

evade punishment. They may in some instances evade the punishment they deserve. They usually end up with some.

Mr. ACHESON. That is correct.

Senator McINTYRE. Thank you.

The CHAIRMAN. The Senator from Colorado.

Senator DOMINICK. I would just like to ask again as a couple of experts in this situation here, your opinion on the following. I have a basic feeling that the more legislative standards you put into the law which must be complied with prior to a conviction, the more shill-laghs you give to a defendant attorney to say that they haven't been lived up to. What would be your feeling on the constitutionality of the law if you just put in 1 and 2 of your recommendations as opposed to all four of them?

Mr. KATZENBACH. I would think that would go a long way toward solving the constitutional difficulties. At the same time something would have to be set to make sure that the present practice was not continued. I take it you assume this would be with a modification of rule 5(a).

Senator DOMINICK. Yes.

Mr. KATZENBACH. I think that would go a long way toward doing it. I would think that as far as requirement four there was concerned, that I doubt—I don't know the cost of it but I would doubt—that apart from the cost that would be a very burdensome requirement on the police.

Mr. ACHESON. That is correct.

Mr. KATZENBACH. It would seem to me, one that they might be quite willing to undergo. I believe that the conduct of the police, I am sure here in the District of Columbia, and I think in many other cities, is professional, exemplary professional conduct.

I think one of the problems is that there has been enough talk about rubber hoses and clubs and improper police practices that there is sort of a mythology about this that I think influences the opinions of at least some judges that are not really familiar with what actually goes on. I would think that requirements such as we have suggested, that that would be one way of showing the general public and the courts that what is done is done in a decent professional way.

Senator DOMINICK. Now one more question, and then I think I am through. On the top of page 6 you talk about the dissents of the four Justices in the two Supreme Court cases which you mentioned, *Groban and Anonymous v. Baker*. Is it your feeling that if the proposed change in rule 5(a) is made without at least 1 and 2, that the dissents of the four Justices might become the majority opinion of the Court?

Mr. KATZENBACH. Those four Justices are still on the Court. It needs one more to make it the decision.

Senator DOMINICK. But I am in effect asking you whether you think that this would—

Mr. KATZENBACH. I think it is quite possible, Senator, yes.

Senator DOMINICK. To shove over a couple more to their side.

Mr. KATZENBACH. That is right. I think that it might, and that I suppose would guarantee written into the law that the risk of that kind of holding is unconstitutional along with an opinion that really put them in as a constitutional matter would be minimized.

Senator DOMINICK. Thank you.