

crimes are concerned, it may render law enforcement quite impotent. To say to a city police force: You must operate as does the FBI is no answer. The nature and character of the cases are different. The city police force lacks the trained personnel, the resources, and nationwide organization of the FBI.

What then does the *Mallory* doctrine require and what is the area within which Congress may legislate in the interest of improving and making more effective local law enforcement.

The *Mallory* case makes it clear that lawful arrests must be predicated on probable cause. To arrest without probable cause and on mere suspicion is unlawful. There has been an extension of the *Mallory* doctrine in the *Killough* case, decided about a year ago, in which a postarrest confession was excluded because it was "tainted" with the illegality of the first confession. Efforts are now being made to apply the "fruit of the poisonous tree" doctrine to all evidence learned as a result of illegal detention. The courts have seen fit to impose sanctions for the reason that they have felt that it is the only way effectively to bring about compliance by the police force with the rules of arrest.

These sanctions actually penalize the public more than the police force. They have a tendency to insulate the criminal from the consequences of his wrongdoing. If the police force were less honest than I believe our police force to be, it could result in a calculated, deliberate move on the part of the police to protect by this expedient, criminals who otherwise would be prosecuted.

In this connection, I have emphasized to the Chief the necessity of continuing a series of seminars and lectures which were instituted during the time I served as U.S. attorney. It is absolutely necessary that the police know the decisions of the court, particularly the limitations emphasized in these decisions so that their work in the future will be guided by the teaching of these judicial precedents.

It is my feeling that more men, better educated in these decisions and better trained in procedures required to meet these decisions are necessary because of the impact of these decisions and particularly the sanctions which are incident thereto.

In both the *McNabb* and *Mallory* decisions, the Supreme Court was careful to state that it was concerned with the enforcement of a procedural statute or rule. It was not concerned with a constitutional right. It is, of course, familiar doctrine that if a case can be decided upon other than a constitutional provision, the courts does so. Rule 5(a), which was involved in the *Mallory* case, requires that the arresting officer take the person arrested "without unnecessary delay" to the nearest available commissioner. Short periods of delay are sanctioned provided they stem from the need for verifying the story or for normal police procedures, such as booking and so forth, but the court has emphasized that it is unlawful to take the arrested person to the police station for the purpose of extracting a confession.

I have felt and I do feel that since the Supreme Court indicated that the basis of its decision was its interpretation of what Congress intended in authorizing such a rule as 5(a) that it is an area in which Congress may speak as to what its intention is.

When rule 5(a) was originally drawn by the Supreme Court's committee, the original draft contemplated the imposition of sanctions insofar as the introduction of evidence obtained in violation of the rule was concerned. The majority of the committee, however, did not go along with the imposition of sanctions and that language was deleted from the rule which the committee recommended and the Supreme Court adopted and the Congress approved. (S. Rept. 1478, p. 5.) It seems to me, then, that there is a proper basis for concluding that Congress did not intend that sanctions be applied whenever law enforcement failed to adhere strictly to the provisions of rule 5(a).

Legislation comparable in form to title I of H.R. 7525 has thrice passed the House. Once under the sponsorship of Senator O'Mahoney it passed the Senate in a slightly different form.

Such legislation would have the effect of tending to restore the balance between safeguarding the rights of the individual and maintaining effective and intelligent law enforcement.

It would still require the police to take the arrested person before the commissioner without unnecessary delay. But it would say to the courts: Congress in authorizing rule 5A does not condone the impositions of sanctions which have the effect of excluding confessions or admissions which are voluntary in character.

Respectfully submitted.

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