VAROUTSOS, KOUTOULAKOS & ARTHUR,
Arlington, Va., December 3, 1963.

Hon. ALAN BIBLE,
Chairman, Committee on the District of Columbia,
U.S. Senate,
Washington, D.C.
(Attention Mr. Chester Smith).

DEAR SENATOR BIBLE: I am writing in response to your letter of November 8, 1963, in which you ask for comments on the recommendations of Deputy U.S. Attorney General Nicholas deB. Katzenbach with regard to possible corrective legislation in the *Mallory* area.

The Greater Washington Chapter of the Americans for Democratic Action are strongly opposed to these recommendations and stand squarely behind our original position upholding the *Mallory* rule as enunicated by the Supreme Court. The reasons for our opposition follow.

The recommendations (most particularly, the third recommendation) would permit, and, in effect sanction, the reprehensible practice of dragnetting into the police station large numbers of persons, charging them all with the commission of the same crime, pressing them all for a confession in the hope one will admit his guilt.

This means that the police can engage in the en masse detention for investigation technique which we so vehemently deplored in our testimony before your committee on October 24, 1963, merely by placing a charge against each arrestee, rather than "detaining for investigation," regardless of the requirements of probable cause so ingrained in our jurisprudence. For 6 hours, therefore, any person whom the police remotely suspect has any connection with the commission of a given crime, or even happened to be in the area of the crime, could be subjected to intensive interrogation. If no confession was forthcoming from an arrestee, he could be merely released without ever being brought before a magistrate.

The essential crux of the issue is whether we are going to allow persons to be detained in police headquarters without judicial approval. Judicial approval can only be given if there is probable cause to believe that the arrested person committed the crime of which he is accused. Probable cause must exist prior to the arrest.

The Supreme Court reiterated in *Mallory* that prompt arraignment is one of the essentials of the procedural due process of law. Implicit in this view is the difficulty faced by the courts in insuring that this important step of procedure is adhered to by the police. One method of enforcement the Supreme Court has is to emphatically make known to the police through its decisions that regardless of the actual guilt or innocence of the accused, if he is detained unnecessarily before arraignment then such detention is unlawful, and the "fruits" of such period of detention will be inadmissible in a trial, and thus the conviction may well be unattainable if the other evidence is insufficient.

Secondly, the Court restated in *Mallory* that arrests must not be upon mere suspicion but only for probable cause and that the arraignment before a commissioner is essential so that he can inform the accused of his right to counsel, right to remain silent and can allow the accused a reasonable opportunity to consult counsel (354 U.S. 1359 and rules 5 (b) and (c) of the Federal Rules of Criminal Procedure).

Thus, if there is probable cause for arrest, prompt arraignment should not affect the police's case. If there is no probable cause, a 6-hour delay provides a ready pretext for police to search for probable cause by pressuring statements from any amount of arrestees the police can round up.

Recommendation 3 makes the 6-hour rule an irrebuttable presumption of admissibility of otherwise admissable confessions or admissions regardless of the circumstances affecting the promptness of arraignment. We feel that the clear meaning of the philosophy underlying Mallory and of the constitutional requirements of procedural due process make such a presumption untenable. The other three recommendations are all acceptable to us as normal elements of police practice. The first two recommendations, in substantial measure, are already basic to procedural due process of law, and the fourth might be a useful tool for the police in substantiating confessions. However, neither of these three proposals belong to any formula for a presumption of admissibility of confessions that would permit and encourage dragnetting of suspects and adversely affect