

A more realistic distinction would be to treat all Federal crimes of violence alike. This, too, might fail to pass the test, but it certainly would come closer.

Thank you for the privilege of allowing me to elaborate on the points under consideration. I hope these comments are of some assistance to you.

With kind regards, I remain,

Cordially yours,

SIDNEY ZAGBI, *Legislative Counsel.*

THE UNIVERSITY OF WISCONSIN LAW SCHOOL,
Madison, Wis., November 22, 1963.

CHESTER H. SMITH,
Staff Director, Committee on the District of Columbia,
U.S. Senate,
Washington, D.C.

DEAR MR. SMITH: This is a reply to your letter of November 15 in which you ask for such additional views as I may have relating particularly to the testimony of Deputy U.S. Attorney General Nicholas deB. Katzenbach.

The major point which I tried to make in my previous letter is that it is important for the Congress to indicate whether in-custody interrogation is proper and, if it is, the circumstances under which an in-custody interrogation is proper. Title I of H.R. 7525, as passed by the House of Representatives, does not achieve this objective but on the contrary, merely provides that a confession will be admissible even though it was given during a period of detention in violation of the requirements of rule 5(a) of the Federal Rules of Criminal Procedure.

The suggestions of Mr. Katzenbach do go further in the direction of specifying when an in-custody interrogation is proper. In my view the legislation ought to be even more explicit and provide substantially as follows:

Delay for purposes of interrogation for a period not in excess of 6 hours following a lawful arrest is proper when such delay is reasonably required in order to decide whether to charge the person with a crime or to release him without prosecution provided that the arrested person is notified of his right to remain silent and of his right to counsel, and the interrogation is observed by a responsible witness or there is a verbatim transcript or recording of the interrogation.

I assume that this is not inconsistent with the Deputy Attorney General's objective. He says on page 680 of the transcript of the hearing of November 5, 1963: "Free of abuse, interrogation is a valuable investigative tool for arriving at the facts." One of the major difficulties with the current state of the law in the Federal system is that it is at best doubtful whether police act properly when they interrogate a person after his arrest, even when the interrogation is for a brief period and conducted under otherwise proper conditions. Unfortunately most of the attention given by legislatures and courts in the past has been in the direction of specifying improper police practices without giving enough attention to the specification of procedures which police can follow with assurance that they will be acting in conformity with the requirements of law. In the long run, the specification of proper procedures may be more important than the identification of improper procedures.

I would also go further, for much the same reason, and specifically authorize the common police practice of conducting a "field interrogation" of suspicious persons. By this I do not mean the detention provisions specified in title III nor the arrests for investigation discussed in the so-called Horsky report. Rather, I have in mind the more limited kind of imposition which results from a brief stopping and questioning of a person found under suspicious circumstances on the street.

This position was argued by the Department of Justice in *Rios v. United States*, decided by the Supreme Court on other grounds:

Being stopped by a police officer for purposes of inquiry may at times cause some inconvenience to the person stopped, but that temporary inconvenience is normally minor compared to the importance of such reasonable inquiry to effective law enforcement. Without the power, for example, to stop a suspiciously acting automobile to ask questions, the police might be forced to spend fruitless hours investigating actions which the occupant, had the police been able to ask him questions, could readily have explained as being entirely inno-