Then we are troubled very frequently with borderline cases. For example, I had one case where confession was made after three-quarters of an hour, after a person was brought to police headquarters. In that case I held that was not an unnecessary delay. The court of appeals sustained me. Other cases where the delay might have been just a little longer, the confession has been held inadmissible.

I venture to suggest that so far as substantial justice is concerned, or abstract justice is concerned, the question as to whether a person was brought before a magistrate within an hour or 3 or 4 or 5 or 6 hours—that question has no bearing on the question of substantial and abstract justice, so long as the confession or statement is voluntary.

Now, of course, in determining whether or not a statement or a confession is voluntary, if the defendant has been held incommunicado all the time, that matter may be considered in determining whether the confession is voluntary. But mere delay I venture to urge should not be considered to be in and of itself sufficient to exclude a confession.

As I said a moment ago, if I may repeat, the requirements of substantial justice do not require it. As a matter of fact, substantial justice is at times defeated by the rule.

Now, title I of the pending bill, H.R. 7525, I venture to suggest adequately deals with the matter. Subsection (a) would do away with the rule promulgated in the *Mallory* case that delay alone in bringing a person before a committing magistrate may—is sufficient to exclude a confession made during the period of delay.

However, the defendant is safeguarded and protected by subsection (b) which provides that no statement made by any person during an interrogation by a law enforcement officer while such person is in custody shall be admissible unless he has been previously warned as to his rights.

As a matter of fact, a warning as to a person's rights has never been—has frequently been given by police officers, but was never required by law. This would add an additional safeguard to defendants by requiring such a warning.

Subsection (a) I think would be a step in the direction of progress in the enforcement of criminal law.

I very often like to refer to a statement made by Justice Cardoza in the leading case of Snyder against Massachusetts. He said in his inimitable manner, "Justice, though due to the accused, is due to the accuser also."

The CHAIRMAN. Thank you very much, Judge. I certainly appreciate your appearance before me this morning.

May I ask you just one question, because I think I understand you clearly. That is, whether title I, H.R. 7525 (secs. 101 (a) and (b), in your considered judgment would stand a constitutional test.

Judge HOLTZOFF. Oh, yes, in my opinion. May I add this observation. This bill is an omnibus bill, and it is possible that some parts of it will not appeal to some and others will.

Now, title I can be separated from the rest of the bill and enacted as a separate measure. I feel strongly that it is constitutional.

The CHAIRMAN. Thank you very much, Judge.

Judge HOLTZOFF. Thank you for your courtesy, Mr. Chairman.

The CHAIRMAN. The next witness will be Prof. Fred E. Inbau, Criminal Law Department, Northwestern University School of Law,