

confession," one made immediately upon apprehension, is always admissible (*Lockley v. United States*, 270 F. 2d 915 (D.C. Cir. 1959) (confession made within 15 minutes of arrest); *Heideman v. United States*, 259 F. 2d 943 (D.C. Cir. 1958) (less than an hour and during booking procedure); *Metoyer v. United States*, 250 F. 2d 30 (D.C. Cir. 1957) (immediately upon transfer from Maryland authorities to metropolitan police); *Day v. United States*, 281 F. 2d 33 (D.C. Cir. 1960) (in police vehicle on way to station house). What is forbidden is a delay in arraignment beyond that necessary for normal administrative procedures for the purpose of questioning.

In respect of the precise legislative recommendations of Katzenbach and Acheson, I see two basic obstacles. First, by providing for a 6-hour period (transcript, p. 681), Katzenbach appears to be sanctioning the practice of investigative arrests. I said, at the outset, that the *McNabb-Mallory* rule is one of evidence. Actually, and more properly, it is a rule of procedure enforced by a rule of evidence. If, by the proposed legislation, Katzenbach would be establishing a new rule of procedure, i.e., an investigative arrest limited to 6 hours, serious constitutional problems are raised. For the reasons indicated earlier in this letter, I think such a rule would violate the fourth amendment. I am not alone in this belief. The Commissioners' Committee so concluded ("Report and Recommendations," *supra*, p. 44). And the Commissioners, acting on the report, outlawed the practice. The other criticism which I have goes to the proposition of legislating solely for the District of Columbia. Katzenbach bases the need for change on the high incidence of crimes of violence in the District (transcript, p. 678). Yet, he recommends legislation which would apply to all crime in the District, including "frauds, mail thefts, narcotic violations, and the like" (transcript, p. 678), crimes which he implies can ably be prosecuted without a change. The resulting distinction between the Federal prosecution of crimes of violence in the District and in other Federal jurisdictions is an "invidious discrimination" within the meaning of the U.S. Constitution. It is geographic legislation with no sound basis for a geographic distinction.

The applicability to Federal criminal defendants of the guarantee of equal protection, through the due process clause, was implied in *Coppedge v. United States* (369 U.S. 438, 447, and note 13). The Court there indicated that "invidious discrimination" against pauper defendants, which had been held "inconsistent with the guarantees of due process and equal protection of the laws of the 14th amendment" in *Griffin v. Illinois* (351 U.S. 12), and in similar cases, would also be prohibited to Congress in legislating for Federal criminal defendants. Recently, in *Koyce v. United States Board of Parole* (306 F. 2d 759 (1962)), our Court proceeded on the premise—advanced by appellant and not disputed by the Government's brief—that the fifth amendment due process clause secures the guarantee of equal protection of the laws to Federal offenders with respect to conditions of punishment. Applying this principle in *Koyce*, the Court upheld the distinction in treatment there in issue "because of the recognition by Congress that it is desirable and feasible for persons confined in [civilian prison] institutions * * * to be subject to certain specified and salutary parole conditions, notwithstanding like provisions have not been deemed desirable or feasible for those who serve their sentences in a military prison * * *" (306 F. 2d at 762).

"But it is equally clear that the [congressional] power of selection for classification is not an arbitrary one, but must have a reasonable foundation. It 'must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis' (*Gulf, C. & S.F.R. Co. v. Ellis*, 165 U.S. 150, 155; 41 L. Ed. 636, 668; 17 Sup. Ct. Rep. 257" (*Lappin v. District of Columbia*, 22 App. D.C. 68, 79 (D.C. Cir. 1903))).

In the leading case on point, *Skinner v. Oklahoma* (316 U.S. 535), the Supreme Court ruled that the equal protection guarantee of the 14th amendment prohibits a State from prescribing a mandatory punishment for certain defendants drastically more severe than could be imposed upon others for essentially identical conduct. The issue in *Skinner* concerned the constitutionality of a statute requiring sterilization of third felony offenders who had committed larceny but not similarly situated offenders who had committed embezzlement. The Court observed that larceny and embezzlement involved conduct essentially the same in nature and culpability. The equal protection guarantee was therefore violated by the "invidious discrimination" entailed in applying the sterilization requirement to prior offenders convicted of the former but not those convicted