

it legal by holding him illegally. That is really what we are doing. That in a sense was Judge Prettyman's argument in the *Mallory* case below, before he was reversed. He argued if there was not probable cause to arrest the man, you could hold him long enough and question him long enough until you got probable cause to charge him. And the Supreme Court said you have to have probable cause in the first place, you cannot operate that way.

All right.

Now, looking at this bill, it is interesting to note that nobody is suggesting that we change the rules. No one is suggesting that we change the rules which say the police officer shall bring the arrested person before a committing magistrate without unnecessary delay. That will still be the law after this act is passed. And it will also be the law in the District of Columbia, under a special provision of the code, that an arresting officer must immediately, or without delay, bring that man before a magistrate. (See District of Columbia Code sec. 4-138, 4-140.) And the warrants will continue to issue, warrants for arrest will continue to issue, saying "Bring the man forthwith to the magistrate."

Now, the interesting thing is that we are not changing the rule itself. We are only changing—we are only trying to change the sanction.

The CHAIRMAN. Let me just follow you there.

Mr. KAMISAR. My point, Mr. Chairman, is it will still be a violation of rule 5(a) if you do not bring the man before the magistrate without unnecessary delay.

The CHAIRMAN. That is the general law today.

Mr. KAMISAR. That law will still be violated. All you are saying is that the violation will not matter. All you are saying is, even though it is a violation of a law you can still profit by it, you can still use the confession obtained in violation. But you are not changing that law. The same argument comes up in connection with the exclusionary rule in the search and seizure cases.

In Minneapolis until 1961 nobody paid any attention to search and seizure laws. We have a constitutional provision saying you cannot search or arrest without probable cause. Nobody cared whether the Constitution said it or not. All the police cared about was, could they do it and get away with it?

The amazing thing was when this matter came up in 1961, there was utter chaos in Minneapolis—and I think it is representative—they did not know there was a provision in the Constitution to that effect. They never had any occasion to read it. The Minneapolis city attorney said, "I haven't issued a search warrant in 10 years." The police said, "What do we do now?"

The exclusionary rule, the sanction, that is the rule, as far as these law enforcement people are concerned.

What we are suggesting here is that we keep the law, we will continue to have a rule 5(a), which we can talk about on Law Day or Constitution Day, and it says the arresting officer must take a man before the magistrate without unnecessary delay. But of course that won't mean anything any more, because if he does not do it, he can still use the confession.

In other words, the law will be unenforced because we want to give the police the power to violate that law. But it will be unrepealed, because we want to preserve our morals.