

at trials of criminal cases, was that any voluntary confession was admissible, while any involuntary confession, i.e., a confession obtained as a result of any physical, mental, or moral coercion, or improper inducement, was excluded. This has become a rule of constitutional law and is comprehended by the due process clause of the 5th and the 14th amendments. The *Mallory* case added a further qualification, that no confession, voluntary or otherwise, should be admitted in evidence if made after the expiration of an unnecessary delay between the arrest of the defendant and the time when he was brought before a committing magistrate. This additional limitation is not a rule of constitutional law, but purely a rule of evidence, and was intended as a sanction or a means of enforcing rule 5(a) of the Federal Rules of Criminal Procedure, which requires that an arrested person be brought before a committing magistrate without unnecessary delay. The pending legislation would abrogate this additional limitation and would bring the law back to where it was prior to the decision in the *Mallory* case. Thus, it would seem clear that no constitutional question is involved in the pending legislation.

As I read Mr. Katzenbach's testimony, he agrees with the foregoing postulates. He suggests, however, that the Supreme Court might possibly change its views on the constitutional aspects of the matter. Such a possibility always exists, for the history of Supreme Court decisions, ever since the creation of that tribunal, indicates that from time to time the Supreme Court has changed its views on various questions. I respectfully suggest, however, that it is futile to speculate on the possibility of a change of decisions in the future, and legislation should be framed in the light of the law as it exists at the time.

Mr. Katzenbach predicated his fears on the dissenting opinions in two cases: *In re Groban*, 352 U.S. 330, 337; and *Anonymous v. Baker*, 360 U.S. 287, 298. These cases, however, dealt with an entirely different subject and involved a wholly different principle than that presented by the pending legislation. In each case there was a State statutory proceeding at which a witness was compelled to answer questions. In each instance the official presiding at the hearing excluded counsel although the witness requested that his counsel be present. In each instance the witness was convicted of contempt of court for refusing to answer questions when his demand for the presence of counsel was denied. The Supreme Court upheld the convictions. The dissenting Justices expressed the view that it was a violation of the due process clause of the 14th amendment, to compel a person to appear alone before any law-enforcement officer and give testimony against his will. Manifestly these views are not applicable to the legislation under consideration, as it does not contemplate compelling anyone to give testimony.

It is observed that in the course of the hearing a question was asked whether the rule of the *Mallory* case has actually kept anyone from being punished for a crime that he has committed. From my observation of cases that have come before me, I can unequivocally say that this question should be answered in the affirmative. There have been quite a number of instances, although I have no statistics, in which a person who has committed a crime has received no punishment whatever because of the limitations of the rule of the *Mallory* case. Some judges of the district court on occasion have been constrained to exclude confessions and to direct judgments of acquittal because of the rule of the *Mallory* case. Mallory himself was released and was not punished for the rape that he committed. As an irony of fate some time later he was apprehended by the local police in Philadelphia, for another crime that he subsequently committed there, and was sentenced to a long term of imprisonment by the Pennsylvania State courts. Then, too, there have been cases in which the U.S. attorney found it impossible to prosecute because of the limitations of the *Mallory* case.

The four amendments proposed by Mr. Katzenbach will now be taken up by me individually.

In dealing with these proposals it must be borne in mind that they would apply, not only to the Metropolitan Police Department of the District of Columbia, but also to Federal law enforcement agencies, such as the Federal Bureau of Investigation, the Federal Bureau of Narcotics, the Post Office inspectors, the Secret Service, and others, when they investigate crimes committed in the District of Columbia. While the majority of cases that come before the U.S. District Court for the District of Columbia, originate from the Police Department, there is a large minority of cases that are handled by Federal law enforcement agencies.