

which rule 5(a) of the Federal Rules of Criminal Procedure may be enforced. As you know, rule 5(a) requires that an arrested person shall be taken "without unnecessary delay" before the nearest available commissioner or before any other officer empowered to commit persons charged with offenses against the laws of the United States.

In *Mallory* the Court held that if an arrested person is not brought promptly before the nearest available commissioner but is held and interrogated by officers for the purpose of eliciting self-incriminating statements, such statements may not be received in evidence at the subsequent trial. It should be emphasized that the *Mallory* rule is in no way concerned with whether or under what circumstances a policeman may make an arrest. It stands merely for the proposition that a confession obtained from an arrested person before his arraignment will not be received in evidence in a criminal trial if obtained during a period of "unnecessary delay."

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 eye witnesses and independent evidence.

It is quite common in cases of homicide, yoke robberies, rape, and certain other crimes that there is no third eye witness, and it is often difficult for the complaining witness to make an identification. Of course, in homicides there is no complaining witness. Thus, in such cases, confessions assume far greater significance as evidence of guilt, and it becomes important to defendants to have their confessions excluded 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 records, tax returns, et cetera.

Therefore, it is reasonable to consider the problems in the District of Columbia as being rather unique with respect to the *Mallory* rule and deserving of congressional consideration in legislation limited to its application to the District of Columbia.

In my opinion, the *Mallory* rule is a good one. Through it, the Supreme Court made clear its intention to prevent law enforcement officers from delaying preliminary hearings for the purpose of eliciting confessions. This is as it should be.

The problem which gives rise to the legislative proposal before the committee lies not with the *Mallory* rule but with its application in the District of Columbia.

In a number of cases in the District of Columbia "unnecessary delay" has been interpreted and applied to make it virtually impossible, I am informed, for investigating officers to speak with arrested persons with any assurance that resultant confessions will be acceptable in the courtroom.

For example, in *Elsie V. Jones v. United States*, 113 U.S. App. D.C. 256, 307 F. 2d 397 (1962), the defendant was arrested at 4:25 of a Sunday morning, confessed 3½ hours later, and was brought before a committing magistrate at 9 Monday morning. A divided court held her confessions inadmissible.