

Now, that is what I was directing your attention to.

Mr. INBAU. Well, Mr. Chairman, I have no doubt but that there are some members of the U.S. Supreme Court who would like to see, and who would impose, if they could, the *Mallory* rule upon the State as a constitutional requirement. The Court has not said that so far. And I would suggest to this Congress that this awesome responsibility be left up to the Court, and that Congress should not, by fear of possible constitutional invalidity, refuse to pass this bill. I think it is vitally necessary. And if the time comes when it is held to be a constitutional requirement, I would like to have the privilege of coming before the appropriate committee to suggest that we have a constitutional amendment to change it, for the simple reason that it is absolutely necessary for the police to have this opportunity to interrogate criminal suspects.

Now, with reference to the second misconception——

The CHAIRMAN. Before you get to the second misconception, may I rephrase my question a little and ask you this:

Do you know of any U.S. Supreme Court decision that would hold to be constitutional a provision similar to the one that we have before us in title I?

Mr. INBAU. No, I do not—except I think we have to go back to the *McNabb* case, the original case that laid down this rule. And in that case the Court very specifically disclaimed any constitutional basis for the decision. The Court said:

We are laying this down only in the exercise of our supervisory power.

Now, if the Court wanted to make this a constitutional requirement, it had a wonderful opportunity in the *McNabb* case. It could have said so specifically in the *Mallory* case. But the Court itself has never said this.

The CHAIRMAN. I understand that the *McNabb-Mallory* line of decisions, are not based on constitutional grounds, rather they go to the construction of a rule of procedure. Is that correct?

Mr. INBAU. That's right.

The CHAIRMAN. But my question, aside from the Federal court system, is there any provision similar to the one that is now before us where it is indicated that evidence including but not limited to statements and confessions otherwise admissible shall not be inadmissible solely because of delay in taking the arrested person before the Commissioner?

Now, do we have any construction of a provision of that kind by the U.S. Supreme Court, to your knowledge?

Mr. INBAU. Not specifically on that. It may be this, Mr. Chairman, that the Department of Justice is referring to.

As we all know, the U.S. Supreme Court has imposed the exclusionary rule on all the States as a constitutional requirement. Now, you may deduce from what the Court did in the case that laid down this rule, that if the police delayed in bringing someone before a magistrate, in defiance of a State requirement, that then anything obtained during that delay is inadmissible because it would be unconstitutional to use such evidence. In other words, it laid down a rule of exclusion with respect to confessions as they have—as regards evidence of a physical nature, that has been illegally seized.