

must make it so that the poor man will have as nearly as possible an equal opportunity in litigating as the rich man, and under present conditions, ashamed as we may be of it, this is not the fact."

We therefore believe that if interrogations are to be permitted of persons while they are in the custody of police officers, provision should be made for representation by counsel, and for those who are indigent, that counsel be appointed on their behalf.

With representation by counsel, Mr. Katzenbach's fourth proposal, we believe would be best modified to eliminate the need for the presence of a "responsible witness" to observe the questioning. A verbatim transcript of the interrogation would constitute the best record of the proceeding.

In conclusion, the National Capital Area Civil Liberties Union restates its belief that H.R. 7525, fails utterly to deal with the complex problem of crime in Washington. We believe that the enactment of the bill will serve no purpose other than to hobble the fair administrations of justice. We therefore urge that it be rejected.

Respectfully yours,

DAVID CARLINER, *Chairman.*

SHER, OPPENHEIMER & HARRIS,
Washington, D.C., November 19, 1963.

Mr. CHESTER H. SMITH,
Staff Director, Senate District Committee,
Senate Office Building, Washington, D.C.

DEAR MR. SMITH: This letter is in reply to Senator Bible's November 8, 1963, letter, with enclosures, requesting my comments upon the Department of Justice proposal to revise the *Mallory* rule as embodied in H.R. 5726.

As the transcript of my testimony at the hearing on H.R. 5725 shows, I appeared as a witness for the National Capital Area Civil Liberties Union. That organization intends to submit a single reply to Senator Bible's invitation to comment further on the record, and therefore I do not believe I should comment separately, except to say this:

The protective features proposed by the Department of Justice and written into H.R. 5726 deal only with the rights of a potential criminal accused who is arrested and questioned before his preliminary hearing. They provide no solution to the other great evil which criminal rule 5A and *Mallory* were intended to eliminate, namely, the loss of basic liberty involved in an arrest and detention which has no judicial approval. This is the same loss of liberty which makes investigative arrests unconstitutional because there can be no judicial finding of probable cause prior to the preliminary hearing.

For this reason alone I would oppose H.R. 5726. At any rate, I respectfully suggest that it is far too complex and important a proposal to be recommended for passage without a fuller hearing on its own terms.

Thank you very much for the opportunity to submit these comments.

Sincerely,

JAMES H. HELLER,
Secretary, National Capital Area Civil Liberties Union.

OFFICE OF THE SUPERINTENDENT OF POLICE,
Chicago, November 13, 1963.

HON. ALAN BIBLE,
Chairman, Committee on the District of Columbia,
U.S. Senate, Washington, D.C.

DEAR SENATOR BIBLE: Thank you for again permitting me to comment upon proposed legislation pending before the U.S. Senate Committee on the District of Columbia pertaining to the *Mallory* rule.

It is my firm belief that there should be no exclusionary rule on confessions so long as they are voluntarily obtained.

I have no objection to a requirement that an accused be advised that he is not required to make a statement and that any statement made by him may be used against him. I think that a failure to so advise an accused should be considered with other evidence bearing upon the voluntariness or involuntariness of the confession but that such failure alone should not operate automatically to exclude an otherwise valid confession.