

THE LAW

CRIMINAL LAW

The Court & the Cop

The most controversial issue in today's criminal law is the right of the defendant v. the right of the police. Since 1961, in a succession of far-reaching decisions, the Supreme Court has greatly extended the guarantees of the Bill of Rights available to the lowliest defendant in municipal court. It has spelled out and strengthened the right to counsel, the right to quick arraignment and the guarantee against illegal police search and seizure. These decisions have put new burdens on already overworked police departments and have brought angry protests from prosecutors and police officials (TIME ESSAY, July 16). Last week, while Chief Justice Earl Warren and Associate Justice William J. Brennan Jr. sat by in solemn and startled silence, former New York Police Commissioner Michael Murphy delivered the bitter complaint of the frustrated cop on the beat, irately accused the court of handcuffing police while "vicious beasts" roam the streets.

"They Will Not Confess." Murphy, who rose from patrolman to chief of the nation's largest police force (27,000) before he stepped down last June amidst criticism from civil rights groups for his stern opposition to a civilian police-review board, spoke on a panel at a high-level meeting. It was the annual conference, in Atlantic City, of federal judges and lawyers from the Third U.S. Circuit.* A frequent critic of the court, Murphy lashed into last year's controversial *Escobedo v. Illinois* decision, which requires police to tell defendants of their rights, particularly the right to counsel, before confessions can be taken. "It has been our experience," said Murphy, "that if suspects are told of their rights, they will not confess." Fully half New York's homicide convictions in 1963 and 1964 were gained through confessions, he said, adding caustically: "We are forced to fight by Marquis of Queensberry rules while the criminals are permitted to gouge and bite."

A fellow panelist quickly rose to counterattack Murphy and plead for the Supreme Court. Yale Kamisar, University of Michigan law professor, pummeled the police for what he called chronic hysteria and efforts to make the court a "scapegoat" for society's failure to stop the criminal. He assailed Murphy's position as "simplistic, narrow-minded and politically expedient." Said Kamisar: "Fighting crime is a difficult, frustrating business. When you can't handle it, the easiest and most politically attractive device is to blame it on the courts. It's a lot more popular than raising taxes to increase the police force."

* Pennsylvania, New Jersey and Delaware.

The Bad Old Days. Larding his assault with heavy sarcasm, Kamisar pulled out a sheaf of newspaper clips from "the good old days"—1910—which laid a "crime crisis" to "coddling the criminals" and "giving undue weight to individual rights." Then he added: "It sounds a lot like what we heard today, doesn't it? I wonder what rights we'd have left if we always yielded to the police hysteria."

Brushing past Kamisar at the end of the session, Murphy returned in kind, grunted only: "That was awful." Chief Justice Warren diplomatically praised the discussion as "splendid, fair

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FORMER NEW YORK COMMISSIONER MURPHY
Bitterness on the beat.

and searching." Pointing out that he had been a law-enforcement officer himself (chief deputy district attorney of Alameda County, Calif., for two years and California's attorney general for four years) Warren said that he had abundant sympathy for the problems of the police.

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