

H.R. 7525, title I: Repeals the *McNabb-Mallory* rule and nullifies section 5(a) of the Federal rules. While the *Mallory* rule is an exclusionary rule of evidence, its repeal will interfere with certain basic constitutional safeguards. It opens the door for prolonged detention for an unlimited period of time. Imprisonment incommunicado interferes with the right of habeas corpus, which is guaranteed by article I, section 9, of the Constitution itself. If the prisoner's family or friends or lawyers knew where he was, they could at once obtain habeas corpus and compel the immediate production of the prisoner before a magistrate.

No expediency would supersede the rule of immediacy—no court would permit custody without committal to be continued an instant because of the desirability of interrogation or the indavisiability of warning confederates. The suspension of habeas corpus by policemen should be condemned.

Unlawful detention takes away the right to bail guaranteed by the eighth amendment of the Constitution to insure personal freedom. Even after a lawful arrest only a magistrate can grant a person bail. Those who keep him from the magistrate are denying him the right to bail.

Unlawful and secret detention deprives the accused to have the assistance of counsel for his defense; which is guaranteed by the sixth amendment. The Supreme Court through Justice Sutherland and Justice Black has declared that a person requires the guiding hand of counsel in every step in the proceeding against him.

The constitutional right to counsel commences from the moment of the arrest of the prisoner to assist him in securing his discharge if the evidence is insufficient, to advise him about his statement during preliminary examination before the magistrate, to arrange his bail, and to protect him from abuses during confinement.

Finally, unlawful detention tends to impair the right of the accused under the fifth amendment not to be "compelled in any criminal case to be a witness against himself." This does not preclude proper questioning, but it is obvious that the line between proper and improper questions may easily be passed. Nothing but the conscience of the police officer can protect a prisoner from milder or drastic forms of the third degree so long as he is in their uncontrolled custody removed from systematic prison regulations and isolated from the outside world.

Title III: Title III seeks to accomplish indirectly what title I would do directly. It is, to quote the minority report of the House District Committee, "a legislative sheep in wolf's clothing."

Although it is extensively designed to detain a material witness, it does not provide that the material witness be in connection with a pending case. The Federal rules already provide for the detention of material witnesses under those circumstances. Actually under this title, any investigative arrest or any confession obtained could be used for the purpose of obtaining an arrest of a person detained.

The proponents of title I will do more than to "qualify and amend" the Supreme Court's decision in *Mallory v. United States* (354 U.S. 449); it will, in fact, overrule many court decisions and a long well-established judiciary policy of protecting persons against unlawful arrest and secret prolonged interrogation.