

all of the story the officer goes to his typewriter and types out his recollection of the confession plus any view of his own. Usually he begins the typewriter version with language to the effect that the accused was advised of his rights. However, in many such instances the officer does not spell out just what those rights are. The typewritten version is then presented to the defendant for him to sign, which he does in 90 percent of the cases without bothering to read it. In many cases, he cannot read so he has to rely upon what the officer tells him is in the typewritten version.

In other situations the defendant is told he doesn't have to make a statement "but it will be better for you if you do or the sooner you do, the sooner you can get out on bail, or if you cooperate I will see that you get a bondsman." To the neophyte and uninitiated this is tantamount to saying to him, "You have no other choice." It should also be observed that in many such situations this represents the first time the defendant has been locked in a cell and some of the cell blocks are permeated with stench and foul odors as a result of being inhabited by drunks and unclean persons, and there is an additional factor of, in many cases, having to be in the same cell with sexual deviates.

The upshot is that in many instances, as a practical matter, being advised of one's rights by a police officer, is the same as receiving no advice because of the manner in which the advice is given. However, when these same cases are brought into court and a motion is made to suppress the confession, it amounts to a contest of credibility between the testimony of the defendant as to the involuntariness of the confession, because of the manner in which it was obtained, and the testimony of the officer, who, by virtue of his status, is presumed to give credible testimony, and, further, can furnish ample corroborative testimony from fellow officers.

A good example of this is *U.S. v. Mitchell*, 332 U.S. 65 (1944). In that case, it will be recalled, Mitchell was indicted for housebreaking and larceny, for which he was tried in the U.S. District Court for the District of Columbia. At the trial a motion was made to suppress Mitchell's oral confessions and certain stolen property which had been recovered from his home. The facts disclosed that Mitchell made the oral confession shortly after being arrested and gave his consent for the search of his home. Subsequently, Mitchell was held for a period of some 8 days before being taken before a committing magistrate. The trial court denied the motion. On appeal, the U.S. Court of Appeals of the District of Columbia reversed on the basis of *McNabb v. U.S.*, 318 U.S. 332 (1943). The Supreme Court, on writ of certiorari to said U.S. Court of Appeals for the District of Columbia reversed on the ground that the *McNabb* doctrine was inapplicable because the extended period of detention occurred after the confession and the consent to search the premises. Incidentally, in passing, it is interesting to note that the ostensible purpose of the detention was to give Mitchell the opportunity to cooperate with the officers in solving about 30 other cases of housebreaking. This gives one cause to wonder whether, in fact, such cooperation was voluntary on Mitchell's part. In any event, it would make little difference because it would be his word against that of the officers.

Moreover, title I, and particularly section 101(b) does not provide a mechanism for fully protecting the defendant. It merely states that prior to interrogation by law-enforcement officers the arrested person is advised that he does not have to make a statement and that any statement made may be used against him. It is submitted that this proscription does not provide ample protection for the accused.

It does not comport with his full constitutional rights. In the first place, it fails to set a standard relative to who should do the advising and what their qualifications should be; the manner in which such advice is given or any requirements that there be some criteria for indicating or determining that the accused person had some, or better still, substantial awareness, of the significance of such advice. A mere bare statement, oftentimes incoherently mumbled, is insufficient. In addition, this admonition does not spell out or provide for one's full rights, such as his right to counsel, which is quite important. I think he should be told not only the fact that he does not have to make a statement and that any statement that he makes could be used against him, but he should also be fully advised of his right to consult with counsel prior to making any statement. This, the act, does not do.

Title I could only lead to wholesale dragnet arrests, without any scintilla of probable cause, in contravention of the dictates of the fourth amendment to the Constitution. There could be arrests solely for the purpose of exacting a con-