

What about the conviction rate—that the police are hampered so much by the *Mallory* rule, and the courts are turning them loose. Professor Inbau has called this the turn-them-loose policy.

The conviction rate in the District court, as shown by statistics from the Administrative Office of the U.S. Courts, for felonies—take 1960 again, for a base year, that year there were 1,337 indictments, I believe, and there were 140 acquittals, 66 of those were for insanity. They went to St. Elizabeths. The remainder were outright acquittals. That means there is an acquittal rate of about 5 percent of the indictments, at least for that year. And I suggest that in any year the people that are indicted are convicted in about 90 percent of the cases. And I understand in the court of general sessions it is around 80 percent.

I suggest to the committee that this compares pretty favorably with the State jurisdictions who are not hampered by the so-called *Mallory* rule.

I have two other comments that I would like to make. I know that I have taken a lot of the committee's time.

The CHAIRMAN. That's all right. We are very happy to hear from you.

Mr. SHADOAN. First of all, one of the things the Senate has been concerned about, and I am sure this will be elaborated upon—is what is this constitutional problem. Well, I do not essay to speak for the Justice Department, nor do I suggest that I have made a study of this. But as I see that this is something that is of interest at the moment—I did not come prepared to discuss this, but I only want to make one observation.

The last sentence of the *McNabb* case holding by Justice Frankfurter went something like this—

We hold only that the integrity of the judicial system will not tolerate the receipt of confession secured under circumstances such as these.

It may well be that when we are talking about the procedure necessary to protect the integrity of a Federal court, that this is something that inheres in the power of the court to determine. And there may be a constitutional question as to whether or not a legislative body can interfere with the minimal standards that a court will set to protect its integrity. This is just a suggestion, based upon this statement.

I would like also to point out that the States, contrary to Professor Inbau's statement, as I understood it, are not unanimous in rejecting the *Mallory* rule, although certainly the great majority do. But I would call the committee's attention to the 1960 case in Michigan, *People v. Hamilton*, 357 Michigan at page 410, where they adopted a rule similar to *Mallory*—even though they were not required to do so. They thought that maybe that was a civilized way to administer justice in the State of Michigan.

I would like only one other comment and that is this matter of the third degree that Professor Inbau spoke to you about this morning, and the fact that all you have to do is have this policeman say to himself, "Is what I am going to do going to make an innocent person confess."

There is no suggestion—and I have some familiarity with these techniques, as I had the privilege recently to review Professor Inbau's book "Criminal Interrogations and Confessions"—there was no sug-