

Senator McINTYRE. Is this responsible witness—I take it the answer is obvious—is this responsible witness or verbatim transcript or recording not a customary practice in the District of Columbia today?

Mr. ACHESON. I don't believe so, but I would prefer to leave that question to the Chief of Police.

Senator McINTYRE. Do I understand that it is an accepted practice that the suspect be given an opportunity to telephone his friends or relatives or his attorney?

Mr. ACHESON. There again I think he is. Usually, Senator, these people don't know a lawyer.

Senator McINTYRE. I appreciate that.

Mr. ACHESON. They may have a relative.

Senator McINTYRE. I appreciate that, but it is the opportunity?

Mr. ACHESON. They are offered the telephone. I think a classic situation here is the famous defendant Killough in a murder case, who was offered the telephone. He did not make use of it. He didn't know a lawyer to call. But he could have called a relative or called anyone he chose. I think the answer is "Yes," as far as I know, they are allowed the opportunity.

Senator McINTYRE. Of course, I realize the practicalities of this thing in going down the drain but of course we are interested in the opportunities for protection of these rights that are so important. Of course I am not familiar with the problems of a tremendous big city like Washington. Do the police offer to this person names from the Legal Aid Society or other opportunities for counsel or names of attorneys, just a list?

Mr. ACHESON. I think the police with some reason feel that it would be quite improper for them to select counsel for defendants, and I believe that the legal agency at the present time is not authorized to accept the call of the police to represent defendants in the custody of the police.

Senator McINTYRE. Nothing in my question was meant to indicate that I thought the police should select counsel.

Mr. ACHESON. I understand.

Senator McINTYRE. In a smaller city you would just give them a list of attorneys. One thing I wanted to get straight in my mind is this: In looking over these decisions that you indicated here, I realize you are compressing the facts down to a number of hours, but certainly in these cases there must be something that goes to the voluntariness of the confession. Are these facts all that are necessary, two or three and a half hours are sufficient to throw the question out?

Mr. KATZENBACH. That is right, Senator. There is no question in any of these cases as to the voluntariness of the confession.

Senator McINTYRE. No question at all as to the voluntariness?

Mr. KATZENBACH. No, sir.

Senator McINTYRE. This is a safeguard written into this *Mallory* rule which indicates that a delay of time is an implication that there may be some undue force at work.

Mr. KATZENBACH. I think that is one of the reasons in the *Mallory* rule, but only one. I don't think—they do go back to *McNabb*. In the *Mallory* case and they do talk about that, but the test is not whether or not the confession is voluntary. It is far more automatic even in the *Mallory* case. They say rule 5(a) was not complied with