

Mr. KATZENBACH. I believe that there are serious constitutional questions, Senator, and I can discuss those with the committee if you wish. If you are suggesting hypothetically that it would pass in this precise form now, I suppose that we would call those constitutional difficulties to the attention of the President. Whether we would recommend a veto or not is not something that I am prepared to say at this moment. I would say that I don't believe our report says it would be my opinion that the provision as it now stands is clearly and unequivocally unconstitutional.

The CHAIRMAN. It does not say that and I haven't suggested it.

Mr. KATZENBACH. It would raise serious constitutional questions that it seems to me Members of both Houses should consider this in terms of their legislative responsibilities. I am sure the President would consider those as well and I am sure that a report written to him by the Department of Justice would draw his attention to those difficulties, and also the fact, as I have just stated, that such a statute is more clearly unconstitutional.

The CHAIRMAN. I am not trying to do anything except to arrive at sound conclusions as to how we handle this particular problem. As you say, this is a highly controversial problem. It is one that has been before the Congress many times. There are divergent views as to whether it is or is not constitutional. All we are attempting to do is to arrive at a result that would be of some assistance to law enforcement here in the Nation's Capital. This would be my view as the chairman, at least speaking for myself. But I would have considerable concern if we were to enact legislation which the Department of Justice as the legal adviser for the President of the United States would feel was unconstitutional. This is all I am trying to determine.

Mr. KATZENBACH. Let me stand on what I have already said. I have not said that this legislation is unconstitutional. I have said that it raises serious constitutional questions, and I have attempted to give you the reasons, and I can put those at more length as to why it does. I do not know how the Supreme Court would hold in this case.

The CHAIRMAN. I recognize that the Department of Justice and the Attorney General cannot, of course, speak for the court. If the Congress should pass the legislation then let the courts determine its final legality. I recognize they are the final authorities as to whether an act is unconstitutional or whether it is constitutional. I would call to your attention that in 1958 the Attorney General in the Department of Justice, under date of August 18, 1958, stated this, and I think this should go into the record. It is directed to the law enforcement problem, speaking on legislation then before the Judiciary Committee in amendment of rule 5 (a) :

It is directed to the law enforcement problem raised by the Supreme Court decision in *Mallory v. U.S.* (354 U.S. 448). Its scope is narrow. It is aimed at one legal problem. Its effect may be anticipated. In the *Mallory* case, the Court ruled inadmissible a confession made during a delay between arrest and arraignment which the Court considered to be unnecessary. The bill would provide for evidence including the statement and confessions otherwise would not be admissible solely because of reasonable delay in taking an arrested person before a commissioner or other officer empowered to commit persons charged with offenses against the laws of the United States. We have no objection to the enactment of this bill.