

AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES
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Supplementary Material

Chapter 6: The Civil War and Reconstruction – Criminal Justices/Investigations and Interrogations

Superintendent Walling: His Trial Before the Police Board (1875)¹

George Walling was the superintendent of police in New York City during the 1870s. On January 17, 1875, thieves robbed the Adams Express Company of \$70,000. Three weeks later, the police arrested Daniel Haurey, John Sweeney, and James Drew. Rather than take them to a magistrate, as mandated by law, Walling had the three suspects held in the police station. Over a period of three days, police officers repeatedly questioned them about the robbery. Margaret Sweeney, John Sweeney's sister, hired Oakley Hall, the former mayor of New York, to defend her brother. Hall had Margaret Sweeney demand that Walling bring her brother before a magistrate. Walling refused. He brought Sweeney before a magistrate seventy-two hours after the arrest, after Sweeney had confessed to participating in the robbery. Hall demanded that a hearing be held to determine whether Walling's failure to bring Sweeney before a magistrate immediately after arrest violated New York law. The Police Board found Walling guilty and fined him ten days' salary. Walling was unrepentant. Police under his supervision continued to interrogate the persons they arrested before bringing them to a magistrate.²

The excerpts below are taken from the New York Times report on Superintendent Walling's hearing. Compare Walling's justification for interrogating prisoners with Senator Howard's justification for trying Jefferson Davis before a military commission. Both Walling and Howard claimed they were championing the only means to bring persons who violated the law to justice. What other similarities exist in their claims? What are the most important differences?

John Sweeney . . . testified as follows. . . . I was arrested on the night of February 5, between 10 and 12 o'clock. . . I was taken to the Twenty-seventh Precinct Station-house . . . and detained there about an hour; I was then taken in a cab to Police Head-quarters and detained there until Monday morning. I was confined in two different cells; I saw Superintendent Walling for the first time on Saturday morning and had a short conversation with him; I saw him again that same night; I saw him on Sunday once or twice; the Superintendent asked me some questions relative to the robbery, and appeared to take down my answers in writing. . . . [O]n Sunday night I made a statement relative to the robbery. . . . I was taken down town on Sunday night; during the time that I was locked up I did not see any of the Commissions to know them; I was not told what I was charged with when first arrested.

. . . . Margaret Sweeney . . . , sister of John Sweeney . . . testified: Between 8 and 9 o'clock on Saturday I called at Mr. Hall's office and left a note for him, retaining him to defend my brother, Haury, and Drew, who had been arrested for robbery; I then went to Police Head-quarters . . . and saw Superintendent Walling, asked him to let me see my brother; he said, "I will not at present, but if you come back between 4 and 5 o'clock in the afternoon I will let you see him, if I prudently and judiciously can." I went away and saw Mr. Hall between 3 and 4 o'clock, who advised me to again demand to see my brother; called at Police Head-quarters between 5 and 6 o'clock and saw Superintendent Walling. He again refused to allow me to see my brother. I told him that my counsel had advised me that he should take the prisoners

¹ *New York Times* (March 13, 1875), 10.

² This account is taken from Wesley MacNeil Oliver, "Magistrates' Examinations, Police Interrogations, and Miranda-Like Warnings in the Nineteenth Century," *Tulsa Law Review* 81 (2007): 777.

before a Magistrate. Superintendent Walling then said, "You've come to talk law with me, and I will send him and your counsel to State Prison." . . .

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. . . Superintendent Walling . . . testified as follows . . .

. . .

. . . I am aware of section 52 of the charter, and also familiar with rule 42 of the regulations of the Department; I did not consider it my duty to disobey the law, but I believed it to be my duty to detain the prisoners until I could procure the witnesses necessary to secure a conviction. I did not have Sweeney as a witness until Saturday; he did not confess until Saturday night. . . . I . . . sent Haury to Mercer Street Police Station and Drew to the Mulberry Street Station to prevent them communicating with each other. . . [T]he reason I refused to allow the relatives to see the prisoners was to prevent any communication between them that would defeat the ends of justice and would interfere with the conviction of the prisoners and the recovery of the property. I don't think it is the duty of the Police to warn prisoners not to make any statement that might be used against them; there is no statute which makes it the duty of the Police to do so; I questioned the prisoners on three or four different occasions; took their statements in writing. I did not let Drew go after I learned that he was not implicated in the robbery, fearing that he would go to the place where the [money] was buried and exhume it before I learned where it was. . . .

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