circumstances. He is now given his warning that he need not make any statements, after he already has. And he goes to jail.

In comes the police officer and asks him—I am quoting from footnote 2 at page 243.

> He asked him if he remembered anything he had not told [him] in his [original] statement, to which he replied, "My statement is just about the same."

And then he goes over it all over again.

Well, if you can violate the rule flagrantly, and then when a man is in jail walk in and lead him to believe that the first confession is going to be used against him anyhow, and simply ask him to repeat it all over again, then there is no point having the rule. And it seems to me that is really all the *Killough* case stands for. It does not forbid interrogation after the man has been advised of his rights. It only forbids the unfair leverage, once a man has improperly been induced into confessing.

Now, there is one point that I would like to get into briefly before I go on to title III, and that is the question you have been asking about the constitutional difficulties.

I did not come prepared here to discuss that, but since I have been listening to you ask this question of other witnesses I have been thinking about it—all day.

A great many of these people, as I have indicated, are arrested without probable cause in the first place. That is why they are held—to get more information.

Now, the Supreme Court has come down with a decision this year, the *Wong Sun* case (371 U.S. 471 (1963)), which holds, as I read it, that in Federal cases, at least, incriminating statements obtained from an arrested person should be thrown out—I'm sorry—illegally arrested person, should be thrown out, just as physical evidence obtained from an illegally arrested person is thrown out. In other words, if you arrest a man without probable cause and you search him, you cannot use the physical evidence you find. If you arrest him without probable cause and he makes a statement, the court has now indicated you cannot use that either, because again we want to take the profit out of illegal arrest.

So you may have that problem.

I think that is a serious constitutional problem.

There is language in *Wong Sun* which indicates that no distinction is going to be made—at least in Federal jurisdictions, and at least when the statement is obtained by the arresting officer relatively promptly or a few hours afterward—no distinction between verbal and physical evidence. That is one problem.

The other problem may be—it is true, as Senator Ervin said, and Professor Inbau said, that prior to the *McNabb* case, no one even suggested there was a constitutional problem here. That's true. But the *McNabb* case is 20 years ago. That is the stone age as far as the history of criminal procedure is concerned. The developments in the last 20 years are, relatively speaking, fantastic. You just cannot go back to 1943.

Senator Ervin made a very, very fine speech in favor of overruling *Mapp* v. *Ohio* because the physical evidence obtained in violation of search and seizure is trustworthy—the old common law rule should come into play. We are not going to overrule *Mapp* v. *Ohio*. That