

The CHAIRMAN. Very much in line with the questions which Senator Dominick was just asking you about the first two safeguards, it also occurred to me that if we built in all four of the safeguards which you suggest, you might be hamstringing the police more than you are helping them.

Would you have any views on that, Mr. Acheson? I understood Mr. Katzenbach to say if you put in the first two safeguards in his opinion it would be constitutional. Do I correctly understand you?

Mr. KATZENBACH. I think it would help a great deal in that respect, yes.

The CHAIRMAN. It would help a great deal. If you put all four in, are your standards going to be so rigid and so fixed that it is going to handcuff the police more than they claim they are handcuffed now by the *Mallory* decision, because this is their claim. It is just that simple.

Mr. ACHESON. I would not think so, Mr. Chairman.

The CHAIRMAN. You don't think so. Well, we are going to have the Chief of Police next, so we will get his views.

Mr. KATZENBACH. Requirement No. 1 is pretty much the practice now. Requirement No. 3, as I indicated, is not really a terribly important factor in the normal case that involves 1 or 2 hours. I should not think requirements 2 or 4 would be terribly burdensome, but of course I don't speak for the Chief on that.

The CHAIRMAN. I understand. He is the next witness, and we can solicit his views on that.

Our staff has suggested questions that I would like to ask you. As you know, one is the former assistant U.S. attorney here in the District of Columbia with some 10 years of experience, and the other staff member is a former assistant U.S. attorney in Maryland. These are some questions that they have suggested.

Is it a fact that in a great number of criminal cases occurring in the District, the accused are not brought before a committing magistrate without unnecessary delay as defined in *Mallory*, but rather they are held in police custody for hours awaiting the convening of the court or the availability of the U.S. commissioner? Would you know, Mr. Acheson?

Mr. ACHESON. Well, I think the regular practice in night arrests where a confession is not an essential element of the case against the defendant, is to arrest him, charge him, fingerprint him, photograph him, and then put him in the lockup for his appearance before the commissioner at 10 o'clock the following morning.

If he is arrested during court hours, he has his appearance usually very promptly. If he is arrested at night, it has always been thought legitimate and in full compliance with the provisions of the law to bring him before the magistrate when court opens in the morning.

Where a confession is an important element of the case, and it is thought important to protect that confession, he is normally arraigned before a magistrate at some nighttime arraignment. The magistrate is called out of bed frequently or away from dinner or whatever, at the request of the prosecutor.

The question, if I may say, rather presents the same legal issue that we are talking about.

The CHAIRMAN. I understand.