

I would like to confine my remarks today primarily to titles I, II, and III. These concern, respectively, the *Mallory* rule, the *Durham* rule, investigative arrests, and detention for questioning material witnesses. The Subcommittee on Constitutional Rights, of which I am a member, has considered each of these subjects in connection with its continuing investigation of the administration of criminal justice, and all three were dealt with in detail during the subcommittee's hearings on "Confessions and Police Detention" and on "Constitutional Rights of the Mentally Ill: Criminal Aspects."

TITLE I

The *Mallory* rule and rule 5(e) of the Federal Rules of Criminal Procedure are subjects which have long been of great concern to me. It is my feeling that the crime rate in the District will continue to mushroom and effective law enforcement here will continue to be frustrated until legislation such as that contained in title I is enacted. For this reason, I have in this and previous Congresses introduced legislation to clarify rule 5. Mr. Chairman, I request that S. 1012, a bill concerning this subject which I introduced and which was cosponsored by Senators Byrd of Virginia, Eastland, Johnston, McClellan, and Talmadge, on March 7, be printed at this point in the record of hearings.

[S. 1012, 88th Cong., 1st sess.]

A BILL To make voluntary admissions and confessions admissible in criminal proceedings and prosecutions in the courts of the United States and the District of Columbia

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding the provisions of rule 5 of the Rules of Criminal Procedure for the United States District Courts or any other rule or statute of like purport, a voluntary admission or a voluntary confession of an accused shall be admissible against him in any criminal proceeding or prosecution in the courts of the United States or of the District of Columbia, and the finding of the trial court in respect to the voluntariness of the admission or confession shall be binding upon any reviewing court in the event it is supported by substantial evidence.

Although S. 1012 differs in language from title I of the legislation before you today, the effect would be the same no matter which measure is enacted. That effect would hopefully be to reverse the upward direction the crime rate has taken since 1957, the year the Supreme Court decided the case of *Mallory v. U.S.*, 354 U.S. 449. Although I realize this is not the only factor influencing the crime rate, the *Mallory* rule certainly is a major factor for due to it self-confessed criminals are let free by the courts, and the police are hampered in their crime detection. Here, I believe it might be well to review the history of the case itself.

The *Mallory* ruling held inadmissible the voluntary statement of a convicted and self-confessed rapist because of the delay in taking him before a committing magistrate. The Court stated that a delay of 7½ hours in arraigning the prisoner violated rule 5(a) of the Federal Rules of Criminal Procedure which requires that an arrested person be taken before a committing officer without "unnecessary delay."

The *Mallory* ruling and the decision in the earlier case of *McNabb v. United States*, (318 U.S. 332) have resulted in abolishing an old and fundamental rule of evidence regarding the admissibility of a confession. Prior to these decisions, the sole test of the admissibility of a confession was whether it was made voluntarily. Under this test, if a confession was freely and voluntarily made, it was deemed to be trustworthy. Of course, if there was a showing that the delay itself constituted sufficient inducement to confess, the court could, in its discretion, render such a confession inadmissible. But, the point is, that mere delay in itself was not enough to invalidate a confession.

In the *Mallory* case, time alone was the deciding factor. There was no showing that any duress was used in extracting the confession from the prisoner. Indeed, there was no allegation on the part of the prisoner that any force whatever was used to have him confess to the crime. There was nothing to indicate that the confession was anything but voluntarily given. Nevertheless, despite the voluntary nature of the confession and despite the fact that the confession was substantiated by all the facts of the crime charged against the prisoner, it was invalidated merely because of the passage of time.