

eral Katzenbach, the court had good reason to find that the delay was unnecessary. It does not follow that because a confession was obtained within a short time after arrest, that the surrounding circumstances did not indicate the existence of unnecessary delay.

The 6-hour detention period repeals the present rule banning investigative arrest in the District of Columbia, which was enacted by the Commissioners as a result of the Horsky report, which found that there had been great abuse of police authority in arresting individuals on grounds of suspicion. There is no law called suspicion.

Under the fourth amendment, the person may not be arrested unless there is probable cause before the arrest may be made. This probable cause may not be ascertained by an unnecessary delay through the media of the secret investigative arrest. The fact that there is a 6-hour limitation on the investigative arrest does not make it less a violation of a fourth amendment right.

Despite all the constitutional window dressing of section 3, the fact remains that the suspect is informed of his rights against self-incrimination, right to counsel, right to remain mute—not by a magistrate, not by a commissioner, but by the police. This bill substitutes the zealotry of police action for time-honored checks on the police through judicial machinery.

The legislative policy behind the requirement that an officer making an arrest take the arrested person without unnecessary delay before the nearest available commissioner is spelled out by the U.S. Supreme Court in *McNabb v. United States* (318 U.S. 332, 343, 344, p. 1582):

The purpose of this impressively pervasive requirement of criminal procedure is plain. * * * The awful instruments of the criminal law cannot be entrusted to a single functionary. The complicated process of criminal justice is therefore divided into different parts, responsibility for which is separately vested in the various participants upon whom the criminal law relies for its vindication.

I wish to point out that the Katzenbach proposal does not divide this function. He vested all in the police authorities.

Legislation such as this, requiring that the police must with reasonable promptness show legal cause for detaining arrested persons, constitutes an important safeguard—not only in assuring protection for the innocent but also in securing protection for the innocent but also in securing conviction of the guilty by methods that commend themselves to a progressive and self-confident society. For this procedural requirement, checks resort to those reprehensible practices known as the third degree which, though universally rejected, as indefensible, still find their way (354 U.S. 453) into use. It aims to avoid all the evil implications of secret interrogation of persons accused of crime.

I must agree with the Washington Post editorial:

* * * It is a sound principle of law that arrested persons should be taken before a judicial officer without unnecessary delay, that they should be advised of their rights by a judicial officer and that they should be subject to detention only upon the authorization of a judicial officer. The only effective way we can think of to make the police observe this principle of law is to forbid the use of any evidence, including confessions, obtained in violation of it.

I must agree with Senator Morse's evaluation of this bill:

The Acheson bill is a most unacceptable compromise. When one concludes the reading of the Acheson bill he discovers he has nothing but a meaningless hodgepodge left.

I must agree with the—

overwhelming majority of the 900-odd lawyers of the District bar who voted against all three bills (including the Acheson bill) aimed at a revision of the *Mallory* rule and permitting easy interrogation of suspects by policemen.