

the *Mallory* rule goes along with the Supreme Court philosophy as the Court is presently constituted.

Mr. KATZENBACH. There has been no disposition on the part of the Supreme Court to review any of these cases.

Senator DOMINICK. Have they denied certiorari on any of them or denied appeal?

Mr. KATZENBACH. Do you know the answer to that, Mr. Acheson?

Mr. ACHESON. My recollection is, Senator, that in the last year or two, perhaps the last 2 or 3 years, at least one case involving a *Mallory* question was sought to be reviewed in the Supreme Court and certiorari was denied. I know of no case in which the Supreme Court has confirmed or disavowed the rather extreme line of rulings that we cite here.

Senator DOMINICK. All right. Now, if I may, could I just ask you a couple of questions about your recommendations on adding certain safeguards to the proposed *Mallory* rule. You obviously would have the legal question right away under Recommendation No. 2 as to what is or is not a reasonable opportunity, to notify a relative or friend or consult counsel of his choosing.

Might you not get into the same bind on that as we are as to whether there is a reasonable or unreasonable delay in the *Mallory* ruling to begin with?

Mr. KATZENBACH. I would think, Senator, that whether or not there was a reasonable opportunity there would be a question of fact for the trial court, and the trial court could make a finding of fact in that respect.

Senator DOMINICK. One would surmise that this would be also true in the trial court ruling on whether a confession has been obtained with or without a reasonable delay?

Mr. KATZENBACH. It is without an unnecessary delay.

Senator DOMINICK. Doesn't the trial court make a finding of fact on that?

Mr. KATZENBACH. When it admits—yes, it does; when it admits the confession.

Senator DOMINICK. And in each of these cases presumably it made a finding of fact that this would not constitute an unnecessary delay and then the court of appeals reversed it?

Mr. KATZENBACH. I think it might be desirable for the legislation to state what a reasonable opportunity was.

Senator DOMINICK. How did you happen to pick 6 hours, in No. 3?

Mr. KATZENBACH. Like any period of time, it is somewhat arbitrary. We thought it ought to be on the short side. One of the things that lies behind the *Mallory* rule, I don't think it is the essence of it, though, is the coercion aspect. It seemed to us that a 6-hour delay, in the light of the cases and of experience would scarcely result in coercion, yet would be sort of fast enough to be reasonable.

By that I mean I was thinking in terms of an arrest late at night and how quickly can you get them before a magistrate. It seemed to us that 6 hours, if you took into consideration the nighttime problems, was a reasonable length of time, and 12 hours seemed to us rather too much, and 4 hours seemed rather too little.

Senator DOMINICK. Of course your recommendation of 6 hours' elapsed time between arrest and completion of the confession does not say anything about arraignment?