

not so with the police who usually must conduct their investigations on the spur of the moment and often when the accused is already in custody. There is a vast difference in such operations as these.

The CHAIRMAN. I think that point you make is an excellent one in distinguishing the application of Federal rule 5(a) in the District of Columbia as contrasted to its application elsewhere in the United States.

I call your attention to the fact that the Department of Justice, in writing an opinion which frankly is very critical of title I which we have before us, nevertheless, does recognize, as you do, that we have a different problem here in the District of Columbia.

This is what the Department of Justice said and it seems to me that it fits in very well with what you have just stated:

The *Mallory* rule is not frequently invoked in Federal criminal cases in jurisdictions other than the District of Columbia. The reason is twofold:

First, only in the District of Columbia do the Federal courts have broad jurisdiction over crimes of violence which characteristically lack eyewitnesses and independent evidence.

It is quite common in cases of homicide, yoke, robberies, rapes and certain other crimes that there is no third eyewitness, and it is often very difficult for the complaining witness to make an identification.

In homicides there is no complaining witness at all. Thus, confessions assume far greater significance as evidence of guilt and it becomes important to defendants to exclude their confessions in the courts of the District of Columbia.

Second, by contrast most Federal criminal cases in other jurisdictions involve frauds, mail thefts, narcotic violations, and the like, where there is substantial evidence apart from a confession; i.e., contraband property, financial reports, tax returns, etc.

The CHAIRMAN. Chief Murray is charged, in this Nation's Capital, with operating under the Federal rule very much with the same type of functions that you are charged with as the superintendent of police in the city of Chicago.

I think you have made a very fine distinction here, and I think it is one that is not quite often understood.

Thank you, sir.

Superintendent WILSON. There are those who seem to advocate that the police can perform their function without questioning suspects at all; that the solution of crimes is merely a matter of proper skill and training to find physical evidence at the scene of the crime. These same individuals argue that this is the practice routinely followed by the FBI and they ask rhetorically why the police cannot be equally skilled.

I submit that there is no substitution for questioning. Even in the relatively few cases where incriminating evidence is found at the scene of the crime, the evidence rarely speaks for itself. The testimony of someone, or an admission by the accused, is usually needed to tie the evidence to the accused and to make the physical evidence relevant as proof.

I cannot express this thought better than was done in the opinion in the case of *Trilling v. United States* (104 U.S. App. D.C. at 182):

At least one of the prime functions, if not the prime function, of the police is to investigate reports of crime or the actual commission of crime. The usual, most useful, most efficient, and most effective method of investigation is by questioning people. It is all very well to say the police should investigate by microscopic examination of stains and dust. Sometimes they can. But of all human facilities for ascertaining facts, asking questions is the usual one and always has been. The courts use that method.