

fession. Such tactics are closely akin to those of the police state or gestapo. It hardly commends itself to what is expected of a law-enforcement agency of a self-confident and free society. Moreover, it would deny protection to those persons who are in greatest need of such protection. I have reference to the poor, the illiterate, and the impoverished, the victims of the slums and low economic ghettos. The educated and sophisticated and the affluent are not in great need of protection. In the first place, the incidence of crime is much lower in this group and the brush with the law is not as frequent. Furthermore, when there is such a brush with the law the members of this group are able to make bail immediately, and, more important still, they know that they have a right to consult with counsel before making any statement.

Frequently does this situation occur. In this category, when the arrested person is asked a question, his reply is "I'm not saying anything until I've seen my lawyer." It is also significant that the police, with respect to members of this group, do not bother or attempt to get a statement because of their very physical appearance and the manner of dress and speech. The police are impressed with the fact that these are the people that should not be tampered with, their rights should not be infringed upon, and they make no effort to question them.

It is submitted that rule 5(a) of the Federal Rules of Criminal Procedure, which requires that an arrested person shall be brought before the nearest available committing magistrate "without unnecessary delay," and the *McNabb-Mallory* doctrine, afford the best protection against violation of one's rights by law enforcement officers, and by so doing, protects society. This is significant because it was fashioned by the courts and not by the legislature—which is the way it should be. As was said by Mr. Justice Frankfurter in *McNabb v. U.S.*:

"Experience has therefore counseled that safeguards must be provided against the dangers of the overzealous as well as the despotic. Instruments of the criminal law cannot be entrusted to a single functionary. The complicated process of criminal justice is therefore divided into different parts, responsibility for which is separately vested in the various participants upon whom the criminal law relies for its vindication."

and in *U.S. v. Mitchell*, referred to above, Mr. Justice Frankfurter had this to say:

"Practically the whole body of the law of evidence governing criminal trials in the Federal courts has been judgemade. Naturally these evidentiary rules have not remained unchanged. They have adapted themselves to progressive notions of relevance in the pursuit of truth through adversary litigation, and have reflected dominant conceptions of standards appropriate for the effective and civilized administration of law.

"As this court when making a new departure in this field took occasion to say a decade ago, 'The public policy of one generation may not, under changed conditions, be the public policy of another.' The *McNabb* decision was merely another expression of this historic tradition, whereby rules of evidence for criminal trials in the Federal courts are made a part of living law and not treated as a mere collection of wooden rules in a game."

I submit to you, gentlemen, that the same situation is applicable today; that the rule as is commonly espoused by Federal rule 5(a) as buttressed by *McNabb-Mallory*, is an example of living law—that it should be flexible, and only the courts can keep it that way. The legislature is not in the position to devise and design laws which should be applicable in every situation. It should be left to the courts to do this, depending on the facts and circumstances in each given case. The proposed law would merely be one of the wooden rules referred to by Mr. Justice Frankfurter.

It would appear that if the proponents of title I really wanted to eliminate entirely, or considerably reduce, the incidence of crime in the District of Columbia, more energy and attention should be directed to the cause of crime. And some of these are self-evident; e.g., lack of employment opportunities, low paying jobs, inadequate housing, and school dropouts. It is noteworthy that a large percentage of crimes are committed by juveniles or young adults. It would appear that society is partly responsible for this. Many of these youngsters have been denied an opportunity. A classic example is a current situation in the District of Columbia, relative to the policy of certain boys' clubs which still espouse and adhere to the outmoded and undemocratic doctrine of segregation on the basis of race. The proposed legislation is not going to resolve such issues and, therefore, is not going to reduce the incidence of crime.