

of the witness. I would assume in the normal course of things that the man is taken into custody and that when he arrives at the precinct station, he should be given this opportunity to make a phone call to a relative or to a friend or to a lawyer.

Senator DOMINICK. At least one of our witnesses has indicated that if these people do get counsel, the counsel will tell him to say nothing, which is the general role of a counsel defending a defendant.

Mr. KATZENBACH. That is certainly Perry Mason's constant advice.

Senator DOMINICK. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. The Senator from New Hampshire.

Senator McINTYRE. I understand, then, that you feel the *Mallory* rule is a good rule, generally speaking?

Mr. KATZENBACH. Yes, I do.

Senator McINTYRE. Do you understand also that it does pose some problems for the District of Columbia in its enforcement of law and order?

Mr. KATZENBACH. I think the *Mallory* rule as it has been interpreted by the court of appeals here in the District does pose such problems.

Senator McINTYRE. Are you suggesting to this committee that there are four areas where you feel that the law if passed in its present form might very well raise some serious constitutional objections?

Mr. KATZENBACH. That is correct, Senator.

Senator McINTYRE. What I would like to be informed about is this: As I look over these four provisions, What is the accepted practice or what is required by the law today here in the District of Columbia when an arrest is made? If an arrest is made can a man be brought to the police station and immediately shoved into a chair and the interrogation commence or does he have to have these things? Is this accepted practice or is it required by law that first of all he be informed that he need not make any statement at all. Is this being done or isn't it?

Mr. ACHESON. At the present time, the procedure is, Senator, that, of course, probable cause is required to justify the arrest. After the arrest is made, the case law provides that there are certain administrative steps that are entirely justifiable and even necessary which call for the taking of the defendant to the police station, the precinct, or the headquarters where he will be fingerprinted, photographed, and a lineup sheet involving his vital statistics, prior record, and all that filled out, and when that is accomplished, he may be briefly questioned to determine whether he has got any statement to make on the case.

He may not be held for a long period for the purpose of interrogation, because *Mallory* forbids that. But he may be initially interrogated to see whether he has a statement to make or an alibi or anything which, on its face, would tend to exculpate him. In connection with that interrogation defendants frequently confess. This is called a threshold confession, and it has been in the past allowed to be introduced in evidence by the District judges and by the courts of appeals. We are now reaching the point where successive opinions of the court of appeals have tended to shrink the period in which a threshold confession may be elicited. This initial interrogation is