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**Order Prevents Court Test**

# U.S. Bars Use of Crime Law

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Federal prosecutors, including those in Washington, are under Justice Department orders not to use anti-Supreme Court provisions of the new National Crime Control Act in criminal cases.

The crime law, passed in reaction to controversial high court rulings, purports to broaden the powers of Federal law enforcement officers and weaken the safeguards surrounding suspects accused of crime.

Senate conservatives sought to overturn decisions governing both state and Federal courts, but the Johnson Administration succeeded in limiting the law to Federal criminal trials.

Whether the law is constitutional—and few of its supporters argued seriously that it would be upheld in a court test—is a matter for the Supreme Court. But court tests are considered unlikely to arise while the 93 United States Attorneys are under instructions not to invoke the controversial provisions.

The Nixon Administration will have to decide whether to lift the embargo. Nixon, in sharp contrast to President Johnson and Attorney General Ramsey Clark, endorsed the law during the political campaign.

Among the high court rulings the law attempts to upset are the confession rulings in

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RAMSEY CLARK
. . . places embargo

## JUSTICE, From L1

Mallory v. U.S. in 1957 and Miranda v. Arizona in 1966, as well as two 1967 decisions requiring the presence of counsel when prisoners are made to stand in lineups for identification.

In the Miranda case the Court held that no confession can be used in evidence unless the prosecution shows that the accused has been fully advised of his rights, including the right to free legal counsel, and has waived those rights before confessing. The crime law says the warnings are waivers are only part of the "circumstances" judges should take into account when deciding whether a confession is admissible.

Last summer the Justice Department wrote to all U.S. Attorneys that a policy paper on implementing the Crime Control Act was in preparation but that "meanwhile" the prosecutors should obey the Supreme Court's Miranda and lineup decisions.

**Labored in Vain**

The interim directive has become semi-permanent as Justice Department lawyers have labored in vain, in the words of one official, "to come up with a respectable legal argument" for utilizing the Act.

Not using the law has had scant effect on prosecutions, officials said, because Federal agents have been held to strict requirements to take suspects promptly before a judge to receive legal warnings since a Supreme Court decision in 1943.

Not mentioned in the Justice Department directive were provisions of the crime law modifying the so-called "Mallory Rule" in all Federal courts.

Thus, prosecutors are free to rely on the law for authority that suspects need not be taken immediately to a Federal magistrate but may be held up to six hours in Washington or three hours in other Federal courts.

The Supreme Court's unanimous Mallory decision freed convicted rapist Andrew Mallory because police here obtained his confession after arresting him on suspicion and holding him too long, violating the existing Federal law on prompt arraignments.

Officials said the provision covering the Mallory Rule was omitted from the embargo because the Mallory decision had been based on Federal law, which Congress has the power to amend, rather than the Constitution itself.

A test of the Mallory provision appeared to have reached the Supreme Court from an unexpected direction. A lawyer for a convicted robber argued last week that the Court should extend the prompt arraingnment requirement to the 50 states as a matter of Constitutional law.

If the Court should agree and reverse the conviction of Carmine V. Palmieri of Miami, the decision would cast a cloud over the new Federal crime law.