

(iii) Unless the questioning is both witnessed and recorded, there will be no assurance against overbearing questioning. A tape recorder can be turned off, and it does not reflect such matters as a policeman leaning over the accused while he questions him. A witness, on the other hand can observe such acts but cannot hope to remember 6 hours of conversation.

3. We utterly reject the claim that such a sweeping revision of the rights of arrested persons in the District of Columbia, as opposed to all other Federal jurisdictions, is either necessary or wise because we have more common-law crime here. By the same token we have more people arrested whose constitutional rights must be protected. We are not second-class citizens simply because we are the only big city controlled by the Federal Government. I also point out that rape or assault are equally serious whether they occur here or in another Federal enclave and that what the police do not need elsewhere to solve such a crime they do not need here either. To handle our crime problems we have a correspondingly larger police force.

4. Lastly, I submit that H.R. 5726, which was not the focus of the committee's hearings prior to November 5, is not the sort of measure that should be reported out after only 1 day of hearing. It is far too complicated and explosive a proposal for that sort of consideration. I am confident that the committee and its chairman, who have been unfailingly courteous to District citizens and attentive to their views, will want to search the issues posed by the bill more fully than can be done by written comments such as these.

Sincerely yours,

JOSEPH L. RAUH, Jr., *Acting Chairman.*

Washington, D.C., November 25, 1963.

HON. ALAN BIBLE,
*Chairman, Committee on the District of Columbia,
U.S. Senate, Washington, D.C.*

DEAR SENATOR BIBLE: Undersigned furnishes herewith written comments upon Mr. Katzenbach's suggested amendments to any legislation amending the *Mallory* rule, as per request contained in your November 18, 1963, letter.

Undersigned, as chairman of the Due Process Committee of the National Capital Area Civil Liberties Union, in its behalf and personally, cannot urge upon you any more strongly, graphically, vividly, or vigorously his own opposition to any alteration whatsoever to the *Mallory* rule and, as well, the unalterable opposition of the Civil Liberties Union to such legislation.

Testimony of Chief Robert Murray, of the Metropolitan Police Department, contained in pages 738 to 749 in the transcript of the record of the hearings held by your committee, serves to illustrate, in some particulars, some of the vices inherent in the proposals of the highly esteemed Assistant Attorney General Mr. Katzenbach: While Chief Murray gives lipservice to the proposition that an arrested suspect should be advised of his right to counsel and he gives further lipservice to the proposition that the suspect should be permitted to consult with counsel during incarceration and, presumably, during, and prior to, an interrogation, the true feelings of Chief Murray are perhaps best put in his own testimony at page 741 of the transcript, wherein the Chief says:

"* * *, if a criminal knows that all he has to do is sit tight for 6 hours, he may sit tight for 6 hours and not say anything. I think a time limitation should be decided by the judge, if it is a reasonable length of time."

What Chief Murray really seeks is the right to incarcerate for periods exceeding 6 hours persons arrested without probable cause, after having given a suspect merely a superficial assurance that he is entitled to counsel and for the sole purpose of facilitating a breach of the fifth amendment by causing the possible self incrimination of the suspect.

The right to counsel is a very precious right that should be jealously guarded by the Senate of the United States of America. Personal experiences, while often germane to an issue, are not always acceptable in demonstrating or proving a point at issue. Nevertheless, undersigned will point out to you and to the committee that on an occasion, on a Good Friday afternoon in the early 1950's, possibly 1953, 1954, or 1955, undersigned presented himself at the headquarters of the Metropolitan Police Department, 300 Indiana Avenue NW., in the District of Columbia, on the fifth floor of that building, where the offices of the Gambling and Liquor Squad of the Morals Division were then housed, for the purpose of conferring with his client, one Kermit Mallette, who had been arrested a matter