

Mr. GASCH. There was a point of order raised.

The CHAIRMAN. That's right.

Mr. GASCH. I think this also is implicit. I do not think it is necessary to put that language in. It could be left in the committee report. But I think it is implicit that it is one of the elements to be taken into consideration.

I am sure that would be the first thing that any trial judge would think of, as to whether the confession or admission is the product of an unnecessary delay.

The CHAIRMAN. A further question.

Is it a fact since the *Mallory* decision was decided by the Supreme Court several cases decided by the U.S. Court of Appeals for the District have sanctioned the questioning of an arrested person prior to his being taken before a U.S. commissioner in order to verify his story concerning the commission of a crime?

Mr. GASCH. Yes, I think that's true.

The CHAIRMAN. And is it also true that they verify it through third parties, when they are available, as to the commission of a crime?

Mr. GASCH. Yes.

The CHAIRMAN. Does it appear that if the appeal court decision were to be extended any further in the matter of allowing police to verify an arrested person's story, that the questioning by police might assume the nature of a proceeding that would provide opportunity for extraction of a confession?

Mr. GASCH. Well, of course I think you cannot draw a line, as some of the legislation seeks to do, to say the police should have 6 hours or 12 hours, as Senator Butler's bill did some years ago. I think that the period of delay between the arrest and the preliminary hearing must be a reasonable delay, and if anything other than a reasonable delay is encountered, during that additional period the confession is obtained, then I would question whether the court would permit that confession to be considered by the jury.

The CHAIRMAN. Who determines the voluntariness of the confession in the District of Columbia, in the District courts? Is this determined by the judge without the jury?

Mr. GASCH. If there is no factual issue, it is determined by the judge.

The CHAIRMAN. In the absence of the jury.

Mr. GASCH. That's right, sir. If, on the other hand, there is a factual issue, the judge submits the question to the jury.

The CHAIRMAN. Thank you very much, Mr. Gasch. I certainly appreciate your continuing interest and valuable advice in this field. It is very, very helpful. We appreciate it a great deal.

Mr. GASCH. Thank you, sir.

(The statement referred to follows:)

CRAIGHILL, AIELLO, GASCH & CRAIGHILL,
Washington, D.C., October 22, 1963.

HON. ALAN BIBLE,
Chairman, Committee on the District of Columbia,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: In response to the committee's request, I am pleased to present my views herewith. I should like to state the views which I express are my own personal views and I express them as an individual and not as an officer of the Bar Association of the District of Columbia.