opportunity to concern myself with this issue as project director of the American Bar Foundation's survey of the administration of criminal justice in the United States, and as a member of the Advisory Committee on the Federal Rules of Criminal Procedure. The views which I express in this letter, however, are not those of either of these groups but are my own individual views.

Title I is designed to repeal the so-called *Mallory* rule. In the very recent case of *United States ex rel. Williams* v. *Fay* decided on October 4, 1963, Chief Judge Lumbard of the Second Circuit Court of Appeals made a statement which seems to me very relevant to the issue raised by title I. In his opinion he referred to the problem of police interrogation and said in part:

Cases such as this raise a very serious question, whether the States are powerless to make the kind of inquiry which will bring to justice those who rob at night and murder their victims leaving no witness who can identify them. As a judge who must pass upon these cases where Federal court intervention is sought, I cannot concur without pointing out that the courts have been left to make rules and apply constitutional standards with little, if any, real knowledge or guidance regarding the difficulties which face the police in solving such crimes in our crowded metropolitan centers. *Moreover, Congress and the legislatures have failed to make appropriate inquiry and statutory provision to meet the situation.* [Emphasis added.]

It seems to me that Judge Lumbard is right when he says that courts have had to act without sufficient knowledge or guidance regarding most enforcement practices and problems. I believe he is also right when he says that the Congress has failed to make appropriate inquiry and statutory provision to meet the situation. Certainly title I does not meet this need. All it does is to repeal the sanction which is the exclusion of evidence obtained during a period of illegal detention. The vital question is left unanswered. This is the question of when a law enforcement agency may properly detain a person, following a lawful arrest, for the purpose of conducting an in-custody interrogation or other in-custody investigation designed to produce facts which will make it feasible to either charge the suspect or to release him from custody. This is an extremely complex and an extremely important issue. Its difficulty makes it understandable why the Congress might want to avoid the issue by merely providing that a confession is not inadmissible merely because of a failure to bring the suspect before the Commissioner without unnecessary delay. However, the difficulty of the task does not, in my judgment, justify the failure to deal with the issue.

Law enforcement agencies cannot avoid the responsibility of deciding whether to detain or not to detain suspects. The question is whether they will have to continue to do this without adequate guidance from the Congress. Congressional dissatisfaction with the *Mallory* rule, evidenced by the passage of title I of H.R. 7525, is in fact dissatisfaction not only with the exclusion of evidence, but more importantly with the requirement that a suspect be brought before the Commissioner without unnecessary delay. Treating the symptom, which is the exclusion of the evidence, will have no effect whatsoever on the basic and important question of when detention for purposes of in-custody investigation following a lawful arrest is proper and when it is improper.

Passage of title I of H.R. 7525 will make it possible for police to act illegally without jeopardizing the conviction of the suspect. Certainly this is not a happy situation for anyone, most of all for law enforcement agencies who ought not to be content with a situation in which they are required to act illegally in order to maintain the level of enforcement demanded by the community. If in-custody interrogation is necessary (and I might say parenthetically that I believe it is both proper and necessary), it ought to be sanctioned by legislation spelling out when a suspect may be detained for the purpose of in-custody investigation. Congress has the facilities to make the kind of thorough investigation necessary to enable legislation to be drafted which will adequately deal with this issue.

In brief, I would oppose title I of H.R. 7525 because I do not think it deals adequately with the problem. It continues what seems to me to be the history of legislative default in regard to some of the basic questions facing law enforcement agencies today.

Title III of H.R. 7525 does attempt to deal more directly with the problem of detention for investigation prior to arrest (title I having dealt with detention following arrest). Title III does at least try to indicate the circumstances in which it is proper to detain a person and sets a limit on the period of detention. There is also an effort made to prevent the suspect from having an arrest record if he is released following the investigation.