

Senator McINTYRE. Yes. Well, what I was mostly concerned with was that the practices that I have seen are followed here in the District of Columbia. In other words, the attorney comes in, interrogation is going on, the attorney is allowed to instruct the witness in the Perry Mason formula?

Mr. ACHESON. Oh, yes.

Senator McINTYRE. This is very important.

Mr. ACHESON. Where he arrives timely, where the interrogation isn't completed by the time he arrives, I am sure that is the practice.

As far as element No. 3 is concerned, I think in some very high percentage of the cases a confession is made if it is going to be made at all, within an hour or two, perhaps 3 hours after arrest. I don't believe for that reason that the 6-hour detention would become standard in every case. In the great majority of cases a confession is made fairly promptly after arrest. Of course, a confession is withheld because the defendant thinks the police have nothing on him. When he finds out they do, he very frequently confesses. You get some cases like *Killough* in which the police can not get anything on him and he will not confess even though he is held for a few days. We certainly don't suggest that there is any legislation that is practicable which would cope with a situation like that.

Senator DOMINICK. Would the Senator yield at that point?

Senator McINTYRE. Yes, I would be happy to yield.

Senator DOMINICK. I would just like to get your estimate of the likelihood of this. If this becomes a part of the written law; namely, a maximum of 6 hours, isn't it entirely possible that the at least hardened criminals would take this into account and simply wouldn't open their yap until more than 6 hours had gone by, and then it wouldn't make any difference what they said? Any confession or anything that they said would be ruled out?

Mr. ACHESON. Senator, I think that is attributing a degree of sophistication to even a hardened criminal that very few of them seem to possess. At the present time for all practical purposes if he can hold out for 2 hours, 2½ hours, he is pretty well in the clear, but very few of them do.

Senator DOMINICK. So your answer to the question is that you don't think that this would give them an additional escape hatch?

Mr. ACHESON. I do not.

Element No. 4, just to finish this, goes back to your question, Mr. Chairman. The witness or transcript or recording which is called for in element No. 4 would prevent the very controversy that you suggest from coming into a trial and being taken seriously where there was not factual support for it as to what happened at the interrogation.

Senator McINTYRE. Who would normally be this responsible person? Where would you find such a responsible person, go out in the street and get him?

Mr. ACHESON. It is in the alternative here, Senator. The probability is that the practice would be to set up a transcription system or a reporting system instead. Where there was a responsible person in the shape of a relative or counsel that happened to be there, they might prefer to protect the interrogation in that fashion.