

It was subsequently transcribed and confirmed in writing, and the morning of the following day the defendant was brought to arraignment before the Commissioner.

Senator DOMINICK. So that there was a rather substantial delay between the time of the confession and the time of arraignment. This is the point I was making.

Mr. ACHESON. That is correct. And Senator, you might have had occasion to notice the case, the decision of *United States v. Mitchell* in the Supreme Court 322 U.S. 65, which I think dates from about 1956. That makes it clear that the delay that takes place between the time of confession and the time of arraignment is really immaterial for purposes of application of the *Mallory* rule. It is the delay that produces the confession which is the significant thing. The *Mitchell* case makes that quite clear, and I don't know of any case that indicates that thinking has been reversed in the Supreme Court.

Senator DOMINICK. All right. Now on your fourth recommendation you say:

A responsible witness other than a law enforcement officer should observe the questioning, or the recording of the interrogation.

Who do you mean or what type of person? Are you thinking of a court reporter, a stenographer, or are you thinking of a lawyer on behalf of the defendant or are you thinking of a friend or a relative on behalf of the defendant or what?

Mr. KATZENBACH. That or a person of good reputation in the community, a priest, a minister.

Senator DOMINICK. If you arrest someone at 4 a.m. Sunday morning you are going to have kind of a hard time unless someone is connected with the case in getting anybody down to court, aren't you, or to go to a police station?

Mr. KATZENBACH. I don't think that is necessarily true, Senator. In the area in which I lived in Chicago before I came with the Government here, the police within that area always secured, when somebody was arrested, an independent witness to look at the questioning, and it was extremely helpful in terms of credibility of what happened during the questioning to have a person unconnected do that. A number of citizens were quite happy to volunteer for this and to make sure that any questioning, any interrogation was fair in this respect.

Senator DOMINICK. Was this a matter of a law or was this a matter of procedure?

Mr. KATZENBACH. It was a matter of procedure and practice, and I think probably it was confined to one or two precincts in Chicago, the university area where I lived. This has been suggested as a means of insuring that any claims that any confession was coerced could be rebutted, and the police in these precincts at least followed that practice with some regularity.

Senator DOMINICK. Are you recommending under No. 2—and I might say in passing that I think your procedural statement of what the police did is most helpful. I think if we could get that moving in other jurisdictions it might be a real help, but are you recommending under No. 2 that the relative or friend who is notified, and the consultation with counsel of his own choosing should take place during the questioning by the police or prior to the start of it?

Mr. KATZENBACH. It should take place prior to any interrogation