we want you to know of your rights. We have a special form." The man is going to say, "I was broken; I was informed too late; the door was closed only when the horse was out of the barn."

It seems to me we are going to have tremendous evidentiary problems. So we are right back where we started.

The whole idea of the *McNabb-Mallory* rule was to avoid these problems of proof. The whole idea was to avoid the dispute over what happens, the inevitable evidentiary battles over what really happened behind the closed doors.

The theory was that if the policeman exists who is willing to violate the Constitution, he is also willing to perjure himself. Now, if that policeman exists, he is willing to perjure himself and say that he gave the suspect the warning.

Now, this is an illusory safeguard, I think. And the thing that is even more dangerous, it seems to me, is that when you read it together with title III—title I says, "A person under arrest shall be given this protection." But title III says, "A man can be detained for 6 hours and he shall not be regarded as under arrest." Does that mean that you can detain a man for 6 hours and not advise him of his right to remain silent and so forth, because he is not under arrest?

Certainly the way title I and title III now read, it is susceptible of that meaning.

If so, you hold a guy for 6 hours and you say, "We did not have to give him any warning; he was not arrested, he was only detained." And then after he has made some incriminating statements, we then arrest him, and then we give him the safeguard, when it is too late.

So I think that is a very serious problem which ought to be clarified.

Now, it is also interesting to me to note that in the 1957 House committee hearings, at page 37, I believe, the Chief of Police was against this caution. He said it couldn't work, nobody would make any statements. But what happened? The years since have demonstrated that it does work, because apparently it is standard practice to give this warning, and a great many statements are being obtained. This is not a substantial barrier after all.

But moving on to title III——

The CHAIRMAN. Before you move on to title III—the thing that puzzles me about this problem that we have if I understand your position correctly—what would the police do in the case of—and I am sure this happens in many places in the country, I assume it happens in Minneapolis—where you have a particularly atrocious sex crime within the city. I think it is customary for the police to go out and round up all known sex violators of the past, they have them fairly well cataloged. I assume under your theory the police could not do this.

Mr. KAMISAR. Senator, I state this categorically. I do not think there is a competent legal scholar in the United States who will say that that is constitutional. You cannot round up 100 or 200 people. How can you say you have probable cause?

The CHAIRMAN. They do it, though; do they not?

Mr. KAMISAR. The wide disregard of constitutional rights which exists is no reason to make the practices constitutional. Now, 30 years ago police interrogators were hitting guys with telephone books and blackjacking them, and that was common practice. That was common practice in 1930. We finally cleaned that up. But if the law