

(3) A maximum of 6 hours elapsed time between arrest and completion of the confession; and

(4) A responsible witness, other than a law enforcement officer, observing the questioning, or a verbatim transcript or recording of the interrogation.

The above-mentioned safeguards are contained in legislation which was introduced in the House last April as H.R. 5726. That measure was prepared by the U.S. attorney for the District of Columbia.

Thank you very much. I shall be pleased to respond to any questions you may have.

The CHAIRMAN. Thank you, Mr. Katzenbach. I think several questions do suggest themselves. Your original report on this bill, dated September 13, 1963, among other things, says in regard to title I of the bill:

However, it raises serious constitutional difficulties in dispensing with safeguards which the *Mallory* rule assured to persons charged with crime.

This is part of your opinion of September 13, 1963. I am sure you are very well aware that title I is now before us for consideration, has passed the House of Representatives in essentially its present form on at least four different occasions. In 1958, the Senate, by a vote of 65 to 12, passed a version almost identical with that contained in the House bill which we now have before us for consideration, except for the addition of the word "reasonable" before the word "delay." This was added by the Senate Judiciary Committee. When the bill went to conference, the Senate and House conferees accepted the word "reasonable" but also added a proviso in the proposed legislation that had the effect of making delay a matter to be considered in determining the voluntariness of the confession. I think it is fair to state that this proviso which was added to the amendatory language to rule 5(a) by the conferees in 1958 was ruled out on a point of order raised at a very late hour in the 1958 session of the Congress. So actually the amendment to rule 5(a) was not enacted into law. But in view of this legislative history, I would like to ask you what position the Department of Justice would take with regard to title I of the pending bill, if it were to pass in its present form.

Mr. KATZENBACH. If that legislation were to pass in its present form we would defend its constitutionality in the courts.

The CHAIRMAN. What recommendation would the Department of Justice make to the President?

Mr. KATZENBACH. Did you say to the President?

The CHAIRMAN. To the President, yes. Would you recommend that the bill be signed or would you recommend that the bill be vetoed?

Mr. KATZENBACH. I don't believe it proper for me to state at this time what recommendation the Department of Justice would make to the President, Mr. Chairman.

The CHAIRMAN. Why would that be? I am raising the question because your own opinion says that it raises serious constitutional difficulties.

Mr. KATZENBACH. I think that it does.

The CHAIRMAN. Would those constitutional difficulties be such that you would feel it was unconstitutional and recommend to the President of the United States that it be vetoed?