confessions even though the police had actually denied the arrestee the right to counsel. See *Crooker* v. *California* 357 U.S. 433 (1958) and *Cicenia* v. *LaGay* 357 U.S. 504 (1958).

The committee's attention is also called to a recent decision of the Supreme Court of Illinois, *People* v. *Escobedo*, 190 N.E. 2d 825 (1963) in which the Illinois Supreme Court said:

"Commonsense dictates that the presence of an accused's attorney would preclude effective police interrogation even though the questioning be fair. The law, of course, protects an accused whose will to confess has been overborne by excluding the use of the confession as evidence against him. It does not follow, however, that he is entitled to have someone present, who under the auspices of giving legal advice, warns and advises him against reacting to his first natural sensations to confess. As long as the questioning is fair, incriminating statements of an accused are not likely to result from any idea that he must answer, that is, as a result of his ignorance of his right against self-incrimination, but are likely to result from his free choice to make them. In any event, it is possible for someone other than his attorney to advise him of his right against self-incrimination and let the accused invoke the right rather than his attorney. The exclusion of a voluntary confession made outside the presence of counsel or the preclusion of effective interrogation by the presence of counsel is a high price to pay for whatever deterrent effect the presence of counsel would have on police abuses."

(A discussion of the issue of the right to counsel at the arrest state of criminal case appears on pp. 167 to 173 of "Criminal Interrogation and Confessions.")

In the light of the case law upon the subject, I do not feel that the committee should concern itself about the right-to-counsel aspect of title I. In my judgment, title I should be held constitutionally valid, and there is some reason for believing that if and when the issue is squarely presented to the Supreme Court, it would hold title I constitutional, although probably in another one of its 5-to-4 decisions.

Title 3, which is essentially the Uniform Arrest Act, is in my judgment, necessary legislation and it is also constitutionally valid. I have reference particularly to subsections a, b, and c of section 301 which, as a practical matter, is of greater importance than section 302.

Just as it is essential that the police have the opportunity to interrogate criminal suspects, it is necessary that they be given the opportunity to detain for a reasonable period of time persons they have reasonable grounds to believe are committing, have committed, or are about to commit a crime in order to identify these persons and inquire of them the reason for their presence in the particular place. The States of Delaware and Rhode Island have similar provisions in their laws and the supreme courts of both of these States have upheld their constitutionality. See *Kavanagh* v. *Stenhouse* 174 A 2d 560 (R.I. 1961), which was appealed to the U.S. Supreme Court, but the appeal was dismissed for want of substantial Federal questions (368 U.S. 516). Also see *Cannon* v. *State* 168 A 2d 108 (Del., 1961). In the light of these two State supreme court decisions and in view of the dismissal of the appeal of one of them by the U.S. Supreme Court, I think the way is clear for Congress to proceed with the enactment of title 3 on the assumption that it is constitutionally valid.

GEORGETOWN UNIVERSITY LAW CENTER,
Washington, D.C., November 27, 1963.

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

DEAR SENATOR BIBLE: Thank you for providing me with the opportunity of commenting on the proposals contained in H.R. 5726 and the testimony of Deputy Attorney General Katzenbach, U.S. Attorney Acheson, and Chief Murray.

In the first place, I do not think that a need for legislation on the subject has been established. After declining in 1962, the crime rate again rose last year. The crime rates in adjoining counties which have no *Mallory* rule also has risen. Chief Murray has not presented any evidence, other than his own opinion, that the *Mallory* rule either has been a factor in the increasing crime rate, or that any substantial number of defendants has escaped conviction because of it. Mr. Katzenbach stated that he did not know of any facts that could be cited which would lead to the conclusion that a substantial number of criminals have evaded punishment (R. 712). Mr. Acheson testified that there has been no substantial