

pose—this is what was stated in Justice Frankfurter's opinion, at least what he thought the purpose of it to be—

To avoid all the implications of secret interrogation.

Now, Congress had enacted this statute requiring the taking of the arrested person before the nearest Federal Commissioner. But I submit that it was not for the reason ascribed to it by Justice Frankfurter in the *McNabb* case. Not only was that not the reason for it, but this statute initially said nothing about taking someone to the nearest Federal Commissioner without unnecessary delay. This particular statute that applies in the *McNabb* case made no reference to the time within which this was to be done.

This statute—and I traced the congressional history of it—was enacted for an entirely different purpose than the one ascribed to it in the *McNabb* case. It was actually enacted for the purpose of putting a stop to a racket that had developed between Federal marshals and Federal commissioners at that time. And you will find all this in the Congressional Record. It was not an order to protect the accused person from secret interrogations.

The original bill that was the basis for the *McNabb* case was an amendment to an appropriation bill in Congress.

Now, the reason that I mention all this is because the Court in the *McNabb* case indicated that it was only effectuating a congressional intent.

All right. If the court was wrong in that—in other words, this was not the intent of Congress—it seems to me that the present Congress is all the more privileged to set the records straight as to what this Congress intends. It certainly was not the intent of Congress, with this 1893 bill, and I hope this present Congress will make it clear that it is not the intent of Congress at the present time, that you do not approve of this rule which severely handicaps the police.

I like to put it in a little more drastic term—that handcuffs the police. And that is what is being done here in the District of Columbia.

Mr. Chairman, you asked Judge Holtzoff a question about the constitutionality of the proposed bill, and I would like to make some statement on that, if I may.

It is quite clear in the original *McNabb* bill, which laid down the rule that was only perpetuated in *Mallory*—the court made it quite clear that it did not found this rule on constitutional considerations; it was merely—it was laid down by virtue of the supervisory power over—within the Supreme Court over lower Federal courts. It was not based upon constitutional considerations. And the State courts have held unanimously that this is not binding on them, they are privileged to accept or reject it.

Now, I think that being so, if you have here a bill, as you do have, which would abrogate this rule, it seems to me that it is completely constitutional, and Congress has the privilege and I think the duty to enact this particular piece of legislation.

The CHAIRMAN. The citations of similar provisions in the State statutes; for example, on this subject, and particularly in my own State of Nevada the duty is expressed this way. "The defendant must in all cases be taken before the magistrate without unnecessary delay." I think that is fairly standard in many of the States.