

Rule 5(a) provides that a police officer who has made an arrest shall take the arrested person before a magistrate without unnecessary delay. Rule 5(b) provides that the magistrate shall inform the defendant of the complaint against him, of his right to retain counsel, of his right to a preliminary hearing, that he is not required to make a statement, and that any statement made by him may be used against him. Rule 5 imposes no sanction on the police for a violation of the rule.

The *McNabb* decision interpreted the statutory antecedents of Rule 5(a). It merely decided that any confession obtained during a period of illegal detention cannot be received in evidence. *McNabb v. United States*, 318 U.S. 332 (1943).

The *McNabb* rule itself is not a constitutional doctrine. It is a rule of evidence established by the Supreme Court in the exercise of its supervisory authority over the administration of criminal justice in the federal courts. The facts in the *McNabb* case itself, and in other cases involving application of the *McNabb* rule, raise constitutional questions as well because protracted secret questioning by the police may, at least under some circumstances, also constitute a violation of due process. When the *McNabb* doctrine is applied, however, the constitutional questions need not be reached, and they were not reached by the Supreme Court in the *McNabb* case.

The *Mallory* case simply interprets *when* the *McNabb* rule is violated. *Mallory* was arrested around 2:30 P.M. The police then had insufficient evidence to take him before the Commissioner. He made a series of confessions late that night and was arraigned at 10:00 o'clock the next morning. The Court held the confessions were improperly admitted at trial because Rule 5(a) had been violated. *Mallory v. United States*, 354 U.S. 449 (1957).

The *Killough* case involved a situation in which there had been a *Mallory* violation in that the police had obtained a confession during a period of illegal detention. The defendant was then arraigned and the police later obtained a reaffirmation of the earlier confession. At the trial the prosecutor used only the reaffirmation. The *Killough* case simply holds that the reaffirmation has no validity unless the accused has received