Senator DOMINICK. It does not seem to me it is exactly the same, because in your letter you say he should have the rights to consult with a relative or friend. In the bill we say he has a right to consult with counsel. I was going to bring that up with the police.

Why in the world should a right be given to have a meeting with a relative or friend, who are much more likely to be in cahoots with a guy that was arrested than a lawyer?

A lawyer at least is under the sanction of being an officer of the court and subject to all kinds of punishment if he does something that is out of line. This is not true of a relative or friend.

The CHAIRMAN. The letter as I read it, Senator, does include a lawyer.

Senator DOMINICK. It includes a lawyer but it also adds a relative or friend. In our bill we simply say that he can notify a relative or a friend but it does not give him the right of meeting.

The CHAIRMAN. Will you make that point for me again?

Senator DOMINICK. We say that they can notify a relative or friend or lawyer.

The CHAIRMAN. And consult with counsel.

Senator DOMINICK. And consult with counsel. The letter of the Attorney General, of Mr. Acheson, says that they can consult with a relative, friend, or counsel.

The CHAIRMAN. Should be permitted to communicate with a lawyer, relative, or a friend, and such persons should be given access to him. Your point of difference is what?

Senator DOMINICK. My point is I gather what they are going to do is to say the police must let the accused call a relative or friend and if they should come down to the station house wherever he is, they should have immediate right of access to him.

The CHAIRMAN. Would you comment on the difference between the statute and your lawyer?

Mr. ACHESON. There is that difference between the two. The notion underlying the provision in the letter, Senator, is that where the prisoner does not have counsel, does not know counsel, cannot communicate with counsel for that reason, he should have some means of consulting with somebody so that you don't get the question of whether the detention violated due process or fundamental fairness, or something of that kind.

We don't want to get into a situation where, if the prisoner does not know a lawyer, he is really being held incommunicado.

Senator DOMINICK. How do you figure he is going to be held incommunicado if he has a right to notify someone that he has been picked up by the police and is in jail?

A person has a right to do whatever they want to do on the outside. get a lawyer for him or anything else.

Mr. ACHESON. That is true, but it is not the same thing as an immediate face-to-face consultation. I suppose if the prisoner wants to consult with a relative, on the question of whether the relative can get a lawyer for him, they don't want to talk on the telephone with the police in the room, there is something to be said for letting the relative or friend come to the lockup and talk to him face to face.

Senator DOMINICK. Do you have any objection on this portion of the bill?

Mr. ACHESON. To meet your earlier point, we do have a provision in that paragraph of the letter that is designed to take care of the confederate who comes down to get instructions from the prisoner about how to dispose of stolen property or something of that kind.

We say where the consultation is believed to be for the purpose of concealing or destroying evidence, or defeating the ends of justice, then it should not be permitted.

Senator DOMINICK. Excuse me, Mr. Chairman.

The CHAIRMAN. I think you asked one question of Mr. Acheson that he did not answer. I think you asked whether or not this particular provision met the approval of the police. I don't think he has responded on that matter.

Mr. ACHESON. The police have made the point, of course, Senator, that there is a chance that when these face-to-face consultations take place with a lawyer or with anyone else, then it may reduce the chance of the prisoner making any incriminating statement. They made that point and we are aware of the point. They have not objected on that ground to these instructions.

They have simply cautioned us that it might have the effect of reducing the number of incriminating statements we get. Frankly, neither the police nor we know whether it would have that effect in 5 percent of the cases or 95 percent of the cases.

One of the reasons for following this administrative instruction route instead of a statutory route at this point is to see how these procedures work before we lock them into the statute books.

Senator DOMINICK. Is it contemplated in your letter that this consultation with a relative or friend would be without the presence of police or within the presence of police?

Mr. ACHESON. The letter does not state. The court decision seems to look toward a confidential consultation with counsel. I frankly don't know whether the courts would require a confidential consultation with a relative or friend.

Senator TYDINGS. We are talking about people who are not charged with a crime or being held for investigation?

Mr. ACHESON. No.

Senator TYDINGS. What are we talking about?

Mr. ACHESON. We are talking about people who have been arrested on probable cause to make them guilty of a felony.

The CHAIRMAN. The Senator from Colorado.

Senator DOMINICK. This is the point: I had assumed, and this is why I asked the question, that you were putting the relative or friend in the same capacity as a lawyer, and, therefore, had confidential access to the prisoner. I wondered why you had done that, what legal requirement there was that this be done, or whether this confidential access would not create more problems than it solves.

Mr. ACHESON. If it turns out that way, Senator, we can make a change in this procedure.

This again is another reason for having some flexible instructions that we can change fairly readily. If the police have problems in permitting confidential consultations with a relative or a friend, then if there are reasons to change it we ought to change it.

I frankly don't know whether they will have problems with it or not. I think we all have to be candid in admitting that we are sort of feeling our way along. We are trying to collect data, some solid, factual experience, on how these procedures work.

The CHAIRMAN. The next section of the bill under paragraph 3 that was reported out by this committee in the last session says:

Not more than six hours shall elapse between the arrest and the completion of the confession, statement, or admission.

However, you say 3 hours in your proposed letter. Would you point out what the differences are between the letter that you have given to the Chief of Police and the bill that we reported out last year in that respect?

Mr. ACHESON. The purpose, Mr. Chairman, is to allow a more flexible and useful type of questioning procedure. We have come to the conclusion, a tentative conclusion, that it is much more useful to have a period of time that you can divide up into pieces to question than to have one flat period in which you must compress all of your questioning.

We rather thought that 3 hours divided up over a longer period of time for questioning would be more useful than a rigid 6-hour period. The reason for that is because the way the situation is usually handled, the police will ask a few questions of the prisoner, perhaps not get any satisfactory answers, will then find another witness or discover another piece of evidence an hour or two later which they can bring back and confront to the prisoner.

Confronted with this new information, the prisoner may say something that is more illuminating. There ought to be time for the police to divide up these interviews with the prisoner rather than have to compress their whole investigation into a 6-hour period.

In other words, 3 hours spread out seemed to us more useful than 6 hours compressed into a continuous rigid period.

The CHAIRMAN. The fourth paragraph of last year's bill and also of S. 1526 stated:

Such questioning and the warning and advice required by paragraphs 1 and 2 of this section where, whenever reasonably possible, witnessed by a responsible person who is not a law officer, transcribed verbatim, recorded by wire, tape, or other sound recording, or conducted subject to other comparable means of verification.

What is the difference between that requirement and your directive to the Chief of Police?

Mr. ACHESON. There are two major differences, Mr. Chairman. One is that we are, in the letter, leaving it more to the discretion of the police as to what kind of records they should keep. We do want a solid, reliable record of these interrogations, and so do the police. We are not sure whether this is best achieved by sound recordings or transcripts or quite how.

The statute gave the police an alternative. Frankly, in the bill the language "wherever reasonably possible" suggested to us that the courts might review that and try to decide for themselves when a recording was possible and when it was not, and then throw a confession out of evidence if they thought the recording was possible and was not made.

In our letter, we simply ask the police to keep records and invite their experimentation with sound recordings so that we can see whether they are workable as a device for regular uniform recording.

There will be problems, I am sure.

Senator DOMINICK. May I interrupt?

The CHAIRMAN. Yes.

Senator DOMINICK. I just don't understand this at all, Mr. Acheson. I am not trying to be disagreeable about this. But if you read that bill, which I am sure you have before, because a large part of it is based on the recommendations given by you—

The CHAIRMAN. I think it was his language and the Attorney General's language of a year and a half ago.

Senator DOMINICK. It says "such questioning and warning and advice required by paragraphs 1 and 2," which refer to the fact that any statement can be used against him and he has a right to notification, where, whenever reasonably possible, witnessed by a responsible person who was not a law-enforcement officer, or transcribed verbatim, or recorded by a wire, tape, or other sound recording, or conducted subject to other comparable means of verification.

It doesn't require that you do it by recording. It doesn't require that you do it by court-reporting procedures. It says that you do, wherever possible, reasonably possible, have some method of verification.

Mr. ACHESON. That is right, Senator. But it does make one or another means of recording a condition of admissibility.

Senator DOMINICK. Recording in the broad generic sense.

Senator TYDINGS. You are saying that this paragraph would not help the police officers but would, in effect, hinder them.

Mr. ACHESON. I think that paragraph in the bill would make it a condition of admissibility and might make it impossible for us to offer many confessions in evidence. But the letter doesn't set conditions of admissibility. The letter simply sets ways in which the police are going to try to operate. I think it is best not to be pinned to a recording as a condition of admissibility until we can find out whether sound recordings do work and in what circumstances they can be made, and how regularly they can be kept.

The CHAIRMAN. Further questions from the Senator?

Senator DOMINICK. I have a lot more.

The CHAIRMAN. I was just trying to develop those four points. I have a few more questions based upon your statement, Mr. Attorney General.

You say on page 2:

Careful police implementation and sound prosecutorial discretion will assure the development of a solid basis for legislation.

I will ask you this question: If we were to take this letter which the U.S. attorney has written to the chief of police and couch it in statutory language, what would be the position of the Attorney General of the United States?

It seems to me the biggest difference is in the time element, the 3 versus the 6. It may well be that you need more flexibility in the time for questioning. I am not clear yet as to whether your position is that that is a total of 3 hours or whether it is a continuous 3 hours.

Mr. CLARK. It is a total of 3 hours.

The CHAIRMAN. It could be 1 hour now and 2 hours later this afternoon; is that the way it works?

Mr. CLARK. That is the way it works. As a practicality, it probably never would be as long as 2 hours.

The CHAIRMAN. I understand. I was using that as an example. But it isn't a solid 3 hours but a total of 3 hours.

Mr. CLARK. Yes, sir.

The CHAIRMAN. It seems to me that is the main difference. What would the position of the Department of Justice be if we took the letter, if we took your statement, put it in statutory language and reported it out as a bill?

Mr. CLARK. We would feel that it would place limitations on the police that could only be altered or modified by the Congress; that these limitations might result in the loss of confessions and what flows from the loss of confessions; that the police would be placed in a rigid requirement; and these confessions taken under the statute would then be tested in the courts and the statute, itself, might fail. At this time we really don't have a pattern of experience, and an ob-

jective and studied determination of all factors in police interrogation, when we really don't have an adequate, in our judgment, fact basis to promulgate a final rule. We believe that all the advantages of the statute, plus flexibility, can be secured from the administrative procedure without the inflexibility and the risks that are inherent in statutory implementation at this time.

The CHAIRMAN. May I explore that just a bit further? That was the next question I was going to ask. I am not clear on it. This is on page 3, where you say it is more useful at this time than legislation incorporating the same features, which really answers the question I just asked you, and which is the same thing you just said. The next sentence says it does not run the risk of constitutional invalidation of the standards involved as would a statute.

Would you elucidate and clarify that for me? If a defendant feels that his constitutional rights have been violated by means of this letter from the U.S. attorney to the chief of police, isn't there some method that he can test that in court, as to whether this did or did not violate his constitutional rights?

Mr. CLARK. Certainly the individual under arrest would have full opportunity to test the legality of his arrest. But the standard on which the court would pass would be rule 5(a) as it reads today, and not the broad standards of this police regulation which is really merely instructions to police as to how they should conduct themselves.

Therefore, the setting aside of a confession under this administrative procedure would not have the result of invalidating all questioning that the police may engage in, anymore than the decisions of the courts heretofore setting aside such confessions have had that result.

On the other hand, if we had a statute, then the court would be forced to construe the statute. It would be confronted directly with the constitutional question: Is this statute constitutional? It might arise at a time when we have had inadequate experience to reach the best balance that we can between the necessity for police interrogation and the protection of the rights of the individual, and the statute might fall as being unconstitutional. The Congress would then be in a much more difficult position to face this problem than it would be after an implementation and study and court review of this administrative order.

One of the more significant developments in this area on law in the last month, really, and even to some extent since our last hearing, is the role of the issue of the right to counsel in the *Mallory* field. The cases that have gone up in the District of Columbia, the cases that have been referred to, courts of appeals cases, in my statement, do not address themselves to the effect of the right to counsel on *Mallory*.

This can make a big difference. We think it would be most helpful to give courts an opportunity to address themselves to the question with that big difference in there, and we could do that without avoiding the risks that would be involved in a statute and we would have a much more flexible opportunity for effective police questioning in the interim.

The CHAIRMAN. I am just asking for edification, but if I understand you correctly there might never be any real need of the Congress enacting a statute in this field, if you could do it better, by means

of an administrative order and have more flexibility and have less possibilities of being thwarted by court cases of one kind or another, either in the original jurisdiction or appellate or Supreme Court.

Mr. CLARK. I consider that a possibility but not a probability. I think probably legislation will be deemed beneficial at some time in the future. But I think the opportunity today to have a direct experience with the same police techniques that the statute would impose would be very advantageous to the police, the public, the courts, and this Congress and this committee at a subsequent time when they review that experience.

The CHAIRMAN. What you are saying is that you are asking us to do nothing with title I at the present time, but to permit you to proceed by means of administrative orders to handle this problem, to see what your experience develops in this area.

Mr. CLARK. That is our recommendation to the committee; yes.

The CHAIRMAN. The Senator from Colorado.

Senator DOMINICK. Am I correct that an order was issued to the police sometime ago that police should not conduct any, at least, extensive questioning before arraignment?

Mr. CLARK. That is correct; October 1964.

Senator DOMINICK. That went in in October 1964?

Mr. CLARK. Yes.

Senator DOMINICK. That was the so-called hold order, or whatever we called it, the stop order?

Mr. ACHESON. This was not an order, Senator. It was one of a series of communications that I have been sending to the Chief of Police every several months, giving him our evaluation of the effect of court decisions in the field of interrogation of prisoners.

This particular letter in October 1964 pointed to some changes that had been made in the law recently, and said that at the present the best we could say was that great caution should be employed by arresting officers and duty officers at precincts and headquarters in interrogating persons under arrest.

I said that I thought probably at that time only a statement volunteered at headquarters or taken immediately at the scene of arrest would be admissible.

The Chief of Police who was then in office circulated that letter to the force and it had the effect, I think, of greatly restricting the interrogation practice which had been the custom in the Police Department.

Senator DOMINICK. If I may, I would like for the record to cite the first sentence of the last paragraph of your letter of October 27, which reads:

As a simple rule of thumb, I should think it would suffice to instruct your men that persons under arrest are not to be questioned regarding the facts of the offense following their arrival at a precinct or headquarters until after their appearance before the magistrate and appointment or retention of counsel.

That is the so-called stop order.

Mr. ACHESON. Yes, that is right.

Senator DOMINICK. You have changed your viewpoint, then?

Mr. ACHESON. I have, Senator. And for two reasons. I think there are some indications, although they are far from clear and they are not statistically demonstrable, that the restrictions on questioning that the

police followed after receipt of this advice did limit or reduce the closing of some investigations.

I can't be sure of that, but I think there are some indications that it did. Therefore, it seemed to us that perhaps we are paying a price that was a little too high in return for an attempt to follow the case law. Second, and I think more importantly, the case law began splitting all over the place in recent months, and after the *Copeland* decision and the *Perry* decision, it became clear that there really wasn't any reliable guideline in the court of appeals as to a time period which would be permissible for questioning under rule 5(a). Therefore I concluded, and the Department concluded, that there was—that we were trying to achieve illusory, certainly, in following case law when there really wasn't any governing standard as to the time period, and, therefore, the police should be given the benefit of the flexibility that there was in case law and should, of course, adhere to the case law where the standards were clear, as they are becoming clearer, and the right to counsel.

Therefore, the sensible thing to do, it seemed to us, was to change the instructions to the police.

Senator DOMINICK. When were these recent cases decided that you referred to?

Mr. ACHESON. I have the dates here, Senator. I will look them up. The *Perry* case was decided in November; the *Copeland* case was decided in December. The *Alston* case was decided in May.

The CHAIRMAN. What years were those?

Mr. ACHESON. November and December of 1964, and May of 1965.

The CHAIRMAN. Thank you.

Senator DOMINICK. Your letter to the police is dated July 14.

Mr. ACHESON. That is correct.

Senator DOMINICK. I have some concern over your statement to the committee saying it is more useful at this time than legislation incorporating the same features. In other words, your recommendations to the police. In effect, you are advising us that we should not go ahead legislatively on the *Mallory* rule.

Then in your letter to the police, in the last paragraph, you say:

Pending legislative or judicial clarification of the governing law, I believe that our public responsibilities will best be served if the course outlined herein is followed—

Indicating we should have some legislative clarification. How do you fit those two comments together?

Mr. ACHESON. Senator, when I say pending legislative or judicial clarification, we have to, I think, admit the theoretical possibility that we may get a court decision which makes it clear, for example, that 4 hours of questioning, divided over an afternoon or half a day, is compliance with rule 5.

I would be rather surprised if we got it, but if we should get it, I think it would have a significant effect on our feeling of need for legislation. If the Supreme Court of the United States, for example, should give us that decision, I think it would change the premise we are working from.

Senator DOMINICK. Many of us have felt for some time, as you probably are aware, that the courts have been judicially legislating in quite a large number of cases; that perhaps the Congress, itself,

should start doing the legislating instead of the courts. Are you advising us, in effect, that you would prefer to have the courts do it?

Mr. ACHESON. No, Senator, certainly not. Even if we were to come back 3 months from now and say we have concluded that S. 1526 is exactly the right solution to our problem and we want that bill passed, I still think as sensible people we would be in a much better position if we had worked for 2 or 3 months with this procedure that the police have been given in the letter so we know what the problems of recordings are, and the problems of access to counsel and relatives and friends.

The procedures we are experimenting with here may work and they may not. I think we ought to know whether they will and what the problems are before we ask the Congress to put them on the statute books.

Senator DOMINICK. This problem has generally arisen in the District, as I understand it, largely because we are under Federal Criminal Rules of Procedure, rule 5(a). Let me ask you what would be the effect if the home rule bill is passed? What will be the effect? Will we still be under this rule 5(a) of the Federal Rules of Criminal Procedure, or will we not?

Mr. CLARK. I would have to guess. I think we would still be under the Federal Rules of Criminal Procedure, particularly in the U.S. district courts. That is where *Mallory* is involved. I don't think the home rule bill would intend to delegate to the city government the power to make rules for U.S. district courts.

Senator DOMINICK. I am frank to say that I am at least perplexed. We received recommendations to pass this bill before from the U.S. attorney's office and we did pass it, as far as this committee was concerned. We put it back in again.

Then you say we need clarification by legislation. Then you say it won't do any good to put legislation in, or it won't do much good. I am confused, to say the very least. If we are trying to do something which will give the police investigative powers which will enable them to prosecute an arrested person, it seems to me that the proper way to go about it is to pass legislation which will apply on these procedural points.

What you are saying is that we can escape the effect of rule 5(a) by administrative procedures far easier than we can legislative. Isn't that really what you are saying?

Mr. CLARK. No, I don't believe I would categorize it that way. I think what we are saying is that we do not believe that we have adequate experience with the practicalities of police questioning at this time to risk a commitment through legislation that will be inflexible as far as the police are concerned and can have such far-reaching consequences in terms of release of the guilty, or otherwise. We feel most of the benefits, if not all, of that legislation, can be tested, appropriately tested, under an administrative procedure, and through that testing this can be determined.

The CHAIRMAN. Would you defer to the Senator from New Hampshire?

Senator DOMINICK. Certainly.

Senator McINTYRE. In view of the differences and the changes that you propose today, do either of you gentlemen have any feeling that section 103, as written, might be unconstitutional.

Mr. CLARK. Possibly, yes, sir. I can see the case where—and I realize there are many considerations to be taken—I can see the case where 6 consecutive hours of questioning would not be deemed coercive by the police, perhaps, at the time they engaged in it, would subsequently be found, with all the circumstances that surround it, would be found to be coercive and set aside. If it were that 6 hours were authorized by statute, and the statute would be found inconsistent with the process clause of the Constitution.

Senator McINTYRE. I have to go. I want to express my appreciation. I share the feeling of the Senator from Colorado of disappointment, because I think the majority of the committee would like to do something to cure what seems to me to be the harmful effect of the *Mallory* rule in the District.

I have appreciated your testimony. I see you have come smack up against the constitutional rights of the accused. The more you probe, the more it seems to me they come to the surface. It is a very delicate problem.

Senator DOMINICK. Are you saying that this would be unconstitutional or are you saying any confession you got would be set aside because the confession would be involuntary or coercive?

Mr. CLARK. I said both, the Court could go either way depending on the circumstances. The Court could read from one part of the statute it can't be coercive and only this confession is set aside.

This confession, on the other hand it might see a fair connotation, did this statute authorize this questioning and was it under these circumstances a denial of due process?

If it answered the first question no, and the second question yes, you have an invalidation.

The CHAIRMAN. Might I just go one step further in line with the questions of the Senator from New Hampshire? What have you built into this statute in the third provision of section 103, exactly the same language that you have on page 2 of the U.S. Attorney General's letter to the Chief of Police, specifically that the aggregate period of time for questioning exclusive of interruptions should not exceed 3 hours?

I assume that it is your position that that would be constitutional because this is the decision you have come to in the statement you make and carried out in the letter the U.S. attorney writes to the Chief of Police. If that were made 6 hours would it then be constitutional?

Mr. CLARK. I think the question would be essentially the same. It would be a matter of degree.

The CHAIRMAN. Thank you, I did not mean to interrupt, Senator.

Senator DOMINICK. It would be unconstitutional?

Mr. CLARK. It could be. I am not saying in my judgment this bill, if it became law, would be unconstitutional and I certainly would hope it would not be. I believe it is most important that the police have an opportunity to question.

I think we risk quite a bit getting into it without a full understanding of all the preliminary problems with interrogation.

Senator DOMINICK. I gather, Mr. Chairman, we are going to have time for Chief Layton?

The CHAIRMAN. I have been advised, for the information of the other committee members, we are operating under unanimous consent

agreement, and we are in session. There was an objection to any meeting afterward, and an objection has been lodged as to any committee meetings so I would hope that we might conclude with the present witnesses and then we again may be required, because of the objections that have been raised, to ask Chief Layton to return earlier next week.

Any further questions?

Senator DOMINICK. No further questions.

The CHAIRMAN. Senator Tydings.

Senator TYDINGS. I just wanted to see if I got the thrust of your testimony this morning. As I understand that your primary concern in this matter is to give assistance to the Police Department by giving them the greatest amount of flexibility in the conduct of their investigations.

Your reason for cautioning the committee against legislating in this area at this time is you held that rather than assisting the police, legislation might conceivably cause a court test. Such a test case involving one action or arrest under the new law might simply throw more confusion into an area in which the law is already greatly confused. Administrative procedures, on the other hand, would give the police more flexibility, with less risk of a judicial test of established police procedure. Is that a fair statement?

Mr. CLARK. Well, very generally, yes, that is true. The need for flexibility is to afford an opportunity for empirical data, we can't really say today, and the police can't say, how much questioning goes on in a typical case and we might be imposing by statute restrictions on effective police investigations that would be very difficult for them to operate efficiently under with their own administrative procedure which is flexible.

I think empirical data can be obtained and we can learn more.

Senator TYDINGS. It is also my understanding there are presently being undertaken several large-scale studies in this area by the Department of Justice, with the assistance of the police department and by the American Law Institute. There should be within a reasonable amount of time a great deal more information available as to what the actual needs of the police are in this area. What you need now are the data as to the effect of the *Mallory* rule on police work, correlated data upon which a course of action can be based, facts and information which you do not now have available, is that right?

Mr. CLARK. That is true. I would like to say I have only lived officially with this problem a few months, but in looking back over the history it appears to me there has been a very great tendency to deal with the *Mallory* problem in terms of theory and abstractions and we have never gotten down to the hard cases and practicalities of police investigations.

Now in the last 6 months we have worked with the police at great length and tried to face and understand their practical problems of investigation and questioning of suspects and we feel that that is the real way to get to the heart of the problem and that if we establish, if we can establish a pattern of experience then this Congress can come much closer to what is needed to perfect this bill.

Senator TYDINGS. It is not inconceivable, and in fact might be very probable that when you have completed your study and have the facts before you, you then come to Congress with the request for legislation

in this field. But in the interim period legislation in this area would not be of any great assistance, and might in fact hinder your efforts to ascertain the probable effects of the *Mallory* rule.

Mr. CLARK. That is exactly right and I think it is important to recognize this in the meantime the public safety is not jeopardized because the police under this administrative regulation will be authorized and instructed to engage in the same type of questioning as with the statute but with greater flexibility.

The CHAIRMAN. I think it is important you emphasize that, I am sure it is—the view I have, and I am sure other members share it, we want the streets of Washington to be safe and we want whatever methods can be devised legislatively or otherwise to see that the streets are safe. If this does part of the job, fine. I hope we can do the complete job and in some measure reduce the problems that have been raised by the *Mallory* decision.

I would like to have the chief of police back next week. Chief Layton, we can't hear him this morning but I think this is a step in the right direction and we ought to go as far as possible.

Senator TYDINGS. It is my understanding from the testimony that essentially there is nothing which the statute would permit in the field of police investigation and interrogation which the police could not do under the letter of July 14, under the administrative procedure. The administrative procedure, however, has the additional advantage of according the police more flexibility in their operations, at least in the area of aggregate time for questioning of a witness.

My question is only to emphasize the chairman's question which I think was the most important asked here today, namely, will the police be able to do all the investigatory work under your letter of July 14, under the administrative procedures set forth in that letter that they would be able to do under this proposed legislation which is the subject of the hearing today?

Mr. ACHESON. Is that addressed to me, sir?

Senator TYDINGS. Yes, sir.

Mr. ACHESON. I believe so, the question of course does not solve the problem to disagree as to what rule 5 means, and a bill would settle that question. The answer to the question why we don't prefer the bill right away is that we want to see how these procedures work.

The CHAIRMAN. Senator Dominick?

Senator DOMINICK. Just to point out the seriousness of this to the average person living in the District, I would like to have included in the record at this time a short box article from the Washington Star dated July 13, 1965, showing for the 37th consecutive month that serious crimes have increased sharply every month.

The CHAIRMAN. Without objection it will be included in the record at this point.

(The article referred to follows:)

[From the Washington Star, July 13, 1965]

SERIOUS CRIME IN THE DISTRICT INCREASES FOR 37TH MONTH

Serious crime in the District increased last month by 26.3 percent over June 1964, police reported today.

It was the 37th consecutive month in which the number of local crimes showed a rise over the comparable period a year earlier. The June figures brought the total offenses for the fiscal year to 32,545, an increase of 12.4 percent over the 12 months ending in June 1964.

Compared to June 1964, robberies showed the greatest rate increase last month, rising to 275 from 139, or 97.8 percent. Housebreakings increased by 82 to 644; grand larcenies by 38 to 147; petty larcenies by 165 to 873; auto theft by 139 to 496; rape by 4 to 15, and aggravated assault by 1 to 246.

Criminal homicide, which dropped from 13 to 11, was the only category to show a decrease.

The CHAIRMAN. Any further questions of the witness?

Gentlemen, I do appreciate your appearance here this morning, I think we have come somewhere along the way and I think this letter will be helpful and of benefit to the police. We will recess and, convene again at a later date.

We hope to move forward quickly there and go into executive session.

(Whereupon, at 1:20 p.m., the committee adjourned subject to call.)

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CRIME IN THE DISTRICT OF COLUMBIA

THURSDAY, AUGUST 5, 1965

U.S. SENATE,
COMMITTEE ON THE DISTRICT OF COLUMBIA,
Washington, D.C.

The committee met at 10 a.m., pursuant to recess, in room 6226, New Senate Office Building, Senator Alan Bible (chairman of the committee) presiding.

Present: Senators Bible, Morse, Kennedy of New York, and Dominick.

Also present: Chester H. Smith, staff director; Fred L. McIntyre, counsel; Robert T. Hall, assistant counsel; and Richard E. Judd, professional staff member.

The CHAIRMAN. The committee will come to order.

This is the continuation of the hearings on S. 1526 and H.R. 5688. Our last witness on these bills is the Chief of Police of the Metropolitan Police Department, Chief Layton. We are very happy to have you with us today. We are sorry that circumstances developed at our last hearing that you weren't able to complete your testimony at that time.

Senator MORSE. Mr. Chairman, may I say before the Chief starts his presentation this morning, that the Senate Labor and Public Welfare Committee is waiting for me downstairs to make a quorum on its poverty markup. I shall be shuttling back and forth, but every word that you put into this transcript you may be sure I shall study very carefully. I am going to see you tomorrow morning, anyway.

The CHAIRMAN. Thank you.

STATEMENT OF CHIEF JOHN B. LAYTON, ACCOMPANIED BY INSPECTOR JERRY V. WILSON, DISTRICT OF COLUMBIA METROPOLITAN POLICE DEPARTMENT

Chief LAYTON. Thank you, Senator.

The CHAIRMAN. Very well. We are happy to see you, sir. You may proceed.

Chief LAYTON. Thank you, Mr. Chairman.

The CHAIRMAN. Each of us has a prepared statement in front of us.

Chief LAYTON. Mr. Chairman, my appearance today is at your request and with reference to the July 15 statement of the Deputy Attorney General in which he presented to the committee the revised questioning procedures recommended to the Metropolitan Police Department by the U.S. attorney the day previous.

However, I should like to take a moment to express through this committee to the Congress my appreciation for the rapid response to our requests for additional manpower and equipment to strengthen the Department.

The Congress has provided in our 1966 budget the 235 police positions needed to experiment with saturation patrol techniques, the additional automobiles we requested for investigators, and for establishment of a one-man scout car program, the additional school crossing guards to relieve police officers, and the immediate expansion of our two-way footman radio system.

Senator DOMINICK. Mr. Chairman, I wonder if I may interrupt here.

The CHAIRMAN. Certainly. You may interrupt at any time.

Senator DOMINICK. When you refer to a two-way footman radio system you are talking about two patrolmen on a beat with a radio interchange through a walkie-talkie or some system of that kind.

Chief LAYTON. No, Senator; the operation of this is primarily between a precinct station, base radio station, and the footman on the beat.

In other words, in each of the precincts that we have equipment now we have 10 footman radios. This means that each 1 of 10 footman on the beat carry a radio which puts him in communication with the base station at the precinct station house, so that they can be called, can be directed to happenings on their beat, calls for service. They can in turn call the precinct station if they should discover premises open and need additional help to search the premises, or if they should get into some difficulty and find a situation developing to require the need for more police help.

Senator DOMINICK. And this is in addition to your patrol cars?

Chief LAYTON. That is correct, sir.

Senator DOMINICK. Thank you.

Chief LAYTON. We have now four precincts equipped and with the additional funds that were made available during this coming year we will be able to equip five additional precincts and we hope to complete that and equip the other five early next year.

Senator DOMINICK. Thank you.

Chief LAYTON. Although I was disappointed that our Planning and Development Bureau and computer proposals were not included, I am hopeful that we may be able to resubmit these programs in the 1966 supplemental, with sufficient justification to convince the Congress of the extremely high potential value of these programs.

The CHAIRMAN. At that point, Chief, are you making a submission of these programs that were denied in the regulation District of Columbia appropriation?

Chief LAYTON. Yes, sir.

The CHAIRMAN. Is that being made?

Chief LAYTON. Yes, Mr. Chairman. I have discussed this with the Commissioners. They are receptive to this and our Budget Office also is picking this up and it will be included in the supplemental.

The CHAIRMAN. Because I am advised that before we complete this session of the Congress there will be, as usual, a final supplemental bill, and what you are saying is that you are going to make your presentation to have these items included in the supplemental appropriation which were previously denied in the regular appropriation bill a part of the last supplemental?

Chief LAYTON. That is correct, Mr. Chairman.

The CHAIRMAN. Roughly, what is the amount involved in this particular program?

Chief LAYTON. \$214,000 approximately, Mr. Chairman.

The CHAIRMAN. Why is this so important in strengthening the arm and hands of the police?

Chief LAYTON. On the one hand, we feel that the volume of crime here is such that we need the procedures that we see in computer processing, both to store information and to retrieve it quickly. We feel that this will be very useful in assigning of our manpower, determining quickly where the critical areas are, and also many other procedures, the checking of records, wanted notices, warrants, automobile records, and even to the extent of storing and retrieving information relative to the identity and modus operandi of members of the criminal element in order to identify suspects.

The CHAIRMAN. Is this the first-year cost?

Chief LAYTON. Yes, sir.

The CHAIRMAN. The \$214,000?

Chief LAYTON. Yes, Mr. Chairman; this is the first-year cost.

The CHAIRMAN. Then there is a continuing cost of a lesser amount?

Chief LAYTON. Yes. There would be probably rental equipment, rental expenses, in connection with it that would be continuing costs.

The CHAIRMAN. I, for one, as a member of the Appropriations Committee, can assure you I will certainly take an added interest in this item. I am sorry it was lost in the regular budget, but there is another chance within a short time of saving this item for you, and I hope we can do it.

Chief LAYTON. Thank you, Mr. Chairman. I am hopeful, too, that the Congress will give early approval to the proposed overtime legislation, which not only is a factor in police morale, but which is sorely needed to provide a source of manpower for large details of policemen to special events and emergencies.

The CHAIRMAN. As I think you probably know, we have had a hearing on the bills for overtime pay. It is on our executive agenda today. If we do have a sufficient membership here to constitute a quorum so we can proceed in executive session, this is one of the items that we will consider.

Chief LAYTON. Thank you, Mr. Chairman.

Additionally, we have been in consultation and working closely with the staff agencies of the District government in working out proposals which we hope will provide recruiting incentives to enable us to meet and maintain the strength authorized by the Congress.

The CHAIRMAN. What is your strength today, Chief?

Chief LAYTON. Our current strength is 2,905 members of the force.

The CHAIRMAN. And your authorized strength is 3,000.

Chief LAYTON. 3,000; yes, sir.

The CHAIRMAN. You are able to recruit how many men per year? You testified to this before, but just to bring it up to date.

Chief LAYTON. Yes. We have recruited as many as 400 men in a year. As I have testified before, our average loss in separations from the Department through retirements and resignations is about 20 per month. It so happens that during the month of July and so far this month, just a little over a month, we have had a fairly large number of separations.

Since the 1st of July we have lost 48 men, 23 resignations and 25 retirements, and during that same period we have been able to appoint 41 men.

I am advised that we have 12 more applicants who we are ready to appoint, and we have 226 applications under investigation.

Now, we won't get all of those 226, of course. We do lose quite a large percentage of them along the way, but I did take notice, and I thought it would be interesting to this committee, Mr. Chairman, that it so happens during the past month we have had a larger than usual loss from the Department.

The CHAIRMAN. What are the reasons for the separations? I am not concerned with the retirements, but I think you said you had 23 resignations. Why are these people leaving the police force? Is the pay inadequate, or the retirement inadequate, or the work too hard or too long hours, or too difficult?

Chief LAYTON. As to some of the reasons, Mr. Chairman, that are assigned for leaving the force, in some cases it is to take other employment. I am sure from the inquiries that we make of men leaving the Department some of them are not happy with the necessity in the Police Department of working three tours of duty, working around the clock.

We do have some cases where men find that living costs here in the District are higher and their salary then is not as attractive as it looked to them before they came here.

Also, one of the items I think that we can mention to your committee is that one of the incentives that we hope to obtain is that of increasing the salary, the beginning salary particularly.

The CHAIRMAN. Your beginning is where now? About \$6,000?

Chief LAYTON. \$6,010; yes, sir.

The CHAIRMAN. Is it correct that this is one of the highest starting salaries of any of the police forces in the United States? I think you at one time said San Francisco was the only one ahead of you.

Chief LAYTON. There are several, Mr. Chairman. New York City on the east coast is above our starting salary.

The CHAIRMAN. How much?

Chief LAYTON. They are \$7,000.

The CHAIRMAN. They start at \$7,000 in New York City?

Chief LAYTON. Above \$7,000.

Mr. WILSON. We are in seventh place.

The CHAIRMAN. Seventh place in starting salary?

Chief LAYTON. That is correct. Los Angeles and San Diego on the west coast in particular, and there are several others, New York in particular on the east coast, but the standing now, as Inspector Wilson informs me, is about seventh place in starting salary.

Senator DOMINICK. Chief, I wonder if I may ask one more question along this line?

Chief LAYTON. Yes, sir.

Senator DOMINICK. You have, I think, you had 2,914.

Chief LAYTON. 2,905 at the present time.

Senator DOMINICK. 2,905. How does that compare on a percentage basis or how does it compare per thousand of population with other cities?

Chief LAYTON. We stand, now, first, Senator Dominick. We were running behind Boston, but we now are in first place in the percentage of police officers per thousand population.

Senator DOMINICK. Thank you. I think that is significant, Mr. chairman, because it indicates what a problem we have.

The CHAIRMAN. It certainly is significant.

Senator DOMINICK. We have more policemen per thousand inhabitants than any other city in the country and our crime rate is going up faster than any other city in the country despite the efforts of the Police Department.

It strikes me that we really have the need to do something more.

The CHAIRMAN. I couldn't agree more. Of course when you get to do something, I would like to have you spell out what that is—one, two, three, four, five.

Senator DOMINICK. We have a bill before us which might help.

The CHAIRMAN. We hope it will. There are a number of bills that we have that we hope will be of assistance in that area. I have asked you this question before. I think it is a difficult question to answer.

How many more men do you need? How many more can you use? You have the training problem and the recruiting problem. When we read of this increasing rate of rapes, of robberies, of other crime, it disturbs each and every one of us. I certainly don't envy you in your position as Chief of Police.

There seems to be a fair amount of crime occurring in the daytime, which is an amazing thing it seems to me. These are facts, ones we must face. What would happen if we gave you another 1,000 men, if you could recruit and train them.

Chief LAYTON. Yes, sir. As you have indicated, there are variables and there are factors that control the matter of recruitment, the matter of training. There are some limitations there, but it is my feeling, as I testified before both your committee and the Appropriations Committee here earlier this year, that the addition of police officers and the availability of sufficient numbers of policemen to place them closely on the streets, such as we are doing now with the tactical force, must have a deterrent effect.

In other words, if a policeman is visible in sight, someone who is inclined to commit a crime is not so likely to do it. The real problem is obtaining a sufficient number of men and spreading them throughout the city. If you don't mind my taking the time—

The CHAIRMAN. I wish you would. I mean this is very important—

Chief LAYTON. During the latter part of July, for instance, we actually got the tactical force in operation on the 20th of July and for the last 12 days of July we see an effect from the effort that is being put here.

Now, of course with the limitations that have already been referred to we settled on the figure of 235 positions. We have used those men available in particular areas, the areas of high crime incidence, and during the hours of the day. During those hours of the day and in those areas of the city where these men have been deployed we have seen a decline in the number of street cases and in the number of robbery cases.

I have taken a preliminary look at our preliminary statistics. We don't yet have our final figures on the number of cases during the month of July. Our part 1 crimes are going to be up again for the month of July, despite the fact that we have had the tactical force in effect.

The CHAIRMAN. Part 1 is again what for the record?

Chief LAYTON. Homicide, robbery, rape, auto theft, grand larceny, and housebreaking.

The CHAIRMAN. They are going to be up again for the month of July as compared with the month of July last year.

Chief LAYTON. July of last year, that is correct, and we find that in the robbery category we are going to have a pretty big increase in this, but we have examined the figures and, as you have made reference to, we have had a number of holdups of business establishments during the daytime even during this latter part of July.

The CHAIRMAN. And you saturated certain areas during that period of time.

Chief LAYTON. No, sir; we have not during that period of time. We expect to use this tactical force and move them as the pattern of crime indicates we should to meet the trends, but what we have done so far in the couple of weeks that we have had this force on the street is to use them during the evening hours which historically have been the high crime areas, and during these hours and in this area of the city we have seen an effect.

We had during the beginning of July a tremendous upsurge in the number of robbery cases and this has carried over. In attempting to evaluate this we have compared the daily rate for the last 12 days of July with the daily rate for the first part of July and we find that in the robbery category for the last 12 days we have a decline of 30 percent per day.

This is comparing the latter 12 days of the month with the first part of the month, so that we had a big buildup in the robbery category in particular during the early part of the month, and it means that we will have probably about a 50-percent increase for the month of July of 1965 over July of 1964.

The CHAIRMAN. What was that percentage again?

Chief LAYTON. About a 50-percent increase. In the robbery category only that is.

The CHAIRMAN. Fifty-percent increase?

Chief LAYTON. Yes, sir. But as I relate, this appears to be a buildup that we had the first part of July, the first 18 days of the month.

Senator DOMINICK. Mr. Chairman, I think it might be pertinent to say at this time that I had a discussion with some of the members of the FBI the other day and they indicated that the number of crimes cleared, in their terminology, by the Metropolitan Police force was about as high as any place in the country, and as they talk in terms of the clearance they are saying by arrests.

I think it was 49 percent, they said of the crimes have been cleared by arrest, in their terminology. This was a surprise to me because I thought we did better than that all over the country, but they say no, we have not, and that this is very high.

Is this pattern of clearance by arrest still going on?

Chief LAYTON. Senator, over a period of time we have had a good record, for many years, in the matter of clearance of crime. We have

had a higher percentage than that. We are in the midstreet of a declining trend in the rate of offenses cleared.

For instance, going back to 1958, our rate of clearance during that year was 56.8 percent and it has been declining since that time. My records that I have here, Senator Dominick, only carry me up to 1963, and our rate in 1963 was 42.4 percent, so that we are in the midstreet of a declining trend in the rate of clearance.

This is a concern to me also and has been for some time.

The CHAIRMAN. You may proceed.

Chief LAYTON. At the request of the Department of Justice, Mr. Chairman, my staff and I have cooperated, particularly with staff members of the Office of Criminal Justice in their effort to become better acquainted with the problems of our Department and the practical aspects and effect of legal decisions on police work.

The new policies recommended by the U.S. attorney will provide relief from the procedures under which we have been operating since last October. As your committee noted at the July 15 hearing, since October 1964 our personnel have been under instructions and I quote, and this is a quotation from the letter of the U.S. attorney:

That persons under arrest are not to be questioned regarding the facts of the offense following their arrival at precinct or headquarters, until after their appearance before the magistrate and appointment or retention of counsel.

As to specific aspects of the new policies, I would offer the following comments:

As the U.S. attorney notes in his proposal, it has been the general policy of this Department that persons arrested and questioned regarding crimes shall be clearly warned that they may remain silent and that any statement made by them may be used as evidence in court. This proposed condition in the new policy should not pose an insurmountable problem as a general rule in the investigation of criminal offenses.

Senator DOMINICK. You have been doing that already, I gather.

Chief LAYTON. Yes, Senator, we have.

With reference to the warning that an arrested person may consult a lawyer, relative, or friend, I would refer to the testimony given your committee by myself on S. 1526 and to the unanimous opinion of experts to the effect that any attorney contacted by an arrested person would automatically and immediately advise his client to make no statement whatever to the police. It has been Department policy that whenever a defendant requested an opportunity to consult with an attorney he was given this opportunity, but it is difficult to predict with any certainty the extent to which arrested persons may make such requests when their attention is specifically directed to this opportunity by the police prior to questioning the individual regarding a particular offense.

This requirement seems to me to go beyond the requirement in current court decisions as I understand them and therefore affords greater protection than provided by such decisions. However, to operate under an administrative policy in this area until clarifying court decisions are handed down is preferable to the strict requirement of statutory provisions.

As I reported in my statement on S. 1526, this Department has for many years made use of third party witnesses to confessions and in recent times we have taken some sound recordings of confessions.

Consequently, I have no objection to further experimentation in the making of sound recordings of questioning whenever reasonably possible. Experimentation under an administrative policy allows flexibility not available in a statutory requirement, in order to determine the feasibility of such procedures and to determine where problem areas may develop.

Mr. Acheson points out in his letter that court decisions in our own circuit court of appeals and in other circuits have emphasized the division of view among judges as to what time limitations and other circumstances make questioning permissible under rule 5-A and the *Mallory* decision.

From the language of his letter, it seems clear that the U.S. attorney intends the proposed procedures as only an interim provision and I quote him, "pending legislative or judicial clarification of the law," and I, of course, am not in a position to predict whether or not these procedures will stand the test of interpretations by our court of appeals.

The lack of consensus in the decisions referred to, in my judgment, underscores the need for clarifying legislation on the subject.

On the other hand, in view of the length of time this subject has been under study, the continuing and intensive study being given by the agencies mentioned in Mr. Acheson's letter, and while I have some concern and reservation with regard to some of the provisions, I would say to your committee, Mr. Chairman, that the overall effect of the recommended procedures would appear to be an improvement over these under which we have operated since last October.

The CHAIRMAN. Thank you, Chief. I am wondering if any comparison has been made as to the percentage of police officers to population in the District of Columbia with the surrounding area.

After all, it is very difficult to separate the District of Columbia proper from the metropolitan area, as we are all aware, because it does spill into Maryland on the north and to Virginia on the south, and I don't know whether any comparison has been made as to the number of police officers used here in downtown Washington as compared with those in the metropolitan area, over in Arlington, or Alexandria, Falls Church, Silver Spring, Bethesda, and the outlying areas.

Chief LAYTON. I don't have those figures with me, Mr. Chairman. I will be glad to get them and submit them to your committee.

(The information referred to follows:)

Washington metropolitan area jurisdictions, police employees, Dec. 31, 1964

Jurisdiction	Estimated population	Full-time police employees ¹	Employees per 1,000 population ¹
Montgomery County.....	410,234	441	1.1
Prince Georges County.....	358,448	325	.9
Alexandria.....	117,972	158	1.3
Arlington County.....	184,736	230	1.2
Fairfax County.....	324,197	253	.8
District of Columbia.....	808,000	3,113	3.9

¹ Full-time police employees, including civilians, as of Dec. 31, 1964.
Source: Federal Bureau of Investigation.

I would say from general observation that the percentage that you refer to, the number of police officers to 1,000 population, is lower in the surrounding areas than in the District of Columbia.

The CHAIRMAN. What are the incidences of crime there on a comparable basis? You say, if I understand you correctly, that there has been an alarming 50-percent increase in robberies—your statistics will show this when they are released—in July 1965 compared to July 1964.

What would be the situation in the outlying Virginia metropolitan communities and in the Maryland outlying communities? In reading the papers and listening to the television and radio I think we are very well aware they are having a lot of crime problems there as well. How do they compare percentagewise with the percentage of crimes here in the District of Columbia?

Chief LAYTON. The one jurisdiction that has a very favorable picture is Arlington, Va. They, I think in the last year, had a slight decline. In Montgomery County the crimes against property in particular in Montgomery County have increased at a very sizable rate.

If I recall correctly, I think I recall seeing figures of 50-percent increase in property crimes. This would be housebreaking, thefts of property, and this sort of thing. They do not have the high percentage or high rate of offenses against the person that we have in the District. This would be assaults and robberies, cases where there is personal contact. I can't give you from recollection just what the picture is in Prince Georges County. There has been some increase, but this we can also submit to your committee, Mr. Chairman.

(The information referred to follows:)

Washington metropolitan area jurisdictions, offense rates, calendar year 1964

Jurisdiction	Estimated population	1964 offenses per 100,000 population ¹
Montgomery County.....	410,234	1,265.1
Prince Georges County.....	358,448	2,211.5
Alexandria.....	117,972	1,790.3
Arlington.....	184,736	1,555.7
Fairfax County.....	324,197	1,070.0
District of Columbia.....	808,000	2,838.1

¹ Crime index offenses: includes murder, nonnegligent manslaughter, forcible rape, robbery, aggravated assault, burglary, larceny (\$50 and over), and auto theft.
Source: Federal Bureau of Investigation.

The CHAIRMAN. I think it might be helpful because we have to look at this almost as a unit, as an area I guess of 2.3 million people now, maybe more than that.

Do we have court cases in the outlying areas, Montgomery County, Prince Georges County, or in the Virginia communities, that are comparable to the restrictions of the *Mallory* decision?

Do they follow that, or do they follow some other administration of confessions in those areas?

Chief LAYTON. I am sure, Mr. Chairman, that the effect of the *Mallory* rule which, as you know, is an interpretation of rule 5-A of the Federal rules of procedure, has not become as critically applicable

to the State jurisdictions, including the surrounding jurisdictions, as they are here in the District of Columbia where all of our felony cases, all of our serious crime cases, do go through the Federal courts and are subject to the Federal rules of procedure.

The CHAIRMAN. Yes; I recognize that distinction and I did not know whether or not the Maryland courts as a State court system followed the *Mallory* decision or not, because some State courts have, even though they are not Federal courts.

Chief LAYTON. I think there is some recognition of this, Mr. Chairman, and some decisions I am sure that have taken this into account, but I am sure it is not as applicable and not as critical in the State courts as it has been interpreted here by our circuit court of appeals.

The CHAIRMAN. Thank you, Chief. I have no further questions. If you have anything else that you want to tell this committee as to how this committee legislationwise can be of some assistance to you or verbal assistance to you, certainly don't hesitate to speak up if there are any further observations you might have to make.

Is there anything further that this committee can do as a legislative committee? We are not an appropriations committee.

Chief LAYTON. Yes, sir.

The CHAIRMAN. We are a legislative committee.

Chief LAYTON. I did appear before your committee, Mr. Chairman, as you know, sometime earlier and testified specifically on the various sections of the proposed bills that were before your committee and I would just emphasize that those views presented then are my views yet. I feel strongly that there is a need for an opportunity to talk to defendants, that is, an opportunity for police officers to talk to defendants, to clarify the facts of a case.

We have cases many times, and we have cases that can be cited and have been cited in the past, where the opportunity to talk to an arrested person has clarified an accusation to the point where it was determined that the suspect or the arrested person was not in fact guilty of the crime which had been alleged, sometimes by a complaining witness who had identified him or in other ways he had been connected originally with the crime.

In addition to that, while we do and must operate on the proposition that arrests can be made only on probable cause to believe that a person has committed an offense, this probable cause does not always satisfy the requirements for proof of guilt beyond a reasonable doubt and we know from past experience that this kind of clarification can be obtained during a period of proper questioning and an opportunity to discuss the facts and the evidence with an arrested person.

There is a need for this if we are to be effective in attempting to control the serious crime problem we have in the District of Columbia.

The CHAIRMAN. Thank you Chief. I hope this committee can be of some help in that legislative clarification. This is not an easy problem, as we well know. We are also very well aware of the American Law Institute study which made some type of recommendation, and as a lawyer and as a former Attorney General I know how difficult it is to bring a consensus, particularly among lawyers and jurists.

I don't know whether we are talking in ranges of next January or February, or a year from then, but knowing of this difficult field—how hard it is to bring legal minds together in agreement and writing a statute—we must take some action as a legislative committee.

However, we have the responsibility to make the streets of Washington safe and I think it is just that simple and I think we will do everything we can to try to do it wherever we can.

Senator DOMINICK. Mr. Chairman?

The CHAIRMAN. The Senator from Colorado.

Senator DOMINICK. I just want to comment on your last statement that even Santa Claus, I think, will be coming more often where we will get an agreed decision from the ALI or a group of lawyers on the exact wording on a change in the *Mallory* rule.

It just seems to me, in view of the evidence that we have had not only in the newspapers and radio and television, but the detailed evidence from the Chief, that it is imperative that we take some action.

Chief, I wanted to ask you this: I gather from your statement that this administrative procedure of having at least 3 hours over a 24-hour period is better than the situation that you had in October, even though it may not be perfect for you.

Do you feel that this 3 hours out of a total of 24 is more helpful than the 6-hour limitation that is in the bill because of the flexibility?

Chief LAYTON. Yes, Senator. I do feel that because of the flexibility there that it would be more helpful. I don't interpret Mr. Acheson's letter to mean that we have 3 hours during a 24-hour period. We still will have to be bound by the Federal rules; that is, a prompt presentment.

Senator DOMINICK. Yes; I understand that. This is a maximum limitation.

Chief LAYTON. Yes, sir. The flexibility is the thing that makes the 3 hours attractive over the 6-hour period for the reason that there are occasions when an individual is identified sufficiently and there is sufficient probable cause even to justify the issuance of a warrant.

This person may be arrested at a time when the officer most familiar with the case is not readily available. His arrest would be effected and if the time began running from that time on there would be some time that would be lost, that would not be available to us for proper interrogation.

Senator DOMINICK. Then a change in the bill to conform to this administrative procedure you think would be helpful?

Chief LAYTON. I certainly do, Senator.

Senator DOMINICK. We have taken up quite a few other matters in the bill itself. Are there any matters that are apparent to you which would be of assistance to you in clearing up this crime situation which are not in the bill at the present time—additional punishments, or additional criminal action, or changes in existing statutes that aren't dealt with in this legislation?

Is there anything that leaps into your mind that has been left out of the bill?

Chief LAYTON. I would refer back to the testimony that I gave on material witnesses, Senator Dominick, and I prefer the language of the House bill over that of the Senate bill because I think it provides for those times and places where a material witness would be found outside of the court proceeding.

Senator DOMINICK. I don't blame you for wanting it, Chief, but I think there is a good indication it is unconstitutional. That would make it difficult here to write into law.

Chief LAYTON. It certainly would. I have said before that those areas where we have a constitutional question, that naturally we recognize as controlling.

Senator DOMINICK. But other than the material witness you think that the bill covers at least a good number of the sore spots by which you are affected.

Chief LAYTON. Yes, Senator. The effort to obtain an allowable period of time during which persons who are arrested on probable cause for a criminal offense can be questioned in my judgment would be helpful. I have given testimony here this morning and I did previously on the section and particularly the statutory requirement that the defendant be advised by the police that he may call an attorney has the real possibility of precluding the obtaining of any admissions, and this sort of thing because it is putting him on notice at that stage that he has this opportunity, and, as I have indicated, in my judgment at least, and as I understand the decisions that have been brought to my attention, this goes somewhat beyond the decisions that we have at the present time.

Senator DOMINICK. Thank you, Chief.

The CHAIRMAN. The Senator from Oregon.

Senator MORSE. Mr. Chairman, I am not going to ask any questions this morning. This is a matter we will discuss in executive session and on the floor of the Senate at great length. The Chief—and I have an exceedingly high regard for him, as he knows—and I simply differ, as I differ now with the Attorney General of the United States, and the Deputy Attorney General of the United States, and the U.S. attorney for the District of Columbia, in regard to the handling of this issue as to police powers prior to a preliminary hearing.

In my judgment everything that the Attorney General of the United States, and the Deputy Attorney General of the United States, and the U.S. district attorney, and the Chief himself have said in regard to this matter cries out loud for legislation and not for administrative procedures. There is the admission throughout their statements that they seriously question the constitutionality of their procedure.

To me it is shocking that people entrusted with the sovereign responsibility of law enforcement should prefer administrative procedures in lieu of legislation when they have serious question as to whether or not their procedures would be constitutional if put into legislation.

I have told the chairman that I am willing to cooperate in voting out legislation determined by the majority of this committee. I shall be no party to giving any support to the administrative processes that the Attorney General of the United States, the Deputy Attorney General of the United States, and the U.S. attorney, and the Chief of Police, and any others connected with law enforcement in the District advocate by way of administrative procedures and I shall discuss it at great lengths in the days ahead on the floor of the Senate.

I announced last night in the Senate that I intended to analyze the position of the Attorney General of the United States in his letter exchange with Judge Bazelon, a philosophy in regard to law enforcement that simply shocks me. To think that we have an Attorney General of the United States that is willing to waive precious rights of individuals in connection with law enforcement, as he obviously is, is just beyond my power of comprehension.

Senator DOMINICK. Mr. Chairman, before this is closed I would like to include in the record, if I may, an editorial from the Rocky Mountain News of May 31, 1965, entitled "To Keep the Balance True."

The CHAIRMAN. Without objection the editorial of the Rocky Mountain News will be made a part of the record.

(The information referred to follows:)

[From the Rocky Mountain News, May 31, 1965]

TO KEEP THE BALANCE TRUE

Unless a trend started by the Supreme Court's *Mallory* decision of 1957 is reversed, we are close to the time when police will not be able to make any use of a confession involving clandestine crime.

The most recent ruling is by the Third Circuit Court of Appeals—the court level second only to the Supreme Court itself.

The appeals court has just overturned the conviction of two men accused of killing a Newark, N.J., policeman while they were trying to rob a tavern. It said the police before questioning the pair had not advised them of their right to a lawyer or their right to remain silent.

The appeals court went three steps beyond any previous Supreme Court ruling.

It said the suspects did not have to request counsel, that they should have been furnished counsel if they could not pay and that such a defense could be raised on appeal even if not raised at the trial.

If the Supreme Court permits this to stand, it would nail down the right of any arrested person to see his lawyer before the police question him.

Police believe this will end confessions. This seems a reasonable conclusion for any lawyer worth his salt certainly would advise a client arrested in an unsolved crime to keep his mouth shut.

Police contend there are many crimes where there are neither witnesses nor fingerprints and that questioning of logical suspects is the only practical route toward solving them.

Certainly there would seem to be a place in crime investigation for proper police questioning of suspects.

Justice Cardozo, one of the Supreme Court liberals in the Holmes-Brandeis-Stone-Cardozo era, in an opinion once said:

"Justice, though due the accused, is due to the accuser also. The concept of fairness must not be strained till it is narrowed to a filament. We are to keep the balance true."

"To keep the balance true," police rights—which are so necessary for public protection—need to be set out just as clearly as police limitations have been.

The CHAIRMAN. The Senator from New York.

Senator KENNEDY. Mr. Chairman, I just have a few questions. As I understood, Chief, you said before I came in that crime in the District of Columbia had gone up 50 percent in July over what it had been in the prior year.

Chief LAYTON. In one category, Senator. The category that I was referring to was that of robbery, the offense of robbery, and when our figures are completely tabulated and released they will show an increase in the part 1 offenses for July of 1965 over 1964.

The sharpest rise is in the category of robbery and it appears now from our preliminary figures that for July of 1965 over July of 1964 we will have a 50-percent increase in the number of robbery cases.

Senator KENNEDY. What percentage of those who are involved in robbery and these other criminal offenses are repeaters who have been in difficulty with the law on prior occasions or have been convicted on prior occasions? First let's take the percentage of those who have been convicted on prior occasions.

Chief LAYTON. There is a pretty high percentage of repeaters, Senator. I don't know that I have the figures with me this morning, but we do know from general experience that the percentage of repeaters in this category of crime is pretty high.

For instance, oh, a year ago I remember a group of men who were holding up business establishments at that time, grocery stores and liquor stores in particular, and some others. A group of them were arrested and charged and then we had another series, another rash, of the same type of offenses before they were tried, and they were identified separately and apart from the previous offenses, but there were a number of the same group, and then we even had some of them that were arrested again later for another series of similar cases.

Senator KENNEDY. I had understood here in the District of Columbia that of those who are responsible for crimes, approximately 75 percent of them had been convicted on previous occasions. Would that appear to be about right?

Chief LAYTON. That figure, Senator, sounds to me like a figure that came from the penal institution and my recollection is that that is approximately correct, that the people who are committed to the penal institutions runs about 75 percent with previous convictions.

Senator KENNEDY. I wonder in view of that whether we should place greater emphasis on the rehabilitation and probation programs that exist in the District of Columbia. I think that perhaps we need more emphasis on the procedures that we have in the District of Columbia for checking on those who are convicted of a crime, on what happens to them, and what kind of lives they lead.

Chief LAYTON. I believe there has been testimony, Senator, on the large workload that the probation and parole officers have here in the District of Columbia and I think this certainly is a factor.

Senator KENNEDY. I am also wondering whether we shouldn't place greater emphasis on the training of probation officers, whether that also wouldn't be of great help to the police in the effort that you are making. If 75 percent of the people who are convicted of crime have been convicted before and they go to an institution and they come out and start all over again, it seems to me that somewhere our process of law and justice is breaking down.

One of the reasons that people are incarcerated is to try to train them so that they will not return to crime. If 75 percent of them do return to crime it means that we are not really doing what we should be doing in dealing with these problems.

Senator Morse's committee is going to go into this whole area when it meets; perhaps we ought to take a look at that. Would you feel that that is an area in which you could use some help in meeting your responsibility?

Chief LAYTON. I would feel, Senator, that with the heavy workload that the probation officers have, and I am not sufficiently familiar to know just what type of training they have to give you a satisfactory answer on that, but certainly the workload that they have with the large number of cases I think makes it difficult for them to do a good job.

Senator KENNEDY. Is there any central authority for the probation officers here in the District of Columbia?

Chief LAYTON. We have two separate forces really, one under the district court and the other from the court of general sessions, the District probation office, and the other is the Federal system under the District court.

Senator KENNEDY. Is there one central authority for both of them, or for either one of them?

Chief LAYTON. No, sir. One is controlled from the District of Columbia and the other through the Federal system. Mr. Garrett is the chief probation officer in the District court.

Senator KENNEDY. Do you know if they have any special training, either group of probation officers, and do you know how long that training is?

Chief LAYTON. I am not able to tell you what their training consists of, no, sir.

Senator KENNEDY. Do you work closely with the probation officers?

Chief LAYTON. Yes, sir; our personnel do work closely with them. We have occasion to consult with them from time to time. There are occasions, of course, when some of the probationers get into difficulty, are identified in crimes. We have a good working relation with them, yes, sir.

Senator KENNEDY. Perhaps we could look at that at another time with your committee, Senator Morse. I also want to join with Senator Morse in saying I have the greatest respect for what you are doing, and what you are attempting to do here in the District of Columbia. Whatever help this member of the committee can be of to you I would like to assist.

Chief LAYTON. Thank you, Senator.

The CHAIRMAN. I thank the Senator from New York. Chief, I have one question that I overlooked. It is rather collateral to the problem at hand, but either yesterday or the day before yesterday we had two bills before us to increase the staffing of the court of general sessions, one that I introduced that increased it by three judges, one that the Senator from Oregon introduced that increased it by five judges.

I think they made a very fine case for the higher figure of five. Senator Morse's bill provided for the creation of a traffic court and it seemed to me that that was a good idea.

During the course of the questioning it was indicated that they should have some of these traffic courts at night.

I read from the record, from the testimony of Mr. Miller, as to the question of releasing police officers to come into the traffic court, I presume primarily as witnesses, and some indication was made that in preliminary discussions on this subject you may have had some reservations as to releasing police officers during the hours, say, 6 to 9 o'clock in the evening, or whatever the range might be for holding a night court. Is that correct? They are needed on the streets because of this crime problem.

I did indicate that I would ask you for an expression on that. It is rather collateral to the problem we have, and I am convinced that we should give the court of general sessions more manpower and I think the idea of traffic court is excellent.

My only question of you is your views as to whether or not having a night traffic court, either on a mandatory basis or in the discretion

of the chief judge of the court of general sessions, would take valuable police manpower off the streets during these evening hours?

Chief LAYTON. Mr. Chairman, the hours suggested, 6 to 9 or 7 to 9, would be during the critical crime period for us, which has been operating from about 6 p.m. to 2 a.m. or 7 p.m. to 3 a.m. These are the high crime areas. I would be sympathetic to the opportunity granted to citizens to come into court to contest a case that they thought they were justified in doing, but it is true that this period of time would be a critical time for the Police Department so far as the serious crime is concerned in the District.

The CHAIRMAN. Would it be your feeling that it would be better at least as we initiate and move in this field to leave that discretion to the holding of night courts with the chief judge rather than making it mandatory in a statute?

Which would be your preference? I assume you would rather have it discretionary. Personally, I think Senator Morse's bill is an excellent one.

Chief LAYTON. My personal reaction, Mr. Chairman, would be that it might be better to leave it discretionary with the chief judge. I would feel that he would certainly take notice of the committee's wishes in that respect, and he has taken some steps already in the matter of treatment of traffic offenses, and it might be better to leave it discretionary with the chief judge.

The CHAIRMAN. It is something of course the committee will consider, but I did say that I would get your viewpoint.

The Senator from Oregon.

Senator MORSE. Just a question or two.

The CHAIRMAN. Certainly.

Senator MORSE. Chief, it seems to me that we are talking about a matter of procedure of handling your testifying officers. Night traffic court does not mean that someone that has received a ticket at 6:30 goes to traffic court that night, but a night traffic court does give people who have been ticketed during the day an opportunity to appear before the court at night.

What about your hours schedule? An officer goes on the beat at 8 o'clock in the morning. He is certainly not on the beat at 7 o'clock at night.

Chief LAYTON. That is correct.

Senator MORSE. And, as you know, I am a strong advocate of overtime pay for policemen when they are called to carry out their official duties during off hours. The system that I am advocating is very common in many of the large metropolitan cities of this country where you have night courts at the convenience of the citizenry. It is a great loss to the citizen, sometimes results in his losing his job, when he has to be called into court on a traffic ticket during working hours, and I think it is true that many times people pay it when they think they could really win their case if they went to court. I don't think that is very fair to citizens to put them in that position, so what I have in mind is what I think you will find is a scheduling of the handling of your ticket so that at a given night court, we will say tonight only those tickets that have been, say, handled up until 2 p.m. or 3 p.m. that day, and preceding days, would be brought before the judge, and anything after a fixed hour, 2 p.m. or 3 p.m., can go to court

the next day, or the next night, depending upon the individual's schedule.

That isn't going to take anyone off the beat that is on the beat the night that the court meets.

Now, you will have a problem with the individual who gets a ticket at 8 o'clock tonight and wants to go to court tomorrow night, say at 7 o'clock, but it seems to me that what you have to work out procedurally is what we call a shift force or shift squad.

You are going to know in advance what officers are going to be required to testify at 7 o'clock tomorrow night and your shift squad can serve as a substitute for those officers for that occasion.

Lastly let me say it is a question of a shortage of manpower, you have no trouble with the senior Senator from Oregon. Whatever police manpower we need in order to have an efficient police department in the District of Columbia I am for, but I am also for having a police department large enough so that the citizens can be adequately and fairly dealt with, and I happen to think that a lot of injustices accrue to individuals by a denial to them of a night court in regard to traffic, and I think we ought to try to work out a procedure here whereby the people know that there is going to be that night court, and subject to the discretion of the judge in arranging his own calendar. Of course they are not entitled if they get ticketed this afternoon, necessarily to get to that traffic court tonight if the judge can't work out such an agenda.

We might very well schedule them into next Monday night, and if a traffic ticket happens to be assessed during the night then I think we have to have a police department large enough so that that particular officer can be released to testify before the court, and a substitute with overtime pay, if he is on regular duty some other time, will take his shift while he is in court.

The CHAIRMAN. At this point in the hearing record I will insert President Johnson's crash anticrime program for the District of Columbia as presented to the Senate District Committee by Commissioner Tobriner on May 13, 1965, and the status of the program as of today, August 5, 1965.

President Johnson's crash anticrime program for the District of Columbia as presented to the Senate District Committee by Commissioner Tobriner on May 13, 1965

	Appropriation		
	1965	1966	Later
1. Implementing of saturation patrol techniques.....		X.....	
2. Overtime legislation for police and firemen ¹		X.....	
3. Additional scout cars, additional automobiles for investigators and establishment of 1-man scout cars.....	X.....	X.....	
4. Increase in school-crossing guards and review of all assignments of police officers to administrative, clerical, and technical duties.....		X.....	
5. Establishment of Planning and Development Bureau and applications of computers to police work.....		X.....	
6. Immediate expansion of 2-way radio system for footmen.....		X.....	
7. Early construction of police training facilities.....			X.
8. Development of plans for installation of a Police Department television network.....			X.

¹ Requires legislative as well as appropriation action for 1966 financing.

STATUS OF EIGHT-POINT PROGRAM AS OF TODAY, AUGUST 5

1. (As above). This being carried out with 235 officers on a 5-day week basis.
2. (As above.) Legislation presently before this committee for final consideration.
3. (As above.) Officers will begin this specialized training next Monday, August 9. Delays were caused by the necessity that equipment be purchased. Such could not be carried out until approval of the 1966 District of Columbia appropriations bill. Vehicles will be totally operable by September 15, 1965.
4. (As above.) Additional school-crossing guards will be used starting at the beginning of the school term this fall. Review of police assignments to bring about possible reassignment of police officers from administrative, etc., details to patrol and enforcement work will start before September 30, 1965.
5. (As above.) This item was denied by the District of Columbia Appropriations Subcommittee of the Senate. However, it is included in a supplemental request of the District of Columbia government that may come before the Congress in the supplemental budget before adjournment this year.
6. (As above.) Contracts are now being advertised for purchase of these radios.
7. (As above.) Request for funds is contained in the 1967 District of Columbia budget that will come to the Congress in January 1966. Likewise, the District government's request for a site at the National Training School, being abandoned by the Department of Justice, is now before the National Capital Planning Commission. The District government has been unable to get a decision from the Planning Commission.
8. (As above.) Funds contained in the 1967 District of Columbia budget coming to Congress in January 1966.

The CHAIRMAN. Any further comments or questions?

The hearing is concluded. We will go into executive session.
(Whereupon, at 11:17 a.m., the hearing was concluded.)





