

In brief, I suggested more men, men better trained, men who understood the impact of this decision and who are prepared to work around the clock with it.

All this is costly. And I wanted the Appropriations Committee to know that. But I felt we had no alternative under this doctrine.

Now, in spite of the fact that he has received what he considers complete cooperation from the Congress, insofar as his appropriation requests are concerned, the crime rate still continues to rise, he still continues to have these problems. And it is in the area of interrogation of persons arrested that I think he does need some help.

I think that the statement made in title I respecting confessions and admissions otherwise admissible—by that we mean voluntary in character—shall not be deemed inadmissible solely because of delay between arrest and a preliminary hearing.

I think that would do much to take care of the problem with which we are confronted.

The CHAIRMAN. Well, at that point, Mr. Gasch, quite possibly you have covered it in your prepared statement—as you know, the Department of Justice and the U.S. attorney take the position that title I may raise constitutional problems.

Now, I recognize, and I would like to have your comments on that—I recognize the *Mallory* rule does not turn upon a constitutional provision, it turns strictly upon the interpretation of “without unnecessary delay” as written into rule 5(a).

The Department of Justice, in their letter to this committee, dated September 13, 1963, stated the following:

Title I as passed by the House of Representatives is intended as a response to the Supreme Court decision in *Mallory v. United States* (354 U.S. 449 (1957)). However, it raises serious constitutional difficulties in dispensing with safeguards which the *Mallory* rule assures to persons charged with crime. If a change in some of the recent interpretations of the *Mallory* rule is to be legislated, certain essential safeguards should be preserved to save the bill from constitutional attack.

The *Mallory* rule is a rule of evidence in criminal trials. The rule excludes a confession from evidence if it was obtained during a period of “unnecessary delay” in bringing an arrested person before a committing magistrate. It is intended as a judicial sanction with which to enforce rule 5(a) of the Federal Rules of Criminal Procedure, which rule requires that an arrested person be taken without unnecessary delay to a committing magistrate to be advised of his rights and to receive a preliminary hearing.

The Supreme Court made it clear that the *Mallory* rule was intended to prevent law enforcement officers from delaying preliminary hearings for the purpose of eliciting confessions. This is as it should be.

I would appreciate your comments upon that particular portion of the letter that the Department of Justice forwarded to this committee concerning title I of the House passed bill.

If I understand you correctly it is your opinion that title I of the House bill would stand a constitutional test.

Mr. GASCH. Yes, sir. In the first place, I would emphasize that what the Supreme Court was concerned with in the *Mallory* case was an interpretation of a procedural rule, 5(a). There is no indication that the Court considered that they were dealing with a constitutional situation. That is true also in the earlier *McNabb* case, where they were dealing with certain statutes which required immediate arraignment.