

The step-by-step process that I have described is recognized by Judge Burger, of the Circuit Court of Appeals for the District of Columbia, in his opinion in the case of *United States v. Goldsmith*, 277 F.2d 335:

At the risk of stating the obvious, we take note that the process of law enforcement must, of necessity, proceed step by step * * *. A vital factor to bear in mind is that as these steps progress the burden of the law enforcement agency increases. What may constitute probable cause for arrest does not necessarily constitute probable cause for a charge or arraignment * * *. Hence at each stage, and especially at the early stage, when little is known that is sure, police must not be compelled prematurely to make the hard choices, such as arraigning or releasing, on incomplete information. If they are forced to make a decision to seek a charge on incomplete information, they may irreparably injure an innocent person; if they must decide prematurely to release, they may be releasing a guilty one.

Questioning, which is reasonably necessary to decide whether to prefer charges or to release the suspect, ought not to be regarded as unnecessary delay. As Judge Burger said, it is undesirable to compel the police to prematurely decide, on incomplete information, whether to release or to charge a person who has been lawfully arrested. Police must have a reasonable opportunity to conduct an in-custody investigation in certain types of serious crimes in order to produce information on which they may decide whether sufficient grounds exist to subject the arrested person to the further hardship which inevitably results from being charged with the commission of a crime.

I do not want to be misunderstood as advocating prolonged detention. I argue only for the recognition that in-custody investigation is necessary for the proper performance of the police function in almost every case involving a serious crime. The only delay recognized under the *Mallory* rule is the delay necessary for the clerical procedures involved in the arraignment. I submit that this is not enough but I argue only for the additional delay reasonably necessary for the police to perform their proper investigative duties, no more, no less.

The CHAIRMAN. On that particular point, would you have any knowledge as to Illinois cases that sustain that position?

Your statute, as you have said, requires you, and I think this is fairly uniform in the States if I understand the rule correctly and the statutes correctly—your statute says that when an arrest is made without a warrant, either by an officer or by a private person, the person arresting shall, “without unnecessary delay” and most of these cases turn upon what is and what is not an “unnecessary delay.”

And your point is that you should go a step beyond the delay recognized on the *Mallory* rule which I think you are correct in saying, which says the delay necessary for clerical procedures, but you are saying that you should go one step further and permit the police to perform their proper investigative duties.

This is the position you are taking?

I am wondering whether this is sustained in view of your Illinois statutes by the courts of Illinois.

Superintendent WILSON. Yes. There is an Illinois Supreme Court decision that bears on this question.

Unfortunately, I am not able to give you the citation. I will be glad to send it to you.