

If the Congress was right in requiring that the arrested citizen be promptly arraigned, and if rule 5(a) of the Federal Rules of Criminal Procedure is a rule good for citizens in general, then there should be some method of enforcing the rule. No civil or criminal sanctions can be invoked against the peace officer or official who willfully and deliberately violates the law as set forth in rule 5(a). The Supreme Court, therefore, by the promulgation of a rule of evidence, seeks to enforce rule 5(a) by the assessment of a penalty against the Government in instances where this law has been violated. That penalty is simply the refusal to admit into evidence statements or confessions obtained during the period of unlawful detention without regard to coercion or lack of coercion.

All that the Supreme Court is saying in this regard is this: Rule 5(a) provides for the arraignment of arrested citizens without unnecessary delay. This is the law. Unfortunately there is no means of enforcing this rule. Because unnecessary delays invite and encourage extensive, unwarranted and secret interrogation of arrested citizens and possible employment of "third-degree" methods of obtaining information and confessions, we had devised a rule of evidence that will not only discourage the violation of the law contained in rule 5(a) by police officers but will, indeed, effectively remove the reason for such unnecessary delay (i.e. the desire to delay arraignment while a confession is extracted). This rule of evidence is quite simple and most effective: if officers fail to cause the suspect to be promptly arraigned, statements or confessions obtained during the period of unnecessary delay may not be used in evidence against the suspect. The rule is enforced through the penalty.

In *Mallory* the Supreme Court says this to the peace officer:

(1) You must not arrest a citizen without probable cause for his arrest in the first instance;

(2) If you have arrested a citizen upon what you believe to be probable cause, take him promptly before a committing magistrate, judge, or commissioner who under our system of jurisprudence, will judicially determine if there is in fact probable cause. If you are correct in your original assumption, the citizen will be held and bail bond fixed. If you are not correct, the citizen will be released.

(3) If you have arrested a citizen without probable cause, you have no right to hold him for the purpose of questioning concerning your suspicions and if, by chance, you are correct in your suspicions and after a long delay before arraignment the defendant confesses his guilt you will have thwarted your own purpose, for you will then be unable to use the confession in evidence against the defendant upon his trial for the offense.

The effect of that directive by the Supreme Court to the peace officer, once he understands it and as soon as his superiors cease complaining that they are hampered in law enforcement by *Mallory*, will be to compel him to employ more efficient methods of crime detection. The peace officer will realize that where a crime has been committed and he has suspicions concerning possibly a dozen persons but no probable cause to charge any single one of the dozen with having committed the crime, he can no longer arrest all 12 of the citizens without probable cause and for the purpose of questioning them at length and by that method derive his probable cause against one of them (or, possibly with the result that the whole 12 have been arrested in vain), but he must seek to discover some individual together with sufficient evidence of his guilt to constitute probable cause before making any arrest.

Many persons have erroneously interpreted *Mallory* to hold that a confession or statement obtained during a long delay before arraignment is presumed to be involuntary. Nothing could be further from the truth. Under *Mallory* whether or not a confession or statement is involuntary or coerced is not germane to the issue. *Mallory* does not say that such statements or confessions are presumed to be involuntary. That decision merely holds that as a rule of evidence and as a means of enforcing the prompt arraignment requirement of rule 5(a) of the Federal Rules of Criminal Procedure, a confession obtained during the period of unnecessary delay before arraignment is inadmissible. The question as to whether or not such statement or confession is voluntary or not is closed and of no importance. Such statement or confession is not admissible as a rule of evidence whether involuntary or voluntary.

In order to enforce the fourth and fifth amendments to the Constitution the Supreme Court formulated the Federal exclusionary rule in *Weeks v. United States* (232 U.S. 383 (1914)). The purpose of that rule is: "To remove the temptation to ignore constitutional restraints on search and seizure, evidence