

Senator McINTYRE. One final question. Taking into account all the crimes that are committed in this district, do both of you feel that a substantial number of criminals evade punishment because of this?

Mr. KATZENBACH. I don't know of any facts that could be cited that would lead to that conclusion.

Senator McINTYRE. I take it your answer means that you do not believe there are a substantial number of criminals that evade punishment because of the *Mallory* rule?

Mr. KATZENBACH. I phrased it as I did, Senator, because people whose judgment I respect do take the view that there are. I simply don't know of any way of establishing that by—

Senator McINTYRE. There are no statistics on it?

Mr. KATZENBACH (continuing). By factual evidence that would lead anybody to that conclusion.

Senator McINTYRE. Of course, the question is directed to you more as an opinion as an expert. May I ask this same question of Mr. Acheson?

Mr. ACHESON. Senator, let me answer by indicating the disposition of some of the defendants whose cases are cited here in Mr. Katzenbach's statement, because I think they are typical of the way the normal *Mallory* reversal by the court of appeals is ultimately disposed of.

Elsie Jones pleaded guilty, after the reversal of her conviction, to manslaughter, and received a sentence of imprisonment from 1 to 4 years commencing January 11 of this year.

Senator McINTYRE. Just a minute. I don't know what she was charged with here. What was she charged with in the first instance?

Mr. ACHESON. She was charged with murder.

Senator McINTYRE. Well, that is not bad, reduction from murder to manslaughter. All right.

Mr. ACHESON. Charles Coleman entered a plea of guilty to unauthorized use of a vehicle, and was sentenced in May to imprisonment for a period of 8 months to 2 years. As I recall, he was charged originally with robbery, and murder.

Senator McINTYRE. And he pleaded guilty to what?

Mr. ACHESON. Pleaded guilty to unauthorized use of a vehicle. Tony Coleman, of course—now his conviction was reversed on six counts but affirmed on one, and the six counts that were reversed were dismissed. By the time the appellate reversal came down, he had already served the sentence on the one count that was affirmed, so that he is now out of custody.

It is the practice, of course, of this court, as you may know, Senator, this District court, in most cases to enter judgment of sentence on multiple counts which are concurrent sentences rather than consecutive.

Now there is another case pending which I wouldn't want to comment on in detail now, the *Killough* case. I don't know how that will end. But I would say, to generalize, that a number of defendants have escaped the punishment that they deserved, certainly the punishment which was sought to be imposed upon them, because of the *Mallory* case. I think very few were turned loose in the street as a result of that decision.

Senator McINTYRE. Then I take it your answer is that because of the *Mallory* rule there is not a substantial number of criminals who