

committee hearings on the subject of "Confessions and Police Detention," in 1958:

We must bear in mind that the purpose of the criminal law is to protect the public. On the one hand, it is essential that no innocent person be convicted of a crime and that oppressive methods be not used against the guilty. On the other hand, it is equally indispensable that victims of a crime and potential victims of possible future crimes receive protection. The victim must not become a forgotten man. As was said by Mr. Justice Cardozo in *Snyder v. Massachusetts* (291 U.S. 97, 122), "Justice, though due the accused, is due to the accuser also. The concept of fairness must not be strained till it is narrowed to a filament. We are to keep the balance true."

In considering the effect of these decisions, we should keep in mind that the Supreme Court did not base its decisions on any constitutional issue. It did not suggest that to admit Mallory's confession into evidence would be a violation of due process. The Court in both *Mallory* and *Killough* based its decision on its interpretation of the will of Congress as expressed in rule 5(a) of the Federal Rules of Criminal Procedure. I do not believe that the Court has correctly interpreted the will and intent of Congress in this matter. It is for this reason that I endorse title I, a provision to make voluntary admissions and confessions admissible in criminal proceedings and prosecutions in the courts of the United States and the District of Columbia.

When all is said, the *Mallory* case rests upon the conviction that voluntary confessions made by an accused before arraignment must be excluded because their admission might tempt arresting officers to extort involuntary confessions. This being true, the reasoning which underlies the *Mallory* case is really a throwback to the common law philosophy that the interests of parties to actions might tempt them to testify falsely and for this reason they should be prevented from testifying at all for fear that they might commit perjury. In other words, the *Mallory* case rests upon the proposition that arresting officers must be freed from temptations even if the process by which they are so freed results in the freeing of those who murder innocent victims or prey upon a society which the criminal law was designed to protect.

I might add that it seems to me that enough has been done for those who murder and rape and rob. It is time for somebody to do something for those who do not wish to be murdered, raped, or robbed.

Mr. Chairman, I would like to summarize the rest of my statement, and have the entire statement in respect to titles II and III printed in the record.

The CHAIRMAN. I will be happy for you to do that. Your prepared statement will be printed at the conclusion of your testimony.

Before you proceed, Senator, and while you are on title I, the Department of Justice, in their official report on title I, House bill 7525, takes the position that it raises serious constitutional difficulties in dispensing with safeguards which the *Mallory* case assured a person charged with a crime.

Now, I recognize, as you well pointed out, that the *Mallory* decision does not turn on an interpretation of the Constitution; it is a straight out interpretation of rule 5(a).

Now, my question of you would be if title I was enacted, do you believe it would be held constitutional?