ing officers to delay preliminary hearings 6 hours for the "completion of a confession."

Mr. Katzenbach's justification for this recommendation we believe is singularly unconvincing for it is nothing more than a recital of judicial decisions which excluded confessions which were given in periods varying from 15 minutes to 3½ hours after arrest.

If it is a good rule to have which prevents delay for the purpose of eliciting a confession, it cannot make a difference whether the delay is for 15 minutes or for 6 hours. Any delay for this purpose would be forbidden.

As the Supreme Court has explained, rule 5(a) of the Federal Rules of Criminal Procedure "contemplates a procedure that allows arresting officers little more leeway than the intervals between arrest and the ordinary administrative steps required to bring a suspect before the nearest magistrate," *Mallory* v. *United States*, 354 U.S. 449, 453 (1956).

Second, Mr. Katzenbach would give to the police the duty to warn the "defendant, immediately in advance of the questioning, that he is not required to make any statement at any time and that any statement made by him may be used against him."

The Supreme Court has more than once found, as laudable as these words of caution may be, coming from the lips of a police officer, that they are not adequate to assure persons under arrest of the rights they may wish to assert. "The lawful instruments of criminal law cannot be entrusted to a single functionary," the Supreme Court said in *McNabb* v. *United States*, 318 U.S. 332.

It is for this reason that rule 5 of the Rules of Criminal Procedure commands that a person under arrest be taken to a U.S. commissioner, and gives to that judicial officer the function of advising the defendant of his rights.

The decision in *McNabb* indicates that Mr. Katzenbach's proposal neither provides protection for a person under arrest nor assures the prosecution of the admissibility of a confession obtained in violation of rule 5.

Mr. Katzenbach's two remaining proposals deal with the conduct of the police interrogation. Inasmuch as we believe that no interrogation of persons under arrest is permissible until after they have been arraigned before a U.S. commissioner, it is our belief that there is no warrant to establish procedures for conducting such questioning. To the extent that these procedures would establish the proper safeguards, they would merely duplicate the preliminary hearings now prescribed by the Federal Rules of Criminal Procedure. To the extent that they failed to provide such safeguards, it is our view, as it seems to be Mr. Katzenbach's, that the procedures would be unconstitutional.

If, nonetheless, your committee favors legislation to define procedures under which police officers may question persons under arrest, we believe that there must be as a minimal requirement, a provision for representation by counsel.

It would seem necessary to assert the need for such representation, in view of the importance which it has been given in the Constitution. The much-quoted statement of Justice Sutherland in *Powell* v. *Alabama*, 287 U.S. 68, 69 (1932), that "even the intelligent and educated layman * * * requires the guiding hand of counsel at every step in the proceedings against him" applies as much to the interrogation in the police station as to any other stage of his prosecution. This requirement has been underscored in at least two Supreme Court decisions: *Crooker* v. *California*, 357, U.S. 433 (1958) and *Cicenia* v. *LaGay*, 357, U.S. 504 (1958).

The National Legal Aid Association has pointed out that "if the rights of the defendant are to be fully protected, the defense of a criminal case should begin as soon after arrest as possible" "Equal Justice for the Accused, 1959," p. 60). Obviously, the need for protection becomes all the more compelling if the police are to be given the authority to conduct interrogations of accused persons who are in their custody.

In the light of these requirements, Mr. Katzenbach's proposal that persons under arrest be given, "a reasonable opportunity * * * [to] consult with counsel of his choosing," is scarcely adequate.

For counsel to be able to provide the "guiding hand" which *Powell* v. *Alabama* says is indispensable, the accused must have more than the right of consultation with counsel. Counsel must be present during interrogation.

Moreover, for the indigent, the right to have "counsel of his choosing" is no more than an empty gesture. Mr. Katzenbach's proposal would perpetuate the phenomenon which Chief Justice William Howard Taft decried many years ago:

"Of all the questions which are before the American people, I regard no one as more important than the improvement of the administration of justice. We