

that because I am going to direct much of my testimony here this morning to point out that this so-called compromise——

The CHAIRMAN. The committee has reached no determination on this bill. They have not met in executive session and there will be no determination until they have met in executive session.

The indication was where there were possible avenues of working this out.

Mr. ZAGRI. Because let me say that there can be no compromise with the techniques of the police state or with the essentials of personal liberty. There can be no compromise with "secret investigative" arrests, whether they be by Castro's secret police, the Soviet Committee for State Security, or by the Metropolitan Police of the District of Columbia.

There can be no compromise with fundamental constitutional guarantees. H.R. 7525 openly flouts the Constitution; whereas, H.R. 5726 hems and haws, advances and retreats between constitutional safeguards and arbitrary police action. What it gives with one hand, it takes away with another.

H.R. 5726: I consider H.R. 5726 the more dangerous of the two bills because it is the more plausible. It appears to afford constitutional safeguards without assuring them. It is an attempt to reconcile "the exigencies of criminal prosecution with the imperatives of constitutional liberty." In reality, it ends in whittling away dangerously at vital constitutional safeguards.

Its principal proponents—such as Deputy Attorney General Katzenbach—start out with the major premise that the *Mallory* rule is a good one—but not for the District of Columbia.

In defense of the *Mallory* rule, he states:

\* \* \* the District court made clear its intention to prevent law enforcement officers from delaying hearings for the purpose of eliciting confessions. This is as it should be.

He then states:

The problem which gives rise to the legislative proposal before the committee not with the *Mallory* rule but with its application in the District of Columbia.

He makes the rather remarkable proposal that Federal rule 5(a), requiring preliminary hearing without unnecessary delay, which is effective in all of the courts of the 10 judicial districts of the Federal court system, and with all the States having similar enactments, be repealed in its application in the District of Columbia.

Rule 5(a) is aimed at preserving constitutional rights and, in particular, procedural due process of law. It provides for the treatment of accused persons on an equal basis—the innocent as well as the guilty. It offers protection to the impoverished, uneducated, or youthful suspect. The hardened, well-heeled criminal does not need a city magistrate to advise him of his rights.

He knows those rights. He has highly paid attorneys to advise him in advance.

On what basis can he justify that the lowly, the illiterate, the impoverished of the District of Columbia be detained by the police up to 6 hours without probable cause to believe that the accused has committed a crime, and afford the right of prompt arraignment in all other jurisdictions?