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Voluntary Confessions: An Examination of the Need to Restore a Pure Voluntary Confession Rule in *Corley v. United States*, 129 S. Ct. 1558 (2009)

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Note*

Voluntary Confessions: An Examination of the Need to Restore a Pure Voluntary Confession Rule in *Corley v. United States*, 129 S. Ct. 1558 (2009)

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I. INTRODUCTION

In the 1960s Congress began responding to public demands for more effective law enforcement.¹ Congress was of the view that “crime and civil disobedience” were “surging” in the nation, while at the same time, convictions were dwindling due to the increase in defendants’ rights.² Many members of Congress believed that recent Supreme Court decisions in cases like *Miranda v. Arizona*,³ *Mallory v. United States*,⁴ and *McNabb v. United States*⁵ were causing prosecutors to lose convictions because otherwise voluntary confessions were being suppressed.⁶ Thus, Congress passed Title II of the Omnibus Crime Control and Safe Streets Act in an attempt to define “new standards for admissibility of confessions.”⁷ This was an attempt by Congress to abrogate the unnecessary delay rule in the *McNabb-Mallory* line of cases.⁸

Prior to the *McNabb-Mallory* line of cases, a confession would be admissible at trial if it was voluntarily obtained.⁹ However, after the decision in *McNabb*, which was reaffirmed in *Mallory*, an otherwise voluntary confession would be excluded if it was the product of unreasonable delay in presenting a defendant before a committing magistrate or judge.¹⁰ Since Congress believed that this judicially-created rule was causing too many defendants to be acquitted, Congress included provisions in the Omnibus Crime Control and Safe Streets Act to restore the pre-*McNabb-Mallory* voluntariness test used in determining whether a confession would be admitted.¹¹ These provisions were codified at 18 U.S.C. § 3501. However, subsection 3501(c) has caused the federal courts difficulty when interpreting this statute. The main question is: Does subsection (c) work to completely abrogate the *McNabb-Mallory* rule, or does subsection (c) merely limit *McNabb* and *Mallory* by creating a “safe harbor” where presentation delay cannot be a reason for excluding a confession, provided it is obtained within six-hours of arrest? Under the former view, voluntariness is restored as the sole test for admission of a confession, even if obtained

1. Kenneth C. Stephan, Comment, *Title II of the Omnibus Crime Bill: A Study of the Interaction of Law and Politics*, 48 NEB. L. REV. 193, 193 (1968).

2. Note, *Title II of the Omnibus Crime Control Act: A Study in Constitutional Conflict*, 57 GEO. L.J. 438, 438 (1968).

3. 384 U.S. 436 (1966).

4. 354 U.S. 449 (1957).

5. 318 U.S. 332 (1943).

6. Note, *supra* note 2, at 438.

7. Stephan, *supra* note 1, at 193.

8. S. REP. NO. 90-1097, at 37-41 (1968).

9. Samuel M. Davis, Comment, *Title II of the Omnibus Crime Control and Safe Street Act of 1968 as it Affects the Admissibility of Confessions and Eyewitness Testimony*, 40 MISS. L.J. 257, 258 (1968).

10. *Mallory v. United States*, 354 U.S. 449, 453 (1957).

11. Stephan, *supra* note 1, at 193.

more than six hours after arrest.¹² Under the latter view, if a confession is obtained more than six hours after an arrest but before presentation before a magistrate, the confession must be excluded due to unreasonable delay.¹³ This debate went on for over forty years until the latter view was adopted by the Supreme Court in *Corley v. United States*.¹⁴

This Note examines the Supreme Court's decision in *Corley*, comparing the reasoning for the decision with the reasoning for the opposite conclusion, adopted by the dissent and many circuits. Part II provides the background of the *McNabb-Mallory* decision, Congress' response and intent in 18 U.S.C. § 3501, and how section 3501 has been interpreted by the lower federal courts. Part III argues for the adoption of the dissent's view by examining various reasons compelling its conclusion. These include the legislative intent of section 3501, the negative implications created by the holding in *Corley*, and policy reasons that favor the dissent's view. Part IV concludes by advocating that Congress intended to completely abrogate the *McNabb-Mallory* rule, thereby restoring a complete voluntariness test to restore judicial discretion and eliminate acquittals based on technicalities.

II. BACKGROUND

After several Supreme Court decisions, including *McNabb* and *Mallory*, the Court was criticized for "allegedly 'hamstring[ing]' police and 'modycoddling' criminal offenders."¹⁵ Both the President and Congress seemed to side with this popular view.¹⁶ Understandably, tensions arose between Congress and the Court, leading to the adoption of 18 U.S.C. § 3501. This section seeks to further explain how the *McNabb-Mallory* rule came to be, why it was disfavored by Congress, and how Congress responded. This section also explains the intent behind the statute and how it has been interpreted by the lower courts.

12. See *United States v. Clarke*, 110 F.3d 612 (8th Cir. 1997) (holding that a voluntary confession obtained more than twelve hours after the defendant's arrest and before her arraignment was admissible into evidence under 18 U.S.C. § 3501(c)).

13. See *United States v. Perez*, 733 F.2d 1026 (2d Cir. 1984) (holding that a voluntary confession obtained more than six hours after arrest and before presentation is inadmissible under 18 U.S.C. § 3501(c)); *United States v. Robinson*, 439 F.2d 553 (D.C. Cir. 1970) (holding that a voluntary confession obtained more than six hours after arrest and before presentation is inadmissible under 18 U.S.C. § 3501(c)).

14. 129 S. Ct. 1558 (2009).

15. Stephan, *supra* note 1, at 193.

16. *Id.*

A. The Pre-*McNabb-Mallory* Voluntariness Test

Before the Supreme Court began developing rules for confessions in cases like *McNabb*, *Mallory*, and *Miranda*, the Court used a voluntariness test to determine if a confession violated the Fifth Amendment due to coercion.¹⁷ Under the voluntariness test, the trial court would look at the “totality of the circumstances” to determine if the confession was the product of coercion—thereby violating the Fifth Amendment—or if it was given by the defendant’s own free will.¹⁸ If the confession was not voluntary, it would be excluded. The voluntariness test and exclusionary rule can be traced back to English common law in 1783, and both naturally became part of the United States common law.¹⁹ Initially, the Supreme Court was concerned with “third degree tactics”²⁰ and condemned state or federal convictions that were the product of “third degree” coercion.²¹ Thus, the traditional voluntariness standard was the only “absolute prerequisite to the admissibility of a confession obtained by the police.”²² This rule was virtually extinguished under *McNabb v. United States*.²³

B. The *McNabb-Mallory* Rule

In *McNabb v. United States*,²⁴ the Supreme Court declared that a confession obtained by federal officers during a pre-arraignment delay in violation of Rule 5(a) of the Federal Rules of Criminal Procedure would be excluded at trial, regardless of whether the confession was voluntary.²⁵ Rule 5(a) required that an arrested individual be brought before the nearest available committing magistrate without

17. Davis, *supra* note 9, at 258.

18. *Id.*

19. OTIS H. STEPHENS, JR., THE SUPREME COURT AND CONFESSIONS OF GUILT 19 (1973). The first formal rule of exclusion was stated in 1783:

A free and voluntary confession is deserving of the highest credit, because it is presumed to flow from the strongest sense of guilt, and therefore is admitted as proof of the crime the which it refers; but a confession forced from the mind by the flattery of hope, or by the torture of fear, comes in so questionable a shape when it is to be considered as the evidence of guilt, that no credit ought to be given to it; and therefore it is reject.

Id. at 19–20 (citing *The King v. Warickshall*, (1783) 168 Eng. Rep. 234 (K.B.)).

20. Third degree tactics have been defined as “employment of methods which inflict suffering, physical or mental, upon a person in order to obtain information about a crime.” STEPHENS, *supra* note 19, at 10 (citing NAT’L COMM’N ON LAW OBSERVANCE AND ENFORCEMENT, REPORT ON LAWLESSNESS IN LAW ENFORCEMENT 2 (1931)).

21. *Id.* at 10.

22. *Id.* at 21–22.

23. 318 U.S. 332 (1943).

24. *Id.*

25. Jerald P. Keene, *Ill-Advised State Court Revival of the McNabb-Mallory Rule*, 72 J. CRIM. L. & CRIMINOLOGY 204, 206 (1981).

unnecessary delay.²⁶ Thus, *McNabb* applied the exclusionary rule to Rule 5(a). Under this new rule, if an arrested person was not brought before a committing magistrate within a reasonable amount of time, then any confession—even a voluntary confession—obtained by the federal officer prior to arraignment would be automatically excluded. This rule was reaffirmed in *Mallory v. United States*.²⁷

The *McNabb-Mallory* cases show a shift from the Court only being concerned with “third-degree” coercion to the Court considering new dimensions of human dignity and individual rights.²⁸ Thus, the Court’s holdings in *McNabb* and *Mallory* served the purpose of deterring “evil potentialities” of law enforcement, which condoned secret police interrogations, and “insur[ing] the purity of criminal proceedings by effectively prohibiting investigative arrests.”²⁹ Put another way, “the reason for the *McNabb-Mallory* doctrine was simple—to discourage the police practice of rounding up suspects or ‘prospects,’ and eliciting confessions from them to support probable cause for the arrest, in the absence of any other probable cause that would be acceptable to a magistrate.”³⁰ The police now had a new system to contend with because voluntariness was no longer the standard.

The *McNabb-Mallory* rule essentially abrogated the voluntariness test and replaced it with a delay test.³¹ It is interesting, however, that neither *McNabb* nor *Mallory* were decided on constitutional grounds (e.g., under the Due Process or Self-Incrimination Clauses).³² Instead, the *McNabb-Mallory* rule was an application of several statutes enacted by the legislature.³³ The Court interpreted these statutes to re-

26. *Id.* at 207; see FED. R. CRIM. P. 5(a).

27. 354 U.S. 449 (1957). The *McNabb-Mallory* rule is often referred to as the Unnecessary Delay Rule.

28. STEPHENS, *supra* note 19, at 30.

29. Note, *supra* note 2, at 450.

30. Davis, *supra* note 9, at 278–79. Third degree practices were often difficult to prove as it became the word or the police versus the word of the suspects. The Court was aware of this, which provided all the more reason to adopt the *McNabb-Mallory* rule. YALE KAMISAR, POLICE INTERROGATIONS AND CONFESSIONS: ESSAYS IN LAW AND POLICY 9 (1980).

31. James E. Hogan & Joseph M. Snee, *The McNabb-Mallory Rule: Its Rise, Rationale and Rescue*, 47 GEO. L.J. 1, 5–6 (1958).

32. See Jeffery C. Munnell, *In-Custodial Interrogation and the McNabb-Mallory Rule—A Proposal*, 72 DICK. L. REV. 325, 329 (1968); Keith E. Kaiser, Note, *Criminal Law—Confessions—Delay in Arraignment—Confessions Given More than Six Hours After Arrest During a Delay in Arraignment are Admissible Under 18 U.S.C. § 3501(c), Although the Trial Judge Under Subsection 3501(b) May Take into Account Delay in Arraignment in His Determination of Voluntariness*: *United States v. Halbert*, 436 F.2d 1226 (9th Cir. 1970), 3 ST. MARY’S L.J. 103, 106 (1971) (“[T]he authorities generally regard the rule as one not invoking the constitutional provisions of due process but rather it is an evidentiary rule applicable to federal courts only.”).

33. STEPHENS, *supra* note 19, at 65.

quire prompt presentation of arrestees before a magistrate and exclusion of their confessions if they were the result of unreasonable delay.³⁴ The holding, therefore, did not rest on whether the confessions in *McNabb* or *Mallory* were voluntary, but on whether there was “reasonable promptness” in presenting the arrested suspect before a committing magistrate.³⁵ By choosing this course of action, the Court rendered any voluntariness analysis superfluous unless it could be shown that there was prompt presentation.³⁶

C. Legislative Action Against the *McNabb-Mallory* Rule

The Court’s holdings in both *McNabb* and *Mallory* were not well received by the lower federal courts.³⁷ Many of the states were also hostile to the *McNabb-Mallory* rule.³⁸ Moreover, Congress was not pleased with the decision in *McNabb* and *Mallory* and eventually crippled the rule.³⁹ The first attempt to eliminate the *McNabb* decision was in 1947 when Congressman Samuel F. Hobbs introduced the Hobbs Bill.⁴⁰ The pertinent portion of the bill stated: “[N]o failure to observe the requirement of law as to the time within which a person under arrest must be brought before a magistrate . . . shall render inadmissible any evidence that is otherwise admissible.”⁴¹ Congressman Hobbs, a former trial judge, stated his preference for a voluntariness test to admit a confession.⁴² Like many of the lower courts and states, Hobbs was concerned that an obviously guilty suspect would be freed merely because a federal officer failed to promptly present the prisoner to a magistrate.⁴³ It is clear that the *McNabb-Mallory* decisions were overreaching the intended goal of deterring coercive police conduct and causing confessions obtained in good faith to be held inadmissible due to presentation delays.⁴⁴

34. *Id.*; see *infra* note 200.

35. STEPHENS, *supra* note 19, at 66.

36. See *Mallory v. United States*, 354 U.S. 449 (1957). However, no guidance was given by the court as to what constituted prompt presentment.

37. KAMISAR, *supra* note 30, at 212; Hogan & Snee, *supra* note 31, at 5–6 (explaining that when the Supreme Court announced the decision in *McNabb* many lower courts were outraged, unsympathetic, and even hostile because they thought *McNabb* was “bad law”).

38. KAMISAR, *supra* note 30, at 212 (explaining that since *McNabb-Mallory* was not a constitutional decision, it had no effect on state practices, but many states still refuse to adopt such a rule).

39. *Id.*

40. H.R. 3690, 78th Cong. (1943).

41. *Admission of Evidence in Certain Cases: Hearings Before the Subcomm. No. 2 of the H. Comm. on the Judiciary*, 78th Cong. 1 (1943).

42. STEPHENS, *supra* note 19, at 70.

43. *Id.*

44. See, e.g., *Alston v. United States*, 348 F.2d 72 (D.C. Cir. 1965) (presenting a situation where a suspect voluntarily confessed within five minutes of his arrest, but

The Hobbs Bill was never enacted by Congress, but that did not prevent subsequent legislatures from proposing legislation designed to overrule the *McNabb-Mallory* line of cases. In 1968, the *McNabb-Mallory* rule was finally overruled with the passage of Title II of the Omnibus Crime Control and Safe Streets Act of 1968.⁴⁵ Title II was designed to restore and codify the traditional due process voluntariness test to suppress a confession, nullifying *McNabb* and *Mallory* and restoring the “totality of the circumstance test.”⁴⁶

The portion of Title II of the Omnibus Crime Control and Safe Streets Act that was drafted to nullify the *McNabb-Mallory* rule and restore the voluntariness test was 18 U.S.C. § 3501(a), (b), and (c).⁴⁷ Subsection (a) plainly states that a confession “shall be admissible in evidence if it is voluntarily given.”⁴⁸ Subsection (b) provides five factors that a trial judge may take into consideration to determine the voluntariness of a confession. Specifically, subsection (b)(1) instructs the trial judge to consider the amount of time between arrest and presentation before a magistrate to determine if a confession is voluntary. Thus, when these two sections are read together, it appears that

the court held his statement was inadmissible because he was not promptly presented before a magistrate).

45. See 18 U.S.C. § 3501 (2006).

46. Keene, *supra* note 25, at 209; Davis, *supra* note 9, at 258. However, in *Corley v. United States*, 129 S. Ct. 1558 (2009), the Court refused to hold that Congress meant to eliminate *McNabb* and *Mallory*. Instead, the Court held that Congress only meant to narrow the *McNabb-Mallory* rule in 18 U.S.C. § 3501.

47. The pertinent portions of 18 U.S.C. § 3501 are as follows:

(a) In any prosecution brought by the United States or by the District of Columbia, a confession, as defined in subsection (e) hereof, shall be admissible in evidence if it is voluntarily given. Before such confession is received in evidence, the trial judge shall, out of the presence of the jury, determine any issue as to voluntariness. If the trial judge determines that the confession was voluntarily made it shall be admitted in evidence. . . .

(b) The trial judge in determining the issue of voluntariness shall take into consideration all the circumstances surrounding the giving of the confession including (1) the time elapsing between arrest and arraignment of the defendant making the confession, if it was made after arrest and before arraignment

(c) In any criminal prosecution by the United States or of the District of Columbia, a confession made by a person who is the defendant therein, while such person was under arrest . . . shall not be inadmissible solely because of delay in bringing such person before a magistrate judge . . . if such confession is found by the trial judge to have been voluntarily . . . and if such confession was made . . . within six hours immediately following his arrest or other detention: *Provided*, That the time limitation contained in this subsection shall not apply in any case in which the delay in bringing such person before such magistrate judge or other officer beyond such six hour period is found by the trial judge to be reasonable considering the means of transportation and the distance to be traveled to the nearest available . . . magistrate judge.

48. 18 U.S.C. § 3501(a) (2006).

Congress restored the voluntary “totality of the circumstances test” and abrogated the *McNabb-Mallory* rule.⁴⁹ However, Congress also included subsection (c), which has been the source of difficulty in interpreting the statute.

The only clear rule in subsection (c) is that a trial court cannot suppress a voluntary confession because of an unreasonable delay if the confession was given within six hours.⁵⁰ The difficulty has been what to do with a voluntary confession obtained more than six hours after the arrest but before presentation. This was the issue in *Corley v. United States*,⁵¹ and, indeed, it has been a source of conflict among the circuit courts for over forty years.

The majority interpretation—the restored voluntariness view—holds that subsection (c) was meant to remove some of the discretion from trial judges in determining whether a confession was voluntary because of a delay in presentation.⁵² Under the restored voluntariness view, if there was delay in presenting the suspect before a magistrate, that delay cannot be the basis for excluding an otherwise voluntary confession if obtained within six hours of the arrest. Essentially, subsection (c) carves out a “safe harbor” for police,⁵³ allowing them to interrogate for up to six hours without suppression concerns.⁵⁴ If the confession is obtained after the six hours, then subsections (a) and (b) control, and a trial judge can examine the amount of time between arrest and arraignment to determine whether the confession was voluntary.⁵⁵ However, delay is only one factor in determining voluntariness and will not by itself be grounds to automatically suppress a confession.⁵⁶ This view eliminates *McNabb*

49. The majority in *Corley v. United States* acknowledged that if Congress had stopped after subsection (b), the Court would have had to decide that the *McNabb-Mallory* rule had been eliminated.

50. Courts and other authorities have not had difficulty in interpreting what must be done with a voluntary confession obtained within the first six hours of an arrest.

51. 129 S. Ct. 1558 (2009).

52. Compare *United States v. Clarke*, 110 F.3d 612 (8th Cir. 1997) (holding that a voluntary confession obtained more than twelve hours after the defendant's arrest and before her arraignment was admissible into evidence under 18 U.S.C. § 3501(c)), with *United States v. Halbert*, 436 F.2d 1226 (9th Cir. 1970) (holding that a voluntary confession obtained more than six hours after the defendant's arrest and before his arraignment before a magistrate should not be suppressed under 18 U.S.C. § 3501(c)).

53. See *United States v. Senogles*, 570 F. Supp. 2d 1134 (D. Minn. 2008) (discussing how 18 U.S.C. § 3501(c) creates a “safe harbor” for police to interrogate a defendant for up to six hours after an arrest without fearing suppression of a voluntary confession obtained).

54. *Id.*

55. See 18 U.S.C. § 3501(b)(1) (2006).

56. *Senogles*, 570 F. Supp. 2d at 1160.

and *Mallory* because a trial judge ultimately makes a determination of voluntariness.⁵⁷

The opposing minority view—the modified delay view⁵⁸—holds that instead of removing some discretion from the trial judge, subsection (c) was enacted to limit or modify the absolute voluntariness test of subsection (a).⁵⁹ Under this view, if a confession is given within six hours of arrest—within the “safe harbor”—but before presentation before a magistrate, then subsection (a) will allow that confession to be admitted if it is voluntary. However, if the confession is given after the six hour time limit, then subsection (a) no longer controls and the *McNabb-Mallory* delay rule will automatically suppress the confession if the trial court finds that the delay was unreasonable.⁶⁰ Thus, the unreasonable delay rule is modified to only apply to confessions outside the six hour safe harbor.⁶¹ This minority view was the view adopted by the Court in *Corley v. United States*⁶² and has put an end to the circuit court split. However, this view is not what Congress intended when enacting 18 U.S.C. § 3501.

D. Legislative Intent of Title II

The arguments for and against whether subsection (c) eliminates the *McNabb-Mallory* rule generally involve a thorough analysis of the legislative history behind subsection (c).⁶³ The main question is whether the legislative history shows that Congress meant to eliminate *McNabb-Mallory* or only to carve out an exception for a six hour delay.⁶⁴ This brief subsection seeks to inform the reader about re-

57. See *Mallory v. United States*, 354 U.S. 449 (1957); *McNabb v. United States*, 318 U.S. 382 (1943).

58. The “modified delay view” and “restored voluntariness view” are terms coined by this author to help label the two interpretations of subsection (c).

59. See *United States v. Perez*, 733 F.2d 1026 (2d Cir. 1984) (holding that a voluntary confession obtained more than six hours after arrest and before presentation is inadmissible under 18 U.S.C. § 3501(c)); *United States v. Robinson*, 439 F.2d 553 (D.C. Cir. 1970) (holding that a voluntary confession obtained more than six hours after arrest and before presentation is inadmissible under 18 U.S.C. § 3501(c)). But see *United States v. Christopher*, 956 F.2d 536 (6th Cir. 1991) (“*Perez* stands alone in its disregard for the statute’s focus on voluntariness and will not be applied by this court.”).

60. See Matthew W. Frank, *18 U.S.C. § 3501 and the Admissibility of Confessions During Unnecessary Prearrest Delay*, 84 MICH. L. REV. 1731 (1986) (providing an analysis of the modified delay view).

61. See *Perez*, 733 F.2d 1026; Frank, *supra* note 60, at 1733.

62. 129 S. Ct. 1558 (2009).

63. See *United States v. Halbert*, 436 F.2d 1226 (9th Cir. 1970), for a thorough analysis of the legislative intent behind 18 U.S.C. § 3501.

64. See *United States v. Corley*, 500 F.3d 210 (3d Cir. 2007), *rev’d*, 129 S. Ct. 1558 (2009); *United States v. Ostrander*, 411 F.3d 684 (6th Cir. 2005); *United States v. Clarke*, 110 F.3d 612 (8th Cir. 1997); *United States v. Christopher*, 956 F.2d 538 (6th Cir. 1991); *United States v. Perez*, 733 F.2d 1026 (2d Cir. 1984); *United*

vealing content in the legislative history and how courts and scholars have interpreted that content.

The Senate Report on Title II states that the “enactment of subsections 3501 and 3502 . . . is needed to offset the harmful effects of the *Mallory* case.”⁶⁵ The Report continues, “[E]nactment of subsections 3501 and 3502 would assign proper weight to the *Mallory* rule. Delay in bringing a suspect before a committing magistrate would be a factor to consider in determining the issue of voluntariness, but it would not be the sole criterion to be considered.”⁶⁶ The Report also states that there is “no constitutional bar to congressional abrogation of the *Mallory* rule” because the “rule is not based on any constitutional principle.”⁶⁷ A straight-forward reading of the Senate Report on Title II suggests that the *McNabb-Mallory* rule was abolished by 18 U.S.C. § 3501, but, nevertheless, the Supreme Court and a few circuits held that *McNabb-Mallory* was not intended to be abrogated.⁶⁸

The reason for this minority view comes from a previous version of subsection (c) that was later amended to the current form. The original subsection (c) did not have the six hour language, but instead indicated that a confession would not be inadmissible solely because of delay if the confession was found to be voluntary.⁶⁹ Subsequently, an amendment was introduced to amend this section to read that a con-

States v. Manuel, 706 F.2d 908 (9th Cir. 1983); United States v. Gaines, 555 F.2d 618 (7th Cir. 1977); United States v. Odom, 526 F.2d 339 (5th Cir. 1976); United States v. Shoemaker, 542 F.2d 561 (10th Cir. 1976); Gov’t of the Virgin Islands v. Gereau, 502 F.2d 914 (3d Cir. 1974); United States v. Halbert, 436 F.2d 1226 (9th Cir. 1970); United States v. Robinson, 439 F.2d 553 (D.C. Cir. 1970); United States v. Erving, 388 F. Supp. 1011 (W.D. Wis. 1975); United States v. Leland, 376 F. Supp. 1193 (D. Del. 1974).

65. S. REP. No. 90-1097, at 38 (1968).

66. *Id.* at 40–41.

67. *Id.* at 40.

68. See Corley v. United States, 129 S. Ct. 1558 (2009) (holding section 3501 modifies—but does not eliminate—the *McNabb-Mallory* rule); United States v. Perez, 733 F.2d 1026 (2d Cir. 1984) (holding that a confession obtained more than six hours after arrest and before presentation was not reasonable and thus subject to suppression); United States v. Robinson, 439 F.2d 553 (D.C. Cir. 1970) (holding that statements of a mental hospital inmate given to doctors and officers were inadmissible because they violated the six hour requirement of subsection (c)); United States v. Erving, 388 F. Supp. 1011 (W.D. Wis. 1975) (holding a delay of 11 hours and 20 minutes in presenting the defendant before a magistrate violated subsection (c), thus suppressing the confession).

69. The previous subsection (c) read:

In any criminal prosecution by the United States or by the District of Columbia, a confession made or given by a person who is a defendant therein, while such person was under arrest or other detention in the custody of any law-enforcement officer . . . shall not be inadmissible solely because of delay in bringing such person before a commissioner or other officer . . . if such confession is found voluntarily.

141 CONG. REC. 14,172 (1968).

fession would not be inadmissible solely because of delay if the confession was voluntary and given within six hours of arrest.⁷⁰ Thus, some courts have taken the position that this provision was added simply to put a time limit on the voluntary confession rule and not to completely abrogate the *McNabb-Mallory* rule.⁷¹ These courts also hold that without interpreting subsection (c) as modifying subsection (a) and *McNabb-Mallory*, subsection (c) would be rendered superfluous.⁷²

Many courts, however, take the position that the legislature indeed intended to abrogate *McNabb-Mallory*.⁷³ For example, *United States v. Halbert*⁷⁴ provides an extensive survey of the legislative history and can be quite persuasive in arguing that Congress intended to abrogate *McNabb* and *Mallory*. Legal scholars have also noted that Congress intended to eliminate the *McNabb-Mallory* rule. "Title II of the Omnibus Crime Control Act . . . was originally referred to the Senate Committee on the Judiciary as a separate 'anti-court' bill."⁷⁵ Michael A. LaFond states that the six hour provision was an attempt—though ineffective in his view—at eliminating the *McNabb-Mallory* rule.⁷⁶ Although the legislative history shows that Congress disliked the *McNabb-Mallory* rule, the bigger question is why Congress found the rule so unappealing? Simply put, Congress felt that too many obviously guilty suspects were getting off on technicalities.⁷⁷ Members of Congress were outraged that the public was paying the price when a voluntary confession proving guilt was suppressed because a police

70. *Id.*

71. *Corley v. United States*, 129 S. Ct. 1558 (2009); *United States v. Perez*, 733 F.2d 1026 (2d Cir. 1984); *United States v. Erving*, 388 F. Supp. 1011 (W.D. Wis. 1975); *United States v. Leland*, 376 F. Supp. 1193 (D. Del. 1974).

72. *Corley*, 129 S. Ct. at 1566 ("The fundamental problem with the Government's reading of § 3501 is that it renders § 3501(c) nonsensical and superfluous.").

73. *United States v. Ostrander*, 411 F.3d 684, 695 (6th Cir. 2005) (finding that presentation delays in excess of six hours do not "standing alone" make a voluntary confession suppressible); *United States v. Clarke*, 110 F.3d 612 (8th Cir. 1997) (holding that a confession that is obtained more than six hours after arrest but before presentation is not automatically excludable due to delay if the confession is otherwise voluntary); *United States v. Christopher*, 956 F.2d 538 (6th Cir. 1991) (holding that the defendant's statement does not have to be suppressed, even if it is obtained more than six hours after arrest and prior to presentation before a magistrate); *United States v. Halbert*, 436 F.2d 1226 (9th Cir. 1970) (holding that § 3501 was meant to abrogate the *McNabb-Mallory* rule and restore a voluntariness test).

74. 436 F.2d 1226 (9th Cir. 1970).

75. Note, *supra* note 2, at 439. Interestingly, during the time Title II was proposed, there was also a proposed amendment that would make voluntariness of confessions the sole test for admissibility, and if a trial court found a confession voluntary, it could not be reversed or disturbed by the Supreme Court. *Id.* (citing S.J. Res. 22, 90th Cong. (1967)).

76. Michael A. LaFond, *Survey of Title II: Omnibus Crime Control and Safe Streets Act of 1968*, 18 AM. U. L. REV 157, 176 (1968).

77. *See S. REP. NO. 90-1097*, at 37-40 (1968).

officer made a mistake in getting the defendant arraigned without any unnecessary delay.⁷⁸ Moreover, many elected officials believed society and the courts had become “obsessed” with uncovering new rights for the defendants, which caused the scales of justice to become “unbalanced.”⁷⁹

The Senate Report also discusses the rising crime rate as a reason for enacting Title II. Specifically, the Report notes that the crime rate in the District of Columbia rose by seventy-two percent in the sixteen years prior to 1968, but the amount of felony convictions for these crimes decreased by thirty-nine percent.⁸⁰ The decisions in *McNabb* and *Mallory*, which undoubtedly suppressed voluntary confessions that established guilt, were targeted by Congress as one of the factors contributing to the dramatic decrease in felony convictions.⁸¹ Thus, Congress had every reason to abolish what it thought was an “illogical and unrealistic” rule that made crime more prevalent in society.⁸²

E. Circuit Split on the Interpretation of Subsection (c)

Some circuits have adopted the modified delay view, arguing subsection (c) was the only section aimed at *McNabb* and *Mallory* and did nothing more than modify the rule.⁸³ For example, in *United States v. Perez*,⁸⁴ the Second Circuit held that if subsection (c) did not modify the pure voluntariness test of subsection (a), then subsection (c) would be left meaningless.⁸⁵ The court also stated that if voluntariness was the only test that Congress wanted to adopt—thereby eliminating *McNabb* and *Mallory*—then the statute would have contained language that a confession would not be “involuntary” solely because of delay.⁸⁶ However, since Congress said a confession will not be “inadmissible” because of delay, the court held that Congress did not mean to adopt a complete voluntariness test, and thus *McNabb-Mallory* is still ineffec-

78. *Id.* at 38.

79. *Id.* at 39.

80. *Id.*

81. *Id.*

82. *Id.* at 38.

83. See *Corley v. United States*, 129 S. Ct. 1558 (2009); *United States v. Perez*, 733 F.2d 1026 (2d Cir. 1984); see also Note, *supra* note 2, at 448–50 (explaining that several courts thought that subsections (a) and (b) were meant to abrogate *Miranda*, while only subsection (c) addressed the *McNabb-Mallory* rule).

84. 733 F.2d 1026 (1984).

85. The term “meaningless” is analogous to the term “superfluous” that the Court in *Corley* uses to describe the interplay between subsection (a) and subsection (c). See *Corley*, 129 S. Ct. at 1566.

86. *Perez*, 733 F.2d at 1031.

tive after the six hour time frame.⁸⁷ The Second Circuit has been the main proponent of this minority view.⁸⁸

A majority of the circuits have adopted the restored voluntariness rule, holding 18 U.S.C. § 3501 was enacted in part to overrule *McNabb* and *Mallory*.⁸⁹ The principle case adopting this view was a Ninth Circuit case, *United States v. Halbert*.⁹⁰ There, the court took the view that subsections (a) and (b) work together to give the trial judge discretion in determining whether a confession is voluntary.⁹¹ Because subsection (a) specifically says a confession will not be inadmissible if it is voluntary, and (b) discusses factors determining voluntariness, the court reasoned that subsection (c) is required to fit into this framework.⁹² As the court stated, “[W]e cannot say that Congress intended by the provision in subsection 3501(c) to undo all it had done with the proceeding subsections.”⁹³ Thus, the court held that subsection (c) serves to remove some of the discretion under subsection (b)(1).⁹⁴ This means that under subsection (c), a trial judge may not consider the delay between arrest and arraignment as a factor to determine involuntariness if the confession was made within six hours of arrest. However, if the confession was obtained more than six hours after the arrest, a trial judge would be free under subsection (b)(1) to consider delay as a factor of involuntariness.⁹⁵ Still, this holding does not say that the confession is per se excluded if it occurred more than six

87. *Id.*

88. *See Perez*, 733 F.2d 1026. However, in *United States v. Christopher*, the court states that *Perez* stands alone in refusing to interpret voluntariness as the focus of 18 U.S.C. § 3501. 956 F.2d 536, 539 (6th Cir. 1991).

89. *See United States v. Ostrander*, 411 F.3d 684, 695 (6th Cir. 2005); *United States v. Clarke*, 110 F.3d 612 (8th Cir. 1997); *United States v. Christopher*, 956 F.2d 536 (6th Cir. 1991); *United States v. Manuel*, 706 F.2d 908 (9th Cir. 1983); *United States v. Odom*, 526 F.2d 339 (5th Cir. 1976); *United States v. Shoemaker*, 542 F.2d 561 (10th Cir. 1976); *United States v. Campanile*, 516 F.2d 288 (2d Cir. 1975); *Gov't of the Virgin Islands v. Gereau*, 502 F.2d 914 (3d Cir. 1974); *United States v. Keeble* 459 F.2d 757 (8th Cir. 1972); *United States v. Halbert*, 436 F.2d 1226 (9th Cir. 1970).

90. *Halbert*, 436 F.2d 1226.

91. *Id.* at 1234.

92. How subsection (c) works with subsections (a) and (b) is at the heart of this debate. The view in *Halbert* is that subsection (c) must fit into the framework of subsections (a) and (b). However, the view in *Perez* and *Corley* is that subsection (c) controls and subsections (a) and (b) must fit into the framework of subsection (c).

93. *Halbert*, 436 F.2d at 1234.

94. *Id.* Subsection (b)(1) states that a trial judge may consider the time between arrest and delay as one factor to determine if a confession is voluntary. 18 U.S.C. § 3501(b)(1) (2006).

95. *Halbert*, 436 F.2d at 1234.

hours after arrest, because Congress replaced the unreasonable delay test with a voluntariness standard.⁹⁶

F. Facts and Background of *Corley*

By the time *United States v. Corley*⁹⁷ came along, most courts held that 18 U.S.C. § 3501 overruled the *McNabb-Mallory* rule and adopted a totality of the circumstances test.⁹⁸ Thus, the Third Circuit was on firm ground when it decided that Corley's confession, if it did occur more than six hours after arrest, could be admitted because it was voluntary.

Johnnie Corley was the suspect in a bank robbery in Pennsylvania.⁹⁹ He was located by state and federal officers on September 17, 2003, when they were serving a warrant.¹⁰⁰ When the police arrived, Corley was pulling out of his driveway in his car.¹⁰¹ He almost ran over one officer, then jumped out of his car, pushing another officer down, and ran.¹⁰² The officers chased Corley and arrested him for assaulting an officer.¹⁰³ He received minor injuries during the chase.¹⁰⁴

Corley was arrested at approximately 8:00 a.m.¹⁰⁵ He was kept at a local police station while the police questioned his neighbors.¹⁰⁶ At 11:45 a.m. he was taken to a hospital to receive medical care, and was released back to the police around 3:30 p.m.¹⁰⁷ At this point, six hours had already passed since his arrest. Around 5:30 p.m., Corley began an oral confession that lasted about an hour.¹⁰⁸ When asked to put

96. *Id.* A third view of subsection (c) was presented in *United States v. Gaines*, 555 F.2d 618 (7th Cir. 1977). There, a quasi hybrid analysis controls, suggesting the trial court should be free to exclude a confession in excess of six hours (a violation of *McNabb*) only if it would be a deterrent and further the goals of the exclusionary rule. If the police acted in good faith, the confession would not be suppressed because of delay, because it would not deter the police. *Id.* at 623.

97. 500 F.3d 210 (3d Cir. 2007).

98. See Daniel Gandara, *Admissibility of Confessions in Federal Prosecutions: Implementation of Section 3501 by Law Enforcement Officials and the Courts*, 63 GEO. L.J. 305 (1974) ("Federal courts now uniformly apply the 'totality of the circumstances' test of section 3501 to determine the admissibility of confessions made during delay in bringing persons taken into custody before federal magistrates."); see also cases cited *supra* note 89 (collecting cases for the restored voluntariness view).

99. *Corley v. United States*, 129 S. Ct. 1558, 1564 (2009).

100. *Id.* at 1564–65.

101. *Id.* at 1565.

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.*

the oral confession in writing, Corley stated that he would, but that he was tired and wanted to resume in the morning.¹⁰⁹ At 10:30 a.m. on September 18, 2003, he began a written confession, which he signed at 1:30 p.m., over twenty-nine hours after his arrest.¹¹⁰

Corley's confession was not suppressed under 18 U.S.C. § 3501(c) because the Third Circuit viewed it as voluntary.¹¹¹ Even though it was outside the six hour window,¹¹² the Third Circuit believed that since the confession was otherwise voluntary, it should be admitted because voluntariness is the sole test.¹¹³ Consequently, the Supreme Court granted certiorari to determine whether subsection (c) eliminated the rule in *McNabb* and *Mallory*, restoring the voluntariness rule, or whether subsection (c) created a modified delay rule, where any confession obtained after six hours would be automatically suppressed unless due to a reasonable transportation delay. The Supreme Court held that the modified delay rule is the correct interpretation of subsection (c).¹¹⁴

III. ANALYSIS

In *Corley v. United States*,¹¹⁵ the Supreme Court was presented with the issue of whether Congress intended 18 U.S.C. § 3501 to wholly abrogate the rule in *McNabb v. United States*¹¹⁶ and *Mallory v. United States*¹¹⁷ or to merely narrow the rule. Specifically, the Supreme Court was to decide whether an arrested person's confession would be inadmissible if there was unreasonable delay in bringing him or her before a judge.¹¹⁸ In a five-to-four opinion, Justice Souter gave the opinion of the Court, which held that "Congress meant to

109. *Id.*

110. *Id.*

111. *See* *United States v. Corley*, 500 F.3d 210, 220 (3rd Cir. 2007), *rev'd*, 129 S. Ct. 1558 (2009).

112. In *Corley v. United States*, 129 S. Ct. 1558 (2009), the Government contends that even if the Court holds the modified delay view, the confession should still be admissible. The Government argues that the confession was not outside the six hour "safe harbor" because the clock should stop while Corley received medical treatment. This means his confession *started* within the six hour time frame—even though it was not finished until later—and should be admissible. *See* Brief for the United States at 47–48, *Corley v. United States*, 129 S. Ct. 1558 (2009) (No. 07-10441). This issue will have to be determined on remand.

113. *United States v. Corley*, 500 F.3d 210, 220 & n.7 (3d Cir. 2007), *rev'd*, 129 S. Ct. 1558 (2009).

114. *Corley*, 129 S. Ct. 1558.

115. *Id.*

116. 318 U.S. 332 (1943).

117. 354 U.S. 449 (1957).

118. *Corley*, 129 S. Ct. at 1562. Under 18 U.S.C. § 3501(c), and as interpreted by the Court, an unreasonable delay would be a delay exceeding six hours from arrest until presentment before a magistrate. *Id.* at 1571.

limit, not eliminate, *McNabb-Mallory*.”¹¹⁹ Justice Alito’s dissent argues that Congress meant to eliminate the *McNabb-Mallory* rule and restore the old voluntariness test that existed prior to the *McNabb-Mallory* line of cases.¹²⁰

A. The Majority’s Argument

The thrust of the majority’s argument centers upon judicial canons of statutory interpretation. The majority recognizes that a conflict exists between subsections (a) and (c) of 18 U.S.C. § 3501.¹²¹ The two interpretations of 18 U.S.C. § 3501 are as follows: (1) subsection (a) restores the voluntariness test that will always allow a confession to be admissible so long as it is voluntary, no matter how long after an arrest the confession is obtained; or (2) subsection (c) modifies subsection (a) to create a voluntariness test, so long as the confession is given within six hours of arrest.¹²² The majority reasons that if the Court were to adopt the first interpretation of 18 U.S.C. § 3501, subsection (c) would be rendered “nonsensical and superfluous.”¹²³ According to the Court, if subsection (a) really means that any voluntary confession is admissible no matter what, then subsection (c) could not add anything of value because it could not limit subsection (a) with the six hour time frame.¹²⁴ Therefore, the majority believes that Congress would not purposefully add a section into a statute that would be superfluous, and if Congress did add a superfluous subsection, it would be at odds with canons of statutory interpretation.¹²⁵ This argument provides the main reasoning allowing the majority to find that subsection (c) modifies subsection (a), and thus, Congress did not abrogate the *McNabb-Mallory* rule.¹²⁶ Instead, Congress created an “immunization”¹²⁷ where voluntary confessions obtained during the first six hours of arrest cannot be excluded because of delay—however, voluntary confessions obtained after six hours *must* be excluded if the defendant had not yet been presented to a magistrate.¹²⁸

119. *Id.* at 1562.

120. *Id.* at 1571 (Alito, J., dissenting).

121. *Id.* at 1566 (majority opinion).

122. *Id.* at 1564–66.

123. *Id.* at 1566.

124. *Id.*

125. *Id.*; see also *Hibbs v. Winn*, 542 U.S. 88, 101 (2004) (“A statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant.”). *But see Corley*, 129 S. Ct. at 1572–73 (Alito, J., dissenting) (“There are times when Congress enacts provisions that are superfluous, and this may be such an instance.”).

126. 129 S. Ct. at 1566.

127. *Id.* at 1564.

128. *Id.* at 1571.

Even if subsection (c) is read as being vital to subsection (a) and not superfluous, it does not necessarily mean that the pure voluntary standard in subsection (a) only applies if it is within the six hour time frame of subsection (c). However, the Court makes this argument primarily by examining the legislative history and concluding that Congress did not intend to do away with the *McNabb-Mallory* rule.¹²⁹ The reasoning behind this argument is that the original version of subsection (c) contained no such six hour time frame, and that by amending subsection (c) to include this six hour time frame, Congress meant to modify—not eliminate—the *McNabb-Mallory* rule.¹³⁰ By linking canons of statutory interpretation with the majority's opinion regarding the legislative intent, the majority in *Corley* was able to arrive at an interpretation that does not completely abandon the Court's unreasonable presentation delay rule handed down in the *McNabb-Mallory* line of cases.

For the most part, the dissent uses the same type of analysis but arrives at a different conclusion. First, the dissent argues that the canons of statutory interpretation provide that if the words of a statute are unambiguous, then judicial inquiry is complete.¹³¹ Under this analysis, subsection (a) is unambiguous on its face: if the confession is voluntary, it is admissible. The dissent also argues that the legislative intent shows that Congress meant to eliminate the *McNabb-Mallory* line of cases and restore the voluntariness test.¹³² This leads the dissent to adopt the Government's view that subsection (c) is not superfluous, but has been wrongly read by the majority.¹³³ Instead of limiting subsection (a), subsection (c) restores the test of voluntariness by specifically providing that if a confession is given within six hours, then involuntariness will be the only factor to make a confession inadmissible.¹³⁴ This means that if there is no basis for delay in presentation other than coercion for a confession, the confession will be automatically admissible if given within six hours. If the confession is given after the six hours, the confession is not automatically suppressed (as the majority holds), but the trial judge may then consider delay as one factor to determine if the confession was voluntary.¹³⁵ This is the better view because it both serves to deter police officers

129. *Id.* at 1569.

130. *Id.* at 1568–70. Section II.B explains the Court's analysis of the legislative intent. But see *United States v. Halbert*, 436 F.2d 1226 (9th Cir. 1970), for a more thorough and contradictory analysis of the legislative history.

131. *Corley*, 129 S. Ct. at 1572 (Alito, J., dissenting) (citing *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253–54 (1992)).

132. "The Senate Report clearly says that § 3501(a) was meant to reinstate the traditional rule that a confession should be excluded only if involuntary." *Id.* at 1575.

133. *Id.* at 1573.

134. *Id.*

135. *Id.*

acting in bad faith¹³⁶ and also creates judicial autonomy to allow convictions of obviously guilty parties.

The problem with the views of the majority and the dissent is that they fail take into account the policy behind the legislation and the implications of what Congress was wishing to accomplish.¹³⁷ This Note argues that the dissent's conclusion should be adopted, but for reasons that go beyond the dissent's argument. The dissent's view should be adopted because it is consistent with legislative history and because it allows trial judges the freedom to correctly determine the voluntariness of a confession, while not allowing a guilty suspect to go free on the basis of a technicality.

B. Legislative Intent

It is clear from the legislative history of 18 U.S.C. § 3501 that Congress fully intended to restore the old standard of voluntary confessions and do away with the unreasonable delay rule of *McNabb* and *Mallory*. The Senate Report provides that “[t]he traditional right of the people to have their prosecuting attorneys place in evidence before juries the voluntary confessions and incriminating statements made by defendants must be restored.”¹³⁸ In addition, the Senate Report indicates that “[18 U.S.C. § 3501] also assures that confessions made while the suspect is under arrest shall not be inadmissible solely because of delay in bring[ing] the defendant before a magistrate or commissioner, and provides that *nothing therein will bar from evidence a voluntary, spontaneous, and unsolicited confession.*”¹³⁹ This statement alone shows that Congress intended to restore a voluntary test, with nothing—including a six hour or greater delay—blocking the admissibility of that confession.¹⁴⁰

136. Arguably, by excluding all confessions occurring after the six hour time period the goal of deterrence is not met. By allowing judges to look at the totality of the circumstances, they can decide if police have acted in bad faith to coerce a confession. See *United States v. Leon*, 468 U.S. 897 (1984) (explaining that the deterrence principle only applies to police officers acting in bad faith because you cannot deter police actions done in good faith).

137. Congress was trying to “offset the harmful effects of the *Mallory* case” and restore a voluntariness test for confessions. S. REP. NO. 90-1097, at 38 (1968). As discussed, the majority and dissent focus heavily on canons of interpretation without getting at the real policy issues and implications on crime control that Congress was concerned about when they enacted 18 U.S.C. § 3501.

138. S. REP. NO. 90-1097, at 37 (1968); see also Stephan, *supra* note 1, at 193 (“In response to a nation-wide increase in the occurrence of violent crime accompanied by public demands for more efficient law enforcement . . . Congress has recently enacted the Omnibus Crime Control and Safe Streets Act of 1968.”).

139. S. REP. NO. 90-1097, at 37 (1968) (emphasis added).

140. Congress did not like that the public was paying the price for a police officer's blunder, and that price was an otherwise guilty suspect going free on a technicality. See *id.* at 38.

The Senate Report also states that section 3501 was enacted to “offset the harmful effects of the *Mallory* cases.”¹⁴¹ Many public officials were of the view that the increasing crime rate and decreasing felony conviction rate in Washington D.C. were directly related to confessions becoming inadmissible due to presentation delays, even though the confessions were voluntary.¹⁴² In response, Congress believed this bill would eliminate the *McNabb-Mallory* rule and make the delay in bringing a suspect in front of a magistrate one factor in determining voluntariness, but delay would not be the “sole criterion . . . operating to automatically exclude an otherwise competent confession.”¹⁴³ There is nothing in the Senate Reports or legislative history that indicates Congress intended to do anything other than restore a rule that confessions will be admissible so long as they are voluntary.¹⁴⁴

Many lower court decisions and some scholars have also indicated that Congress was attempting to overrule the *McNabb-Mallory* line of cases. In *United States v Gaines*,¹⁴⁵ the court notes that Congress did not intend to broaden protection under *McNabb-Mallory*, a result which may occur under one interpretation of subsection (c).¹⁴⁶ The most persuasive case is *United States v Halbert*.¹⁴⁷ There, the court did an extensive review of the legislative history behind 18 U.S.C. § 3501 and concluded that the statute was designed to overrule or offset the harmful effects of *McNabb* and *Mallory*.¹⁴⁸ Scholarly work also indicates that Congress wanted to overrule *Mallory* or, as one article has said, “emasculate” *Mallory*.¹⁴⁹ While it is clear that Con-

141. *Id.*

142. *Id.* at 39. Specifically, the Senate Report states that since the 1950s the crime rate in the District of Columbia rose by seventy-two percent, but the felony conviction rate decreased thirty-nine percent. Several senators attributed this to the *McNabb-Mallory* presentation delay rule. *Id.*

143. *Id.* at 40–41.

144. See Brief for the United States, *supra* note 112, at 37 (“[R]emarks of Rep. McGregor . . . ‘Section 3501(c) overrules the Mallory decision’ . . . remarks of Rep. Anderson . . . ‘Section 3501(c) does overrule the Mallory decision’ . . . remarks of Rep. Reid . . . stating the bill ‘would reverse’ *Mallory*.”).

145. 555 F.2d 618 (7th Cir. 1977).

146. The majority’s view of subsection (c) may actually broaden *Mallory* and become more of a burden upon police. Under the *McNabb-Mallory* rule, unnecessary delay did not include time spent waiting for arraignment over nights and weekends. Now, under *Corley’s* holding, the police only have six hours to obtain the confession. Nights and weekends do not stop the clock. See LaFond, *supra* note 76, at 173 n.119.

147. 436 F.2d 1226 (9th Cir. 1970).

148. *Id.* at 1236. Other courts have reached similar conclusions that Congress meant to overrule *Mallory*. See cases cited *supra* note 89.

149. Note, *supra* note 2, at 450–51; see also Gandara, *supra* note 98, at 306 (“Congress also sought to modify the Court’s 1957 decision in *Mallory v. United States* and thus to diminish the impact of delays in arraignment on the admissibility of confessions.”); Kurt L. Sundberg, *Commonwealth v. Duncan: Prearraignment Delay*

gress fully intended to restore the voluntariness test and overrule *Mallory*, this naturally leads to the question of what purpose subsection (c) has in 18 U.S.C. § 3501. Legislative history, judicial interpretation, and other scholarly works help resolve this conflict in a way that furthers the policy aims that Congress articulated in the Senate Report.

To begin, it is very important to take note of what subsection (c) *does not* say. Nowhere in subsection (c) does Congress ever mandate exclusion of a confession obtained after the six hour window.¹⁵⁰ Although the majority read this interpretation into subsection (c), such a reading is not evident on its face. What subsection (c) *does* say is that a trial judge is prohibited from using presentation delay as a reason for holding a confession inadmissible if the delay is within six hours of arrest.¹⁵¹ While subsection (a) was designed to give more freedom and autonomy to trial judges to allow a confession if the judge determines it was voluntary, Congress was concerned that a judge might determine under subsection (b)(1) that a presentation delay was unreasonable and, because of the delay, exclude the voluntary confession.¹⁵² Thus, subsection (c) removes some discretion from the trial judge and tells the trial judge that delay cannot be the reason for determining a confession is inadmissible if that confession was produced within six hours of arrest. If the confession was produced after six hours, the trial judge can use the delay in determining whether the confession was voluntary.¹⁵³ Under this view of subsection (c), a delay

and the Failure of the Exclusionary Rule as a Remedy, 49 U. PITT. L. REV. 1159, 1163 (1988) (“The general view is that the effect of section 3501(c) is to overrule the *McNabb-Mallory* rule.”); Matthew M. Walton, *People v. Cipriano: Admissibility of Confessions Made During Unnecessary Prearrangement Delays*, 1989 DETROIT. C.L. REV. 1301, 1303 (1989) (“Cases following Omnibus have essentially overruled *McNabb* and *Mallory*. Also, a majority of the federal courts following Omnibus removed delay alone as a cause for rejecting evidence, and focused instead upon the voluntariness of a confession as the proper test for admissibility.”).

150. *United States v. Halbert*, 436 F.2d 1226, 1233, n.5 (9th Cir. 1970); *see also* *United States v. Keeble*, 459 F.2d 757, 761 (8th Cir. 1972) (“[Subsection (c)] does not say that a delay of more than six hours makes the confession automatically inadmissible.”); Brief for the United States, *supra* note 112, at 17 (“The text of Section 3501(c) does not announce any exclusionary rule and . . . does not mandate the exclusion of confessions taken more than six hours after arrest based on unreasonable delay in presentation to a magistrate. That textual omission of any exclusionary rule should be the end of the matter.”).
151. *Halbert*, 436 F.2d at 1234; *see also* *Gov’t of the Virgin Islands v. Gereau*, 502 F.2d 914, 924 (3d Cir. 1974) (“Section 3501(c) modifies the trial judge’s freedom to determine voluntariness by stating certain instances in which the judge cannot on the basis of delay alone find a statement to have been involuntary.”).
152. Brief for the United States, *supra* note 112, at 17.
153. This is consistent with the statutory language of subsection (c) because nowhere in the statute does it say a confession is automatically excludable if obtained more than six hours after an arrest.

past the six hour window does not automatically trigger exclusion, as the majority in *Corley* would require.¹⁵⁴

Subsection (b)(1) also helps to shed light on the view that subsection (c) takes away some discretion from a trial judge. Subsection (b) provides the trial judge with factors in determining if a confession is voluntary.¹⁵⁵ Subsection (b)(1) instructs the trial court to give consideration to the time elapsing between arrest and arraignment if the confession was made after the arrest but before the arraignment.¹⁵⁶ Thus, subsection (a) instructs the trial judge to use a voluntariness test to determine if a confession is admissible, and then subsection (b) instructs the trial judge to use the amount of time between arrest and presentment to determine voluntariness. Subsection (c), then, cannot be read as Congress undoing all of the work that it had done in subsections (a) and (b).¹⁵⁷ “[S]ubsection 3501(c) . . . merely removes some of the discretion given to the trial judge under subsection 3501(b) in determining voluntariness. Discretion remains in the trial judge under subsection 3501(b), to exclude confessions as involuntary solely because of delay in arraignment during which a confession is given that exceeds six hours.”¹⁵⁸ Stated another way:

Although somewhat ambiguous, subsections (b)(1) and (c) together provide that a confession otherwise voluntary and made within six hours is admissible without reference to delay and that a confession made after a delay of more than six hours may be admissible if the trial judge determines that the confession is voluntary in view of ‘all the circumstances’ surrounding the confession.¹⁵⁹

154. The majority reaches this view incorrectly because it assumes that Congress never meant to eliminate *Mallory*. See *Corley v. United States*, 129 S. Ct. 1558, 1568–70 (2009). Once *Mallory* is eliminated and the voluntariness test is restored, it is easy to see that Congress wanted to make sure that a judge is not using presentation delay as grounds to always throw out voluntary confessions.

155. 18 U.S.C. § 3501(b) (2006).

156. *Id.* § 3501(b)(1).

157. *United States v. Halbert*, 436 F.2d 1226, 1234 (9th Cir. 1970); Brief for the United States, *supra* note 112, at 18 (“[S]uch an implication [of subsection (c)] cannot be drawn where it would override the affirmative command of Section 3501(a) that all voluntary confessions ‘shall be admissible in evidence.’”). But see Thomas J. Miller, *The Six-hour Delay: A Confession Killer*, 33 U. PITT. L. REV. 341, 351 (1971) (arguing that this interpretation of subsection (c) would not “undo” the provisions created in subsections (a) and (b)).

158. *Halbert*, 436 F.2d at 1234. This interpretation has been stated another way:

Title II would modify the *McNabb-Mallory* rule to the extent that no delay of less than six hours would be considered ‘unreasonable’ regardless of the circumstances and no confession obtained during such a period would be inadmissible *per se*. In cases where the delay was more than six hours, the trial judge could admit the confession if he felt that it was voluntary and if he was convinced that the factors causing the delay . . . were reasonable.

Stephan, *supra* note 1, at 200.

159. Gandara, *supra* note 98, at 310–11.

While the majority in *Corley* argues for a per se exclusionary rule for confessions obtained more than six hours after arrest (unless accompanied with a reasonable transportation delay pursuant to section (c)),¹⁶⁰ such a per se reading of subsection (c) is not valid. The majority argues that this statute needs to be read as a whole.¹⁶¹ When the statute is read as a whole, it makes sense that the restored voluntary rule—not the Court’s holding—is the correct statutory interpretation.¹⁶²

Prior acts of Congress also provide evidence against adopting a per se exclusionary rule for confessions obtained more than six hours after an arrest but before presentation. In 1943, Congress attempted to pass the Hobbs Bill¹⁶³ to overrule *McNabb*, but the attempt was unsuccessful.¹⁶⁴ Then, in 1967, Congress “renewed its attack” on the *McNabb-Mallory* rule by passing Title III of the District of Columbia Crime Control Bill.¹⁶⁵ This bill provided a three hour restriction on the unnecessary delay rule of *Mallory* for the District of Columbia.¹⁶⁶ With this bill, Congress specifically stated its intentions for the admissibility of confessions that were given more than three hours after arrest. The Congressional Report makes clear that Title III was not intended to prohibit the admissibility of confessions made after the three hour period has expired.¹⁶⁷

Not surprisingly, section 3501 was modeled after Title III of the District of Columbia Crime Control Bill.¹⁶⁸ During the debate on the Omnibus Crime Control and Safe Streets Act, Senator Scott said, “[Subsection (c)] is an attempt to conform, as nearly as practicable, to

160. *Corley v. United States*, 129 S. Ct. 1558, 1571 (2009).

161. *Id.* at 1566 n.5.

162. Interestingly, neither the majority nor the dissent discuss the importance of section (b)(1) in interpreting section (c). By failing to discuss this section, the majority fails to follow its own opinion about statutory interpretation, and the dissent never considers this persuasive argument. One possible reason the majority does not discuss this argument is that the majority considered section (a) and (b) to only pertain to Congress’ attempt to overrule *Miranda*. The majority says that only section (c) applies to *Mallory*. See *Corley v. United States*, 129 S. Ct. 1558, 1564 (2009). However, as shown, the whole of 18 U.S.C. § 3501 was meant to overrule *Mallory*, not just subsection (c).

163. H.R. 3690, 78th Cong. (1943).

164. Note, *supra* note 2, at 450 n.79.

165. *Id.*

166. *Id.*

167. Gandara, *supra* note 98, at 319–20 n.91 (citing S. REP. NO. 90-912, at 17 (1967)). The cited Senate Report goes on to say that if a confession is given after the three hour period, it will not be protected under Title III, but may still be admitted as long as the confession does not violate other constitutional rights. S. REP. NO. 90-912, at 17 (1967). Like 18 U.S.C. § 3501(c), Congress was intending to make sure a confession would not be held involuntary solely because of a delay in presentation, provided the delay was not more than three hours.

168. Gandara, *supra* note 98, at 320.

title III of Public Law 90-226, the District of Columbia crime bill”¹⁶⁹ The District of Columbia Crime Control Bill was designed to abrogate *Mallory*, and the legislative history indicates that a confession after three hours is not per se inadmissible.¹⁷⁰ The three hours clause expressly authorizes police to interrogate a suspect for three hours before presenting him or her before a magistrate, without fear that the confession will be held inadmissible because of the delay.¹⁷¹ Likewise, subsection (c) sought to make the three hour period longer by allowing the police to interrogate for six hours without fear that the confession will be deemed inadmissible because of presentation delay.¹⁷² Since Congress modeled subsection (c) after the District of Columbia Crime Control Bill, and since the Bill specifically indicates that a confession after three hours of arrest but before delay is *not* per se inadmissible, it follows that Congress did not intend to create a per se inadmissibility rule under 18 U.S.C. §3501(c). Rather, Congress was intending to provide immunity for police to interrogate up to six hours after arrest but before presentment. Under this reasoning, if the interrogation lasts longer than six hours, the police will not get the protection afforded by subsection (c) but will be at the mercy of a judge who will determine under section (a) and (b) if the confession was truly voluntary.¹⁷³ This is the conclusion reached in *Halbert*¹⁷⁴ which provides the correct interpretation of section 3501.¹⁷⁵

Analysis of legislative intent demonstrates that Congress meant to overrule *McNabb-Mallory*. However, the courts were still left to struggle with how subsection (c) fits into subsections (a) and (b). After considering these three subsections as a whole, and what Congress was trying to accomplish—providing a safe harbor for police to interrogate for up to six hours—it becomes apparent that the majority in *Corley* was not correct. Congress meant to restore the voluntariness standard and specifically provided that delay will not be a factor of involuntariness within the first six hours of arrest. Furthermore, if the confession was after six hours, Congress did not intend to default to the per se exclusionary rule of *McNabb-Mallory*. Rather, Congress

169. 141 CONG. REC. 14,184 (1968).

170. See S. REP. NO. 90-912, at 17.

171. Gandara, *supra* note 98, at 319–20.

172. *Id.* Originally, Congress did not have a fixed time period. However, Senator Scott (who introduced the enacted version of 18 U.S.C. § 3501(c)) was worried that the “open-endedness” of the original subsection (c) would be deemed unconstitutional by the courts. 141 CONG. REC. 14,185 (1968). Senator Scott thought that this problem could be fixed by only allowing the police a six hour time frame to interrogate suspects before they had to worry about the confession being suppressed on coercive grounds. See *id.*

173. See discussion *infra* subsection III.D.2.

174. 436 F.2d 1226 (9th Cir. 1970).

175. Gandara, *supra* note 98, at 320.

abrogated *McNabb-Mallory* to restore judicial discretion in determining voluntariness.

C. Negative Implications of the Majority's Rule

One problem with the majority's decision is that it creates an inflexible rule that leaves trial judges without any ability to use their discretion to decide if a confession should be admitted. Often, the suspect is guilty of the crime and has confessed without any coercion, but because of a delay not specifically listed in subsection (c), the guilty suspect cannot be convicted because his confession is inadmissible.¹⁷⁶ One prominent example concerns a situation where a suspect is arrested during the weekend. While the local courts are not in session, the suspect may stay the night in jail, awake the next morning, and give a voluntary confession. However, under the Court's modified delay rule, the confession must be suppressed because his confession did not take place within the six hour safe harbor of subsection (c).¹⁷⁷ The trial court would not be free to use its own discretion to determine that the statement is clearly admissible. Under the dissent's opinion and Congress' true intent, a judge would be free to admit this voluntary confession.

Hypotheticals like this have led the modified delay view of subsection (c) to be seen as even more of a burden upon police enforcement than the *McNabb-Mallory* rule itself.¹⁷⁸ Under the *McNabb-Mallory* rule, many courts held that a weekend arrest that did not result in presentation before a magistrate until the following Monday was a reasonable delay.¹⁷⁹ Also, "delays of far longer than six hours have frequently been held proper, for reasons other than problems of transportation to the nearest magistrate."¹⁸⁰ Soon after 18 U.S.C. § 3501 was enacted by Congress, scholars recognized that it was possible to interpret subsection (c) as imposing more restrictions than the *McNabb-Mallory* rule imposed.¹⁸¹ However, it seems that no one thought the Court would interpret subsection (c) the way that *Corley* has because the legislative intent appears clear.¹⁸² The Supreme Court has now interpreted subsection (c) in a way that has the poten-

176. Importantly, 18 U.S.C. § 3501(c) only specifically lists reasonable delays due to transportation as an exception to the six hour rule.

177. See LaFond, *supra* note 76, at 173 n.119.

178. *Id.*

179. *Id.* (citing *United States v. Doyle*, 373 F.2d 875 (2d. Cir. 1967)).

180. *United States v. Halbert*, 436 F.2d 1226, 1233 (9th Cir. 1970) (citing 1 WRIGHT, FEDERAL PRACTICE AND PROCEDURE § 72, at 74 (4th ed. 2008)).

181. *Id.*; see also LaFond, *supra* note 76, at 173 n.119 ("Title II becomes more of a burden on the police then [sic] the *McNabb-Mallory* rule because they would have only six hours, and not all night or all weekend, to interrogate.")

182. See LaFond, *supra* note 76, at 173 n.119 ("[The modified delay view of section(c)] is contrary . . . to the basic motive of Congress in enacting Title II, to free law

tial to be far more restrictive than the *McNabb-Mallory* rule itself.¹⁸³ This is contrary to what Congress intended.

Prior to the Court's holding in *Corley*, there were some cases that would have completely thwarted the efforts of Congress and the exercise of judicial discretion had they been decided under *Corley*. For example, in *United States v. Manuel*,¹⁸⁴ the defendant was intoxicated when he was arrested.¹⁸⁵ Once he was sober, he made a voluntary confession to the police, but this confession occurred more than six hours after his arrest and before presentation before a magistrate.¹⁸⁶ The court in *Manuel* noted that if the police did interrogate the defendant during the first six hours after his arrest, they would have created a situation that would have produced an unfair and involuntary confession because of the defendant's intoxication.¹⁸⁷ However, under the current *Corley* rule, this confession must be suppressed because it was beyond the six hour window and was not the result of a transportation delay. This type of result was exactly the situation Congress was trying to avoid by enacting section 3501.¹⁸⁸

Even in *Corley* itself the Court has created some negative implications. In *Corley*, the defendant was arrested as a suspect in a bank robbery, but was injured during the arrest.¹⁸⁹ He was arrested at 8:00 a.m. and was taken to a hospital where he stayed and received treatment until 3:30 p.m.¹⁹⁰ At 5:27 p.m., Corley orally confessed to the bank robbery. He was asked to put the confession in writing, but was allowed to wait until the next morning so he could rest.¹⁹¹ At

enforcement of the restrictions imposed by the Supreme Court. The actual meaning of the six-hour provision will have to be determined by the courts.”)

183. Stephan, *supra* note 1, at 201, also discusses this burden. Stephan argues that federal courts that have interpreted the *McNabb-Mallory* rule have upheld as reasonable delays of one or two days “so long as the delay was prompted by unavoidable circumstances.” *Id.* He goes on to state that subsection (c), in effect, allows the police to gather additional evidence “by obtaining a ‘voluntary confession’ within six hours of arrest. *Id.* However, under the Court’s interpretation in *Corley* a trial court is more burdened because they cannot account for “unavoidable circumstances.”

184. 706 F.2d 908 (9th Cir.1983).

185. *Id.* at 910.

186. *Id.*

187. *Id.*

188. Senator Alan Bible stated that “we have become obsessed with uncovering new rights and safeguards for the criminal to such a degree that we have unbalanced the scales of justice, and find ourselves in the unenviable position of losing control of the crime and violence that are running rampant in our cities . . .” S. REP. NO. 90-1097, at 39 (1968).

189. *Corley v. United States*, 129 S. Ct. 1558, 1564 (2009).

190. *Id.* at 1565

191. *Id.*

10:30 the next morning, he began writing the written confession, which he did not sign until over twenty-nine hours after his arrest.¹⁹²

Although the confession may still be admissible on remand,¹⁹³ under the Court's holding, Corley's voluntary confession is inadmissible because the confession took place more than six hours after the arrest. Because subsection (c) does not contain an exception other than for transportation delays, the medical treatment and Corley's request for sleep may not matter. However, as in *Manuel*, it is both more fair and less coercive for the police to provide the defendant with medical treatment and rest before they begin an interrogation. By following the dissent's view, the judge is free to exercise judicial discretion to determine whether the confession was truly voluntary, regardless of the amount of time between arrest and arraignment.¹⁹⁴

D. Policy Reasons for Adopting the Dissenting Opinion

1. Statutory Interpretation and Supervisory Powers

Prior to the 1930s, the Supreme Court's role in supervising the lower courts was minimal.¹⁹⁵ When *McNabb* was decided in 1943, it was generally seen as the first supervisory power decision, marking a turning point for the Court.¹⁹⁶ *McNabb* was specifically decided so that the Supreme Court could "dissociate the federal courts from the unlawful investigative techniques that had been employed in that case and many others."¹⁹⁷ With this new supervisory function, the Court was able to begin creating rules of procedure. This was done in two ways. First, in the 1930s, Congress shifted from creating rules of procedure to allowing the judicial branch to create its own rules of procedure.¹⁹⁸ Accordingly, the Supreme Court would create rules that would be submitted to Congress for review, ensuring Congress could view the rule before it came into effect.¹⁹⁹ The second way for a procedural rule to be created is if the Court creates a supervisory rule

192. *Id.*

193. The Government contends that even if subsection (c) only narrowed *McNabb* and *Mallory* and did not abrogate them, the six hour clock should have paused when Corley was receiving medical attention, and thus the confession may yet fall within the six hour safe harbor. Brief for the United States, *supra* note 112, at 8.

194. It should be noted that nothing in the record indicates that the police were purposely trying to delay presentation to get a confession. The lower courts found that the confession was completely voluntary, and the only issue was that it was outside of the six hour window. See *United States v. Corley*, 500 F.3d 210 (3d Cir. 2007), *rev'd*, 129 S. Ct. 1558 (2009).

195. Sara Sun Beale, *Reconsidering Supervisory Power in Criminal Cases: Constitutional and Statutory Limits on the Authority of the Federal Courts*, 84 COLUM. L. REV. 1433, 1438 (1984).

196. *Id.* at 1435.

197. *Id.* at 1445.

198. *Id.* at 1467.

199. *Id.* at 1483.

through a holding in a particular case.²⁰⁰ This was exactly what has happened in the *McNabb-Mallory* line of cases.²⁰¹

Since *McNabb* was a decision based on the supervisory powers of the Court, and not a constitutional holding,²⁰² Congress can permissibly respond by enacting statutes to change any judicially created, non-constitutional procedural rules. As previously discussed, the legislative history and intent demonstrate that Congress overruled *McNabb-Mallory* and restored the voluntariness test with a specific six-hour safe harbor for presentation delays.²⁰³ As this is what Congress enacted—and had the power to do²⁰⁴—why did the majority interpret this statute as only limiting *McNabb* and *Mallory*? Why did the Court not interpret 18 U.S.C. § 3501 as overruling *McNabb* and *Mallory* as Congress intended?

While there may be no clear answer, one answer may be that the majority's decision aims to reinforce the Court's ability to function as a supervisory power.²⁰⁵ Congress was quite concerned about decisions that followed *Mallory*.²⁰⁶ Mainly, Congress was outraged over *Alston v. United States*²⁰⁷ because the court held that five minutes between arrest and presentation was deemed to be an unreasonable delay under *Mallory*.²⁰⁸ In a way, by enacting section 3501, Congress struck a mighty blow to a line of cases where the supervisory power

200. *Id.*

201. Interestingly, the Supreme Court had misinterpreted the facts of *McNabb*, as well as the statutory basis, resulting in creation of the unnecessary delay rule. The statute in question was about preventing federal marshals from collecting unreasonable travel fees. *Id.* at 1448. It was not intended to prevent prolonged interrogation, but the Supreme Court, under its “supervisory power,” created a judicial rule nonetheless. *Id.*

202. See Note, *supra* note 2, at 451 (“[T]he roots of *McNabb* and *Mallory* run no deeper than the supervisory powers of the Supreme Court and that the case’s holding embodies only a rule of evidence subject to congressional control and is not a constitutional safeguard beyond the scope of legislative control.”); Stephan, *supra* note 1, at 207 (“The *McNabb* and *Mallory* holdings were not based on constitutional principles, but rather they were an interpretation of Rule (5)(a) of the Federal Rules of Criminal Procedure.”).

203. Beale, *supra* note 195, at 1484.

204. See Stephan, *supra* note 1, at 194 (stating that modifying *McNabb-Mallory* is within the power of the legislature because *McNabb-Mallory* is not based on constitutional principles).

205. Beale argues that the Court has no such supervisory power: “Supervisory power as such does not exist. The supervisory power label has been used to describe the exercise of several different forms of judicial power. Use of the term supervisory power has diverted attention from the nature, source, and limits of the authority being exercised in each case.” Beale, *supra* note 195, at 1520.

206. Stephan, *supra* note 1, at 193 (stating Congress viewed the increased occurrence of “violent crime” as a result of several Supreme Court decisions, including *Mallory*).

207. 348 F.2d 72 (D.C. Cir. 1965).

208. S. REP. NO. 90-1097, at 38 (1968).

was first developed. In turn, by the majority holding that Congress has not overruled this line of cases but has only limited them, it can be argued that the Court is seeking to assert judicial control against congressional intrusion. However, because the *McNabb-Mallory* rule is not based on the Constitution, Congress has every right—as it should—to consider what society needs and to make laws accordingly.

Under this view, the policy implications of *Corley* may be larger than what appears on its face. In a roundabout way, the Court has now said that it can maintain its supervisory power, so long as the Court can find a possible interpretation of a statute that fits their view, regardless of what Congress intended when they enacted the statute.²⁰⁹ The dissent, however, used careful analysis of the legislative history and statutory construction to arrive at a conclusion that does not overstep the boundaries set by Congress in section 3501. The dissenting opinion, therefore, should be adopted because it uses judicial restraint and respects the distinction between when the Court has the authority to enact rules and when it must follow the intentions of Congress.

2. *Judicial Autonomy and Discretion*

The previous subsection argues that Congress recognized that application of *Mallory* was impracticable and created numerous barriers to convicting known guilty suspects.²¹⁰ The *Alston* case²¹¹ is a good example of the problems that arose under *McNabb-Mallory*. When Congress sought to overrule *Mallory*, Congress intended to restore the voluntariness test, which would create much needed judicial autonomy so that trial judges could admit a confession by examining the totality of the circumstances in which it was made.

In *United States v. Gaines*²¹² the Seventh Circuit recognized the importance of interpreting subsection (c) to promote judicial autonomy and discretion: “We think it clear that a district court judge retains discretion to exclude a confession where there is a delay in excess of

209. It should be noted that the premise of this argument rests upon legislative intent. This author is of the view that the legislative intent is rather clear as to how 18 U.S.C. § 3501 should be interpreted. However, there are scholars that would argue the majority’s interpretation of 18 U.S.C. § 3501 is what the legislature intended. See Frank, *supra* note 60.

210. See S. REP. NO. 90-1097, at 38 (1968).

211. 348 F.2d 72 (D.C. Cir. 1965) (holding that a five minute delay between arrest and arraignment was an unreasonable delay, resulting in suppressed confession). *Alston* demonstrates why Congress adopted subsection (c): if a court could consider a five-minute delay “unreasonable,” then subsection (c) would eliminate the risk of a future judge making the same determination “solely because of delay.” See S. REP. NO. 90-1097, at 38 (1968).

212. 555 F.2d 618 (7th Cir. 1977).

six hours.”²¹³ The court then discussed the importance of including factors like police deterrence, judicial integrity, and whether admitting confessions after six hours would encourage violations of the Fourth Amendment.²¹⁴ Under the *Corley* Court’s view, a trial judge cannot even take these factors into account because the judge is forced to exclude a confession that was made more than six hours after arrest, even though it was completely voluntary. However, in many cases judicial integrity and societal interest demand that the confession be admitted, and arguments like police deterrence may not be relevant.

*United States v. Keeble*²¹⁵ also supports the argument that subsection (c) has been designed to promote judicial autonomy and discretion. In *Keeble*, the court discusses how subsection (c) “complements subsections (a) and (b), and does not say that a delay of more than six hours makes the confession automatically inadmissible.”²¹⁶ The *Keeble* court concludes that a court may consider the delay between arrest and arraignment and still find that a confession was voluntary under subsection (b) and is thus admissible under subsection (a).²¹⁷ Consequently, a court does need to consider the delay period, but has the freedom to make a true determination of voluntariness that will promote judicial integrity, Fourth Amendment values, and societal interests in dealing with crime.

Furthermore, *United States v. Halbert*²¹⁸ says that subsection (b) was designed to “instruct the trial judge to consider delay in arraignment in determining the voluntariness of a confession *but leaves him with a great deal of discretion on what to make of it.*”²¹⁹ Subsection (b) demonstrates that Congress intended for trial judges to have a good amount of latitude to make judicial determinations: Congress wanted the trial courts to be more autonomous to serve the interests of justice. The *Corley* Court’s view of subsection (c) only grants judicial autonomy during a six hour window. This is not what Congress had in mind.²²⁰ Instead, *Halbert* correctly states that if a confession is otherwise voluntary, subsection (c) “merely removes some of the discretion given to the trial judge”²²¹ under subsection (b) by mandating that the

213. *Id.* at 623.

214. *Id.*

215. 459 F.2d 757 (8th Cir. 1972).

216. *Id.* at 761.

217. *Id.*

218. 436 F.2d 1226 (9th Cir. 1970).

219. *Id.* at 1234 (emphasis added).

220. Outside the six hour safe harbor, Congress wanted the trial judge to be able to determine whether a confession was voluntary by taking into account all of the circumstances surrounding that confession. Gandara, *supra* note 98, at 311.

221. *Halbert*, 436 F.2d at 1234.

trial judge cannot exclude a confession solely because of delay if the confession is given within six hours after the arrest.²²²

Other legal authorities touch on the importance of judicial discretion in allowing voluntary confessions to be admissible. The Michigan Supreme Court moved away from the *McNabb-Mallory* rule and adopted a balancing test, where the trial court would consider several factors to determine if a confession is voluntary and should be admissible.²²³ Under this test, a trial judge would consider, among other things, age, education, intelligence, previous police experience, length of questioning, unnecessary presentation delay, and intoxication.²²⁴

It has also been suggested that a voluntariness test enables a judge to examine the “attendant circumstances” to see if the confession resulted from “pressures having overborne the will of the defendant.”²²⁵ To see if the suspect’s will has been overborne, the “‘circumstances of pressure’ must be weighed against the ‘power of resistance of the person confessing.’”²²⁶ The court in *United States v. Clarke*²²⁷ has also stated that the “underlying concern of § 3501 is to ensure that a suspect’s will is not overborne when making a confession.”²²⁸ Congress intended to abrogate the *McNabb-Mallory* rule to determine voluntariness, but in doing so a suspect still has Fifth and Fourteenth Amendment rights.²²⁹ Thus, by adopting the dissent’s view, the Court would stay true to the legislative intent and be able to use Michigan’s balancing test²³⁰ to ensure that will of the defendant is not overborne.²³¹ This is a superior view because it may result in a greater number of truly guilty suspects being convicted, while still ensuring that no protected rights have been infringed.

222. 18 U.S.C. § 3501(c) (2006). While Congress wanted to promote judicial discretion and allowing courts to take into account all circumstances surrounding the confession, Congress also wanted to stop the police practices in cases like *Alston*. See *supra* note 213 and accompanying text. But see *United States v. Perez*, 733 F.2d 1026 (2d Cir. 1984) (rejecting the view that subsection (c) “merely removes” some discretion and taking the view of *Corley*, removing judicial discretion outside of six hours).

223. Walton, *supra* note 149, at 1301–02.

224. *Id.* at 1302.

225. Sundberg, *supra* note 149, at 1164.

226. *Id.* at 1164 n.27 (citing *Stein v. New York*, 346 U.S. 156, 184–85 (1953)).

227. 110 F.3d 612 (8th Cir. 1997).

228. *Id.* at 615.

229. See discussion *supra* section III.C.

230. See Walton, *supra* note 149, at 1302.

231. But see Meredith J. Rund, *Breathing Life into the “Working Arrangement” Rule: Maintaining a Federal Deterrent in Joint Federal-State Law Enforcement Operations*, 66 UMKC L. REV. 496 (arguing that the six hour time limit of subsection (c) was meant to exclude any confession obtained outside of that time limit, and thus *Clarke* was wrongly decided). However, Rund does not delve into the policy implications that make the holding in *Clarke* a better view.

Finally, there is a need for trial judges to be able to account for harmless error and not operate under rules that are needlessly strict. Prior to the enactment of 18 U.S.C. § 3501, the American Law Institute was already promulgating a similar code section.²³² Researcher Jeffery C. Munnell indicates that this provision, like subsection (c), had a safe harbor where police could interrogate without violating prompt presentation requirements.²³³ However, Munnell argues that a confession obtained after the time limit would not require “absolute exclusion.”²³⁴ Munnell recognizes that many times violations are the result of “harmless error,” and the confession would be otherwise voluntary.²³⁵ Munnell’s view proves persuasive. Many times the reason for the presentation delay is the result of “harmless error.” In those circumstances, the trial judge should be free to use judicial discretion to arrive at a conclusion that furthers the spirit of section 3501. In sum, section 3501 was not intended to be needlessly strict, thereby hindering the convictions of obviously guilty parties.

Under the dissent’s view, the courts are free to balance numerous factors (presentation delay among them) to accurately determine if a confession is voluntary, which may result in more convictions of guilty suspects. Many courts have been in favor of a pure voluntariness standard—not a reasonable delay standard—for admitting confessions.²³⁶ Also, nearly every state has refused to adopt the *McNabb-Mallory* rule and instead maintains a voluntariness test when it comes to confessions.²³⁷ In doing so, “the determination of voluntariness, and thus the admissibility of a confession, is left entirely to the discretion of the trial judge.”²³⁸ As the following section demonstrates, this judicial discretion is critical to preserve judicial integrity and not allow an obviously guilty defendant to walk free because of harmless error.

3. *Judicial Integrity and Technicalities*

During the Senate debates on 18 U.S.C. § 3501, Senator McClellan made a direct argument for the passages of Title II of the Omnibus Crime Control and Safe Streets Act. He stated, “Supreme Court deci-

232. Munnell, *supra* note 32, at 335–38.

233. *Id.* at 337.

234. *Id.* at 338.

235. *Id.* at 338–39.

236. See John E. Betts, *Criminal Procedure—Exclusionary Rule—Evidence Obtained From Defendant During Period of Unnecessary Delay in Presenting Him Before a Judicial Officer Subject to Exclusion under M.D.R. 723(a)*. Johnson v. State, 282 Md. 314, 384 A.2d 709 (1978), 8 U. BALT. L. REV. 562, 562 (1979).

237. *Id.* The only states that have adopted a per se rule excluding confessions solely because of delay are Delaware, Maryland, Montana, and Pennsylvania. Sundberg, *supra* note 149, at 1988.

238. Gandara, *supra* note 98, at 310.

sions in the field of criminal procedure were wrecking the morale and effectiveness of American law enforcement and destroying the faith of citizens in the ability of their governments to protect them from crime.”²³⁹ Senator McClellan went on to argue that without the congressional intervention of section 3501, the courts would continue to “free the ‘obviously guilty’ on ‘dubious and minor technicalities.’”²⁴⁰ After reading Senator McClellan’s remarks, one has a sense that members of Congress were outraged by the thought of guilty people going free merely because of unreasonable presentation delay, even if they were not coerced into confessing to the crime.

To begin, there are two purposes behind the exclusionary rule: (1) deterrence—to keep law enforcement officials from engaging in illegal practices; and (2) protecting the basic rights of the public by ensuring that a person will not be convicted based upon evidence obtained in violation of his or her basic rights.²⁴¹ *McNabb* and *Mallory* were based on these two purposes.²⁴² However, the *Miranda* rules have rendered these reasons irrelevant.²⁴³ Thus, while an exclusionary rule based on presentation delay once served a purpose, many courts believe that the reasons for the *McNabb-Mallory* rule “have been eliminated by constitutional development[s] . . . and accordingly have moved back again toward the issue of voluntariness in determining the admissibility of a confession.”²⁴⁴ Because the reasons for the unreasonable delay rule have been virtually eliminated by *Miranda*, courts are now forced under *Corley* to suppress voluntary confessions that fail to meet needlessly strict technical requirements. The purpose of 18 U.S.C. §3501 is to convict more obviously guilty suspects, but the Court’s holding thwarts that purpose.

The problem with such a technical requirement is that circumstances beyond an officer’s or prosecutor’s control may result in suppression of a confession. For example, if a judicial officer is unavailable due to other pressing judicial business or the time of day, an arraignment may not occur within six hours.²⁴⁵ Or, the delay could be the result of “immediate medical attention” needed for either the arrestee or the arresting officer.²⁴⁶ As the Government argues in

239. Thornton Robinson, *Police Interrogation of Suspects: The Court Versus the Congress*, 57 CAL. L. REV. 740, 757 (1969).

240. *Id.*

241. Munnell, *supra* note 32, at 332.

242. *Id.*

243. *Id.* Another reason for the *McNabb-Mallory* rule was to prevent “third degree” tactics, which have declined dramatically since the time of *McNabb*. *Id.*

244. Walton, *supra* note 149, at 1304.

245. Carol J. Young, *Criminal Procedure: Statements Made During a Prearrest Delay That Exceeds Six Hours Ruled Inadmissible in Pennsylvania*, 23 VILL. L. REV. 366, 379 (1978). This issue can be especially problematic in rural areas. *Id.*

246. Brief for the United States, *supra* note 112, at 19.

Corley, these types of situations do not fit into the statutory framework of subsection (c) and must be suppressed under the holding in *Corley*.²⁴⁷ This narrow construction, therefore, is damaging to judicial integrity because it serves no beneficial function at "great societal cost."²⁴⁸

Moreover, the court in *United States v. Halbert*²⁴⁹ was also concerned with the technical problems that could arise under a narrow interpretation of subsection (c). Citing legislative history, the court noted that "crime will not be effectively abated so long as criminals who have voluntarily confessed their crimes are released on mere technicalities."²⁵⁰ The court also noted that Title II "would restore the test for admissibility of confession in criminal cases to that time-tested and well-founded standard of voluntariness. *It would avoid the inflexible rule of excluding such statements solely on technical grounds such as delay.*"²⁵¹ *Halbert* recognizes that, particularly to the victim, justice is not served when the court cannot punish his assailant due to police delaying presentation before a magistrate, and especially where there is no hint of coercion in eliciting the assailant's confession. Congress recognized this politically abhorrent situation and as a result eliminated the inflexible *McNabb-Mallory* rule because it was not promoting the justice that society and victims deserved.

The problems of the Court's decision in *Corley* can be seen in the preceding cases that suppressed confessions obtained more than six hours after arrest. In *Perez*, for example, the defendants were indicted for conspiracy to distribute, and possession with intent to distribute, heroin.²⁵² Because they confessed after the six hour mark, their confessions were suppressed.²⁵³ The obviously guilty parties were freed because of this technicality.²⁵⁴ In *United States v. Robinson*²⁵⁵ a defendant convicted of second-degree murder had his conviction overturned on appeal, in part because he made incriminating statements more than six hours after his arrest. Also, if *United States v. Manuel*²⁵⁶ had been decided today, the confession of a second-degree murderer would have to be suppressed because it occurred eighteen hours after the arrest.

What the Court has done is to provide a legal loop hole through which defendants, who are guilty and who have voluntarily confessed,

247. *Id.* at 20.

248. *Id.* at 17.

249. 436 F.2d 1226 (9th Cir. 1970).

250. *Id.* at 1236 n.6.

251. *Id.* at 1236 (emphasis added).

252. *United States v. Perez*, 733 F.2d 1026 (2d Cir. 1984).

253. *Id.* at 1036.

254. *Id.* at 1035.

255. 439 F.2d 553 (D.C. Cir. 1970).

256. 706 F.2d 908 (9th Cir. 1983).

readily jump to avoid conviction on the basis of a mere technicality. If the defendant has the patience to wait six hours and one minute, they can confess to the crime, and it cannot be used against them. Though a conviction can still be had based on other evidence, societal interests in truth and justice should not be made to suffer. Defendants should not be allowed to have their voluntary confessions suppressed because of a technicality in the amount of time it takes busy police officers to present them for arraignment.

IV. CONCLUSION

Congress enacted 18 U.S.C. § 3501 to respond to what it saw as a growing problem—too many obviously guilty defendants being acquitted. Congress viewed a main source of the problem to be rooted in the confession rules adopted by the Court in the *McNabb-Mallory* line of cases. The legislative intent clearly demonstrates that Congress meant to abrogate the *McNabb-Mallory* rule and restore a voluntariness test. Admittedly, Congress created confusion when it enacted subsection (c) of section 3501. Though the Supreme Court has now held in *Corley* that Congress only intended to limit the *McNabb-Mallory* rule, this decision fails to follow the intent of Congress and has the potential of creating a greater burden than the *McNabb-Mallory* rule itself imposed.

By failing to carry out the full legislative purpose behind section 3501, the Court has put itself in a position to overrule acts of Congress that are within the powers of Congress to enact. In doing so, the Court has also stripped trial judges of their judicial integrity and discretion. Now obviously guilty defendants have a real chance at being acquitted on the basis of a technicality or harmless error. Judges can no longer view the totality of the circumstances to promote the interests of societal justice and public demands for more effective law enforcement. Safer streets and more effective law enforcement were Congress' purposes in adopting section 3501. However, the Court has disregarded these purposes, potentially setting back crime control efforts to the years prior to Title II of the Omnibus Crime Control and Safe Streets Act of 1968. Therefore, while the Court should re-examine this decision and adopt the dissent's view, a better solution is for Congress to amend 18 U.S.C. § 3501 to clearly restore the voluntariness test that was originally intended and overrule *Corley v. United States*.

