

**Replies to Court's Opposite View**

# Katzenbach Urges Fewer Restraints On Police Questioning of Suspects

8/5/67  
By Dan Morgan

Washington Post Staff Writer

Attorney General Nicholas deB. Katzenbach has asserted that court restraints on police questioning of suspects have gone too far in protecting the criminal at the expense of society.

In a letter to Chief Judge David L. Bazelon of the United States Court of Appeals made public yesterday, Katzenbach put himself squarely in the opposite camp from the chief judge, who had appealed to Katzenbach to back strict restrictions on police interrogation.

Katzenbach concluded:

- Criminal investigation "is designed to discover those guilty of crime," not primarily to ensure equal treatment.
- "Regulation through

judicial decision or statute of investigatory procedures should not have as its purpose to remedy all the inequalities which may exist in our society . . . to the exclusion of all other purposes and values sought to be achieved in the criminal process."

- As a result of court decisions, "the most basic investigatory methods have come to be questioned . . . As a result, policemen, district attorneys and trial court judges have become increasingly unsure of the law with respect to arrest and post-arrest procedures . . ."

- In Brazelon's own court, the "result is too often determined by the particular panel which hears the case," so that "the consistency, the efficiency and consequently the fairness of justice have suffered."

- Acquittal of the guilty does not promote social justice.

- Counsel is provided to accused persons "for our sake, not for theirs." According to an aide, Katzenbach meant by this that a person is given a lawyer for the sake of a basic principle of American justice.

In his letter, written on June 24 and circulated among

leaders of the bar and legal scholars, Katzenbach recognized that poverty is an underlying cause of crime. But he indicated that this does not justify law enforcement's "insulating" poor persons from conviction.

It is the duty of other areas of society besides the courts and the police to remove the causes of crime, he indicated.

Katzenbach's letter, prompted by one sent to him by judges have become increasingly brought considerable comment in the Johnson Administration and the law schools, where a debate over the investigative stages of criminal law has been raging for several years.

It was learned yesterday that liberal advisers to the Administration were so upset at the views expressed in the Attorney General's letter, that Abe Fortas was prepared to write Katzenbach a letter. He abandoned this idea when  
See KATZENBACH, A14, Col. 6

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**KATZENBACH—From Page A1**

## Greater Freedom Asked

named to the Supreme Court, it was learned.

Judge Bazelon's letter dealt with his objections to the preliminary draft of the proposed American Law Institute's model code of pre-arraignment procedures.

The code would allow questioning from four hours up to 24, and for 20-minute questioning of a citizen on the street to "aid in the investigation or prevention of a crime."

The code allows counsel during questioning but does not provide it for persons who cannot afford it.

In Judge Bazelon's view, this provision works an "invidious discrimination between rich and poor."

Katzenbach retorted that while guaranteed counsel, the revising of bail procedures and other procedures have made the criminal process fairer to the poor, "equality" has not been the overriding objective—"nor should it be."

"We provide counsel to ensure that the innocent are not wrongly convicted, that they may raise defenses which help preserve the integrity of the judicial process."

Since the poor are most often the victims of crime, giving poor criminals special protections that might lead to

their exoneration actually "increases the suffering of the less favored in our society," Katzenbach contended.

The Attorney General's remarks have brought strong reaction from legal scholars.

Prof. Anthony G. Amsterdam of Stanford Law School wrote Judge Bazelon that his views were a "shocking self-deception."

"I fear the Attorney General forgets that even judicial conviction and commitment of criminals is itself only a means, not an end . . . The end is more efficiently attained, I am sure the Attorney General would agree, by encouraging citizen obedience to law than by perfecting the means for apprehending and punishing the disobedient."

The debate that has not been brought into the open in the Katzenbach-Bazelon exchange has particular application in Washington, where the now-famous Mallory decision was handed down by the Supreme Court three years ago.

The Mallory Rule, which requires a suspect who made a voluntary statement to police after several hours of questioning, requires prompt arraignment of suspects.