

This was the position of the Department of Justice in 1958.

Mr. KATZENBACH. I think, Mr. Chairman, the record should also show that in 1959 the Supreme Court made another decision relevant to this problem in *Anonymous v. Baker* (360 U.S. 287).

The CHAIRMAN. What is the citation of that case?

Mr. KATZENBACH. 360 U.S. 287.

The CHAIRMAN. I mean the name of the case?

Mr. KATZENBACH. *Anonymous v. Baker*.

The CHAIRMAN. Yes. Your position is that the decision in 1959 would somewhat change the decision of the Department in 1958?

Mr. KATZENBACH. My point would be that in that case again four Justices on the then Court suggested that compulsory interrogation in camera without permitting counsel would be in violation of the Constitution, in violation of the due process of law. The composition of the Court has since changed.

The CHAIRMAN. The Senator from Colorado.

Senator DOMINICK. Thank you, Mr. Chairman.

Mr. Katzenbach, as usual, it seems to me you have given a very good statement here.

Mr. KATZENBACH. Thank you, Senator.

Senator DOMINICK. Just a few questions that I have. On these cases that you cite on page 4 as giving the situation in which confessions were ruled inadmissible, and that any conviction based on that should be reversed, now in those cases did the persons who were doing the interrogation, in fact, warn the defendants of their legal and constitutional rights to have an attorney, and that statements would be used against them, that they didn't have to make any statement at all, or is that not clear in the case?

Mr. KATZENBACH. I believe in at least some of those cases such a warning was given; is that correct?

Mr. ACHESON. That is right, Senator. The warning was given in all of those cases as I recall. That is a standard appurtenant to the regular form of interrogation.

Senator DOMINICK. So that in the normal course of events, absent the *Mallory* case then, these confessions would have been ruled as voluntary legal confessions, in your opinion?

Mr. KATZENBACH. Yes; I think they were voluntary. I don't think there was an coercion, and I think there was a warning. The point that we are trying to make in this is that the *Mallory* case as has been interpreted here in the District of Columbia has undoubtedly raised law enforcement problems, and the Department of Justice is much in sympathy with efforts to clarify the procedures and avoid the kind of situation that arose in the cases which we have put here. One of the principal problems in this is that you really don't know when you are prosecuting a case in Mr. Acheson's office whether or not a confession admitted by the trial court as it would be in all of these cases is or is not going to be overruled by the court of appeals.

In part this depends upon the composition I think of the court of appeals, and it is very difficult for us at least to guess, and that is almost what it is, as to whether or not such confession is going to be ruled out in that trial. Now very often there is probably enough evidence in this case, apart from the confession, to successfully prosecute. But the confession itself, where there is no coercion involved, is