

REPORT OF THE ADVISORY COMMITTEE ON CRIMINAL RULES OF ITS STUDY OF THE
PROVISIONS OF RULE 5(a)

The Advisory Committee on Criminal Rules has spent a considerable amount of time studying and discussing the problems raised by the provisions of rule 5(a) which requires that a person arrested be brought before a commissioner "without unnecessary delay."

The present status of the deliberations of the committee on these problems is as follows:

(1) The committee is agreed that there should be no change in the doctrine enunciated by the Supreme Court in such cases as *McNabb v. United States*, 318 U.S. 332 (1943) and *Mallory v. United States*, 354 U.S. 449 (1957) under which confessions obtained during a period of delay longer than that permitted by rule 5(a) are excluded from evidence.

(2) The committee has so far been unable to articulate any better standard than "without unnecessary delay" which will fit the wide variety of situations and circumstances which exist in the various Federal districts.

(3) The committee recognizes that special problems may exist in the District of Columbia because of the fact that the police in the District have general law enforcement jurisdiction. However, the committee has felt that special rules for the District should not be incorporated in the rules of criminal procedure. The committee, therefore, has not given special attention to the problems which are peculiar to the District.

However, the committee does recommend to the Judicial Conference that it oppose S. 1012 and similar bills which merely seek to abrogate the *McNabb-Mallory* rule in the District of Columbia. Such proposals avoid, but do not solve, the fundamental problems of what procedures are appropriate to govern the police in the District. Instead, their thrust appears to be to permit the police to avoid the present procedure in the course of securing confessions subject only to the controls imposed where the violations are so grave as to result in determinations that confessions are involuntary.

Respectfully submitted.

JOHN C. PICKETT, *Chairman*.

ADMINISTRATIVE OFFICE OF THE U.S. COURTS,
Washington, D.C., January 10, 1964.

MR. RICHARD JUDD,
Professional Staff Member,
District of Columbia Committee,
New Senate Office Building,
Washington, D.C.

DEAR MR. JUDD: In accordance with our telephone conversation of this afternoon, I am enclosing a copy of the Report of the Proceedings of the Judicial Conference of the United States at its September 17-18, 1963, meeting. The record of the position taken by the Judicial Conference with respect to the case of *Mallory v. United States* and to S. 1012, 88th Congress, you will find beginning at the top of page 80.

Sincerely yours,

WARREN OLNEY III, *Director*.

REPORT OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES,
WASHINGTON, D.C., SEPTEMBER 17-18, 1963

ADMINISTRATIVE OFFICE OF THE U.S. COURTS

Warren Olney III, *Director*

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RULES OF PRACTICE AND PROCEDURE

Senior Judge Albert B. Maris, Chairman of the standing Committee on Rules of Practice and Procedure, presented to the Conference a report of the activities of the standing Committee and the Advisory Committee on Rules of Practice and Procedure.

Judge Maris reported that the Advisory Committee on the Criminal Rules in connection with its study of the provisions of Rule 5(a): Federal Rules of Criminal Procedure, which requires that a person arrested be brought before