

ing a confession. But it is not the extraction. You have not put him through the wringer to get it.

When you suggest to him that his partner has confessed the crime, and then he says, "All right, I will tell you," and then he tells you where the gun is, where the loot is, or where the body is—to me that is not extracting a confession; that is obtaining a confession.

When you use the word "extraction" it means that you put somebody through a wringer, you are putting him on the rack, you are threatening and abusing him in order to get him to tell you the truth. That is not what we are talking about. I know that Mr. Wilson yesterday did not have that in mind. The other people did not have that in mind. That is not what we are asking for.

What we are asking for is an opportunity to question people in a way that is not apt to bring forth a confession from an innocent person.

The CHAIRMAN. Is there any way that that theory and practice—is it a practice, that you are suggesting—is there any way that that could be defined and written out in cold print, saying, "Mr. Police Officer, you can interrogate this suspect in this manner." Of course, I realize this is hard to reduce to writing.

Mr. INBAU. I did it. I came up with what I thought was the only kind of advice that could be given to the police. I have analyzed all of these Supreme Court decisions, and the decisions of the State courts and the Federal circuit courts. And the only sensible guide I could come up with is to tell the police this. And after all, you cannot give them a Supreme Court decision and tell them, "This is what you are supposed to do."

As I view it, this is the way interrogation should be conducted, this is the way police should be instructed with respect to interrogation procedures. Ask yourself this question when you are ready to interrogate someone: "Is what I am about to do or say likely to make an innocent person confess?" If the answer objectively given is "Yes," don't do it. On the other hand, if you can objectively say: "What I am about to do or say is not apt to make an innocent person confess," then go ahead and do it.

You see, this was the rule until the *McNabb* case. This was the rule. This is the rule in England today. The test of voluntariness—not a test as to whether the police were naughty and delayed half an hour in getting somebody before a magistrate. The confession rule developed initially to protect persons from untrustworthy confessions. I think we ought to go back to that.

Justice Frankfurter, in the *Colum* case, which was a State case, once again said the test of confession admissibility is voluntariness.

Now, the Court has vacillated on that over the years. But some members of the Court cannot avoid trying to discipline the police by laying down these unrealistic rules, and ignoring the consequences of it insofar as the public welfare and safety are concerned.

Now, this I think brings me appropriately to this next point I wanted to make.

You frequently have heard it said, I know you have heard it here—"After all, the FBI does a fine job, and they are saddled with the *McNabb-Mallory* rule, so others can get along with it, too."