

another direction, and it seems to me that you can have a better police department with *McNabb-Mallory* on the books. It seems to me that—there are statements made by Oliver Gasch (former U.S. attorney for the District of Columbia) saying that as a result of *McNabb-Mallory* the police are preparing their cases better, and that they are not relying on confessional evidence as much, “extensive investigation prior to arrest * * * has resulted.” (Gasch, “Law Enforcement in the District of Columbia,” pp. 3, 4, unpublished address of Mar. 25, 1960, to 12th annual conference, ACLU Clearing House, Washington, D.C.)

Well, I would venture to say that the District of Columbia Police Department is a far superior police department because it has had to work with these restrictive rules and I venture to say that if we repeal the *McNabb-Mallory* rule we may cause more resentment and more crime, because—I come here, you know, simply to say—what is the case for repealing the *McNabb-Mallory* rule? I am not sure that there is any short answer. All I am saying is this bill is not the short answer.

All I am saying is that—for example, Chief Judge David Bazelon put it this way:

“Who bears the brunt? If you repeal the *McNabb* rule, who bears the brunt of police action, police conduct or misconduct? Not you or me,” he said (Bazelon, “Law, Morality, and Individual Rights,” pp. 9–10, unpublished address of Aug. 20, 1963, Juvenile Judges Institute, Minneapolis, Minn.):

We should be aware that if the protections of the Bill of Rights are restricted we shall, in practice, be affecting directly the rights of only our more deprived population. When we talk about arrests for investigation, lengthy police interrogation prior to arraignment, and the like, the subject under discussion is not you or me. We don't get arrested without probable cause because, to put it plainly, we don't “look” as if we would commit acts of violence and we do look as if it might not pay to trifle with our rights. Nor would you or I be subjected to long interrogation by the police without the benefit of counsel. Nor do you and I live in neighborhoods where the police dragnet is used, and where suspects are subjected to wholesale arrest.

So the issue really comes down to whether we should further whittle away the protections of the very people who most need them—the people who are too ignorant, too poor, too ill educated to defend themselves. Can we expect to induce a spirit of respect for law in the people who constitute our crime problem by treating them as beyond the pale of the Constitution?

I venture to say, when you round up 90 Negroes and hold 67 of them overnight and those guys go home, you have caused yourself more problems than anything else, that these people, they have every right to say, “The damn cops, they are our enemies.” (Several years ago, in a hunt for three “stocky” young Negro robbery suspects, District of Columbia police rounded up 90 persons, holding 67 overnight. Another man, not one of the 90 arrested, was later charged. The incident is described in *Trilling v. United States*, 260 F. 2d 677, 690, n. 11 (D.C. Cir. 1958).)

And they do that, to the Negroes—they won't do it to the blue-eyed blondes—they won't round up 90 blue-eyed blondes—and it doesn't happen very often but it has happened. It has happened all over the United States.

It is the Mexicans, the Negroes, the Indians, the poor people—they are the ones that the police push around, and that is the problem. For they are also the ones who breed the most crime. And it may be that