obtained in violation thereof is made inadmissible against an accused in Federal courts." Although the rule as set forth in *Weeks* case was at the time of its promulgation contrary to the law in effect in most of the States and although the Supreme Court has itself said that the *Weeks* doctrine is not a command of the fourth amendment but is a judicially created rule of evidence which Congress could overrule, Congress has not overruled the *Weeks* doctrine during the now 49 years that it has governed the law of search and seizure in Federal courts. During these 49 years the enforcement of Federal criminal law has not been hampered thereby. And today, as at all times since 1914, we must look to the courts to determine what is a reasonable search and what is an unreasonable search under amendments 4 and 5. No one can deny that the courts have done a most effective job in this regard.

If the United States for the past 49 years relied upon the judicially created rule of evidence that was first set forth in the *Weeks* case for the enforcement of the rights of citizens under the fourth and fifth amendments without legislation to circumscribe, define, modify, or emasculate its provisions, without any hampering of law enforcement and without any general failure to bring criminals to justice, it seems to me, that since the provisions of the fourth amendment have been enforced for 49 years by the rule rending inadmissible evidence seized in violation of the fourth amendment, certainly rule 5(a) of the Federal Rules of Criminal Procedure could be enforced by this very similar judicially created rule of evidence as set forth in the *Mallory* decision. This could be accomplished without legislation to circumscribe, define, modify, or emasculate its provisions. I sincerely believe that this will not result in any hampering of law enforcement officials who desire to proceed in a lawful fashion, nor will it result in an inability of the police to bring criminals to justice as heretofore.

Mallory was decided June 24, 1957. In the some 6 years since the law as set forth in that decision has been in effect, there has been nothing in the records of the Police Department in the District of Columbia to indicate that policemen have been hindered in their job of causing the legal arrests and convictions of criminals. Perhaps the job of the policeman has been made not as easy as it was before, but on the other hand, it is perhaps also true that great numbers of citizens have been spared the inconvenience, humiliation, and chagrin of having been unlawfully arrested and having been unlawfully detained for varying lengths of time while being interrogated extensively concerning the crimes that they did not commit.

The majority of the persons complaining of the *Mallory* decision are policemen. The policemen do not admit it, but what they really desire is a right to arrest citizens without probable cause and without penalty of any sort. If we interpret the fourth amendment to mean that a citizen may not be arrested without probable cause, why should we accede to the demands of policemen, who for all intent and purposes really seek to violate the constitutional command? The legislation sought will implement the desire of policemen to arrest without probable cause.

Prior to the *Mallory* decision in the District of Columbia a very large percentage of all arrests were arrests made on the so-called charge of investigation. Since there is no such crime and no such charge known to the law, naturally all of these arrests for investigation were illegal arrests. In other words, many policemen follow the policy of arresting first and investigating later. Seems to me, it should be the other way around. Now, because to some limited extent *Mallory* compels policemen to investigate first and arrest later upon the basis of the investigation, the policemen complain that they are hindered in the performance of their duty. This is not so. Officers can do their duty just as effectively under *Mallory* as before. There can be no doubt, however, that they must work a bit harder and perhaps even a few more officers might be needed. Certainly this price is not too high for the preservation of the rights and liberties of the individual that have been the heritage of Americans through the years. The citizen who is arrested and charged with investigation will have his reputation damaged to the same extent as the citizen who is arrested, charged, and promptly brought before a judge, committing magistrate, or commissioner for arraignment and preliminary hearing. He would be discharged if there be no probable cause for his arrest. In this regard it is interesting to note that the form 57 that job applicants for almost all types of Federal employment must execute, contains the following question:

"33. Have you ever been arrested, charged, or held by Federal, State, or other law enforcement authorities for any violation of any Federal law, State law, county, or municipal law, regulation, or ordinance?