

Now, again I say I have no doubt that several members of the Supreme Court would like to impose the *McNabb-Mallory* rule on the States as a constitutional requirement. I have no doubt about that at all. And it could be another one of these 5-to-4 decisions, holding this particular bill unconstitutional.

The CHAIRMAN. I understand the position you are taking. The Justice Department cites no specific authority. The Deputy Attorney General says in his letter that this would raise serious constitutional difficulties. It would seem to me as a lawyer, if they had a case that would point to these two sections being unconstitutional, they would have cited it. I suppose there is no such case, for the simple reason that probably none of the States have a provision comparable to the title now before us which says that a confession shall not be inadmissible solely because of delay in taking before the committing magistrate.

Mr. INBAU. The reason that you do not have it in the States is because the States do not have the *McNabb-Mallory* rule, anyway.

The CHAIRMAN. Since there is no State legislation comparable with legislation before us, then there probably is no final decision from the Supreme Court bearing on this particular point.

Mr. INBAU. That's right.

The CHAIRMAN. All right, thank you—and pardon my interruption.

Mr. INBAU. The second misconception that I would like to discuss for a few moments is that this notion that third degree practices are prevalent within police departments—and the only way to stop them is by rules such as the *McNabb-Mallory* rule.

Now, first of all third degree practices are no longer prevalent in this country. I knew what the situation was 15, 20 years ago. I know what it was in my own city of Chicago. I know what it is now. It used to be officially condoned. It is not officially condoned now in the Chicago Police Department and other police departments with which I am familiar.

Not only that, but if the police officer indulges in such third degree practices, severe disciplinary measures are taken.

Now, I think we ought to clear the air on that. We are not living in a time when the police are becoming more lawless than they used to be. They are becoming much more law abiding. And now is an inappropriate time to keep clobbering them with these rules that prevent them from functioning effectively.

I think what we have to bear in mind is that there are other ways of protecting the public from police abuses short of depriving them of the necessary opportunity to interrogate criminal suspects. The only way you ever do it is to pursue a practice of selecting better police, training them properly, seeing that there is a minimum of political interference—and by that I mean some ward committeeman and persons like that inducing them to do something wrong; to see to it that there is a promotion system based upon merit considerations and not political considerations. And also to see that they are adequately compensated. That is the only way we are going to protect ourselves from police abuses. We are not going to do it by any judicial decree. And I think the courts have stepped out of their traditional constitutional role, as a judiciary branch of the government, and they have gone into this executive area. I do not think it is the province of the courts to do that.