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THE SUPREME COURT AND THE POLICE: 1968?

(Comments upon *Reflections of a State Reviewing Court Judge Upon the Supreme Court's Mandates in Criminal Cases* by Judge Charles S. Desmond.)

JAMES R. THOMPSON*

In this Symposium, devoted to an examination of the present relationship between the Supreme Court of the United States and the police, the previous authors have examined in detail the existing state of the law, although voicing, to some extent, their fears, or hopes, as the case may be, for the course the Court is taking. This paper is an exploration, in rather summary form, of the future of three areas of the law which will not only soon present the police with new challenges to their concepts of how the law should be enforced, but will greatly concern all citizens, including prosecutors, defense counsel, and judges.

The title of this Symposium—*The Supreme Court and the Police: 1966*—was not intended to further the notion that these two bodies are at war, or that they should, or do, stand at polar extremes in their views concerning the proper administration of American criminal justice. At least implicitly, however, the title reflects a recognition that such polarization is currently accepted as a fact by many of the commentators—lawyers and laymen alike. I join my fellow authors in deploring those debates based upon heat rather than light.¹ What

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The paper that is the subject of Professor Thompson's comments appeared in the September, 1966 issue of this *Journal*, at p. 301.

[Since the predictions stated in Professor Thompson's article are appearing in print only after the *Miranda* decision of June, 1966, I feel impelled to assure the reader that all of the statements in this article concerning *Miranda* were in fact made, prior to the decision in that case, at the April, 1966 Conference on the Supreme Court and the Police at Northwestern University. Moreover, Professor Thompson, in his Brief and Argument on behalf of the State of Illinois in *Escobedo v. Illinois*, 378 U.S. 478, pointed with foreboding to the direction in which the Court logically would have to go if it reversed *Escobedo's* conviction.—*Fred E. Inbau*].

¹ See Desmond, *Reflections Of A State Reviewing Court Judge Upon The Supreme Court's Mandates In Criminal Cases*, 57 J. CRIM. L., C. & P. S. 301(1966); Souris, *Stop And Frisk Or Arrest And Search—The Use And Misuse Of Euphemisms*, 57 J. CRIM. L., C. & P. S. 251, 253, 262 (1966).

will be set forth hereafter is simply a set of predictions (or more nearly accurate, speculative appraisals) of what may be confronting the police two years or so from now.

The focus, then, is on *The Supreme Court and the Police: 1968*, with as much "neutrality" as can be mustered by one with a background in the prosecution of criminal cases, tempered (or perhaps fortified) by a genuine respect for civil liberties, admiration of the police, and a lawyer's warm respect for the highest court in our land.

We begin with *Escobedo v. Illinois*.² That case has been cited, discussed, criticized, praised and dissected many times in this Symposium. And except for the fact that I was the lawyer who lost it, I claim no special qualification for any more perceptive analysis of the decision. Indeed, it is my view that a prognosis of how the Court will decide the pending post-*Escobedo* cases is fairly easy to make. Recognition of two central factors should lead to but one conclusion of what the Court is going to do in deciding whether present police interrogation techniques are compatible with the privilege against self-incrimination and the right to counsel.

One thing that is clear about the *Escobedo* opinion, if anything is clear, is that it is now unquestioned that persons undergoing police interrogation are protected by the privilege against self-incrimination. There is no doubt about that.³

Secondly, under the facts of the *Escobedo* case, the Supreme Court of the United States did indeed recognize a constitutional right to counsel at the

² 378 U.S. 478(1964).

³ "Without informing him of his absolute right to remain silent, the police urged him to make a statement." (378 U.S. at 485.) "Our Constitution, unlike some others, strikes the balance in favor of his privilege against self-incrimination". (378 U.S. at 488.) "The accused may, of course, intelligently and knowingly waive his privilege against self-incrimination . . . at a pre-trial stage . . ." (378 U.S. at 490, n. 14.) ". . . the police have not effectively warned him of his absolute constitutional right to remain silent . . ." 378 U.S. at 491.

interrogation stage. When the Court reversed Escobedo's conviction it did so on the basis that his sixth amendment right to counsel had been violated.⁴ So the case turns upon those two factors.

After one has carefully read the *Escobedo* opinion and then the opinions of those courts which have refused to give any more expansive meaning to the *Escobedo* holding than its precise facts would warrant,⁵ the conclusion is irresistible that those cases are in serious error.

Once it is recognized that a sixth amendment right to counsel and a fifth amendment privilege against self-incrimination exist during police interrogation, it is difficult to understand how anybody can be interrogated without proof in the record that he knows of, and is willing to waive, his right to counsel and privilege against self-incrimination.

We know, from those cases which have applied the sixth amendment to defendants who show up in trial courts without lawyers, that there can be no waiver of counsel without an explanation of, and a consideration of the advantages of, the right to counsel by the defendant. That means somebody has to give him a warning. In a trial situation the trial judge gives the warnings.⁶

In my opinion, the Supreme Court of the United States will hold, in the presently pending cases,⁷ at a minimum, that the California Supreme Court construction of *Escobedo*⁸ is correct, i.e., that interrogation cannot proceed unless the record shows that a defendant has been warned by the police of his privilege against self-incrimination and his right to counsel.

The difficulty with the opinions of those courts which have refused to extend the *Escobedo* case is simply this: Either they are refusing to recognize that the privilege against self-incrimination and the right to counsel apply during police interrogation—a view that seems especially untenable in light of Mr. Justice White's dissent in *Escobedo*,⁹ or even in light of the seemingly restricted holding of the

majority—or they are positing their opinions on the doctrine of waiver and are saying, in effect, that when a man responds to questions he waives the privilege, and when he does not *request* counsel, he waives counsel.¹⁰ But this viewpoint simply cannot be squared with prior decisions of the Supreme Court of the United States on the question of waiver of constitutional rights.¹¹

Suppose, moreover, that the police do give the warnings implicitly required by *Escobedo*, but are confronted by a defendant under interrogation who does not have the funds to hire counsel. The police warn him of his right to counsel, and he says in response to that warning, "I don't have any money for a lawyer, but I would like to talk with a lawyer before I talk further with you gentlemen." The police say, "Well, we have no lawyer available, nor do we have the money to obtain counsel for you", and they proceed with the interrogation.

It seems to me that if the equal protection clause of the Constitution means anything at all, an indigent, who upon hearing of his right to counsel from the police officer decides to exercise that right, is then placed in the very position in which *Escobedo* was placed in his case—that is, a man demanding his right to counsel and yet deprived of one. And if police interrogation proceeds in defiance of that demand, as was the situation in *Escobedo*, then any other court must come to the same conclusion—a confession obtained thereafter is inadmissible.

One great difficulty with these warnings, however, is this: who, properly, should give them? Justice Schaefer, of the Supreme Court of Illinois, in his recent Rosenthal Lectures at Northwestern University School of Law, has suggested that perhaps the warnings ought to be given by magistrates rather than by the police. Although I do not believe that this would be consistent with our present concept of the magisterial function, I do agree that it is inconsistent with the *police* function to place upon them the responsibility of warning a potential defendant of his constitutional rights.

One of the reasons accounting for the *Escobedo* opinion, and perhaps the greatest reason, is that the Supreme Court of the United States was simply sick and tired of hearing voluntary confession

⁴ "We hold only that when the process shifts from investigatory to accusatory . . . the accused must be permitted to consult with his lawyer." 378 U.S. at 492.

⁵ See, e.g., *People v. Hartgraves*, 31 Ill.2d 375, 202 N.E.2d 33 (1964). Other cases are collected in *Miranda v. Arizona*, 384 U.S. 436, 519, n. 17 (1966) (dissenting opinion of Harlan, J.).

⁶ *Carnley v. Cochran*, 369 U.S. 506 (1962); *Johnson v. Zerbst*, 304 U.S. 458 (1938).

⁷ *Miranda v. Arizona*; *Vignera v. New York*; *Westover v. United States*; *California v. Stewart*, 382 U.S. 924, 925, 937.

⁸ *People v. Dorado*, 62 Cal.2d 338, 398 P.2d 361 (1964).

⁹ 378 U.S. 478, 495 (1964).

¹⁰ Cf. *People v. Richardson*, 32 Ill.2d 472, 477-78, 207 N.E.2d 478, 481 (1965) (dissenting opinion of Schaefer, J.).

¹¹ See cases cited in note 6, *supra* and *Fay v. Noia*, 372 U.S. 391 (1963).

cases; it had labored long enough in the jungle of conflicting claims by police and defendants—defendants saying “they beat me”, and the police saying they did not. And it was the Court’s inevitable purpose, in deciding *Escobedo* as it did, to intrude a third person into the interrogation process—defense counsel.

If the police are to be saddled with the job of explaining the Constitution to criminal suspects, not only will they be given a burden inconsistent with their law enforcement function, but we will not have emerged very far from this jungle of conflicting claims by police and defense. We will probably end up with the same kind of problems we now have in those cases where the issue is police brutality, except the new issues will be whether a warning was given at all, whether it was given at an appropriate time, and whether it was fair.

It seems to me, therefore, that the function of warning the potential defendant of the consequences that he risks if he talks under police interrogation must ultimately be assigned to either the judiciary or to counsel, and I believe that the Supreme Court of the United States will soon turn, not to the judiciary, but to counsel, and will require a lawyer in the police station for consultation before any interrogation may proceed.

If this prediction proves to be correct, that result may or may not have very grave dangers for law enforcement and the protection of society.

There have been conflicting claims in the literature and the press recently about just how important confessions are in solving crime.¹² Judge Sobel of New York City made a study and reported that confessions are involved in only ten per cent of criminal cases.¹³ However, I have reservations—and I think almost every law enforcement official does, and I am sure some defense lawyers do, too—about the validity of such a conclusion. Confessions are much more important than that, especially in cases of homicide, rape, armed robbery and the like. Moreover, any assessment of the need for police interrogation must also include a consideration of what are commonly called “exculpatory statements”, e.g., alibis or denials of certain

elements of the offense, which, if proved false, may be just as damaging to a defendant as are full admissions of guilt. And it is certainly true that in some cases the existence of incriminating statements in the prosecutor’s file may induce a plea of guilty, thus obviating any need for their introduction into evidence at a trial.

If it is true, as critics of the *Escobedo* rule allege, that putting a lawyer into the police interrogation process before it has begun, and keeping him there, will ultimately mean the abolition of confessions as a tool of law enforcement, and if that abolition results in a situation in which many grave and heinous crimes go unprosecuted because of the lack of a valid confession as evidence, then perhaps we should reexamine the one barrier that stands between the police and the suspect in obtaining those confessions. That is the privilege against self-incrimination. It is not the right to counsel, after all, that keeps a confession from being admitted into evidence when it is voluntarily obtained; it is the refusal to allow counsel to explain the privilege against self-incrimination.¹⁴

I am not, at this point, prepared to say that we ought to abandon the privilege against self-incrimination. I would have to be convinced, more than I am at the moment, that the potential danger to society from the total abolition of confessions would be as great as some say, and that meaningful alternatives to the privilege could be devised, before I took that step, but it ought to be recognized that this is the issue.

The second area of concern about the Supreme Court’s future course is that of the law of search and seizure. By and large, law enforcement officers fail to appreciate that the Supreme Court of the United States has gone quite far to favor the police in this area; that it has handed down decisions which, if followed by state appellate and trial courts (and by the police!) would enable the police to make, strictly within the confines of the fourth amendment, almost all, if not all, of the searches and seizures that efficient law enforcement demands. There rarely is excuse these days for police officers to illegally seize evidence, particularly if they have, as my state is fortunate to have, a modern search and seizure statute.¹⁵

The potential reach of *Escobedo*, however, will ultimately alter at least one police search and

¹² “Access to Lawyers Is Urged By Koota,” *New York Times*, Nov. 27, 1965, §2, p.1; “Confessions Held Crucial By Hogan,” *New York Times*, Dec. 2, 1965, §1, p. 1; “Study of Confessions Asked by Weintraub,” *New York Times*, Dec. 11, 1965, §1, p. 1.

¹³ *N.Y. Law Journal*, Nov. 22, 1965, p. 1. [For an analysis of Judge Sobel’s statistics, see Inbau, *Democratic Restraints Upon The Police*, 57 *J. CRIM. L., C. & P. S.* 209 (1966)].

¹⁴ Now so held in *Miranda v. Arizona*, 384 U.S. 436, 469–70 (1966).

¹⁵ See Ch. 38, Art. 108 *ILL. REV. STAT.* (1965).

seizure practice now regarded as routine, and may drastically affect, as well, the ability of the police to enforce the laws against gambling, narcotics, prostitution and other vice crimes.

The routine practice is that of the "consent search", i.e., a search without warrant, and not incident to arrest, which is justified by the police on the ground that the suspect "consented" to it. The case of *Escobedo's* co-defendant, a man by the name of Benedict DiGerlando, furnishes a good example of this device in operation.

Benedict DiGerlando did not request counsel in the police station as did Danny Escobedo, and he also confessed, but in addition to confessing, he revealed the whereabouts of the murder weapon he had used. The police found it in his home in a search which was characterized by the trial court, and by the Supreme Court of Illinois, as a consent search.¹⁶

It is fair to say that there are serious problems concerned with the concept of a "consent search", not only in the case of DiGerlando, but in almost every consent search case except where it is very clear that the defendant has indeed volunteered evidence against himself.¹⁷

I believe that the fourth amendment is fully as important to a defendant in a criminal case as the fifth amendment, or perhaps even more important, and if it follows from *Escobedo* that a defendant's fifth amendment right not to incriminate himself cannot be overridden without warning, a defendant's fourth amendment right to be free from unreasonable search and seizure cannot be overridden without warning. Since both interrogation and consent search are premised upon the waiver of constitutional rights, it will not be surprising if the Supreme Court holds hereafter that there can be no valid consent to search, especially by one under arrest or in police custody, until there has been a warning of the fourth amendment prohibition against unreasonable search and seizure, and the consequences of its waiver.^{17a}

Escobedo can be extended further. What about the now common police practice of infiltrating police officers into criminal conspiracies; posing

¹⁶ *People v. DiGerlando*, 30 Ill.2d 544, 198 N.E.2d 503(1964).

¹⁷ Most consent search cases are treated as little more than "swearing contests", e.g., *People v. Peterson*, 17 Ill.2d 513, 162 N.E.2d 380(1959). See Thompson, *Illinois Search And Seizure Law—The New Frontier*, 11 DEPAUL L. REV. 27, 37-39(1961).

^{17a} Since this paper was prepared a court has so held. See *United States v. Blalock*, 255 F. Supp. 268 (D.C. Pa. 1966).

them as members of a gang; having them obtain not only physical, but verbal, evidence as they sit at the table with the ringleaders of a conspiracy? Is that the equivalent of police interrogation? If it is, then does not *Escobedo* apply?

The effect of *Escobedo* upon a related police practice—that of having a policeman pose as a customer for narcotics, gambling and prostitution—is dramatically illustrated by a recent case that has been largely overlooked, one that arose in the First Circuit Court of Appeals just late last year, entitled *Lewis vs. United States*.¹⁸ It involved a criminal conviction for the sale of marijuana, and in a one paragraph *per curiam* opinion affirming the conviction the court said:

Defendant, convicted of selling marijuana to a government agent who had misrepresented his identity, claims an unlawful search and seizure because, thus misled by the agent, he invited him to his home and there made the sale. The happy days for law violators that this claim would produce are not to be. * * * His reliance upon *Escobedo vs. State of Illinois* . . . is quite misplaced.¹⁹

Certainly an argument can be made for the proposition that when a police officer engages a suspect in criminal activity, and records his words for future use as incriminating evidence, the criminal has become a "focal suspect" within the meaning of *Escobedo*—indeed, more than a mere suspect—and, if *custody* is not that important a consideration, why should not the criminal be warned, *during the offense*, of his privilege against self-incrimination?

Even assuming, however, that there is—because the crime is not then complete and the defendant has not yet been subjected to the adversary system—an answer to the questioned posed above, the *Lewis* case argument is potentially a great threat to current search and seizure practices in the area of vice control even under orthodox doctrines. For instance, suppose that a police officer on the narcotics squad receives an anonymous tip that John Jones is selling narcotics. Upon this information alone, no search warrant could issue and there would not be probable cause for the arrest of Jones. In order to verify the accuracy of the tip, the officer dresses in old clothes, and, playing the part of an addict, goes to Jones' home where, under the impression that the officer is what he claims to be, Jones admits him to the premises and sell narcotics

¹⁸ 352 F.2d 799(1st Cir. 1965).

¹⁹ *Ibid.*

to him. Jones is subsequently arrested, and, prior to trial, files a motion to suppress any evidence of the sale on the ground that the officer gained his knowledge of the crime through an illegal search and seizure.

Essentially, this was the argument rejected, along with the *Escobedo* claim, in *Lewis*. But does it not make sense? If the officer, without warrant, had entered Jones' home to search and find narcotics, the search would have been unlawful and Jones could not have been convicted for the possession of the narcotics that were found. If the officer had entered the home, placed Jones under arrest, with or without warrant, and then searched incident to the arrest and found narcotics, the same result would obtain, because the arrest, based entirely upon the anonymous tip of an informer, would not have been made upon probable cause. And any supposed "consent" given by the narcotics peddler, Jones, to the entry of the policeman "addict" is vitiated, is it not, by the "fraud" perpetrated by the officer in misrepresenting his identity? But for the improper entry into protected premises the officer would not have witnessed the narcotics sale and because the evidence of that sale is the product of an unconstitutional police action it must, under the exclusionary rule, be suppressed.

Perhaps this argument has only a seeming, or surface, plausibility. Perhaps I am seeing ghosts where there are none. But if this argument, or one like it, is ever sustained by the Supreme Court, then the present police methods of investigating the violation of vice laws will be unalterably changed, and, in my opinion, for the worse. Since the Supreme Court has granted certiorari in *Lewis*,²⁰ and will decide that case next term, "happy days" for at least some law violators of the worst kind may soon be here again.

The third, and final, area of the law undergoing change which warrants some examination returns us to the subject of police interrogation. Those who champion the right of the police to engage in a period of post-arrest, pre-arraignment interrogation by concentrating their efforts only against the inevitable expansion of *Escobedo* may soon find that the horse has disappeared through the back door while they were attempting to lock the front. For if *Mallory v. United States*²¹ becomes a rule of due process, thus binding upon the states, and if

the *Wong Sun*²² rule, which is now applicable to the states, is applied with full vigor, little opportunity for *any* interrogation following arrest—with or without warnings—may be left.

Simply stated, *Mallory* holds that federal police may not unnecessarily delay taking a defendant before a magistrate following arrest and that such a violation of Rule 5(a)²³ vitiates any confession obtained during the period of "unnecessary" delay. As Professor Pye has pointed out,²⁴ the lower federal courts have been quite liberal in construing the phrase "unnecessary delay", and the consequent rule of practice allows interrogation during the time necessary for "booking" and other police procedures of the paperwork variety and, more importantly, during that period of time when a magistrate is "not available" to arraign the defendant, e.g., while the courts are closed at night and on weekends. Since, in practice, some opportunities for interrogation seem to be afforded even under the *Mallory* rule, law enforcement people would probably not react to the extension of the rule—as it exists in practice—to the states with the initial horror produced by the promulgation of *Escobedo*.

A close reading of the *Mallory* opinion itself, however, does not warrant such potential equanimity. The disparity between Justice Frankfurter's language in *Mallory*, and the development of the rule in practice, is so great as to lead one to wonder whether the lower federal courts which have "interpreted" *Mallory* have in mind the same opinion. The central teaching of *Mallory* is that the police are to be discouraged from arresting persons on suspicion and then supporting the arrest, and subsequent charge, with a confession obtained during post-arrest interrogation conducted before presenting the defendant to a magistrate. That purpose is explicitly frustrated when the police utilize even a period of necessary delay for interrogation.

The Court has not decided a *Mallory* case since that opinion was handed down, and because the lower federal courts have effectively thwarted the original rationale of that case, it is my belief that, in the near future, the Court will find the opportunity to hold what they said in *Mallory*—that the period between arrest and arraignment is not meant to be used for the purpose of interrogation, however "necessary" the delay for other reasons.

²⁰ *Lewis v. United States*, 382 U.S. 1024(1966).

²¹ 354 U.S. 449(1957).

²² *Wong Sun v. United States*, 371 U.S. 471(1963).

²³ FED. R. CRIM. P. 5(9).

²⁴ Pye, *The Supreme Court And The Police: Fact and Fiction*,—J. CRIM. L., C. & P. S.—(1966).

Moreover, there is some evidence that at least a partial *Mallory* rationale is close to adoption in the state courts as a matter of state due process. Though the state supreme courts have long resisted pleas that they adopt a state *Mallory* rule,²⁵ at least one court, the Supreme Court of Wisconsin, has recently gone part way down the road to such a result. In *State v. Phillips*,²⁶ Mr. Justice Hallows said quite plainly that when a man is arrested upon a warrant a judicial proceeding has been initiated against him and it is assumed that, at that point, the police have enough evidence to hold him for examination by a magistrate. The only purpose of detention thereafter, the court concluded, is to allow the police to present him to the magistrate, and interrogation during this period violates due process.

Though the state courts have sought, by and large, to avoid the holding of *Wong Sun*, their semi-defiance cannot long continue. *Wong Sun* was the case in which a Chinese seller of narcotics confessed after the police had unlawfully invaded his home. The Supreme Court found that since the entry and subsequent arrest violated the Constitution, his oral admission, which was the product of that entry and arrest, could not be used in evidence against him because intangible, as well as tangible, fruits of unconstitutional action are subject to the exclusionary rule. *Wong Sun* has been interpreted by the state courts in subsequent cases to apply only to admissions which follow unconstitutional entries into protected premises or "coercive" arrests.²⁷ In my opinion, however, the case plainly stands for the proposition that incriminating statements which are the product of detention following an arrest without probable cause are inadmissible. Without regard to *Escobedo* or *Mallory*, the Supreme Court undoubtedly will so hold in the near future. The police would do well, therefore, to re-examine their present tendency to make a large percentage of arrests on suspicion not amounting to probable cause, for here at least, is one rule which may be avoided by the reformation of current practices.

In conclusion, I should like to direct a few words,

²⁵ Thompson, *From Arrest to Arraignment In Illinois: Some Exclusionary Principles*,—U. ILL. L. F.—(1966).

²⁶ —Wis.—, 139 N.W.2d 41 (1965). See also, Thompson, *Abstracts of Recent Cases*, 57 J. CRIM. L., C. & P. S. 178, 183-185 (1966).

²⁷ KAMISAR, EQUAL JUSTICE IN THE GATEHOUSES AND MANSIONS OF AMERICAN CRIMINAL PROCEDURE, in CRIMINAL JUSTICE IN OUR TIME 41 (1965).

in the nature of friendly advice, to the police, with whom I have worked since the day I became a lawyer. My respect and admiration, and at times, my sympathy, for them is unbounded. Those of us who have been closely identified with the processes of criminal justice are probably more keenly aware of police faults—the occasional brutality; the sometimes officiousness; the disturbing "white" perjury employed to evade exclusionary rules in those cases in which the police think the defendant is guilty. But there is another side of the coin:

The policeman's lot is *not* a happy one. The comfortable citizen who growls at the parking ticket on his windshield ignores the brutal, dirty, and cynical side of police work; the necessity to deal with pimps, whores, drunks, bums, hoodlums, street gangs, rioters, murderers, and petty thieves day after day on bad hours, low pay, and, unfortunately too often, undeserved public contempt.²⁸

And, sadly, I note an increasing alienation of the police from the rest of American society. Colin MacInnes, in *Mr. Love and Justice*, has put it well:

... The story is all coppers are just civilians like anyone else, living among them not in barracks like on the Continent, but you and I know that's just a legend for mugs. "We are cut off: we're *not* like everyone else. Some civilians fear us and play up to us, some dislike us and keep out of our way but no one—well, very few indeed—accepts us as just ordinary like them. In one sense, dear, we're just like hostile troops occupying an enemy country. And say what you like, at times that makes us lonely."²⁹

In his paper presented at this Symposium, my colleague, Professor Inbau, closed with a plea first voiced by Commissioner G. B. McClellan of the Royal Canadian Mounted Police:

When the policeman exceeds his authority, bring him up short, but when he is doing, as most of them are doing, a tough, thankless and frequently dangerous job for you and for all you hold dear, for God's sake get off his back.³⁰

I echo these sentiments, but I add a further note. There exists, among police, a dogged and seemingly unshakeable notion that Supreme Court decisions restricting police practices in the enforcement of

²⁸ Thompson, Book Review, Chicago Tribune Books TODAY, Aug. 21, 1966, p. 7.

²⁹ *Ibid.*

³⁰ Inbau, *Democratic Restraints Upon The Police*, 57 J. CRIM. L., C. & P. S. 265, 270 (1966).

the criminal law are not only aimed "personally" at them, but, supposedly undermining their effectiveness, make *them* "responsible" to the citizenry for rising crime rates and the inability to capture, charge and convict all persons who have committed crimes.

It is high time that the police of America rid themselves of this patellar-like reaction to decisions such as *Escobedo*, *Wong Sun*, *Mallory*, and the others. The fourth, fifth and sixth amendments were put into our Constitution long ago. It is the duty of the Supreme Court to interpret these constitutional provisions and whether particular decisions be thought right or wrong they must be accepted or else the Constitution should be changed. The Supreme Court has adopted the device of the exclusionary rule because it has found no worthy alternative to enforce compliance with these fundamental restrictions upon the power of society to deal with those accused of crime. To the extent that credible evidence is excluded from the fact finding process supposedly designed to find "truth" therefore, we must accept the fact that

some persons whom we know to have committed offenses will go unpunished.

The point is that *this is not the fault of the police* and *they* ought to quit blaming themselves for their inability—if no honest alternatives to practices condemned by exclusionary rules can be found—to prevent crimes and catch criminals. So long as the American people are willing to tolerate a system of constitutional regulation which in some instances restricts society's power to deal with criminals on a totally efficient basis, the police cannot be blamed for gaps in the war against crime. Too often, the police are on their own "backs"; their frustrations, cynicism and bitterness at not being able to "do their job" are too often self-imposed. If the police act within the rules that all the people—not just the Supreme Court—have sanctioned; if they are supplied with the money, manpower and training necessary to raise the profession—and it is a profession—to the level where it must be placed, then all that *can* be expected of *them* will have been done.