

# Senate Curbs High Court on Confessions

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## Mallory, Miranda Decisions On Evidence Are Overturned

The Senate yesterday voted to overturn key Supreme Court decisions protecting the rights of defendants in criminal cases.

But in a surprise show of force late in the day, defenders of the Court managed to strike from the omnibus crime bill several other provisions reversing controversial court rulings on habeas corpus and Federal court review of state decisions on confessions.

In a series of dramatic votes that began early in the afternoon, the Senate first beat down, 51 to 31, a broad-

gauge amendment by Sens. Joseph D. Tydings (D-Md.) and Philip A. Hart (D-Mich.) to remove from the bill a section (Title II) stripping the Supreme Court of the power to review state court-approved confessions. The section contained other Court-curbing provisions that liberals said were unconstitutional.

The Senate then settled down to separate votes on individual provisions of the Title, amid charges from one side that the Court was coddling criminals and from the other that the bill constituted the most serious attack on the Supreme Court since the Court-packing plan of the late 1930s.

### Actions Taken

By the time the Senate adjourned for the day, it had taken these actions:

- Voted to increase from three hours to six hours the time a suspect in a D.C. criminal case may be held by police before being brought to a magistrate for arraignment.

- Voted, 55-to-29, to allow the trial judge in federal cases to admit into evidence any confession which, on balance, he considers to have been voluntary. The judge

would be required to take into account such questions as whether the defendant was warned of his right to a lawyer and his right to silence before confessing. The judge would not be bound to invalidate a confession without warnings if he thought, on the whole, the confession was voluntary.

### Overrules Decisions

This provision directly overruled a series of Supreme Court decisions, culminating in the Miranda case, throwing out confessions in which a defendant had not been advised of his rights and had not clearly waived them.

Critics of the decisions, led by a Southern bloc in the Senate and its Judiciary Committee, had argued that proven criminals were going free because of the Miranda precedent. Court defenders said the Miranda case should be preserved because it protected suspects from self-incrimination.

The Senate further endorsed, 58 to 26, a provision stating that delay in arraignment of a suspect will not by itself invalidate a confession in a Federal criminal case.

This provision overturns the Supreme Court's Mallory rule, which held that if police delayed unnecessarily in bringing a suspect before a judge or magistrate for arraignment, and a confession was obtained during the period of delay, it would not be admitted in evidence.

This provision, as later modified, allows a delay of up to six hours before arraignment.

Although losing on the confessions and delay-in-arraignment issues, defenders of the

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Court won on three important issues.

They struck from the bill, 52 to 32, a provision that would have barred the Supreme Court from reviewing confessions accepted as evidence by state courts. They also knocked out, 51 to 30, a similar provision barring review of lower court decisions on the admissibility of eyewitness evidence. And they killed, 54 to 27, language that would have blocked persons convicted in state courts from seeking Federal court review through petitions for habeas corpus.

Left in was a provision allowing the use of police lineup identifications even if the suspect's lawyer was not present at the lineup to counsel him.

### Bar Is Praised

Earlier in the day President Johnson, at a meeting with the Board of Governors of the American Bar Association, made his first explicit criticism of Title II, praising the ABA for its stand Monday against what he called "some of the very unwise and unfortunate amendments that have been proposed as Title II" of the crime bill.

A large number of Senate liberals were out of town for yesterday's crucial votes, but many of them—including Sens. Eugene J. McCarthy (D-Minn.) and Robert F. Kennedy (D-N.Y.)—entered "live" pairs in favor of the defeated Tydings-Hart amendment.

Much of the debate centered on the provision ultimately knocked out of the bill, forbidding Supreme Court review of state-accepted confessions.

Tydings said that it would mean that "no matter how horrendous the case" in a state court, there would be no right of appeal to the Supreme Court.

### Possible Confusion

He also said it would permit different interpretations by all 50 states of what constitutes a voluntary confession and this would cause confusion in law enforcement and in the protection of the right against self-incrimination.

Sen. Sam J. Ervin Jr. (D-N.C.), argued that to strike out the provision would be inconsistent after the Senate had voted 55 to 29 against eliminating the provision making voluntary confessions admissible as evidence in Federal trials.

"Congress has no right to

prescribe procedures in the state courts," Ervin said, adding that only by keeping the disputed review provision could the Senate restore to the states "the power to convict self-confessed murderers, rapists and robbers."

By killing the provision, he said, the Senate would be say-

ing "that voluntary confessions are admissible in Federal courts but not in state courts."

He said Congress should not make the people subject to "a judicial oligarchy."

### Went Too Far

But provision went too far for many Senators who had earlier voted to retain other provisions curbing Supreme Court powers.

Sen. Albert Gore (D-Tenn.), one of those who voted "no" on the other amendments, said the proposal would strip away part of the Court's right of review as granted by the landmark *Marbury V. Madison* case.

Tydings said that "no matter how bad the state court's decision was, the defendant would just be "out of luck" if he wanted to appeal into the Federal courts.

But Ervin said if the Supreme Court is permitted to continue overturning state court decisions, the Constitution will be a "dead document."

## Senate Vote On Rider to Crime Bill

Associated Press

*This is the 51 to 31 vote by which the Senate yesterday rejected an amendment to delete a crime-bill section that overturns Supreme Court restrictions on confessions and police lineup identifications:*

**DEMOCRATS: FOR (24)**  
 Bayh (Ind.) Mondale (Minn.)  
 Burdick (N.D.) Morse (Ore.)  
 Clark (Pa.) Moss (Utah)  
 Hart (Mich.) Muskie (Maine)  
 Hartke (Ind.) Pastore (R.I.)  
 Inouye (Hawaii) Pell (R.I.)  
 Jackson (Wash.) Proxmire (Wis.)  
 Kennedy (Mass.) Symington (Mo.)  
 Long (Mo.) Tydings (Md.)  
 Magnuson (Wash.) Williams (N.J.)  
 McIntyre (N.H.) Yarborough (Tex.)  
 Metcalf (Mont.) Young (Ohio)

**REPUBLICANS: FOR (7)**  
 Aiken (Vt.) Cooner (Ky.)  
 Boggs (Del.) Fong (Hawaii)  
 Brooke (Mass.) Percy (Ill.)  
 Case (N.J.)

**DEMOCRATS: AGAINST (27)**  
 Anderson (N.M.) Hollings (S.C.)  
 Bible (Nev.) Jordan (N.C.)  
 Byrd (Va.) Lausche (Ohio)  
 Byrd (W.Va.) Long (La.)  
 Cannon (Nev.) McClellan (Ark.)  
 Dodd (Conn.) Randolph (W.Va.)  
 Eastland (Miss.) Ribicoff (Conn.)  
 Ellender (La.) Russell (Ga.)  
 Ervin (N.C.) Smathers (Fla.)  
 Fulbright (Ark.) Sparkman (Ala.)  
 Gore (Tenn.) Spong (Va.)  
 Hayden (Ariz.) Stennis (Miss.)  
 Hill (Ala.) Talmadge (Ga.)  
 Holland (Fla.)

**REPUBLICANS: AGAINST (34)**  
 Allott (Colo.) Miller (Iowa)  
 Baker (Tenn.) Morton (Ky.)  
 Bennett (Utah) Mundt (S.D.)  
 Carlson (Kan.) Murphy (Calif.)  
 Cotton (N.H.) Pearson (Kan.)  
 Curtis (Neb.) Prouty (Vt.)  
 Dominick (Colo.) Scott (Pa.)  
 Fannin (Ariz.) Smith (Maine)  
 Hansen (Wyo.) Thurmond (S.C.)  
 Hickenlooper Tower (Tex.)  
 (Iowa) Williams (Del.)  
 Hruska (Neb.) Young (N.D.)  
 Jordan (Idaho)

(Pairs are used to announce opposing positions when one or both Senators are absent):  
 Kennedy (D-N.Y.) for, Brewster (D-Md.) against;  
 McCarthy (D-Minn.) for, Mansfield (D-Mont.) against;  
 Javits (R-N.Y.) for, Griffin (R-Mich.) against;  
 Kuchel (R-Calif.) for, Dirksen (R-Ill.) against.