for admitting or excluding confessions and other admissions made to police during custodial interrogation.[287]

McNabb-Mallory Doctrine.—Perhaps one reason the Court did not squarely confront the application of the Self-Incrimination Clause to police interrogation and the admissibility of confessions in federal courts was that, in *McNabb v. United States*,[288] it promulgated a rule excluding confessions obtained after an "unnecessary delay" in presenting a suspect for arraignment after arrest.[289] This rule, developed pursuant to the Court's supervisory power over the lower federal courts[290] and hence not applicable to the states,[291] was designed to implement the guarantees assured to a defendant by the Federal Rules of Criminal Procedure,[292] and was clearly informed with concern over incommunicado interrogation and coerced confessions.[293] Although the Court never attempted to specify a minimum time after which delay in presenting a suspect for ar-

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[287] Miranda v. Arizona, 384 U.S. 436 (1966). According to Wigmore, "there never was any historical connection . . . between the constitutional [self-incrimination] clause and the [common law] confession-doctrine," 3 J. WIGMORE, A TREATISE ON THE ANGLO-AMERICAN SYSTEM OF EVIDENCE § 823, at 250 n.5 (3d ed. 1940); *see also* vol. 8 id. at § 2266 (McNaughton rev. 1961). It appears that while the two rules did develop separately—the bar against self-incrimination deriving primarily from notions of liberty and fairness, proscriptions against involuntary confessions deriving primarily from notions of reliability—they did stem from some of the same considerations, and, in fact, the confession rule may be considered in important respects to be an off-shoot of the privilege against self-incrimination. *See* L. LEVY, ORIGINS OF THE FIFTH AMENDMENT: THE RIGHT AGAINST SELF-INCRIMINATION 325–32, 495 n.43 (1968). *See also* Culombe v. Connecticut, 367 U.S. 568, 581–84, especially 583 n.25 (1961) (Justice Frankfurter announcing judgment of the Court).

[288] 318 U.S. 332 (1943). *See also* Anderson v. United States, 318 U.S. 350 (1943).

[289] In Upshaw v. United States, 335 U.S. 410 (1948), the Court rejected lower court interpretations that delay in arraignment was but one factor in determining the voluntariness of a confession, and held that a confession obtained after a thirty-hour delay was inadmissible *per se*. Mallory v. United States, 354 U.S. 449 (1957), held that any confession obtained during an unnecessary delay in arraignment was inadmissible. A confession obtained during a lawful delay before arraignment was admissible. United States v. Mitchell, 322 U.S. 65 (1944).

[290] McNabb v. United States, 318 U.S. 332, 340 (1943); Upshaw v. United States, 335 U.S. 410, 414 n.2 (1948). Burns v. Wilson, 346 U.S. 137, 145 n.12 (1953), indicated that because the Court had no supervisory power over courts-martial, the rule did not apply in military courts.

[291] Gallegos v. Nebraska, 342 U.S. 55, 60, 63–64, 71–73 (1951); Stein v. New York, 346 U.S. 156, 187–88 (1953); Culombe v. Connecticut, 367 U.S. 568, 599–602 (1961) (Justice Frankfurter announcing judgment of the Court).

[292] Rule 5(a) requiring prompt arraignment was promulgated in 1946, but the Court in *McNabb* relied on predecessor statutes, some of which required prompt arraignment. *Cf.* Mallory v. United States, 354 U.S. 449, 451–54 (1957). Rule 5(b) requires that the magistrate at arraignment must inform the suspect of the charge against him, must warn him that what he says may be used against him, must tell him of his right to counsel and his right to remain silent, and must also provide for the terms of bail.

[293] McNabb v. United States, 318 U.S. 332, 343 (1943); Mallory v. United States, 354 U.S. 449, 452–53 (1957).