

forcement officer" in the middle of the night for the purpose of having him witness an interrogation presents real difficulties. Such a witness would be subject to rigorous cross-examination by defense counsel, to which no citizen seeking to perform a public duty should be subjected.

It seems to me that upon proper instructions the jury is the best instrumentality for passing on the voluntariness of confessions or admissions. In my experience, in this jurisdiction, if there is factual issue as to the voluntariness of the confession, it must be submitted to the jury for the jury's determination.

I would make this additional comment on section 4 of H.R. 5726. In the recent *Killough* case, 315 F. 2d 244, where our court of appeals was sharply divided, Judge Youngdahl, the trial judge, did make findings of fact, 193 F.S. 905, with reference to Killough's second confession to the police after he (Killough) had been judicially warned. Judge Youngdahl was in the best position to observe the witnesses on whose testimony he made these findings of fact, nevertheless, his determinations were overruled by the majority of the appellate court. (See dissenting opinion of Judge Danaher at p. 324 of 114 U.S. App. D.C.)

If section 4 of H.R. 5726 which requires the trial judge to make findings is adopted, I would recommend that "such findings when predicated upon substantial evidence shall be deemed conclusive" be added.

Respectfully submitted.

OLIVER GASCH.

NORTHWESTERN UNIVERSITY,
SCHOOL OF LAW,
Chicago, Ill., November 21, 1963.

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

DEAR SENATOR BIBLE: I greatly appreciate the opportunity you have given me in your letter of November 8, to comment upon the testimony given before your committee on Tuesday, November 5. Attached hereto is my statement, in triplicate, regarding the testimony of November 5, and also outlining briefly my overall views regarding title I and title III of H.R. 7525.

Since some of my views regarding the necessity for the police interrogation of criminal suspects have been set forth more fully in a recent book of mine, I am forwarding a copy thereof to you under separate cover with my compliments. After it has served your present purpose, perhaps you may wish to keep it available for possible committee use on future occasions whenever this issue should again arise.

Trusting that the enclosure may be of interest and value to you and your committee, I am.

Sincerely yours,

FRED E. INBAU,
Professor of Law.

COMMENTS OF PROF. FRED E. INBAU, NORTHWESTERN UNIVERSITY SCHOOL OF LAW

Title I, section 101(a) is, in my opinion, an absolutely necessary law. It would nullify the *McNabb-Mallory* rule which makes it impossible for the police of the District of Columbia to give the people of the District the protection they so badly need from the criminal element in the District. At the same time, section 101(b) will give to arrested persons a protection they do not now have as a matter of law, even though, as a practical matter, the prescribed warning is usually given to the arrestee at some time during his interrogation or before the taking of his confession.

To add anything further to title I, as proposed by Deputy Attorney General Katzenbach and U.S. Attorney Acheson, would make matters worse than they are at the present time, and I say so for the following reasons:

1. It is unrealistic to fix a specific time limitation during which a confession could be lawfully obtained. The time that is reasonable or required in a given case will depend upon the particular factual situation of that case. In some instances a half-hour or 1 hour may be adequate; in others a much longer period would be required. I think it is dangerous to generalize on 6 hours. For one thing, the police may generally assume that they are entitled to 6 hours in all cases, which obviously would be to the detriment of many arrested persons. Also, with a specific time limitation, an over zealous police officer may be induced