

This is basically the problem we are faced with in this bill. Where, how and to what extent can basic rights be invaded by the enforcement institutions of society? And further, how can a citizen's rights be protected against overzealous application of the desire to serve the higher purposes of society which transcend individual rights?

We must be careful here not to engage in circuitous logic and presume that the mere allegation of a violation of society's laws permits the deprivation of the accused's rights to liberty and freedom from forcible societal restraint, for this precociously invokes the presumption of "higher social purposes" where the individual accused cannot satisfactorily prove the negative to accusations laid against him. Thus we reach the counter principle that stands high in our hierarchial order of freedom—that each man's freedom is sacrosanct and he shall not be required to prove his freedom from criminal guilt; and his accusers cannot restrain or restrict his freedom without carrying the highest burden of responsibility that they are doing so with probable cause, nor given such probable cause should the accused be insulated from legal counsel or be coerced to waive his right to not make a statement.

When we speak in these terms we are essentially giving voice to, and real meaning to, the sanctity of human dignity due each person regardless of his station in life and that "innocent until proven guilty" is a vital principle that cannot be circumvented by indirect techniques which aim to prove "guilt" out of the mouth of the accused.

Let me turn first to the so-called *Mallory* rule, or more properly to my mind, the *McNabb-Mallory* rule.

We flatly oppose the provision of title I, section 101 of H.R. 7525 which seeks to vitiate the principles laid down in the *McNabb* and *Mallory* decisions of the U.S. Supreme Court.

The bill, by declaring that delay before an accused is brought before a committing magistrate shall not alone make inadmissible any evidence, including confessions acquired beforehand, would permit and encourage third degree and subtle pressure techniques. Police authorities, regardless of their sincerity and desire to be fair, must be restrained in their interrogation to protect those arrested from waiving their constitutional right not to speak, out of fear or intimidation.

I am not referring here to physical intimidation or brutality in the usual sense. The picture I am attempting to draw is basically one of the less-fortunate member of our society, who because of his low economic state or his deficiency of education is somehow transformed in the minds of many persons bearing symbols of authority into a person whose rights, feelings, and sensibilities are not deserving of the same measure of respect as others. Such an arrested person, not willing to buck the all-powerful authorities, becomes easy prey for the necessary intimidation attendant upon secret, prolonged interrogation in surroundings not conducive to objective eliciting of facts.

Without discoursing on the decisions in *McNabb* and *Mallory*, which I am certain you are thoroughly familiar with, you must also be aware that the Supreme Court has not barred all confessions. It has not, moreover, said mere delay before arraignment is fatal to the Government's case. Therefore *Mallory* is not so all inclusive as its vociferous critics have shouted.