DISTRICT OF COLUMBIA ANTICRIME LEGISLATION—1967

HEARINGS

BEFORE THE

SUBCOMMITTEE ON THE JUDICIARY

OF THE

COMMITTEE ON THE DISTRICT OF COLUMBIA

UNITED STATES SENATE

NINETIETH CONGRESS

FIRST SESSION

ON

S. 1509, S. 1510, S. 1513, S. 1516 H.R. 10783, and related Senate bills

APRIL 20, 21; JULY 24 AND 26, 1967

Printed for the use of the Committee on the District of Columbia

U.S. GOVERNMENT PRINTING OFFICE
80-853 WASHINGTON : 1967

COMMITTEE ON THE DISTRICT OF COLUMBIA

ALAN BIBLE, Nevada, *Chairman*

WAYNE MORSE, Oregon
ROBERT F. KENNEDY, New York
JOSEPH D. TYDINGS, Maryland
WILLIAM B. SPONG, JR., Virginia
WINSTON L. PROUTY, Vermont
PETER H. DOMINICK, Colorado
THRUSTON B. MORTON, Kentucky

CHESTER H. SMITH, *Staff Director*

SUBCOMMITTEE ON THE JUDICIARY

ALAN BIBLE, Nevada, *Chairman*

JOSEPH D. TYDINGS, Maryland
PETER H. DOMINICK, Colorado

CONTENTS

Page

Appendix 309

I. TEXT OF BILLS

S. 481. To authorize the detention of certain persons charged in the District of Columbia with the commission of an offense punishable as a felony, and for other purposes 184

S. 1509. Relating to the use of citations by the Metropolitan Police force of the District of Columbia, in lieu of formal arrest, and for other purposes 3, 174

Memorandum re, prepared by staff of Senate District of Columbia Committee 4

"Summons or Citations," chapter 7, section II of the Report of the President's Commission on Crime in the District of Columbia 5

S. 1510. Relating to the obstruction of the administration of justice in the District of Columbia by threats of force, and for other purposes 5, 175

Memorandum re, prepared by the staff of the Senate District of Columbia Committee 6

S. 1512. Relating to material witnesses in the District of Columbia 176

S. 1513. To establish the Commission on Revision of the Criminal Laws of the District of Columbia 54, 176

"Criminal Code Revision," chapter 7, section VII of the Report of the President's Commission on Crime in the District of Columbia 58

Memorandum re, prepared by the staff of the Senate District of Columbia Committee 53

S. 1516. Authorizing the Commissioners of the District of Columbia to supervise persons released into their custody in accordance with judicial orders issued pursuant to section 3146 or 3148 of title 18, United States Code; to authorize the District of Columbia Bail Agency to provide reports to the Commissioners of the District of Columbia with respect to any person released into the custody of the Commissioners pursuant to section 3146 or 3148 of title 18, United States Code; and for other purposes 71, 177

Memorandum re, prepared by staff of Senate Committee on the District of Columbia 73

Report of the President's Commission on Crime in the District of Columbia, reprinted portion related to section of bill, as follows:

Section 1.—Supervised Release Prior to Trial or After Conviction. 77

Section 2.—Supervised Release of Youth Offenders 96

Section 3.—Federal Prison Industries 97

Section 4.—Pleading Insanity—Escape of Mentally Ill 98

Section 5.—Witness Fees and Travel Allowances 123

S. 1517. Relating to material witnesses in the District of Columbia 179

S. 1518. Relating to the admissibility of evidence, including statements and confessions, in the courts of the District of Columbia 180

S. 1519. Designating robbery in the District of Columbia as a crime of violence 180

S. 1520. To amend section 823 of the act entitled "An act to establish a code of law for the District of Columbia," approved March 3, 1901 (31 Stat. 1323; D.C. Code, sec. 22-1801), relating to burglary 181

S. 1521. Relating to the making of false or fictitious reports of the commission of criminal offenses in the District of Columbia, and for other purposes 181

S. 1522. To amend section 872 of the act entitled "An act to establish a code of law for the District of Columbia," approved March 3, 1901 (D.C. Code, sec. 22-2001) 182

S. 1523. To amend the act of March 3, 1901, as amended, regarding the defense of insanity in the District of Columbia 182

S. 1524. Authorizing arrests without a warrant in the District of Columbia in connection with certain misdemeanors, and for other purposes ..... Page 183
S. 1825. Relating to the sale or loan of certain indecent material to minors in the District of Columbia, and to the admission of such minors to certain motion pictures, shows, and other presentations 183
H.R. 10783. Relating to crime and criminal procedure in the District of Columbia 165
Analysis of 185
Crime legislation summary: A comparison of the sections of H.R. 10783 and related Senate bills 189
Senate bills not covered by 188

II. TESTIMONY

Brewster, Hon. Daniel B., U.S. Senator from the State of Maryland 263
Cecil, William Robert, Assistant to the Director, District of Columbia Bail Agency 304
Duncan, Hon. John B., member, District of Columbia Board of Commissioners 7
Durham, Hugh M., Special Assistant to the Assistant Attorney General 201
Flannery, Thomas, A., counsel, the Committee to Reduce Crime Now of the Metropolitan Washington Board of Trade 294
Freed, Daniel J., Acting Director, Office of Criminal Justice, Department of Justice 28, 58, 123
Friedman, Mrs. Antoinette B., president of the Women's Bar Association of the District of Columbia 260
Gimble, Gilbert, Assistant Corporation Counsel, District of Columbia 56
Hardy, Kenneth L., Director, District of Columbia Department of Corrections 56, 123
Harris, De Long, chairman, Legislative Committee, Washington Bar Association 47, 271
Kneipp, Robert F., Chief Assistant Corporation Counsel, District of Columbia 7, 240
Layton, John B., Chief, District of Columbia Metropolitan Police Department 7, 251
McGee, William H., acting chairman of the Committee To Reduce Crime Now of the Metropolitan Washington Board of Trade 44, 294
Mathe, Brig. Gen. Robert E., District of Columbia Engineer Commissioner 7
Nelson, W. R., Associate Director for Planning Research, District of Columbia Department of Corrections 56
Niles, Robert A., director, District of Columbia Bail Agency 56, 123, 240, 304
Ross, William Warfield, chairman of the National Capital Civil Liberties Union 280
Schuchat, Michael A., representative of the Bar Association of the District of Columbia 276
Tobriner, Hon. Walter N., President, D.C. Board of Commissioners 7, 210
Vinson, Fred M., Jr., Assistant Attorney General, U.S. Department of Justice 201

III. WRITTEN STATEMENTS

Ervin, Hon. Sam J., Jr., U.S. Senator from the State of North Carolina 309
Maryland/District of Columbia/Delaware Broadcasters' Association, Inc., Morris H. Blum, chairman of the legislative committee 482
Schulberg, Hilliard, executive director, Washington, D.C., Retail Liquor Dealers Association, Inc. 473
Taft, Hon. Robert, Jr., U.S. Representative in Congress from the State of Ohio 311
Washington Building Congress 472

IV. MATERIAL SUBMITTED FOR THE RECORD

Alexandria Chamber of Commerce, Alexandria, Va., Robert W. Rotroff, president, letter to Hon. Alan Bible expressing concern for the urgent need of anticrime legislation in the District of Columbia 466

Automotive Trade Association, National Capital Area, Maurice J. Murphy, executive vice president, letter dated February 16, 1967, to Hon. Alan Bible with attached letter to President of United States expressing concern about District of Columbia crime situation ..... Page 464
Business and Professional Women's Club of the District of Columbia, Inc., Maurine H. Abernathy, chairman, Anti-Crime Committee, letter and resolution dated June 19, 1967 470
Capitol Hill Southeast Citizens Association, J. C. Leukhardt, member, executive committee, letter dated March 15, 1967, to Hon. Alan Bible with attached resolution re support for the development of stronger crime control measures 466
Congressional reports:
88th Congress, second session: S. Rept. 1172 "District of Columbia Crime" (H.R. 7525) 319
89th Congress, first session: S. Rept. 600, "Crime and Criminal Procedure in the District of Columbia" (H.R. 5688) 369
89th Congress, second session, Conference Report No. 2295, "Relating to Crime and Criminal Procedure in the District of Columbia" (H.R. 5688) 433
Statement of disapproval of 1966 District of Columbia crime legislation (White House press release, Nov. 13, 1966 315
District of Columbia Court of General Sessions, Joseph M. Burton, clerk, letter dated October 10, 1967, listing number of jury trials held in the court of general sessions, January 1, 1965, through June 30, 1967 504
Details respecting inmates held at District of Columbia jail for periods of from 1 to 4 years, as of April 11, 1967 127
District of Columbia Bail Agency, Robert A. Niles, director, letter dated April 19, 1967, to Hon. Alan Bible, commenting on S. 1516 76
District of Columbia Savings & Loan League, Inc., letter dated February 10, 1967, to Hon. Alan Bible expressing concern with the incidence of crime in the Nation's Capital, with attached letter to President of United States re same 465
Ervin, Hon. Sam J. Jr., chairman, Subcommittee on Constitutional Rights, Senate Committee on the Judiciary, letter dated August 10, 1967, to Hon. Alan Bible re Bail Reform Act of 1966 507
Federation of Citizens Associations of the District of Columbia, report of Law and Legislation Committee: subject, S. 1522 200
Federal Prison Industries, Inc., 1966 Annual Report 141
Hardy, Kenneth L., Director, District of Columbia Department of Corrections, statement presented to the Committee on the Judiciary, U.S. Senate, Subcommittee on Improving the Judicial Machinery, April 13, 1967, re S. 388, a bill to authorize the Attorney General to transfer an inmate of the District of Columbia jail to any other institution under the control and supervision of the Director of the District of Columbia Department of Corrections notwithstanding the pendency of a petition for a writ of habeas corpus with respect to such inmate, and for other purposes 128
Institute of Criminal Law and Procedure, Georgetown University Law Center, Edward De Grazia, legal director, letter dated August 3, 1967, to Hon. Alan Bible, presenting views in connection with title II of H.R. 10783 474
International Association of Fire Fighters, William D. Buck, letter dated March 7, 1967, to Hon. Alan Bible, expressing viewpoints about recommendations of the President's Commission on Law Enforcement and Administration of Justice on the subject of pay scales for policemen and firemen 469
Layton, John B., Chief of Police, Metropolitan Police Department, letter dated June 1, 1967, to Hon. Alan Bible, regarding effect of the enactment of S. 1509 on the release of policemen for crime prevention and detection work 25
Length of time spent at the District of Columbia jail by persons awaiting disposition of criminal charges (chart) 126
Metropolitan Washington Board of Trade, William H. Press, executive vice president, letter dated April 24, 1967, recommending enactment of S. 1512, S. 1516, S. 1517, S. 1519, S. 1520, S. 1521, S. 1522, S. 1523, S. 1524 200

S. 1524. Authorizing arrests without a warrant in the District of Columbia in connection with certain misdemeanors, and for other purposes ..... Page 183
S. 1825. Relating to the sale or loan of certain indecent material to minors in the District of Columbia, and to the admission of such minors to certain motion pictures, shows, and other presentations 183
H.R. 10783. Relating to crime and criminal procedure in the District of Columbia 165
Analysis of 185
Crime legislation summary: A comparison of the sections of H.R. 10783 and related Senate bills 189
Senate bills not covered by 188

II. TESTIMONY

Brewster, Hon. Daniel B., U.S. Senator from the State of Maryland 263
Cecil, William Robert, Assistant to the Director, District of Columbia Bail Agency 301
Duncan, Hon. John B., member, District of Columbia Board of Commissioners 7
Durham, Hugh M., Special Assistant to the Assistant Attorney General 201
Flannery, Thomas, A., counsel, the Committee to Reduce Crime Now of the Metropolitan Washington Board of Trade 291
Freed, Daniel J., Acting Director, Office of Criminal Justice, Department of Justice 28, 58, 123
Friedman, Mrs. Antoinette B., president of the Women's Bar Association of the District of Columbia 260
Gimble, Gilbert, Assistant Corporation Counsel, District of Columbia 56
Hardy, Kenneth L., Director, District of Columbia Department of Corrections 56, 123
Harris, De Long, chairman, Legislative Committee, Washington Bar Association 47, 271
Kneipp, Robert F., Chief Assistant Corporation Counsel, District of Columbia 7, 240
Layton, John B., Chief, District of Columbia Metropolitan Police Department 7, 251
McGee, William H., acting chairman of the Committee To Reduce Crime Now of the Metropolitan Washington Board of Trade 44, 291
Mathe, Brig. Gen. Robert E., District of Columbia Engineer Commissioner 7
Nelson, W. R., Associate Director for Planning Research, District of Columbia Department of Corrections 56
Niles, Robert A., director, District of Columbia Bail Agency 56, 123, 240, 301
Ross, William Warfield, chairman of the National Capital Civil Liberties Union 280
Schuchat, Michael A., representative of the Bar Association of the District of Columbia 276
Tobriner, Hon. Walter N., President, D.C. Board of Commissioners 7, 240
Vinson, Fred M., Jr., Assistant Attorney General, U.S. Department of Justice 201

III. WRITTEN STATEMENTS

Ervin, Hon. Sam J., Jr., U.S. Senator from the State of North Carolina 309
Maryland/District of Columbia/Delaware Broadcasters' Association, Inc., Morris H. Blum, chairman of the legislative committee 482
Schulberg, Hilliard, executive director, Washington, D.C., Retail Liquor Dealers Association, Inc 473
Taft, Hon. Robert, Jr., U.S. Representative in Congress from the State of Ohio 311
Washington Building Congress 472

IV. MATERIAL SUBMITTED FOR THE RECORD

Alexandria Chamber of Commerce, Alexandria, Va., Robert W. Rotroff, president, letter to Hon. Alan Bible expressing concern for the urgent need of anticrime legislation in the District of Columbia 466

Automotive Trade Association, National Capital Area, Maurice J. Murphy, executive vice president, letter dated February 16, 1967, to Hon. Alan Bible with attached letter to President of United States expressing concern about District of Columbia crime situation ..... Page 464
Business and Professional Women's Club of the District of Columbia, Inc., Maurine H. Abernathy, chairman, Anti-Crime Committee, letter and resolution dated June 19, 1967 470
Capitol Hill Southeast Citizens Association, J. C. Leukhardt, member, executive committee, letter dated March 15, 1967, to Hon. Alan Bible with attached resolution re support for the development of stronger crime control measures 466
Congressional reports:
88th Congress, second session: S. Rept. 1172 "District of Columbia Crime" (H.R. 7525) 319
89th Congress, first session: S. Rept. 600, "Crime and Criminal Procedure in the District of Columbia" (H.R. 5688) 369
89th Congress, second session, Conference Report No. 2295, "Relating to Crime and Criminal Procedure in the District of Columbia" (H.R. 5688) 433
Statement of disapproval of 1966 District of Columbia crime legislation (White House press release, Nov. 13, 1966 315
District of Columbia Court of General Sessions, Joseph M. Burton, clerk, letter dated October 10, 1967, listing number of jury trials held in the court of general sessions, January 1, 1965, through June 30, 1967 504
Details respecting inmates held at District of Columbia jail for periods of from 1 to 4 years, as of April 11, 1967 127
District of Columbia Bail Agency, Robert A. Niles, director, letter dated April 19, 1967, to Hon. Alan Bible, commenting on S. 1516 76
District of Columbia Savings & Loan League, Inc., letter dated February 10, 1967, to Hon. Alan Bible expressing concern with the incidence of crime in the Nation's Capital, with attached letter to President of United States re same 465
Ervin, Hon. Sam J. Jr., chairman, Subcommittee on Constitutional Rights, Senate Committee on the Judiciary, letter dated August 10, 1967, to Hon. Alan Bible re Bail Reform Act of 1966 507
Federation of Citizens Associations of the District of Columbia, report of Law and Legislation Committee: subject, S. 1522 200
Federal Prison Industries, Inc., 1966 Annual Report 141
Hardy, Kenneth L., Director, District of Columbia Department of Corrections, statement presented to the Committee on the Judiciary, U.S. Senate, Subcommittee on Improving the Judicial Machinery, April 13, 1967, re S. 388, a bill to authorize the Attorney General to transfer an inmate of the District of Columbia jail to any other institution under the control and supervision of the Director of the District of Columbia Department of Corrections notwithstanding the pendency of a petition for a writ of habeas corpus with respect to such inmate, and for other purposes 128
Institute of Criminal Law and Procedure, Georgetown University Law Center, Edward De Grazia, legal director, letter dated August 3, 1967, to Hon. Alan Bible, presenting views in connection with title II of H.R. 10783 474
International Association of Fire Fighters, William D. Buck, letter dated March 7, 1967, to Hon. Alan Bible, expressing viewpoints about recommendations of the President's Commission on Law Enforcement and Administration of Justice on the subject of pay scales for policemen and firemen 469
Layton, John B., Chief of Police, Metropolitan Police Department, letter dated June 1, 1967, to Hon. Alan Bible, regarding effect of the enactment of S. 1509 on the release of policemen for crime prevention and detection work 25
Length of time spent at the District of Columbia jail by persons awaiting disposition of criminal charges (chart) 126
Metropolitan Washington Board of Trade, William H. Press, executive vice president, letter dated April 24, 1967, recommending enactment of S. 1512, S. 1516, S. 1517, S. 1519, S. 1520, S. 1521, S. 1522, S. 1523, S. 1524 200

Newspaper articles:
Washington Evening Star, article by Ronald Sarro, July 17, 1967, entitled "Durham Rule Being Abused, Two Psychiatrists Assert" -- Page 220
Washington Sunday Star, editorial of July 23, 1967, entitled "Criminal Insanity" -- 219
Owens, David J., M.D., clinical director, John Howard division, St. Elizabeth's Hospital, Washington, D.C., letter dated August 8, 1967, to Hon. Alan Bible, presenting copies of letters sent to Hon. David A. Pine -- 504
Pine, Hon. David A., minority report, reprint of, from the Report of the President's Commission on Crime in the District of Columbia -- 485
Pretrial Preventive Detention: Minority views of Commissioner Wald, joined by Commissioners Krash and Ferguson. (From the report of the President's Commission on Crime in the District of Columbia) -- 511
"Pre-Trial Release Programs—Purposes and Procedures" prepared by District Attorney John A. Nejedly, Contra Costa County, Calif., February 6, 1967 -- 30
Rockville Chamber of Commerce, Rockville, Md., John C. Hickman, president, letter dated March 22, 1967, to Hon. Alan Bible, urging enactment of anticrime legislation for the District of Columbia -- 468
Stop and frisk/search laws of States of New York, New Hampshire, Rhode Island, Delaware, Hawaii, and Massachusetts -- 233
The Association of the Oldest Inhabitants of the District of Columbia, Clifford C. Newell, president, letter dated July 7, 1967, to Hon. Alan Bible, endorsing proposed anticrime legislation for the District of Columbia -- 472
The Bar Association of the District of Columbia, John E. Powell, president, letter dated July 27, 1967, to Hon. Alan Bible, re H.R. 10783, S. 1509 to S. 1524, inclusive -- 461
The Host Club, Lions International, Frank J. Binks, executive secretary, letter dated March 13, 1967, to Hon. Alan Bible, with attached resolution with regard to crime in Washington, D.C -- 467
The Retail Bureau of the Metropolitan Washington Board of Trade, Arthur T. Lyon, chairman, letter dated February 14, 1967, to Hon. Alan Bible, in support of crime reduction legislation -- 463
Tobriner, Hon. Walter N., president, District of Columbia Board of Commissioners:
Letter dated April 19, 1967, to Hon. Alan Bible, reporting on S. 1509 -- 22
Letter dated April 19, 1967, to Hon. Alan Bible, reporting on S. 1510 -- 26
Letter dated April 20, 1967, to Hon. Alan Bible, reporting on S. 1513 -- 55
Letter dated April 20, 1967, to Hon. Alan Bible, reporting on S. 1516 -- 75
Letters dated July 20, 1967, to Hon. Alan Bible, reporting on S. 1512, S. 1524 -- 196, 197
Letter dated July 21, 1967, to Hon. Alan Bible, reporting on and recommending amendments to S. 484 -- 266
Letter dated July 24, 1967, to Hon. Alan Bible, reporting on H.R. 10783 -- 190
Letter dated July 26, 1967, to Hon. Alan Bible containing certain statistical data relative to acquittals of criminal offenses by reason of insanity, with attached pages from report of the President's Commission on Crime in the District of Columbia entitled "Experience under the *Durham* rule" -- 242
United States v. *Shapiro*, appeal from the U.S. District Court for the northern district of Indiana, South Bend division -- (*)
U.S. attorney for the District of Columbia, David G. Bress, correspondence to the Committee on the District of Columbia concerning alleged disparity between U.S. attorney and St. Elizabeths Hospital, Washington, D.C., figures on persons found not guilty by reason of insanity -- 502
U.S. Department of Justice, Office of the Deputy Attorney General, Legal Section, Legislative and Legal Section:
Citations, information on use of, in their jurisdictions -- 203
Criminal code revision in other States -- 225
Pretrial release programs: Purposes and procedures. Prepared by District Attorney John A. Nejedly, Contra Costa County, Calif., February 6, 1967 -- 205

*Files of subcommittee.

U.S. Department of Justice, etc.—Continued
Report of State case law on statutes governing instructions to jury on consequence of a verdict of not guilty by reason of insanity.... Page 216
Summons, information on use of, in other jurisdictions..... 203
The Manhattan summons project..... 211
U.S. Department of Justice, Warren Christopher, Deputy Attorney General, letter dated August 10, 1967, to Hon. Alan Bible presenting views of Justice Department on S. 1825..... 483
Washington Board of Realtors, Inc., Wallace B. Agnew, president, letter dated July 25, 1967, to Hon. Alan Bible, expressing concern with the problem of crime in the District of Columbia, with attached "Open Letter to the President—Crime In The District"..... 460
Washington, D.C., Area Trucking Association, A. W. (Andy) Johnson, managing director, letter dated February 10, 1967, to Hon. Alan Bible, expressing support of anticrime legislation..... 465
Washington, D.C., Retail Liquor Dealers Association, Inc., Hilliard Schulberg, executive director, letter dated February 15, 1967, to Hon. Alan Bible, supporting anticrime legislation, with attached letter to President Lyndon Johnson expressing views and recommendations of association on the local crime situation..... 461
Washington General Assembly, Fourth Degree, Knights of Columbus, Leo F. Diegelmann, faithful navigator, letter dated May 3, 1967, to Hon. Alan Bible, containing resolution passed April 21, 1967, re crime.. 470
Women's Bar Association of the District of Columbia, Joyce Capps, president:
Letter dated—April 19, 1967, endorsing S. 1510 and parts of S. 1509.. 198
May 10, 1967, endorsing S. 1517..... 198
May 10, 1967, endorsing S. 1518..... 198
May 10, 1967, endorsing S. 1520..... 199
May 10, 1967, endorsing S. 1521..... 199
May 10, 1967, endorsing S. 1523..... 199
May 10, 1967, endorsing S. 1524..... 199
May 10, 1967, opposing S. 1512..... 199
May 10, 1967, opposing S. 1522..... 200
Proceedings of—
April 20, 1967..... 1
April 21, 1967..... 53
July 24, 1967..... 165
July 26, 1967..... 259

DISTRICT OF COLUMBIA ANTICRIME LEGISLATION—1967

(S. 1509, a Bill To Permit District of Columbia Policemen To Issue Citations for Later Appearance in Lieu of Formal Arrest)

(S. 1510, a Bill To Make It Unlawful To Obstruct, Delay, or Prevent a Criminal Investigation in the District of Columbia Prior to Formal Criminal Court Proceedings)

THURSDAY, APRIL 20, 1967

U.S. SENATE,
SUBCOMMITTEE ON THE JUDICIARY,
OF THE COMMITTEE ON THE DISTRICT OF COLUMBIA,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10:35 a.m., in room 6226, New Senate Office Building, Senator Alan Bible (chairman) presiding.

Present: Senator Bible (presiding), and Senator Dominick.

Also present: Chester H. Smith, staff director; Owen J. Malone, associate counsel; Howard A. Abrahams, assistant counsel; Arlene Williams, assistant clerk; and Richard E. Judd, professional staff member.

The CHAIRMAN. The hearing will come to order.

The hearings we begin today, legislatively speaking, have two basic purposes.

First: To inquire into the legislative recommendations of the President's Commission on Crime in the District of Columbia, and, second, to implement and update testimony on the District of Columbia omnibus crime bill vetoed by the President last fall, and suggested modifications of that bill.

For the benefit of our witnesses and the general public, the committee's ground rules of procedure for these hearings will call for taking testimony first on the legislative recommendations of the Crime Commission. Presently, these recommendations are included in eight bills before this subcommittee, and one, the police private pay increase proposal, before the Fiscal Affairs Subcommittee, which is chaired by the Senator from Virginia.

The seven bills patterned after titles of the District of Columbia omnibus crime bill approved by this committee in the 89th Congress,

will not go to hearing until after the House takes anticipated action on the bill now before the House District Committee. This will give this committee an opportunity to deal thoroughly with the subject matters covered in the different versions supported by both committees.

That statement is rather fluid, dependent largely on what action the House takes. Because, in general, the omnibus crime bill represents seven or eight different areas which have been the subject of hearings over the years by this committee in these areas. And I see very little to be gained by having additional extended hearings on the latter bills. I documented at the time I introduced the pending legislation the many days and weeks and hours that were devoted by this committee and by the conferees administering out the omnibus crime bill and I doubt very much if any single piece of legislation has received greater study by this committee than the crime bill in the 88th and 89th Congresses.

Therefore, today we are here in a conscientious and determined effort to make headway in the difficult area of more effective law enforcement for the District of Columbia.

As I said before the Senate last week in introducing this package of 16 anticrime bills, this Capital City simply cannot tolerate lawlessness at the rate of increase which people here have become increasingly subjected to over recent years. We cannot be permissive about violence. We cannot accept excuses for looting and killing. Those who destroy and kill must be punished under the laws they violate. The punishment must fit the crime, regardless of the announced or underlying purposes of that lawlessness.

Root causes of crime and sociological factors must be met. We hope we can continue to assist in doing this. However, the criminal must be dealt with effectively now. Root causes cannot be stamped out overnight—your life or your neighbor's life can.

Crime in the District reached an alltime record high in 1966, ranking this city second in offenses per 1,000 population among the 16 cities of comparable size around the Nation. Serious crime jumped 15 percent in the District last year compared to 11 percent nationally. Violent crime increased 23 percent in Washington, more than double the national rate.

Meanwhile, crime clearances dropped to 26.3 percent, a 5-percent decline over the 31.8 percent clearance for 1965.

The problem is real, acute, and worsening. Those of us with legislative and executive responsibility over the Nation's Capital must get on with our job of curbing the criminal and his dirty work.

I am delighted that, as usual, I have my very dear friend and colleague from Colorado with me at this hearing this morning. I know of no one who has spent more effort and hours attempting to work on these problems. I certainly do welcome to the committee this morning, Senator Dominick of Colorado.

Senator DOMINICK. Thank you, Mr. Chairman.

I just want to reemphasize what the two of us were saying on the floor the other day. I am sure we were both most disappointed over the President's action in vetoing the crime bill last year on which both of us spent time and the staff, on which the staff did an immense job, just a tremendous job. I would suspect this may be the first time in a

long period of time in which the executive department has superimposed upon itself judicial judgment in deciding what was or was not going to be unconstitutional before the courts determination. I was more than slightly annoyed and disappointed over this action. It does not mean we should not go forward.

I want to congratulate the chairman for starting the hearings as soon as possible and I hope we can get some sort of legislative approach to these problems which you properly said will protect the people as well as have the punishment fit the crime. I am delighted to participate with you on this very important subject.

The CHAIRMAN. Thank you, Senator Dominick.

As I did say on the floor after the omnibus crime bill was vetoed, I thought it was an ill-advised veto in an area where fine men and lawyers had agreed conscientiously in their thinking that the courts should decide. It should have gone before the court for the final ruling and their guidance in this.

Senator DOMINICK. I might say the Supreme Court complicated it again with sex offenders. There has recently been an opinion by the Supreme Court holding the Colorado law unconstitutional which you gave punishment as an indeterminate sentence on the ground the judge himself was holding the hearings and the defendant was not entitled to really cross-examine the witnesses, and so forth.

It has nothing to do with conviction, just sentencing. It will affect 26 States. Apparently all those that have been incarcerated for sex crimes are now going to have them reassessed as far as punishment is concerned. I do not know what they will do in the meanwhile.

The CHAIRMAN. I had not heard of that decision. It does sound alarming. I do not know what the answer is. Certainly there must be some answer to this type of treatment.

We have two bills before us. S. 1509, a bill which permits the District of Columbia policemen to issue citations for later appearance in lieu of formal arrest.

The second bill, S. 1510, making it unlawful to obstruct, delay, or prevent a criminal investigation in the District of Columbia prior to formal criminal court proceedings.

We will at this point in the hearing record insert copies of the bills, S. 1509, and S. 1510, staff memorandums on each bill, and a reprinting of the pertinent portions of the Report of the President's Commission on Crime in the District of Columbia, upon which the items are based.

(The items referred to follow:)

[S. 1509, 90th Cong., first sess.]

A BILL Relating to the use of citations by the Metropolitan Police force of the District of Columbia, in lieu of formal arrest, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 10 of the Act of March 3, 1933 (47 Stat. 1485; D.C. Code, sec. 23-610), is amended by designating the present text as subsection "(a)" and by adding the following new subsections:

"(b) An officer or member of the Metropolitan Police force acting without a warrant who has grounds for arrest authorized by law may, instead of taking him into custody, issue a citation requiring a person to appear before an official of the Metropolitan Police force designated to act as a clerk of the District of Columbia court of general sessions.

"(c) Whenever a person is arrested without a warrant and has been booked and processed pursuant to law, an official of the Metropolitan Police force designated to act as a clerk of the District of Columbia court of general sessions may issue a citation to him for an appearance in court or at some other designated place, and release him from custody.

"(d) The District of Columbia court of general sessions shall prescribe rules specifying the offenses for which and the circumstances under which citations may be issued, as well as rules governing the issuance of and compliance with citations.

"(e) Whoever willfully fails to appear as required in a citation, shall, (1) if cited for a felony be fined not more than $5,000 or imprisoned not more than five years, or both, or (2) if cited for a misdemeanor be fined not more than the maximum provided for such misdemeanor or imprisoned for not more than one year, or both. Prosecution under this subsection shall be by the prosecuting officer responsible for prosecuting the offense for which the citation is issued."

SEC. 2. (a) Section 2 of the Act entitled "An Act to establish the District of Columbia Bail Agency, and for other purposes", approved July 26, 1966 (80 Stat. 327) is amended by striking out section 2 and inserting in lieu thereof the following new section:

"SEC. 2. There is hereby created for the District of Columbia the District of Columbia Bail Agency (hereinafter referred to as the 'Agency') which shall secure pertinent data and provide for any judicial officer in the District of Columbia or any officer or member of the Metropolitan Police force issuing citations, reports containing verified information concerning any individual with respect to whom a bail or citation determination is to be made."

(b) Section 4 of said Act is amended by redesignating subsections "(d)" and "(e)" as "(e)" and "(f)", respectively, and by inserting the following new subsection (d):

"(d) The Agency, when requested by a member or officer of the Metropolitan Police force acting pursuant to court rules governing the issuance of citations in the District of Columbia, shall furnish to such member or officer a report as provided in subsection (a)."

U.S. SENATE,
COMMITTEE ON THE DISTRICT OF COLUMBIA,
April 18, 1967.

MEMORANDUM FOR MEMBERS OF THE JUDICIARY SUBCOMMITTEE

In re S. 1509, relating to the use of citations by the Metropolitan Police force of the District of Columbia, in lieu of formal arrest, and for other purposes.
Date of hearing: Thursday, April 20, 1967, 10:30 a.m.

PURPOSE OF THE BILL

The bill has two purposes:

1. To authorize members of the Metropolitan Police Department, who have lawful grounds for arrest, to release a person, either without formally arresting him or after an arrest without a warrant, by issuing him a citation for later appearance. The citation would be issuable either at the precinct after arrest or on the street wtihout taking the accused into custody. Under the bill, officials of the Police Department would be designated by the judges of the District of Columbia Court of General Sessions to act as clerks of that court, and the court would prescribe rules specifying the offenses for which, and the circumstances under which, the citations may be issued, as well as rules governing the issuance of and compliance wtih such citations. Thus, the procedures would have judicial sanction. The bill prescribes penalties for willful failure to comply with a citation.

Under existing law, the police are required to bring to the precinct for booking all persons arrested, and where collateral or bond is allowed, ot take them to a judicial officer.

The bill is designed to permit policemen to devote a greater portion of their time to the tasks of crime prevention and detection, and less to the feeding, housing, transporting, and attending in court with arrested persons. Also, under the bill accused persons released on citation would no longer suffer the disadvantages flowing from unnecessary incarceration between arrest and bail hearing.

2. The bill would also amend the District of Columbia Bail Agency Act (P.L. 89-519) to authorize that agency to provide members of the Police Department issuing citations verified information concerning persons being considered for release on citation.

Under the present Bail Agency Act, such services of the agency are available to judicial officers only.

This portion of the bill is designed to assist the police in implementing the proposed citation authority.

S. 1503 is an outgrowth of the recommendations of the President's District of Columbia Crime Commission.

OWEN J. MALONE, *Associate Counsel.*

[From the report of the President's Commission on Crime in the District of Columbia, ch. 7, sec. II, pp. 511-512]

SUMMONS OR CITATION

A summons or citation issued in lieu of arrest or detention also achieves the release of some persons charged with crime in the District of Columbia. A summons is a notice to appear for court proceedings and is used in various circumstances in many jurisdictions. It may be issued in at the scene of an offense, as in the case of a traffic ticket; it may also be issued by a policeman at the precinct station after the accused is booked; or it may be issued by the court or the prosecutor in lieu of an arrest warrant under Rules 4 and 9 of the Federal Rules of Criminal Procedure.

In the District of Columbia the police use the summons primarily for traffic offenses. They have not used it in other cases because of doubt as to their statutory authority to do so in the absence of specific legislation. Under existing law they have a duty to bring arrested persons to a committing magistrate,[27] and another statute makes it a misdemeanor not to arrest when a crime is committed in an officer's presence.[28] Prosecutors in the District make substantial use of informal summonses to bring potential defendants and witnesses to the prosecutor's office for conferences, but there is very little use of formal summons in lieu of arrest under the Federal rules. Both the Corporation Counsel and the United States Attorney, however, plan to use the summons increasingly in lieu of arrest under Federal and local rules of procedure.[29]

[From the report of the President's Commission on Crime in the District of Columbia, p. 528, "Summary and Recommendations"]

* * * * * * *

8. Procedures should be developed by the joint efforts of the courts, the Metropolitan Police Department, the United States Attorney, the Corporation Counsel, and the Judicial Conference Committee on Summons to facilitate the release on summons of increased numbers of persons after arrest and prior to presentment before a judicial officer under existing law. If legislative authority is needed, it should be formulated and adopted.

[S. 1510, 90th Cong., first sess.]

A BILL Relating to the obstruction of the administration of justice in the District of Columbia by threats or force, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 802 of the Act of March 3, 1901, establishing a code of law for the District of Columbia (31 Stat. 1330; D.C. Code, sec. 22-703), is amended to read as follows:

"SEC. 802. (a) Whoever corruptly, by threats or force, endeavors to influence, intimate, or impede any juror, witness, or officer in any court in the District in the discharge of his duties, or, by threats or force, in any other way obstructs

---

[27] F.R. Crim. P. 5(a); 4 D.C. Code, § 140 (1961).
[28] 4 D.C. Code, § 143 (1961).
[29] Proceedings, Judicial Conference of the District of Columbia Circuit, May 25, 1966.

or impedes or endeavors to obstruct or impede the due administration of justice therein, or whoever willfully endeavors by means of bribery, misrepresentation, intimidation, or force or threats of force, to obstruct, delay, or prevent the communication to an investigator of the District of Columbia government by any person of information relating to a violation of any criminal statute or regulation in effect in said District, or injures any person or his property on account of the giving by such person or by any other person of such information to any such investigator in the course of the conduct of any criminal investigation, shall be fined not more than $1,000 or be imprisoned not more than three years, or both.

"(b) As used in this section, 'criminal investigation' means an investigation relating to a violation of any criminal statute or regulation in effect in the District of Columbia, including, without limitation, any regulation for the internal administration of the government of the District of Columbia or any department or agency thereof, and 'investigator' means an individual duly authorized by the Commissioners or their designated agent to conduct or engage in such an investigation."

U.S. SENATE,
COMMITTEE ON THE DISTRICT OF COLUMBIA,
April 18, 1967.

MEMORANDUM FOR MEMBERS OF THE JUDICIARY SUBCOMMITTEE

In re S. 1510, relating to the obstruction of the administration of justice in the District of Columbia by threats or force, and for other purposes.

Date of hearing: Thursday, April 20, 1967, 10:30 a.m.

PURPOSE OF THE BILL

Existing law relating to the obstruction of justice in the District of Columbia is addressed solely to matters pending before the courts of the District of Columbia, and makes no provision with respect to the obstruction of an investigation prior to the institution of court proceedings.

The purpose of this bill is to amend present law to make it unlawful to willfully endeavor by bribery, misrepresentation, intimidation, or force or threats of force, to obstruct, delay, or prevent the communication to an investigator of the District of Columbia government, including members of the Metropolitan Police Department, of information relating to the violation of any criminal statute or regulation in effect in the District, *whether or not proceedings are pending in court.* The bill would also make is unlawful to injure any person or his property because such person or any other person has communicated such information to an official investigator.

Under the bill, "criminal investigation" means an investigation relating to a violation of any criminal statute or regulation in effect in the District, including any regulation for the internal administration of the District government or any District department or agency. "Investigator" would mean an individual duly authorized by the Commissioners or their designated agents to conduct or engage in such an investigation.

Penalty. Existing law fixes the penalty for obstructing justice at a fine of not more than two hundred dollars ($200) or imprisonment for not more than three (3) years, or both. The present bill would increase the penalty to a fine of not more than $1,000 or imprisonment for not more than three (3) years, or both.

S. 1510 is an outgrowth of the recommendations of the President's District of Columbia Crime Commission.

OWEN J. MALONE, *Associate Counsel.*

The CHAIRMAN. We have either two or three bills scheduled for hearing tomorrow.

It is my intent to proceed almost daily on the Presidential recommendations which have been introduced and complete those hearings first, then to wait a reasonable time for the action of the House on the so-called omnibus crime bill of last year, and then to govern our own future hearings accordingly.

So the first witness this morning will the Honorable Walter N. Tobriner, President of the District of Columbia Board of Commissioners; accompanied by the Honorable John B. Duncan, a member, and Gen. Robert E. Mathe, District of Columbia Engineer Commissioner.

They are also accompanied by Robert F. Kneipp, Assistant Corporation Counsel, and Chief John B. Layton, Metropolitan Police Department.

STATEMENT OF HON. WALTER N. TOBRINER, PRESIDENT, DISTRICT OF COLUMBIA BOARD OF COMMISSIONERS; ACCOMPANIED BY HON. JOHN B. DUNCAN, MEMBER, DISTRICT OF COLUMBIA BOARD OF COMMISSIONERS; BRIG. GEN. ROBERT E. MATHE, DISTRICT OF COLUMBIA ENGINEER COMMISSIONER; ROBERT F. KNEIPP, ESQ., ASSISTANT CORPORATION COUNSEL, DISTRICT OF COLUMBIA; AND JOHN B. LAYTON, CHIEF, DISTRICT OF COLUMBIA METROPOLITAN POLICE DEPARTMENT

Senator BIBLE. We will proceed first to hear from you, Mr. Tobriner.

Mr. TOBRINER. Mr. Chairman and members of the committee, my statement is a general one directed to the complex of bills that are before you and, as you indicated, the committee will take up in detail the specific bills at a later time and two of them today.

The CHAIRMAN. Very well. You may proceed.

Mr. TOBRINER. Thank you very much for giving the Commissioners of the District of Columbia this opportunity to appear before you in connection with your consideration of proposed legislation relating to crime and criminal procedure in the District of Columbia.

The Commissioners are grateful to you, Mr. Chairman, for the thorough, studious manner in which you have proceeded with your consideration of a matter which is of extreme concern to everyone in the District of Columbia.

I might say that the Commissioners of the District of Columbia share with you the gravity of the state as do all decent and law-abiding citizens of this community.

With respect to outlining and analyzing the proposed legislation which will be considered by your committee, the Commissioners believe there is little which can be added to the excellent statement you made in the Senate at the time you introduced the 16 bills which are to be the subject of these hearings.

As you noted in your statement to the Senate, Mr. Chairman, a number of the bills relating to crime and criminal procedure in the District of Columbia to be considered by your committee are derived from the proposed District of Columbia Crime Reduction Act of 1967, jointly sponsored by the Attorney General of the United States and the Commissioners wholeheartedly give their support to these bills—S. 1509, S. 1510, S. 1512, S. 1513, S. 1514, S. 1515, S. 1516, and S.1524. Also, the Commissioners note that you have introduced, as S. 1511, their bill to increase salary rates and provide certain benefits for purposes of recruitment and retention of privates in the Metropolitan Police force, and this bill, too, the Commissioners naturally support.

The balance of the 16 bills you have introduced, Mr. Chairman, with one exception, are derived from the so-called omnibus crime bill, H.R. 5688, vetoed by the President on November 13, 1966. The Commissioners note that with respect to one of these, S. 1522, relating to indecent publications, the bill in its present form no longer contains the feature which gave rise to constitutional questions; that is, authority in the U.S. attorney for the District of Columbia to petition for injunctions to restrain the dissemination of such material. This change would appear to make the bill acceptable to the administration and to the Commissioner of the District of Columbia, although we are not yet fully prepared to give a definitive answer respecting the bill. But others of the bills derived from the omnibus crime bill do not seem to have been changed in a way that would allow the Commissioners to give them their support.

The cardinal principle to which the Commissioners adhere, as I am sure do all of us, is that whatever is done in the matter of dealing with crime in the District of Columbia must be within the limits of the Constitution. The Commissioners naturally cannot support the employment of unconstitutional means of dealing with crime, even though the use of such means might result in a diminution of crime. This is the reason why the Commissioners have, in the past, had reservations concerning legislative proposals designed to deal with the problems created by the so-called *Mallory* rule, and providing for the District of Columbia such law enforcement tools as are contained in the Uniform Arrest Act and the stop-and-frisk law. In connection with legislation dealing with the *Mallory* rule, the Commissioners are of the view that a suspect's constitutional rights can be adequately protected only by his being presented promptly before a judicial officer, proceeding in a public session and with proper recording.

In view of this, although they recognize that the bill appears to conform with the warning requirements of the *Miranda* case, nevertheless S. 1518 would, upon "a valid waiver of his rights to have the assistance of an attorney during questioning," authorize the detention of a suspect for up to 4 hours before presentment before a magistrate. Since the bill establishes no standards respecting the manner in which the suspect's rights may validly be waived, and since any such waiver could be avoided by observing the requirements of rule 5(a) of the Federal Rules of Criminal Procedure. For the foregoing reasons, the Commissioners have some reservations concerning the merits of the bill.

As the bill relating to the detention of material witnesses, S. 1517, the Commissioners note that a person thought to be a material and necessary witness is to be taken before a judicial officer "within a reasonable time." In its present form, the bill meets some of the objections raised against an earlier version of the proposal by the President in his message vetoing H.R. 5688 of the 89th Congress.* Nevertheless, the bill authorizes the detention of a material witness for some period of time without presentment before a judicial officer. The Commissioners believe that, at the very least, persons thought to be material and necessary witnesses to the commission of a crime should immediately be presented before a judicial officer for the purpose of determining whether they are in fact material and necessary witnesses and that

*See page 315.

there is a reasonable probability that they will not be available to testify at the trial of the person whose offense they witnessed. In connection with this aspect of the crime problem, the Commissioners believe that the better legislation is that contained in S. 1512, derived from title V of the proposed District of Columbia Crime Reduction Act.

The Commissioners either support or have no objection to the balance of the bills derived from the omnibus crime bill—S. 1519, S. 1520 (except to the extent these bills require the imposition of mandatory minimum sentences), and have no objection and support S. 1521. The subject matter of the last of these bills presently is taken care of in a police regulation. The bill has the effect of increasing the penalty for making a false report to the police. The Commissioners have no objection to it.

The CHAIRMAN. Do I understand that the Commissioners do object to the imposition of mandatory minimum sentences? Is that the official position of the Commissioners?

Mr. TOBRINER. Yes; that is the position of the Commissioners, that throughout any criminal presentation we believe the judge, seeing the witness and having a social record of the witnesses before him is in a better position to determine the extent of sentence with a view to more possible rehabilitation than if we impose the mandatory minimum sentence.

The CHAIRMAN. I realize that particular bill is not before the committee today.

Mr. TOBRINER. We believe if jurors come to know of the mandatory minimum sentence, there would be a tendency to acquit because the judge has no discretion in the sentencing.

The CHAIRMAN. We will consider that as we move forward with the other bills.

Mr. TOBRINER. Thank you, Mr. Chairman.

Finally, Mr. Chairman, there is S. 1523, a bill which would amend existing law to provide that insanity shall be an affirmative defense which a defendant must establish by a showing of substantial evidence, and shall be precluded from asserting it as a defense unless he files a prescribed notice. This is, of course, an effort to deal with those problems thought to arise from the *Durham* decision. I believe, however, Mr. Chairman, that in this jurisdiction the law relating to insanity and criminal responsibility has been so well hammered out in the *Durham-McDonald* line of cases as to be firmly established and well understood. In view of this, the Commissioners believe legislation dealing further with this problem to be unnecessary.

I have sought in the foregoing discussion generally to outline the position of the Commissioners concerning the several legislative proposals which are to be considered by your committee. I have not gone into any of them in too great detail, since that is to be done at subsequent hearings. But the Commissioners do want to take this opportunity to express their very great concern about crime in the District of Columbia and to urge that the Congress enact constitutionally sound legislation which will aid in dealing with what the Commissioners consider to be the gravest problem confronting the people of the District of Columbia and the law enforcement agencies operating within the District of Columbia.

In closing, Mr. Chairman, I feel I should make an interim report on another aspect of the crime problem. As you know, the President's Commission on Crime in the District of Columbia made 262 major recommendations dealing with all aspects of the crime problem in the District. The Commissioners are implementing these recommendations. Many of them are now in effect. A great many more are in process of implementation. Action of some kind is underway on most of the remainder. And while the Commissioners are not now in a position to give the committee a full report on the present status of these recommendations, they hope to be able to do so shortly, and, will as soon as it is available, supply such a report for the record. I think you will find, Mr. Chairman, that the Commissioners are moving rapidly and effectively to carry out those of the proposals of the Crime Commission which are under the jurisdiction of the Commissioners.

Please allow me to thank you again, Mr. Chairman, for the very great interest you have evidenced in this matter and for further demonstrating, as you have so often in the past, your great and untiring concern for the well-being and safety of the people of the District of Columbia.

The CHAIRMAN. Mr. Tobriner, you say you will be in a position to give the committee a full report on the status of these recommendations and you hope to be able to do so shortly.

Mr. TOBRINER. Before the close of these hearings, certainly.

The CHAIRMAN. Well, we might close these hearings next week.

Mr. TOBRINER. We hope to be able to do it by then.

The CHAIRMAN. You know the problems here have been called to your attention many times and there is some difficulty in getting reports from the Commissioners so that we can move forward without delay. This is one of the areas in which we certainly hope you will expedite these reports for whatever benefit they will be to the committee. I am not sure they will require legislation. But I urge you to get a report in as quickly as you can.

Mr. TOBRINER. I believe it is only a matter of days, Mr. Chairman.

The CHAIRMAN. That is fine.

The Senator from Colorado.

Senator DOMINICK. Mr. Chairman, I want to say that I know how conscientiously Mr. Tobriner approaches these problems, but for the purpose of the record it seems to me that we do not want to leave any impression that the Comimssioners are wrapped in the mantle of the Constitution and that Congress is working outside it. This implication is made in your statement.

I, for one, think this is not in accord with the facts and certainly not in accord with what the committee is trying to do. I want to make it crystal clear we are concerned——

Mr. TOBRINER. I am sure of that, Senator Dominick. As you know, there was considerable dissention in both Houses on the omnibus crime bill. I am sure those differences are reflected in the opposing opinion.

Senator DOMINICK. You have not, Mr. Tobriner, I gather, made any specific report on S. 1509 which is before us today.

Mr. TOBRINER. S. 1509 is thet bill which would permit policemen to use citations in lieu of formal arrest and for other purposes.

Senator DOMINICK. Are you going to be testifying specifically now on this bill?

Mr. TOBRINER. As you like.

Senator DOMINICK. I do not know what the chairman would like.

The CHAIRMAN. I would hope you would tell us your position straight up on S. 1509 after you have finished your general statement.

Mr. TOBRINER. I have finished my general statement.

The CHAIRMAN. Any other questions, Senator Dominick?

Senator DOMINICK. I have just a few.

It is my understanding, Mr. Commissioner, the District of Columbia is now paying about as high a salary for police officers as any area in the country of comparable size. It that correct?

Mr. TOBRINER. No, sir. It will be paying its police—beginning salaries will be second in the country. If the bill pending before the Congress is passed, it would raise the beginning salary from $6,700 to $7,500. It would be second in the country at that time.

Senator DOMINICK. How do we rank now?

Mr. TOBRINER. I do not have that information available. Perhaps the Chief has it.

Chief LAYTON. My judgment is about sixth or seventh at this time.

The CHAIRMAN. Would you identify yourself for the reporter.

Chief LAYTON. Chief John Layton, Metropolitan Police Department.

My recollection of the largest States is we are still about sixth or seventh.

Senator DOMINICK. Is it not a fact we are ahead of surrounding communities in starting salaries?

Mr. TOBRINER. Slightly.

Chief LAYTON. Yes, Senator Dominick, we are a little bit ahead of the surrounding communities.

Senator DOMINICK. Is it not also a fact we find ourselves still having problems recruiting enough police and being able to maintain them on the force.

Chief LAYTON. Yes, sir; this is correct.

Senator DOMINICK. How much of a shortage do you have?

Chief LAYTON. 309 at the present time.

Senator DOMINICK. From authorized strength or desired strength?

Chief LAYTON. That is from authorized strength.

Mr. TOBRINER. 3,100 is authorized strength.

The CHAIRMAN. If the Senator from Colorado would permit an interruption, to round that out, you are not only authorized to employ 3,100, but you have appropriated funds for that number?

Chief LAYTON. That is correct, Mr. Chairman.

The CHAIRMAN. And you are 309 short of the number you have money for; that is, as of today?

Chief LAYTON. Yes, Mr. Chairman.

Of course, we are using that money. Congress authorized us to use that to pay men for working a 6-day week.

Senator DOMINICK. Mr. Chairman, I do not know whether Commissioner Tobriner or Chief Layton could answer this, but in your effort in trying to recruit as many people as you need, do you find you have difficulty in this because they do not want to enter police work or because they do not want to enter police work in the District of Columbia, or because of other factors, salaries or otherwise?

Mr. TOBRINER. I would say preliminary to the Chief's remarks of recruiting police in local District of Columbia, cities of comparable size

throughout the country are finding the same difficulties in getting qualified young men for police officers. This would indicate police work as such in these times is not desirable irrespective of salaries.

Senator DOMINICK. Chief, would you have anything to add to that?

Chief LAYTON. I would, Senator Dominick, concur with Commissioner Tobriner's remarks. The National Commission on Crime found that the rate of vacancies generally across the country in urban centers is about 10 percent. This is about where we stand. So we do find, in answer to your question, there appears to be some reluctance on the part of young men generally to enter police work.

At the same time, we have lost some of our policemen who have resigned to join other police forces, some in surrounding counties and others in other jurisdictions.

Senator DOMINICK. Have you heard anyone say they do not mind being a policeman, in fact, they like it, but they do not want to be one in the District of Columbia?

Chief LAYTON. We have had some of our men who resigned say this; yes, sir.

Senator DOMINICK. What is the background on that?

Chief LAYTON. I think it is evident that policing in any urban center creates more demands on policemen than policing in a suburban area. A number of our men have gone to the surrounding counties, a number of those who have resigned have gone to the surrounding counties. And the matter of details, parades, demonstrations, and things of this kind create a problem in urban centers and particularly in the District of Columbia. That is, not that it does not happen to the same degree in the surrounding jurisdictions.

Senator DOMINICK. Do I understand correctly or incorrectly you feel you would have the same problem in recruiting regardless of what the starting salary was? I mean, within limits.

Chief LAYTON. We would have problems, Senator, but it is my feeling that if the salary is increased that will tend to make the job more attractive.

Senator DOMINICK. I would certainly agree with that, and I am happy to be sponsoring that particular piece of legislation.

What I am try trying to find out is the root cause of it. I would suggest part of it is the psychological objection to being denounced as brutal, cruel, a bunch of bums and everything else they get screamed at them all over the streets. A lot of people would not want to put up with that. Do you get that reaction?

Chief LAYTON. Yes, very candidly, we do, Mr. Senator. This is a complaint voiced by policemen from time to time. The press frequently carries stories quoting certain individuals that are very critical of police in general and sometimes individual police officers. Ths cannot help but have an adverse effect on the Police Department.

Senator DOMINICK. Chief, just for the record, I would like to say that unlike the chairman, I have always been involved on the defense side when I was practicing law. I have found myself, as I have been holding office, more and more sympathetic to the tough job you have. I think you are to be commended, frankly, in the manner in which the police have conducted themselves in the District. Obviously, everybody has problems from time to time. There is no doubt about that. When

you are dealing with a difficult type of circumstance as you have here. But I was interested in that. I am in favor of increasing the salaries but I am not sure it will solve the problem, as many people assume, and this is simply what I was trying to lay a foundation for.

I have one other question. I have introduced a bill on a general basis to exempt policemen and firemen from the draft. Would this be any assistance in retaining people or in getting them to enter into the service, do you feel?

Chief LAYTON. We, in our Department, I think that consideration has generally been given by the selective service to the importance of maintaining a police force, adequate police force, an effective and efficient force. At the same time it would seem to me that type of legislation would also be beneficial, Senator Dominick.

Senator DOMINICK. Thank you, Mr. Chairman.

I have just finished violating a rule I have always had in court, and that is asking a question to a witness when I did not know what he was going to say.

Mr. TOBRINER. I would support the chief in that position.

Senator DOMINICK. All right. I have one more question to that specific bill, S. 1509, but I do not know if you want to get into it now.

I am completely at a loss as to the purpose of why you have this bill. If you have a person and have a reasonable ground for arrest, then you do not arrest them, and that is the purpose of the bill?

Mr. TOBRINER. The purpose of the bill, Senator Dominick, is to allow the police in instances which would be approved by the court of general sessions in minor crimes. You have a situation now in respect to traffic tickets. The traffic offender, in most instances, is not actually apprehended, but given a ticket or citation directing him to appear or forfeit collateral.

The purpose of this bill would enable police in situations involving minor crimes where they believe the offender will appear for trial, to avoid the necessity of formally taking him to the precinct and locking him up and appearing for preliminary hearing the next morning. It would save police time considerably and since the penalties are fairly stiff for failure to obey the citation, we feel it would add to the efficiency of the police.

Senator DOMINICK. This bill is not restricted to traffic offenders. is it? It could be a felony or anything else.

Mr. TOBRINER. I was just using the traffic offense as an illustration.

Senator DOMINICK. But you could justify releasing a person presumably for attempted rape or anything else.

Mr. TOBRINER. The category of offenses for which releases would be permitted would be developed by the court of general sessions.

Senator DOMINICK. Why should we have them do it, why should we not have it in the law?

Mr. TOBRINER. Because it seems to me they are more closely aware of the general nature of the offenses, because it gives greater flexibility. In the case of a type of offense which is one proved to be unworthy of the citation process.

Senator DOMINICK. I just want to aline myself with Senator Morse on this type of thing. We are constantly asked to issue a general broad piece of legislation and then we let either the Police Department or

someone else determine how to operate it, how to administer it, what clearances are to be affected. I am in favor of more laws, but I am not in favor of giving legislative powers to the court or have a general administrator decide what and how the law will be. We have the same problems with the *Mallory* law as to things in the bill being used, recommended the police put in a regulation and everybody was opposed to our putting it in. There is a lot I still do not understand. And then the President vetoes it. It may be unconstitutional but doing it by Executive action, rather than going through the courts.

Mr. TOBRINER. I think fundamentally, Senator Dominick, it involves belief in ability of our courts or the reverse.

Senator DOMINICK. Our courts are supposed to be deciding specific cases, or so I was told when I went to law school. But it looks like the Supreme Court has been changing that around.

In any event, let me ask you this, to get back to this specific bill. Do you have any objection, or do you think it would be proper for us to put some limitation in for types of offenses which could be treated under this citation process?

Mr. TOBRINER. I would say it would destroy the flexibility and experimentation. But, on the other hand, if Congress feels such limitation excluding certain type offenses which are subject to the citation process are desirable, I could offer no valid objection.

Senator DOMINICK. In any event, when you were considering your report on this type of bill you were thinking in terms of minor offenses, is that correct?

Mr. TOBRINER. Yes. Offenses, of course, which would not, where the continued liberty of the defendant would not endanger the public interest. And this, of course, would also make available to the police who issue the citation the records of the District of Columbia Bail Bond Agency which presumably, would have means of determining the prior record and general character of the defendant in the neighborhood.

Senator DOMINICK. Well, this is a permissive piece of legislation; is it not?

Mr. TOBRINER. Yes.

Senator DOMINICK. That is, permissive to the extent, with the exception of whatever regulations the Police Department might put in. If a policeman could judge for himself whether to give a guy a citation or formally charge him.

Mr. TOBRINER. Only if the offense was in a category approved by the court of general sessions and only to conditions laid down by the court of general sessions guidelines.

Senator DOMINICK. But with those regulatory exceptions or restrictions, each policeman on the force would have the discretion of determining whether he was going to formally arrest a person or give him a citation and say come back, my friend.

Mr. TOBRINER. If the regulations were full and complete, I think the discretion would be virtually nil as far as the arresting officer is concerned. This is speculative, I concede.

Senator DOMINICK. Having just gone on record in praising the police, I am not sure I want to give them that much discretion.

Mr. Chairman, that is all.

The CHAIRMAN. I want to go back to the general statement just a few moments. I am a little concerned about the statement you made. You come up with the conclusion:

That for the foregoing reasons the Commissioners have some reservations concerning the merits of the bill.

I just do not know what that sentence means and how, as a practical matter, the Commissioners arrive at their determination as to whether or not the bill should be signed or vetoed. Do you call your district attorney or do you call up the Attorney General of the United States or the Criminal Division of the Justice Department, and say, "What do we do on this title I?" How do you make your determination? Who tells you whether they think it is constitutional or unconstitutional? Do you arrive at that decision yourself? Here, you say you have some reservations concerning the merits of the bill.

Mr. TOBRINER. Unfortunately, generally we arrive at that conclusion ourselves. That is why we may be wrong in many cases. But actually the determination whether or not we recommend veto on a bill is arrived at by consultation with our Corporation Counsel, by discussion and argument among the Commissioners, for the most part.

The CHAIRMAN. The problem and, again, straying from the bill we are supposed to be hearing this morning, is raised by the nature of your broad general statement. I think the Senate side, at least, or those of us who voted with the majority of the Senate side, on the major pattern or final product of title I did so on the very recommendation of the Attorney General of the United States, of the then Deputy Attorney General, Mr. Katzenbach, speaking for the then Attorney General of the United States, Mr. Kennedy now a Senator from New York and a member of this committee.

They said it. We did not. And we accepted it. Then it was vetoed, notwithstanding.

What I am driving at is this. If we labor long and hard and faithfully and come up with another title with the four-hour rule will the Commissioners again recommend veto or will they say, as Senator Dominick very well phrased it, this is an experimental matter, let the court decide. We were opposed to it going to a court test, but let the court decide it.

Mr. TOBRINER. Well, sir, speaking only for myself, I took an oath of office to support and defend the Constitution. If, in my honest judgment, a proposed piece of legislation is unconstitutional, I feel I have the duty to report it to the President. I am sure both of you gentlemen on the rostrum have argued and voted against legislation on the ground of its supposed unconstitutionality. I feel we have the same obligation.

The CHAIRMAN. Well, you are a very fine lawyer. I know your reputation in that field before you took your present job. I do not know whether you long for the old legal days or the position you are holding. I suppose each has its own merits and rewards.

But do you rely on your own background and ability as a lawyer or do you go to your district attorney or Corporation Counsel for his

advice? You have a very able man with you, I am sure. I have the greatest respect for General Mathe. He is an engineer, a member of the Army Engineers, does he say this looks unconstitutional to me and I am going to recommend a veto?

Mr. TOBRINER. We have not tested General Mathe on that because we have had no legislation involving constitutionality we have acted on.

But, as I say, I personally rely on my own knowledge or lack of knowledge of the Constitution together with such other opinions as I can get from people I consider reputable and reliable and learned in constitutional law.

Senator DOMINICK. Mr. Chairman, will you yield?

The CHAIRMAN. Yes.

Senator DOMINICK. Does the Commission also set the policies of what you are doing by regulation the same way authorization by legislation is unconstitutional and cut it out?

Mr. TOBRINER. The Commission has power to promulgate policies and regulation. We must approve policies and regulations by the same process that is gone through with respect to legislation.

Legislation was employed in determining certain policies.

Senator DOMINICK. What would happen if you approved everything you did before it was put into law and then it was called unconstitutional?

Mr. TOBRINER. I do not get your question, Senator Dominick.

Senator DOMINICK. We had the Acting Attorney General come up here and testify and said he did not want to go and put this into law because it was much more effective if you did it by regulation operated through the police. We have had the testimony on that.

Mr. TOBRINER. I am aware of that testimony, but the extent to which legislation would go, of course, since it has not yet been determined it is speculative. I am sure the Attorney General would not support regulation.

Senator DOMINICK. The procedure is put into effect, this is what he told us, when you try to put procedures into law all of a sudden it becomes unconstitutional.

Mr. TOBRINER. I cannot speak for what went through the Attorney General's mind.

Senator DOMINICK. I cannot either.

The chairman had to step out. Let me ask a couple of more questions along the same line.

What you are in effect warning us here, I gather by the phraseology to which the chairman referred, is if we try to enact into law the type of provision dealing with the *Mallory* rule you would again recommend it be vetoed?

Mr. TOBRINER. No, sir. I am not. Because I can find no constitutional objections to the *Mallory* rule as it is proposed now. I can find practical objections but I cannot find constitutional objections. Because the rule as it is proposed here, modification of the *Mallory* rule involves with minor exceptions which I do not think material, the exact type of warning that was set forth in the *Miranda* case.

My feeling in regard to the *Mallory* rule as proposed here relates to the valid waiver of his right to have the assistance of an attorney during questioning.

It seems to me there is no real substitute for prompt appearance before a magistrate where a record is taken and where the public may be admitted. The same infirmity in respect to a confession may be alleged in respect to the validity of a waiver whereas the matter is settled very positively and unquestionably it seems to me if the accused is brought before a committing magistrate. This is a practical but not a constitutional objection, Senator Dominick.

The CHAIRMAN. I want to get my own thinking clear as to what the police do on this rule and regulation for questioning suspects. Do you follow a 4-hour rule now as a practical matter?

Chief LAYTON. No, Mr. Chairman, we do not. That provision you are referring to, I think, was one we had set up by regulation prior to the *Miranda* opinion coming down. With the *Miranda* opinion, it is necessary to give that full warning immediately as soon as the individual's freedom of movement is restricted by the police. So that we do not have the same problem that we did by departmental order previously.

The CHAIRMAN. I wanted to clarify that.

It seems no matter what we do on this crime rule we always get back to this *Mallory* rule. I will try to desist from any further questioning on this until that bill is before us. That will be the proper place for it.

But you are all here today and you look like you are in a good frame of mind and would probably agree with most anything we were doing so I thought I would take advantage of the situation.

On your general statement, Mr. Commissioner, maybe this is more correctly directed to the Chief of Police, but I have seen tables. In fact, I have one before me right now, that compares the number of District of Columbia policemen per 1,000 population with all States in the United States. I assume the source is the Police Department rather than you, Mr. Tobriner.

Mr. TOBRINER. I am not sure of what the source is, but I think the figures are accurate.

The CHAIRMAN. It say this, and it can be read into the record.

The title is "Comparison of Number of District of Columbia Policemen Per 1,000 Population with All States in the United States."

First, District of Columbia with 3.8 policemen per 1,000 population.

Now, that is correct?

Chief LAYTON. I am sure that is a correct figure, Mr. Chairman. That is based, I am sure, on our authorized strength.

The CHAIRMAN. Very well. You show second, both Philadelphia and Boston with 3.6 policemen per 1,000 population, and, third, New York City with 3.5 policemen per 1,000 population. You show west coast figures. The staff does. 11th place, San Francisco has 2.4 policemen for every 1,000 population. And Los Angeles, in 13th place, with 2.1 policemen per 1,000 population.

My question of you is, Are these fair comparison or are there differences in the Nation's Capital that you do not find in Philadelphia or in Boston or in New York City or in San Francisco?

Mr. TOBRINER. I would assume to answer that, Mr. Chairman.

The CHAIRMAN. All right.

Mr. TOBRINER. There are some 8 or 9 million visitors here every year which is not true of the other cities.

The CHAIRMAN. I would assume that would certainly be true. That is why I am asking the question. I am sure there are differences in the Nation's Capital because of the great visitation. Is that not equally true in New York City?

Mr. TOBRINER. I do not believe so. I read recently that Mayor Lindsay was going to increase the police force in New York City.

Additionally, we have an inordinate number of demonstrations, rallies, that sort of thing here which the chairman knows about, which requires a great number of policemen. We have parades.

The CHAIRMAN. I read the other day that they had a pretty fair demonstration in New York City, and at the same time one in San Francisco, the same day, last Sunday, I believe. These cities are not without demonstrations. I am not trying to confuse the figures. What I am trying to do is establish that the police in the District of Columbia have many duties involving ceremonials during the year, visitors from foreign lands, Ambassadors and Presidents that possibly do not visit the other cities.

What I am trying to find out is whether or not the policemen in the generally accepted sense of keeping law and order and arresting violators are on the same ratio as they are in Philadelphia and Boston and New York City. Is it possible to screen out some of those that have these extracurricular duties that you would not find any place else? I suppose in Philadelphia they do not go to airports such as Dulles International or Andrews Air Force Base and escort foreign visitors in. I do not expect they do that in other places.

They do not visit Boston, Philadelphia, and New York City like they do Washington.

Mr. TOBRINER. I think what you have said is true, Mr. Chairman.

The CHAIRMAN. Do your statistics reflect this? I do not want you to make a study of it because every time you make a study you take a policeman and put him behind a desk instead of keeping him on the street where the greatest requirement is.

Chief LAYTON. I would only add, Mr. Chairman, as I have indicated, we have not made a study between those duties here and those in other cities. But I would call to your attention that the police departments that have close to the same percentage of police manpower are those cities along the east coast—Boston, Philadelphia, New York City. The ones on the west coast are those that essentially have a great deal lower average police force per 1,000 population. We do keep some record of the number of man-hours, days, years, involved in details.

For instance, in fiscal year 1966, for all of the details or assignments of police officers to Federal functions, we had something over 72,000 man-hours, which works out to about 40 policeman years for those kinds of assignments.

We do, as you know, provide additional manpower to supplement the Capital police force and when there are demonstrations at the White House we supplement the White House force, as well as the Park Police force. And the number of demonstrations, number of parades, number of functions here in the District, I am sure, outnumber those in many other cities.

The CHAIRMAN. The other question that I would ask you. You say you are 309 policemen short under your authorized strength of 3,100.

Would other police forces in cities of comparable size have relatively the same amount of shortages?

Chief LAYTON. Yes, sir.

The National Crime Commission reported the rate of vacancies across the country in the urban centers, large urban centers particularly, ran about 10 percent.

The CHAIRMAN. So that keeping police forces in urban cities where you have most of the problems, most of the people, up to authorized strength or up to adequacy, is a pretty national standard dilemma. Is that right?

Chief LAYTON. Yes, sir. This is a problem across the country in the larger cities.

The CHAIRMAN. I realize policemen alone are not the complete answer to this problem. I recognize the problems that the hearings have brought out—better education, better housing, more recreational opportunities. That is the long-range approach. But I feel very conscientiously we have a short-range responsibility to start with.

Would you have any idea whether if you had another hundred policemen above your authorized strength, if it was 3,200 rather than 3,100, that would bring the crime rate down?

Chief LAYTON. I think, Mr. Chairman, we can take some guidance from the time we put in what we termed a saturation-type patrol. That was with the authorization of funds by the Congress in order to do this.

Following implementation of that there was some reduction, a pretty marked reduction in these areas where that force was employed.

The CHAIRMAN. Did they not just go to other areas?

Chief LAYTON. There was some of this. But I think what has happened, for reasons I am not able to give you in any detail as we are searching for reasons ourselves, but after that period of about 5 months I would say where we had reduction in the categories of robberies, housebreakings, auto thefts, particularly, then we got into a period of increasing crime generally again. Our robbery category has gone way up. A number of things can be factors as you have indicated. I certainly agree with the long-range factors. I think everything that can be done should be done to correct those areas.

However, we have had the experience of making arrests of people who had committed robberies who have been released under the bail-bond project who are personally bonded and were committing offenses. I think this is a factor. I think the restrictions that we have had to comply with, that we do comply with, not only in the *Mallory* rule but in the *Miranda* opinion, makes it more difficult to identify and bring to justice those individuals who are committing offenses.

These, I think, are some short-range factors. We definitely have lost ground since about a year ago since our crime rate, particularly in the areas of auto theft, robbery, housebreaking, has again started a pretty sharp upward trend.

The CHAIRMAN. I have only one other question of you in a broad area, Chief Layton. My attention has been called to a New York Times article of Thursday, April 13, 1967, and the first paragraph gives the background for the question.

More than 1,100 policemen now in clerical positions are scheduled to be transferred to the patrol after July 1. In Mayor Lindsay's execu-

tive budget, which he will submit to the Board of Estimates, funds have been allocated to hire trainees and civilians to replace the desk policemen. Such transfers will be in addition to the 511 men who have been shifted from office jobs to beats since last December.

Then it develops some detail.

I think the next paragraph is something important.

"Administrative appointments in the next fiscal year," Mayor Lindsay said yesterday, "would give the city the largest and best equipped force it has ever had."

I know you have been asked this question every time you have been up here.

What has been done in your Department to release police clerks and those with desk jobs to a beat and to hire trainees and civilians to replace the desk policemen?

Chief LAYTON. Yes, Mr. Chairman; we have likewise been engaging in a program to substitute for police officers doing essentially clerical work, substitute them with civilian employees.

In the current fiscal year's budget, my recollection is that Congress has authorized funds for 25 civilian positions. In the budget under consideration now—the fiscal 1968 budget—we have asked for 66 similar positions to replace police officers.

In addition to this, Congress added to the number of school-crossing guards we could hire and also increased the number of cadets we could hire. We have not yet filled up the authorizations in the area of the desks. It is my feeling if we can do this, this will add appreciably to the program of releasing regular full-time police officers to street duty and using the cadets to do much of the clerical work.

I would note also in connection with the number that the New York City Police Department is about 10 times the strength of our Metropolitan Police Department, so that the numbers would be smaller.

The CHAIRMAN. I was not suggesting that you transfer 1,100 policemen in the District of Columbia from their desk jobs. How many do you have?

Chief LAYTON. We have made a survey, Mr. Chairman, a little while back. We estimated approximately 100 could be released from duties they are now doing in the nature of clerical jobs.

The CHAIRMAN. I do not think that is responsive to my question.

My question is, how many policemen do you have on this very day holding desk jobs in your department?

You say you could release 100, but how many would you have left? Go the other way around.

Chief LAYTON. Not all of the desk jobs do we feel could be assigned to civilians.

The CHAIRMAN. I recognize that.

Chief LAYTON. But my estimate would be something over 200 total desk jobs.

The CHAIRMAN. That does not seem to be too very out of line then. You are saying in the police department in Washington, D.C., today, you have approximately 200 policemen doing desk jobs, whatever desk jobs are. I recognize you have to have some policemen behind the desk.

Chief LAYTON. I would estimate between 200 and 250.

The CHAIRMAN. You would estimate between 200 and 250. Your further response, if I understand you correctly, is that of that number you feel approximately 100 could be released to the beat, is that right?

Chief LAYTON. Yes, sir. In fact, we have already released some of those in this program we have underway at the present time.

The CHAIRMAN. In your very fine judgment, in your long experience with the police department as a very fine police officer, do you feel you should have more policemen added to your force now beyond the authorized strength of 3,100?

Chief LAYTON. We had embarked on a program, Mr. Chairman, a couple of years ago, aiming at a force of 3,500 men. This still appears to be a figure we should aim toward. But a large part of our present vacancies occur because we had authorization for 100 in each of 2 years and we have not been able to recruit men to fill up those authorized vacancies. So for this reason in our 1968 budget we determined we would not ask for further increases.

The CHAIRMAN. I think I misused my word. I was asking a question when I said "authorized", help building up the authorized strength. If I recall the law, and if I do not the Corporation Counsel is here and the staff is here. The present law says at least 3,000. Is that true?

Chief LAYTON. That is right.

The CHAIRMAN. So nothing is required of this committee to build the strength to 3,000, that is the law?

Chief LAYTON. That is correct, Mr. Chairman.

The CHAIRMAN. The way it does something is to give additional dollars. Now you say you are short 309 now?

Chief LAYTON. Yes, sir.

The CHAIRMAN. I may be oversimplifying it. I do not know.

Chief LAYTON. No, sir.

I feel certain if we were able to fill up our department to authorized strength, Congress would authorize additional funds.

The CHAIRMAN. I think that answers my questions in this area.

I have no further questions of you, Mr. Tobriner, or of you Chief.

I would be happy to have further observations from Mr. Duncan.

Mr. DUNCAN. I do not think I have any further observations except possibly to express an interest in the recruitment of the police department. It does appear to me, based on all I have heard, not only today but in the recent past, we do have duties in this jurisdiction that differ with the duties of policemen in other jurisdictions. In our area we even have them serving summonses and notices, notices for example, things like a zoning hearing. This takes up certain man-hours.

I certainly agree with the Chief that there must be many hours involved in the process of booking people who might be released as soon as there is adequate protection within the walls of the precinct by armed policemen.

I think also we need a major recruitment effort in this city. Conceivably a new look at the present standards, the percentage of those who cannot qualify out of every 100 potentials during a recruitment process is very, very high. I think we need to create some new incentives including, of course, salary. I do not know. Maybe some incentives along the lines of the kinds of hours work for those just beginning and for those who have been on the force for a long time.

We probably need more effort in securing community support. New effort and greater effort.

Of course, using civilians in all jobs we can, these are obviously things we could do and need to do and no further legislation would be necessary.

As I look at the whole picture here and as I was able to lean forward and whisper to my colleague, Mr. Tobriner, a moment ago, maybe we need a new look at the whole problem. While I do not like the thought of organizing special committees which often take a long time to reach a conclusion, reach a study, it does seem to me great effort—special efforts is needed now to cure this problem we have been discussing, to my personal recollection, for 6 years. I do not say that in criticism of ourselves. I think there is some evolution in progress itself. It sometimes does take a long time to recognize the deficiencies of the present system and inaugurate a new system, new approach to problems. So all this has great merit, as I see it, and that it will probably encourage us to put forth that very special effort in this field.

The CHAIRMAN. Thank you, Commissioner Duncan. General Mathe.

General MATHE. The only thing I would like to say, Mr. Chairman, is we certainly recognize in the District the very critical nature of the crime problem. We appreciate what Congress is doing in getting into this matter this year.

From my own standpoint, I was not here last year when the omnibus crime bill was vetoed. I would say this. I support the view of the Commissioners as it stands here today in making our recommendation to your committee.

However, as far as I am concerned, once the Congress has acted my view would be that we should get the bill on the books and we should move forward and I am sure this is the view I would take at that time.

The CHAIRMAN. I hope you will express that view.

Mr. TOBRINER. Mr. Chairman, we also support, as I have indicated, S. 1510.

The CHAIRMAN. Yes. I will get to those. This is testimony now.

Do you have anything further, Chief Layton, you want to add?

Chief LAYTON. On the general statement? No, sir.

The CHAIRMAN. The official position of the Commissioners in a letter signed by Walter Tobriner, President of the Board of Commissioners, dated April 19, to me as chairman of this committee, will be made a part of the record at this point.

(The material referred to follows:)

APRIL 19, 1967.

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

DEAR SENATOR BIBLE: The Commissioners of the District of Columbia desire to report on S. 1509, 90th Congress, a bill "Relating to the use of citations by the Metropolitan Police force of the District of Columbia, in lieu of formal arrest, and for other purposes."

At present the police are required to bring to the precinct for booking all persons who are arrested and, except where collateral or bond is allowed, to take them to a judicial officer. S. 1509 would authorize members of the Metropolitan Police Department to release a person, either without formally arresting him or after an arrest without a warrant, by issuing him a citation for later appearance. The citation could be issued either at the precinct after arrest

or on the street without taking the accused into custody. The proposed release procedures would be governed by rules to be issued by the District of Columbia Court of General Sessions and would have judicial sanction. These rules would relate to the offenses for which citations may issue, as well as the circumstances and procedures pertaining to their use. Persons who fail to respond to citations would be subject to prescribed penalties (in felony cases, up to $5,000 or five years' imprisonment, or both, and in misdemeanor cases, not more than the maximum fine for misdemeanor or one year's imprisonment, or both).

To assist the police in implementing the proposed citation authority, the District of Columbia Bail Agency Act would be amended to authorize the agency to furnish them information concerning persons being considered for release on citation.

This proposal will permit policemen to devote a greater portion of their time to the most important tasks of crime prevention and detection, and less to feeding, housing, transporting and attending in court with arrested persons. Also, accused persons released on citation will no longer suffer the obvious disadvantages flowing from unnecessary incarceration in the time between their arrest and bail hearing. This legislation is consistent with recommendations of the President's Commission on Crime in the District of Columbia and is strongly supported by the Commissioners.

The Commissioners have been advised by the Bureau of the Budget that, from the standpoint of the Administration's program, there is no objection to the submission of this report to the Congress.

Sincerely yours,

WALTER N. TOBRINER,
President, Board of Commissioners, District of Columbia.

The CHAIRMAN. Now, tell me what this bill does.

Mr. TOBRINER. Yes, sir.

S. 1509 enables the police to, in lieu of formal arrests, in cases that are and under conditions that are approved by the court of general sessions, to issue citations instead of formally apprehending and transporting and incarcerating the offender.

This would be a substantial aid to the police in the opinion of the Commissioners in that it would save considerable time and since there are substantial penalties involved for the violation of the citation, we feel that the legislation is thoroughly proper and will not result in a great many people to whom citations have been issued violating the citations by failing to appear in court.

The CHAIRMAN. I have some of the doubts on this law that Senator Dominick, I believe, also expressed.

I notice on page 2 of the bill in lines 11 to 15, subsection (d) says:

> The District of Columbia Court of General Sessions shall prescribe rules specifying the offenses for which and the circumstances under which citations may be issued, as well as rules governing the issuance and compliance with citations.

Now we have heard over the years that the Congress has surrendered law-making authority to the executive by giving them authority to pass certain rules. It seems to me that what we are being asked to do now is to surrender our authority to make rules to the court of general sessions.

Mr. TOBRINER. Actually, that is only procedural matters, Mr. Chairman. There is nothing substantive about this.

The CHAIRMAN. I notice it says "rules governing the issuance of and compliance with citations."

What is to prevent the court of general sessions under this particular law—and I am not suggesting they would—but what is to prevent the court of general sessions from saying the arresting officer

can issue a citation in every case in which a wife murders her husband but cannot do this in any other type of murder. Would they be able to do that?

Mr. TOBRINER. I think it is possible.

The CHAIRMAN. I do not think they would.

Mr. TOBRINER. I do not think they would either.

The CHAIRMAN. I merely use the husband and wife as an example.

Mr. TOBRINER. I think it is completely possible they could do it, but I think it is unquestionable they would.

The CHAIRMAN. If it is possible for them to do it, I think you good men on the Commission and in the Police Department and in justice should come back and spell out in what areas these citations should be issuable.

Did I understand you to say that this was experimental?

I think, one of the questions Senator Dominick put to you was whether there could be certain offenses specified in this legislation for which the court of general sessions could not prescribe citations and while you said you thought it would interfere somewhat with the flexibility and nature of this program, nevertheless you could see no valid objection to it.

I am informed by Mr. Smith, that he is advised that the Judicial Conference is meeting on May 23 on this very point. Maybe they will come up with something. This is a very loose-ended statute; especially hearing it for the first time without studying it in depth. I will ask the staff to look into it further along that line.

I will be happy to have anything further volunteered on S. 1509.

Chief, how would this work if you did not have to retain the person? How much time would it save if persons charged were released on the street?

Chief LAYTON. One of the items I note in this draft of the bill, Mr. Chairman, that I do not believe was in the original proposal that gives me some concern is paragraph (b), beginning at the bottom of the first page, which gives the authority would give the authority to a police officer on the street to issue a citation and requires that be returnable to a member of the Department who is acting as clerk for the District of Columbia court of general sessions.

I looked at this yesterday, it gave me some concern because it would seem to me that this would add to the clerical duty that would need to be discharged by the Police Department. It would seem to me on that particular proposal it would be better to have those returns made to the court as with our traffic tickets collateral now rather than being returned to a member of the Police Department. We do have a member of our detective division who is authorized as a deputy clerk of the court who in times when court is not in session acts for the clerk and it authorized to fill out the bond authorization, the bond.

But it would seem to me there is a great deal of clerical work involved in this for the Police Department, particularly if section (b) remains.

Many cases now returnable directly to the court would require their appearance back before an officer in the Police Department rather than before the court.

The CHAIRMAN. I appreciate your views on this. There is one sentence in Commissioner Tobriner's transmission.

This proposal will permit policemen to devote a greater portion of their time to the most important tasks of crime prevention and detection, and less to feeding, housing, transporting and attending in Court with arrested persons.

Now, how many policemen will this release for these more important duties of crime prevention and detection?

Chief LAYTON. I would like to try to work that up for your committee, Mr. Chairman, and supply that. I am not sure I can make an estimate.

The CHAIRMAN. It may be very hard. It may be very difficult to answer.

Chief LAYTON. As to maintaining custody of prisoners in a precinct stationhouse and feeding them two meals a day, certainly this would appear to relieve that somewhat.

But, as I pointed out, section (b) here particularly would seem to me to require a great deal more clerical work. As I looked at this originally I had some question in my own mind about the amount of time that would be saved.

The CHAIRMAN. Why do you not take a further look at it and supply whatever further thoughts, suggestions, and recommendations to the committee you have. I am not going to close the hearings on this particular bill. I think it poses problems and the record will be left open on this bill for you to submit anything and you also, Mr. Tobriner.

(Information requested follows:)

JUNE 1, 1967.

Mr. CHESTER H. SMITH,
Staff Director, Committee on the District of Columbia,
U.S. Senate, Washington, D.C.

DEAR MR. SMITH: During the hearings on S. 1509, Senator Bible asked that I submit comments to the Committee regarding how many policemen would be released for crime prevention and detection work if the bill were enacted into law.

Unfortunately, since we have never had actual experience in this jurisdiction with a procedure permitting release of an arrested person on a citation, and since experience in other jurisdictions has thus far been relatively limited and experimental in nature, we have no practical method for developing reliable statistics on the potential effects of such legislation. We do know, however, that cases do occur where release of the arrestee on a citation would be appropriate and could be accomplished without danger to the community. A frequently recurring example is the arrest of an ordinarily respectable citizen who is apprehended in an act of shoplifting. We subjectively estimate that as many as 400 arrests of this type are made annually in our downtown stores. While it is obvious that such shoplifters should be arrested and prosecuted as a deterrent to repeated offenses, it is equally obvious that no good purpose is served by incarcerating or holding for bail on a relatively minor charge an ordinarily law-abiding resident of the community who can be easily rearrested for presentation to the court if he or she fails to respond to a citation.

It is equally difficult, without having had actual experience, to estimate the exact amount of savings of police time through release of an arrested person on a citation. I have noted that the experience of Contra Costa County, California, has been that there was a savings of an average of 37 minutes in each case in transportation time for larceny offenses *in rural areas*. Obviously, the transportation time for an arrestee in a city is not nearly that long. Of course, in order to realize a savings in transportation and booking processes, it is necessary to release the arrestee at the scene of the arrest and, thus, to forfeit the opportunity to process the arrestee through the identification, fingerprinting, and modus operandi recording procedures. If we were willing to forego this process, and I doubt that we should in these times when we must increasingly rely on identification resources in apprehending criminals, we would eliminate some clerical work for station force personnel in booking and processing prisoners who could be released on citations, but it is questionable whether this savings would result

in a direct release of manpower for crime prevention and detection since the savings would be divided into periods of a few minutes each applied at a variety of points and times in the prisoner processing procedures.

Frankly, I am skeptical that this bill can be justified on the basis of savings in police manpower *alone*. This is not to say, however, that it cannot be justified on other grounds. As was pointed out by other witnesses at the hearings, and as I have noted above, there are a number of arrests made in misdemeanor cases where release of the prisoner on citation would be appropriate and would not be dangerous to the community. With language making release on citation in misdemeanor arrests permissive to the police, but not mandatory, I believe that the bill would be useful to the community and should be enacted.

As I noted during my testimony, one objection I have to this bill is the language in Section (b) requiring a person to whom a citation has been issued to appear before an official of the Metropolitan Police Force designated to act as a clerk of the District of Columbia Court of General Sessions; it is my view that this language imposes on the Metropolitan Police Department an administrative and clerical workload which more appropriately should be assigned to the Court of General Sessions. Further, I believe that Section (c) should be amended to permit releases on citations of arrested persons by any officials designated by the Chief of Police rather than restricting such actions to the official designated as a clerk of the Court of General Sessions.

Very truly yours,

JOHN B. LAYTON,
Chief of Police.

The CHAIRMAN. Do other police departments do this?

Mr. TOBRINER. May I go back to your question, Mr. Chairman, which you raised a moment ago about—related to the authority of the court of general sessions?

Currently, the court of general sessions has authority and does specify offenses for which bond or collateral may be given. This bill merely substitutes for bond or for collateral the citation process. It would be perfectly proper for the court of general sessions to allow collateral to be posted in a rape case. Yet the history of the court and the history of the collateral cases indicate that they have been very circumspect in requiring collateral.

The CHAIRMAN. All I know about this bail problem is in the newspapers. I take a grim view of the practices in the bail area. I appreciate your views.

Do we have anything else to add on this particular point on this particular bill?

Next, we will go to S. 1510.

This is a bill to make it unlawful to obstruct, delay, or prevent a criminal investigation in the District of Columbia prior to formal criminal court proceedings.

And the letter of transmission from Mr. Tobriner will be made a part of the record at this point.

(The material referred to follows:)

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

DEAR SENATOR BIBLE: The Commissioners of the District of Columbia desire to report on S. 1510, 90th Congress, a bill "Relating to the obstruction of the administration of justice in the District of Columbia by threats or force, and for other purposes."

Section 862 of the Act of March 3, 1901, establishing a code of law for the District of Columbia (31 Stat. 1330; D.C. Code, sec. 22-703), presently provides that it shall be a criminal offense to endeavor, by threats or force, to influence,

intimidate, or impede any juror, witness, or officer in any court in the District in the discharge of his duties. The section also makes it a criminal offense, by threats or force, in any other way to obstruct or impede, or endeavor to obstruct or impede, the due administration of justice in the courts of the District. But neither this section, nor any other provision of law applicable in the District of Columbia, provides that it shall be a criminal offense to endeavor to obstruct, delay, or prevent the communication by any person to an investigator of the District of Columbia government, including the officers and members of the Metropolitan Police force, of information relating to a criminal offense, prior to the institution of proceedings in a court of the District of Columbia.

The Commissioners support this legislation expanding existing law relating to the obstruction of justice so as to make it applicable not only to the obstruction of justice, but also to the obstruction of an investigation relating to a violation of any criminal statute or regulation in effect in the District of Columbia. As so expanded, the legislation would be applicable not only to those investigations made by the Metropolitan police, but to all criminal investigations made by any individual duly authorized by the Commissioners or their designated agent to conduct or engage in such an investigation, including, without limitation, investigations involving the violation of regulations for the internal administration of the government of the District of Columbia or any department or agency of such government.

In the belief that S. 1510 will effectively operate to prevent or impede the obstruction of justice and the obstruction of criminal investigations in the District of Columbia, the Commissioners recommend its enactment.

The Commissioners have been advised by the Bureau of the Budget that, from the standpoint of the Administration's program, there is no objection to the submission of this report to the Congress.

Sincerely yours,

WALTER N. TOBRINER,
President, Board of Commissioners, District of Columbia.

The CHAIRMAN. Tell us why S. 1510 will be helpful.

Mr. TOBRINER. The current law provides penalty for impeding justice in connection with court or officers of the court and relates to the impediment of justice to the initiation at the progress of court proceedings.

This bill would extend the offenses to those who attempted to impede justice where it is preliminary to the court action in the investigatory stage.

It was supported by the Commission.

The CHAIRMAN. Yes. And your letter of transmittal, dated today, has been made a part of the record in connection with the bill.

You state the Commissioners support this legislation expanding the existing law relating to the obstruction of justice, so as to make it applicable not only to the obstruction of justice, but also to the obstruction of an investigation relating to a violation of any criminal statute or regulation in effect in the District of Columbia.

As so expanded, the legislation would be applicable not only to those investigations made by the Metropolitan Police, but to all criminal investigations made by any individual duly authorized by the Commissioners or their designated agent to conduct or engage in such an investigation, including, without limitation, investigations involving the violation of regulations for the internal administration of the government of the District of Columbia or any department or agency of such government.

In the belief that S. 1510 will effectively operate to prevent or impede the obstruction of justice and the obstruction of criminal investigations in the District of Columbia, the Commissioners recommend its enactment.

Can you give me, Chief, or the Corporation Counsel, or Justice—whoever can—some examples of how this bill would work?

Mr. TOBRINER. We have by authorization of Congress an investigator who reports directly to the Commissioners. If we have a report, for example, that there are alleged bribes for issuing a building permit or for looking the other way in connection with alcoholic beverage control laws, we immediately put our investigator on that problem.

Any action that would tend to impede his thorough investigation, would be covered by this proposed law.

The CHAIRMAN. And today such impeding of your investigator who is trying to find out about a housing scandal or beverage control scandal, you could not do anything about it?

Mr. TOBRINER. That is correct, sir. It is not a crime under the existing laws. It relates only to court proceedings. This is before it ever gets to court.

The CHAIRMAN. Again, the same question I asked on the earlier statute: Are there statutes of this type in other jurisdictions?

Mr. TOBRINER. We would have to supply that for the record.

The CHAIRMAN. Chief, do you have any observations on this particular bill?

Chief LAYTON. I, likewise, would add my support to this piece of legislation.

The CHAIRMAN. You do not see any problems as you did with the other bill?

Chief LAYTON. No, sir.

The CHAIRMAN. All right. Thank you very much, gentlemen. I have no further questions of you.

I think we have an additional witness from the Justice Department this morning. I am very happy to welcome him.

Mr. Daniel J. Freed, Acting Director, Office of Criminal Justice, U.S. Department of Justice.

You may proceed, Mr. Freed.

STATEMENT OF DANIEL J. FREED, ACTING DIRECTOR, OFFICE OF CRIMINAL JUSTICE, DEPARTMENT OF JUSTICE

Mr. FREED. Thank you, Mr. Chairman.

I believe that my statement may be helpful to the Committee on certain questions that have been raised in the earlier proceedings this morning.

The CHAIRMAN. First, we will proceed to S. 1509.

I have no intention of questioning you generally on the Department of Justice's attitude. I think we will reserve that for the Attorney General at some future date.

Please tell us about S. 1509.

Mr. FREED. Thank you, sir.

I appreciate the opportunity to appear before the subcommittee today to testify in favor of two proposals introduced by your chairman and Senator Dominick relating to crime in the District of Columbia.

I wish to express the regrets of the Attorney General and Assistant Attorney General Vinson for their inability to appear personally today to indicate the support of the Department of Justice for this legislation.

S. 1509 would authorize officers of the Metropolitan Police Department to issue citations either instead of or after arresting persons. S. 1510 would extend criminal penalties applicable to obstructing justice to persons who obstruct lawful investigations. Both measures were proposed by the President in his message to Congress on February 27, and both were contained in the proposed District of Columbia Crime Reduction Act of 1967 which the Acting Attorney General and Commissioner Tobriner sent to the Vice President on March 1.

We appreciate the kindness of Chairman Bible in making them part of the package of 16 bills which he introduced on April 13 as "the opening salvo in a renewed campaign against crime in the District of Columbia."

Reducing the need for policemen to take custody of minor offenders, which is the thrust of S. 1509, and increasing the protection afforded to witnesses in criminal investigations, which is S. 1510's mission, are important steps in the development of a more selective and effective crime program.

I will outline each briefly.

CITATIONS

S. 1509 would add two options to the choices currently available to a police officer when grounds exist for arresting and detaining a person. Under proposed section 23-610(b) of the District of Columbia Code, the officer could—instead of taking a person into custody—issue a citation requiring him to appear at a later time at the police station. Under proposed section 610(a), the police could arrest the person but release him—upon issuance of a citation to appear in court, or some other designated place—after booking and processing have been completed at the stationhouse.

Proposed section 610(a) prescribes that the District of Columbia court of general sessions shall issue rules to specify the offenses and circumstances to which citations will be applicable. Section 610(e) lays down criminal penalties for willful default by persons to whom citations have issued, and the final section of the bill would amend the District of Columbia Bail Agency Act to authorize the agency to provide police officers with factual reports to assist them in determining whether or not citations to arrested persons should be issued.

By enabling the police to determine their needs (1) to take custody and (2) to retain custody, by assessing the particular offense and the specific individual they are dealing with, S. 1509 will significantly increase the flexibility with which limited law enforcement resources can be deployed.

This bill recognizes that "crime" is a term with many meanings, from the most heinous assault to the most minor infraction.

Although protection of the community clearly suggests that processing serious crimes should receive intensive scrutiny and priority police attention, and that lesser crimes should be handled with care but dispatch, our present law demands a kind of self-defeating uniformity. With few exceptions, the ancient District of Columbia Code requires the police to arrest all suspected offenders—major and minor alike—and to hold, guard, and feed them until a court or bondsman sets them free.

This wasteful aspect of our law enforcement system means that the police are compelled to leave their beats and spend valuable minutes, sometimes hours, arresting, transporting, booking, fingerprinting, processing, feeding, housing, and accompanying to court many persons whose appearance could have been secured simply by the issuance of an enforceable citation.

The citation concept advanced in S. 1509 is not new. It has much support in police experience. National attention was first focused on the subject when the success of the Manhattan summons project in petty larceny, simple assault, and malicious mischief cases was reported by New York City's Police Commissioner, Michael J. Murphy, to the National Bail Conference in 1964.

The CHAIRMAN. What is an example of petty larceny in the District of Columbia?

Mr. FREED. An example is shoplifting, sir.

The CHAIRMAN. What is the value? If I shoplifted a mink coat, it is certainly not petty larceny, but if I shoplifted a box of cornflakes, I suppose it is.

Mr. FREED. I believe the dividing line is $100 (22 D.C. Code §2202).

California statutes confer extensive citation power on the police both in lieu of and after arrest, and Contra Costa County, north of San Francisco, has gone far under the leadership of its District Attorney Nejedly toward eliminating arrests in most misdemeanor categories.

And in this connection, I would like to offer for the record, for the interest of the committee, a recent address given by the district attorney of Contra Costa County, spelling out the experience law and enforcement in that community has had with the use of the citations before and after arrest.

The CHAIRMAN. Without objection, that will be made a part of the record.

(The document of District Attorney John A. Nejedly, Contra Costa County, Calif., dated February 6, 1967, above-referred to, follows:)

PRETRIAL RELEASE PROGRAMS: PURPOSES AND PROCEDURES

(Prepared by District Attorney John A. Nejedly Contra Costa County, Calif., Feb. 6, 1967)

In continuing studies to determine upon means of improving efficiencies of law enforcement procedures I reviewed with some interest the activities of the Vera Foundation and the possibilities that law enforcement might find means of improvement in the development of more effective systems for reduction in custody pending trial. Reports of the activities in New York, Philadelphia, Los Angeles, Sunnyvale and other communities suggested real values in these experiences, and a committee was organized in Contra Costa County under the authority of the Board of Supervisors to recommend specific improvements in law enforcement practices in the areas of bail and pre-trial release.

Without intending any reflection upon the pioneering programs suggested by the Vera Foundation and other sponsors of pre-trial release systems, all of whom have contributed immeasurably to the improvement of the administration of justice, I necessarily must make it quite clear that the purposes and direction of the pre-trial release procedures in Contra Costa County did not share the premises upon which these other programs have been predicated. First, the argument has been offered to justify, if not demand, the institution of pre-trial release programs, that those arrested for alleged criminal activity are presumed innocent until conviction after trial and therefore any detention pending trial

is the detention of an innocent person. Second, the point is raised that statistics establish that persons released on bail or otherwise have a greater chance of not being convicted than do those who remain in custody and therefore that the establishment of innocence is prevented by incarceration. With neither of these conclusion do I agree, nor were they in any measure taken in support of the work of the Bail Bond and Pre-Trial Release Committee study in our County.

In respect to these arguments, it should be understood that if the presumption of innocence prior to conviction establishes innocence itself, then rather than concern for release from custody our interest should be directed to the prevention of arrests of innocent people. Secondly, if release pending trial reduces the judicial determination of guilt, then again innocent people have been arrested or, on the other hand, a system produced that permits a greater number of guilty persons to escape justice.

This analysis may appear facetious, but, in fact, is offered in all seriousness. I respectfully suggest that reasons for any substantial change in the administration of justice must have the full cooperation of the agents through whom those changes must be effected. While pilot programs in limited areas may point out the desirability of pretrial release procedures in addition to the present systems of bail, there are not enough foundations or grants to finance and staff universal and continuing programs implementing desirable innovations. Ultimately pre-trial arrest procedures must operate within law enforcement agencies and ultimately through law enforcement personnel. Funds available to law enforcement are inadequate enough without imposition of additional responsibilities unless it can be shown to law enforcement itself that appropriate pre-trial release programs effect improvements in police efficiency greater than the time required to administer them, and until such showing is made no broad application of such procedures can be anticipated. Any long-range pretrial release program extending over any appreciable area of law enforcement in the United States must have the cooperation of law enforcement itself, and that cooperation will never be secured if the purposes of pre-trial release programs are related to those mentioned. Without disrespect to the Vera Foundation and its founders and sponsor, I suggest with all possible emphasis that the real purpose of pretrial release programs be stated as the improvement of law enforcement efficiency while respecting fully the right to freedom of those arrested pending judicial determination of guilt in all cases in which responsibility for appearance at such determinations can reasonably be anticipated.

It was with the intent to raise the question of improved police efficiency that the subject was studied in Contra Costa County. After pilot programs were instituted and examined, it was unanimously agreed by the committee and by *all* the police departments that release pending judicial proceedings and release without detention were effective instruments of reduction in costs of police administration and the establishment of improved police efficiency. All activity in these projects was provided by existing police personnel and in the continuing procedures of all police agencies in Contra Costa County, all personnel involved are regular members of the police departments.

The first interest was directed to enabling legislation. In California this appears in Penal Code Sections 853.6, 853.1 and 849(b)(3), which appear as follows:

"§ 853.6. Notice to appear; contents; release; bail; warrant.

"(a) In any case in which a person is arrested for and offense declared by state law to be a misdemeanor, and does not demand to be taken before a magistrate, the arresting officer may, instead of taking such person before a magistrate, follow the procedure prescribed by this chapter. The arresting officer shall prepare in duplicate a written notice to appear in court, containing the name and address of such person, the offense charged, and the time and place where and when such person shall appear in court.

"(b) The time specified in the notice to appear must be at least five (5) days after arrest.

"(c) The place specified in the notice shall be the court of the magistrate before whom the person would be taken if the requirement of taking an arrested person before a magistrate were complied with.

"(d) The officer shall deliver one copy of the notice to appear to the arrested person, and the arrested person, in order to secure release, must give his written promise so to appear in court by signing the duplicate notice which shall be

retained by the officer. Thereupon the arresting officer shall forthwith release the person arrested from custody.

"(e) The officer shall, as soon as practicable, file the duplicate notice with the magistrate specified therein. Thereupon the magistrate shall fix the amount of bail which in his judgment, in accordance with the provisions of Section 1275 of the Penal Code, will be reasonable and sufficient for the appearance of the defendant and shall indorse upon the notice a statement signed by him in the form set forth in Section 815a of this code. The defendant may, prior to the date upon which he promised to appear in court, deposit with the magistrate the amount of bail thus set. Thereafter, at the time when the case is called for arraignment before the magistrate, if the defendant shall not appear, either in person or by counsel, the magistrate may declare the bail forfeited, and may in his discretion order that no further proceedings shall be had in such case.

"Upon the making of such order that no further proceedings be had, all sums deposited as bail shall forthwith be paid into the county treasury for distribution pursuant to Section 1463 of this code.

"(f) No warrant shall issue on such charge for the arrest of a person who has given such written promise to appear in court, unless and until he has violated such promise or has failed to deposit bail, to appear for arraignment, trial or judgment, or to comply with the terms and provisions of the judgment, as required by law.

"§ 853.1. Notice to appear; contents; indorsement; bail; warrant.

"(a) A county, city, city and county may enact in its ordinances, violations of which are punishable as misdemeanors, clauses which provide that if any person is arrested for a violation of the ordinance, and such person is not immediately taken before a magistrate as is more fully set forth in this code, the arresting officer shall prepare in duplicate a written notice to appear in court, containing the name and address of such person, the offense charged, and the time and place where and when such person shall appear in court.

"(b) The time specified in the notice to appear must be at least five (5) days after such arrest.

"(c) The place specified in the notice to appear shall be the court of the magistrate before whom the person would be taken if the requirement of taking an arrested person before a magistrate were complied with, or shall be an officer authorized by such court to receive a deposit of bail.

"(d) The officer shall deliver one copy of the notice to appear to the arrested person and the arrested person in order to secure release must give his written promise so to appear in courts by signing the duplicate notice which shall be retained by the officer. Thereupon the arresting officer shall forthwith release the person arrested from custody.

"(e) The officer shall, as soon as practicable, file the duplicate notice with the magistrate specified therein. Thereupon the magistrate shall fix the amount of bail which in his judgment, in accordance with the provisions of Section 1275 of the Penal Code, will be reasonable and sufficient for the appearance of the defendant and shall indorse upon the notice a statement, signed by him in the form set forth in Section 815a of this code. The defendant may, prior to the date upon which he promised to appear in court, deposit with the magistrate the amount of bail thus set. Thereafter, at the time when the case is called for arraignment before the magistrate, if the defendant shall not appear, either in person or by counsel, the magistrate may declare the bail forfeited, and may in his discretion order that no further proceedings shall be had in such case.

"Upon the making of such order that no further proceedings be had, all sums deposited as bail shall forthwith be paid into the county treasurer for distribution pursuant to Section 1463 of this code.

"(f) No warrant shall issue on such charge for the arrest of a person who has given such written promise to appear in court, unless and until he has violated such promise or has failed to deposit bail, to appear for arraignment, trial or judgment, or to comply with the terms and provisions of the judgment, as required by law.

"§ 849. Arrest without warrant; duty to take prisoner before magistrate and file complaint; release from custody.

"(b) Any peace officer may release from custody, instead of taking such person before a magistrate, any person arrested without a warrant whenever:

"(3) The person arrested was arrested for a misdemeanor, and has signed an agreement to appear in court or before a magistrate at a place and time designated, as provided in this code."

The first utilization of these authorizations was established in misdemeanor arrests for violations in which identification and criminal statistics were not thought to be required, and in which other breaches of the peace or security of the individuals were not involved. These generally related to store thefts by housewives and otherwise responsible members of the community and violations of county ordinances. It immediately became apparent that the extension of the system of release upon promise to appear that had generally been practiced in vehicle code violations could be made an effective police procedure particularly by police agencies in rural areas. For example, an arrest of a housewife for shoplifting in a remote area of the county previously required detention after investigation at the scene and transportation to the central county jail, as much as twenty miles distance, for booking and detention.

If the person involved was accompanied by children, an intermediate stop at the juvenile hall was required to provide custody for the children. The person involved was then fingerprinted, booked and released only upon bail which might not be forthcoming for some time. If the husband or a member of the family did not come to the jail, additional time was required to repeat the transportation process in reverse back to the scene of arrest. Aside from the requirements of police time and custody and transportation expense, one may easily determine the traumatic effect of this procedure on the person already involved in a psychological problem of substantial proportions that exhibits itself in the store theft syndrome, putting aside for the moment the collateral effects upon the children. Moreover, it must be kept in mind that upon receipt of the call from the store, the central dispatcher must assign an officer fully competent to investigate *any* theft for there is no practical way to differentiate as to the seriousness of the call for police assistance. In addition to the considerations already mentioned, the officer notified may already be involved in one investigation or activity which must then terminate and the officer must travel to the scene of the incident reported.

Time and expense of arrests in rural areas has been analyzed and an average incident determined time required to reach the scene after report is seventeen minutes. Investigation time is twenty-two minutes. Transportation time to the County Jail and booking is thirty-seven minutes. Totaling these and excluding the Juvenile problem, custody supervision after booking and possible re-delivery to the scene of arrest, the minimum officer's time is seventy-six minutes, fifty-four of which have been entirely unproductive so far as law enforcement is concerned. In addition, the average travel involved of twenty-nine miles and required removal from service of an expensive piece of police equipment must be considered. Furthermore, neither the officer involved nor the equipment can be called into any other service except in absolute emergency while involved in the transportation of a prisoner.

At present, absent the unusual situation of a case aggravated in nature or by previous arrests, the officer conducts the investigation at the scene and issues a citation in lieu of physical custody. The suspect is allowed to return home simply on the promise to appear. After some experimentation, and the development of citation forms substantially similar to those employed in traffic citations, expansion of the use of citations has gradually extended to all misdemeanors not involving intoxication, prostitution, sex crimes and instances in which either the security of the suspect or the community is involved.

The committee on pre-trial release and bail has closely followed practices in Contra Costa County and all Chiefs of Police and the Sheriff of the County are employing this pre-trial release technique.

Problems in full implementation of a citation system have been encountered and should be discussed. First, the officer at the scene of investigation must have some assurance of responsibility of the suspect. Confinement of a system to local residents or obviously "respectable citizens," however, will unnecessarily and seriously limit the effectiveness of any pre-trial release procedure. The officer must have some assurance that the suspect will appear. Various field procedures have been practiced. A call to the station for clearance or direct reference to an information system to determine indentity and particularly the presence of "holds." Certainly the embarrassment of releasing on citation an individual wanted for other crimes would preclude expansion of a citation system by the

officer involved. Therefore, the officer must be provided with both discretion and information to make any citation system productive.

Contra Costa County shares in a multi-county Police Information Network through which full backgrounds and holds, particularly outstanding traffic warrants, are available to the investigating officer. With this information immediately available, the fullest utilization of the citation system can be expected. In fact, misdemeanor citation expansion can make much more effective the efficiency of traffic citations in that a universal system of arrest scene identification can disclose requirements for arrest and detention not indicated by the significance of the cause of arrest. Police agencies are well aware of the frustrations of the system of traffic citations through which persons wanted, even for serious crimes, parole or probation violation or traffic warrants, are released through a citation system by the arresting officer. If positive steps are taken to expand the citation system, even to misdemeanors, and an immediately available information network provided, the citation system in all its applications will be more successful and, more successful, more widely used.

Another limiting element in the present citation system is the absence of procedures for securing a record of the offense and identification either for local police or state criminal records. It is this deficiency that restricts use of a citation system by many of our police agencies and legislation providing for appropriate record keeping has been prepared for the current session of the Legislature. To eliminate this problem at least temporarily, the alternative of issuance of a citation after booking at a central police facility is being employed.

Statistics developed by the Vera Foundation and all other information available indicates quite clearly that the purpose of a citation system, producing a defendant in court at a time indicated, is effectively served. Appearances will approximate 99% when an intelligent well-administered program is involved and the judiciary cooperates in making it effective. Courts must recognize the failure to appear on a citation a separate offense and provide penalties and the strict application of those penalties to obtain continuing respect for the agreement to appear which, too, must be treated independently of the disposition of the offense for which the citation was issued. If it does not become common knowledge that failures to appear will be effectively dealt with, citation promises will be ignored and the consequent administration required to issue and serve warrants will seriously deter law enforcement agencies in expanding a citation or any other pre-trial release system. The judiciary must be prepared to continuously and effectively cooperate with the police, and it may be pertiment here to point out the vital need for endorsement by the judiciary of pre-trial release systems gnerally. This relationship is pointed out by the second application of a pre-trial release system practiced in Contra Costa County.

As an alternative to issuance of a citation at the scene of investigation, and in the relatively smaller area of a city, Pittsburg, Contra Costa County transports all those to whom a citation would otherwise be issued to the central police station and within five minutes of any part of the city. At the station all persons are booked, holds or warrants investigated and then released by the issuance of a citation. This practice eliminates any question of identity and record, but requires transportation time which, in this city, is minimal. Pittsburgh releases on citations in which the appearance date is the next court day, a practice inconsistent with the five-day requirement of Section 853.6 but considered authorized by Section 849(b)(3). The possible impropriety of this procedure, however, is the concern of one part of legislation proposed in the current session of the California State Legislature.

From May, 1964, to September, 1966, 967 misdemeanants were so released and three (arrested and released for common drunkenness) failed to be brought to justice.

Arrests for drunkenness pose a particular problem for a misdemeanor citation or O.R. release program for the statistics, if the system extends to releases for these offenses, may disclose a large number of failures to appear and thus the ineffectiveness of the programs alleged to exist. Many of these arrests are for transients and pretrial releases for such offenses, whether on bail or some form of O.R., will always produce substantial failures to appear occasioned by the nature of the defendants themselves. Proper administration should develop a separate system for arrest, detention and appearance, if required, for drunkenness: hopefully a system which recognizes the need for protection and care of those arrested for drunkenness and not the involvement of the judicial process

except for the provision of treatment. In fact, the filing of a complaint, issuance of a citation or release on O.R. should be limited to the aggravated case requiring judicial review or, as indicated, treatment.

In addition to issuance of citations at the scene of arrest and in lieu of detention and issuance of citations at a central police bureau after the identification process, police may file a complaint and withhold issuance of warrant, Section 849(b)(3), and release on the promise to appear, a procedure identical in effect to the issuance of a citation except that upon failure to appear the warrant may immediately issue, while in the case of a citation, a complaint would first be required to be filed. This process is seldom employed and usually only in the case of a citizen's complaint arising out of circumstances in which the police wish to fix the position of a citizen who has alleged the commission of a misdemeanor. The requirement of signing a complaint in these circumstances may also be effective in a citation situation as well when it is essential that a complainant not reverse a position after arrest.

In addition to our system of police issuance of citations in lieu of arrest, we have developed a program whereby a complaint is issued through the district attorney's office. This program is particularly applicable to workmen's compensation cases, unemployment insurance, some check cases, many county ordinances, building code violations and other violations of law in this general category. Again, we have developed what we consider to be rather effective arrangements improving upon the previous practice of the court and most of the state.

The old practice was to forward the compliant and the warrant to the court. The court would file the complaint, issue the warrant, and call the police agency involved. The police agency would come to the court, pick up the warrant, serve the warrant—in many cases making more than one trip to effect service—bring the person to the booking agency, book him and release him on bail. The person would then appear at the court at the appropriate time.

Under our present system we forward the complaint and the warrant to the local police agency along with a letter indicating that we feel that under the circumstances a letter should be sent to the potential defendant advising him of the fact that a complaint has been filed instead of serving a warrant.

If the local police agency, after reviewing the particular police problem involved, concurs in our determination, the letter is transmitted with the complaint and warrant to the court. The court holds the warrant, and forwards letter to the defendant indicating that the complaint has been filed and that the warrant will be issued for his arrest if in fact he fails to appear. The court sets a time for his to appear. The police agency is not involved in effecting the physical arrest, nor is there any requirement of jail custody.

We have found that under this system we have been able to develop a much better rapport with the people involved than we could under the old system of arrest and detention, which the public generally thinks of as always following some substantial criminal activity. We have discovered that the opportunity for a plea has been materially enhanced by this system.

Finally, in those citations in which an arrest and detention at a central booking facility has been effected and the police for appropriate reasons do not determine to release upon citation or O.R., the defendant is given a from application for O.R. release which includes pertinent requests for information which the defendant completes or obtains assistance in completing. This application is transmitted to the Clerk of the Court at which the arraignment is to be held. The Clerk makes pre-appearance verification of the information as indicated as being necessary, and at the time of appearance the Court is advised of the background and recommendation of the Clerk as to bail requirements or application of release on O.R. This process saves a considerable amount of the Court's time which would otherwise be directed to individual interrogation of defendant and leads to a better relationship with the police and the defendants. The form indicates that all statements are made under oath and the Court, if it feels it appropriate, may place the defendant under oath and ask confirmation of the facts given. Experience in these proceedings indicates that the information given has been absolutely reliable and verification by the Court is minimal.

With the experiences in Contra County it can be properly reported that pre-trial release programs, properly administered through existing police and court personnel, can substantially improve law enforcement and the judicial process while fully respecting the dignity and liberties of those charged with criminal offenses.

Law enforcement, faced with expanding constitutional concepts, increasing responsibilities and limited portions of the tax dollar, must look to every possibility for improvements in efficiency. Reduction in custody time and expense, elimination of transportation requirements and improvement in police relationships with the community all serve to accomplish this purpose.

Experience in Contra Costa County has indicated that in a proper context pretrial release programs can serve to accomplish that result. The conditioning scene to effective programs should include:

1. Understanding by police personnel and administration that punishment is the function of the judiciary, not the executive branch of government.
2. That confinement is in fact punishment and that unnecessary confinement represents punishment without conviction.
3. That the time devoted to transportation and confinement of prisoners is not law enforcement per se. That if proper alternatives to such duties can be evolved, that the time so devoted can be more effectively utilized in investigation of crime and the apprehension of those responsible.
4. That the custody, care and feeding of prisoners, their transportation, transportation to and from the courts, management of visitors and attorney interviews and the processing and safeguarding of prisoners properly represents a substantial portion of law enforcement budgets.
5. That appropriate pre-trial release programs can serve to provide the means of release from these responsibilities and the opportunity to establish higher levels of law enforcement.
6. That such programs can only operate effectively with the cooperation of judiciary that will join with law enforcement in finding practical, realistic methods of release. Particularly, the judiciary must be willing to create workable O.R. systems that do not necessarily require court appearances.
7. Pre-trial release programs, properly developed, can most practically be established through existing personnel in law enforcement and the judiciary.
8. That such program should include:
   a. Citation system for release without detention.
   b. Citation or O.R. release after booking.
   c. Pre-arraignment preparation of information for the court in determination of bail or other release by the judiciary.
   d. Holding of warrants for complaints not involving public security and notification of filing of complaint to allow voluntary appearance.
9. Legislation authorizing such procedures should include:
   a. Authority for citation release in misdemeanors and appropriate felonies.
   b. Provision for penalties for failure to appear on citation or O.R.
   c. Authority for O.R. release by arresting agencies in cooperation with the judiciary.
   d. System for securing identification prior to conclusion of judicial proceedings for law enforcement records.

Mr. FREED. In Denver, more than half of all misdemeanor defendants are released with citations. Cincinnati makes extensive use of release by citation at the stationhouse.

Many cities have reported appreciable savings in police time. In Contra Costa County the average time saved by citiation release is said to be 30 minutes per arrest. New York City estimated that 4,000 police man-hours could be saved annually in shoplifting cases alone.

Richmond, Calif., which is in Contra Costa County, has been able to dispense with cooking facilities for pretrial detainees, because of the substantial reduction in overnight detention.

Another saving for the police is that the citation can direct the defendant to appear in court on the arresting officer's next court day. A policeman would not have to fear—as at present—that making an arrest will cause him to lose his day off. At the same time, the Police Department can save a large part of the large cost of overtime wages now paid to policemen who sit around in court all day waiting to testify in one or two cases.

In all of the experience we are aware of to date, the selective use of citations has been accompanied by very low records of failure to appear in court.

In May 1966, the Judicial Conference of the District of Columbia Circuit endorsed, and established a committee to develop legislation to authorize, summons and stationhouse release procedures. In December 1966, the District of Columbia Crime Commission recommended wider use of these devices where they could be used "without damage to the public safety."

The Commission report, at page 512, stated that—

> * * * release at the precinct avoids the adverse personal effects of needless incarceration where the prosecutor decides not to proceed against a person who has been arrested and held in jail overnight or where the court immediately grants him release on bail.

And only 2 months ago the National Crime Commission recommended that—

> Each community should establish procedures to enable and encourage police departments to release, in appropriate classes of cases, as many arrested persons as possible promptly after arrest upon issuance of a citation or summons requiring subsequent appearance.

The CHAIRMAN. At that point, tell me exactly what the police do in the District of Columbia today where they find a shoplifter coming out of a department store who has stolen an article that is not worth $100 and they find him just as he leaves the store. What does the policeman do with this man that they suspect of committing petty larceny, and they have the goods on him?

Mr. FREED. If you will permit me, sir, I would like to give a little background.

The situation in the District of Columbia today is somewhat different than up to a year ago because of a time saving practice started by the Police Department. Originally, with shoplifting, the arrest was made by the store detective rather than a member of the Police Department.

The CHAIRMAN. How far can the store detective go beyond the limits of the store?

Mr. FREED. The store detective's jurisdiction is limited to the confines of the store.

The CHAIRMAN. Give us both examples. The store detective finds a suspect walking out with an article of value less than $100, which comes under the definition of petty larceny, finds him at the store and the store detective apprehends him. What does the store detective do with the suspect today?

Mr. FREED. Up to last year, the store detective would call the Metropolitan Police Department, a scout car would be dispatched to the store, the store people would give a statement of the facts to the police and the police would record all the information and take custody of the suspect and the property alleged to have been stolen, take them to police headquarters, execute all the forms, give custody of the stolen property to the property clerk.

Thereafter, a police officer would be required to go to court at the time bail was set and would have to remain in court with the suspect during all subsequent court proceedings.

Under the procedures initiated a year or a year and a half ago, the Police Department, in cooperation with Judge Tim Murphy, who was then assistant U.S. Attorney at the District of Columbia Court of General Sessions, a timesaving practice was put into effect. As I understand it, the store detective would call the police and the police would come to the store, take custody of the suspect, leave the alleged stolen property in the custody of the store detective and proceed to the police station for routine booking procedures.

But thereafter only the store detective would have to go to court with the suspect. The Metropolitan Police Department's job, as I understand it, might be complete with booking and processing of the subject at the precinct.

Under this bill the Police Department would be able to cut out an additional expenditure of time. Under this bill they would be able to issue a citation to the arrested person in the store, and instruct him when to appear in court, or, within the discretion of the officer, the person could be taken to the police station, processed, identified to determine whether or not he was a suitable risk for release on citation, and released at that point for subsequent appearance in court.

There would, in either of those events, be avoidance of the job of housing, feeding, guarding, and accompanying the defendant personally to court. And where there has been issuance of a citation, unless some later information is discovered, the bail procedure in court would be pro forma, and the defendant would remain at liberty.

The procedure which I have just described in shoplifting is one of two examples in the District of Columbia where the U.S. attorney's office in cooperation with the Police Department has already made efforts and strides in the direction of saving the police time.

The second area involves negligent homicide cases. I believe both are discussed in Harry Subin's report on the court of general sessions entitled, "Criminal Justice in Metropolitan Court."

The CHAIRMAN. How much time is involved today, even under improved procedures in taking the suspect and processing him? The police officer calls the wagon and the wagon takes him down to the stationhouse and then the stationhouse does what? Give me the steps from the time you get the suspect with the store detective down to the stationhouse.

What happens the minute he walks into the stationhouse?

Chief Layton's right-hand man is here. Maybe he has taken a poor old shoplifter down to the stationhouse.

Come forward and identify yourself for the reporter.

Deputy Chief WILSON. Deputy Chief Wilson.

This is in a case where a shoplifter had been arrested by a store detective. In this case the wagon would respond to the scene and transport the shoplifter to the stationhouse where he would be worked through the booking process.

The CHAIRMAN. Do not talk too fast. I do not want the suspect behind bars before he has been advised of his rights.

Deputy Chief WILSON. He is processed through the booking process. Ordinarily, he would be fingerprinted, photographed, in the police station. In the case of a shoplifter, he ordinarily would be released on bond or bail collateral.

The CHAIRMAN. How long would that take under your new practice? My understanding is that the store detective can take the suspect directly to the stationhouse.

Mr. FREED. Under the proposed bill——

The CHAIRMAN. Not the proposed bill, because you said they changed it last year, as I understood it. I am not thinking of shoplifting, but I would just like to know exactly how this works. A year ago, not under the bill. Leave the bill out of it.

A year ago, if the store detective picked up a shoplifter within the store; correct?

Deputy Chief WILSON. Correct.

The CHAIRMAN. As I understand it, then he summoned the Police Department and the police officer came there with the paddy wagon and put the suspect in the paddy wagon. The store detective turns him over, gives him the case history, gives him some stolen article, gives him the suspect, and from there the police officer takes him to the stationhouse.

Mr. FREED. From there the processing which Deputy Chief Wilson described takes place. There can be no elimination of that under the present law.

The CHAIRMAN. Now, in the last year you have modified that some, so that the store detective himself takes the suspect to the stationhouse. Is that correct or not?

Mr. FREED. No, sir. If I said that, I was in error.

The CHAIRMAN. You probably did not say it. I probably did not understand you.

Mr. FREED. The store detective must release the defendant from his custody under the bill. Even under the new practice, he releases custody to the Metropolitan Police Department, at the store. The Metropolitan Police Department must take custody and transport the man to the police station and must process him in the usual manner of identification and booking. They must further detain him until bail is set in court unless the man meets the requirements of the stationhouse bail schedule. The police need not, however, accompany the man to court thereafter under the new procedure. The store detectives have been authorized to take over all police prosecution functions. Therefore, the saving of time under the experimental procedure which I have described are mostly in the saving to the police of time spent waiting in court, typing up forms, and testifying in court on a case initiated by a store detective.

The bill which is pending before you would enable the police officer from the Metropolitan Police Department to make two changes in this procedure. If, in the discretion of the police officer, he knows enough about the individual to take one of these two actions, the first choice available to him would be to release the suspected person at the store after taking all relevant information about him, by issuing him a citation to appear in court on a specific date determined by the police officer.

The second alternative would be to take custody of the arrested person at the store, bring him to the police station and continue further processing, booking, photographing, as described by Chief Wilson. Then, if he determines the person is a good risk, he may release the suspect from custody at that point and not hold him overnight or until bail is set.

There are figures which I do not have with me today but which I can supply which the Metropolitan Police Department obtained a year ago. They are the savings in a month the police were getting in just a few downtown department stores.

In New York City where there has been a more elaborate study made along the lines mentioned, they estimated up to 8 hours of police time could be saved from the various functions a police officer would have to perform in the different steps of the processing we have been talking about.

The CHAIRMAN. I was going to ask you to spell out specifically where the suspect is detained because you make a point in your statement it saves many hours in feeding, lodging, and delay before taking him before the magistrate. If I understand you correctly—is that right?

Mr. FREED. That is correct, sir.

The CHAIRMAN. You say you have studies which will show this?

Deputy Chief WILSON. Mr. Freed refers to an earlier study which the Police Department made on the savings. We have made no specific studies that I am aware of in the amount of time saved in the detention of these persons.

The CHAIRMAN. How long have you been on the Police Department?

Deputy Chief WILSON. Eighteen years.

The CHAIRMAN. You have worked a beat, made arrests, you have come up through the ranks; is that correct?

Deputy Chief WILSON. Yes, sir.

The CHAIRMAN. Are you convinced, based on your experience actively working as a police officer, that this proposed bill would be a good thing?

Deputy Chief WILSON. I do not think, Mr. Chairman, that we find anything in it that the Department would find objectionable. I am not certain exactly how much time would be saved in each case. It would depend on how broadly the statute would be applied. Surely there would be some saving in the time.

The CHAIRMAN. The Chief explained his concern, and he is furnishing statistics. I think I understand what you are trying to do.

I understand in Contra Costa County it has worked out successfully. The law enforcement establishment feels it is successful. Of course, to me, if a law enforcement officer wants this type of a tool and does not think it cripples him or handcuffs him this is fine. If they think it is good, I think it would make a fairly good legislation.

Mr. FREED. I might say, Senator, this concept is being directed and used with great success in a very few jurisdictions. The problem, as we see it, is communicating our program to the people in other departments and then having each department take a look at how its own procedures are working out. The interesting thing about Contra Costa County has been the extent to which they have been avoiding taking a person into custody at all. The extent to which they can release him on the street. The reason for their ability to make much broader use of the release on the street is the use of what they call, I think, the police information network. They have a walkie-talkie system through which they talk to the police officer on the beat or in the patrol car and it enables them to radio back to police headquarters all the information from the apprehended person. And they get a very quick identification through California's advanced information system.

They determine whether or not this particular person is wanted for any other particular offenses or any other reason, or whether lack of information would make it more reasonable for the police to take custody. If the police can identify a person and determine there is no reason to take him into custody, they may release him on the street.

I expect that the use of the radio, coupled with a rapid information retrieval system enables many more police officers to spend time on the street in their crime detection duties rather than devote time to traveling down to headquarters and writing out all the forms there.

The CHAIRMAN. Well, I think you have made a very fine statement. You have done your homework well with the exception of the arrest of the shoplifter in Washington. You have done a very fine job on this. I understand it far better now.

If there is anything additional you want to submit, I would be happy to have you do it.

The obstruction of investigation has been very well explained earlier. Your statement incorporated it in full.

Actually, what you say is very, very short. You consider that this does not seem to suggest any particular problems. The other bill may be a fine police tool, but the fact is we do not know much about the citation problem.

Mr. FREED. Senator, if I may, I am sorry Senator Dominick is not here. I would like to address myself to the question of whether it would be preferable for Congress to specify with particularity the offenses for which they can issue a citation for.

The CHAIRMAN. I wish you would address yourself to it. That one section seems to be very loose-ended. Section (d), that the District of Columbia court of general sessions shall prescribe rules specifying the offenses for which and the circumstances under which, citations may be issued, as well as rules governing the issuance of and compliance with citations.

It seems to me, as a lawyer, that is a pretty broad statement of delegation of authority.

You go ahead and say what you want to.

Mr. FREED. I believe that the principal point that I would like to make is that the kind of discretion which would be delegated here to the court of general sessions has a very substantial precedent, both in the law of the District of Columbia, and experience in other jurisdictions. The stationhouse bail schedule to which Commissioner Tobriner referred, is an excellent example or a case in which the Congress has delegated to the court authority with respect to an extensive list of offenses the amount of bond which the suspect must post with police in order to secure a release.

And Commissioner Tobriner is absolutely correct that the only difference between that authority which has long been conferred on the court of general sessions, and through them on the police, and the authority being requested today is that the police would be able to release a suspected person by issuing a citation instead of requiring bail bond from a bondsman.

To that extent, the change in the law which the committee is being asked to consider today simply carries forward the spirit which Congress has already taken hold of and acted on in the Bail Reform Act in

which Congress recognized that there ought to be many other ways beside money in which courts can authorize release of suspected persons.

The CHAIRMAN. The point I was going to make—I do not question what you are saying—but the point I was going to make is that there are various examples where we have delegated the courts authority to make certain rules. You mentioned the bail problem. All I know about the bail problem is what I have read in the papers. I have not gone into it to any extent. I have asked my staff to do it.

The point I would have on the precedent, is that while you can point to places where they have done it, why is it so difficult, since this is an experimental problem and since many people may have the same doubts Senator Dominick does, and I do; why would it be so difficult to put right down in black and white that this could be used only in cases of shoplifting, for example?

Mr. FREED. There would be no reason why the Congress could not make that statement, limiting the use of citations to shoplifting cases.

However, the thrust of release procedures that has been considered by Congress and other legislatures in the past several years has been to look to the individual rather than to the offense. Not instead of the offense, but look to the individual as well as the offense in determining whether or not to release, and how to release.

The kind of question which you are asking came up for discussion by the judicial conference of the District of Columbia circuit back in 1963, when they were trying to decide how broad or how limited should the bail project be. There were proposals offered that release on other than money bail should be confined to misdemeanors. They were those that thought that release on other than money bail should be extended to any crime other than a capital offense.

There were proposals which said releases on any conditions prior to trial should be determined by the court on the basis of what the offense is and what the individual is; what you know about him. The judicial conference took a vote and overwhelmingly adopted the decision that there should be no limitations in advance, no arbitrary exclusions.

The release should remain in the sound discretion of the court, determined by facts in each case, whether or not to release a person.

It seems to me Congress has a number of choices in embarking on citation procedures. It could enact limited legislation specifying one or two offenses. It could limit the authority to misdemeanors and exclude felonies, or it could authorize issuance of a citation in any class of offense which the court of general sessions authorized for the police.

If you took the limited route, you could determine at a later date whether experience justified amending the statute to extend it to other offenses.

On the other hand, following a precedent followed by Congress in the bail legislation, you could confer the kind of broad authority given there, and continue to review and monitor the experience.

The CHAIRMAN. Pardon my interruption. There is nothing secret about what I asked Mr. Smith. I asked him whether my recollection of the complaints we have been having on the bail legislation was faulty. He says no. It is pretty much correct. They feel there are a lot of abuses in this area. Maybe because the legislation Congress enacted was too broad. Maybe they should have been a little more cautious, careful, a little more limited.

I appreciate what you say. It seems this is experimental and it might be wise to start out on a more limited basis, in order to reduce the risk of misuse or misapplication of the statute.

This is something I want to think about. If it would work out on a limited basis, certainly Congress is in continuous session, I guess, as long as they have a man around and would be able to amend it, restrict it or enlarge it, as the experience may dictate.

Is it limited in Contra Costa County?

Mr. FREED. It is at the present time.

The CHAIRMAN. You have been citing Contra Costa County as a prime example in the use of citations.

Mr. FREED. Yes. In Contra Costa County, it extends, I believe, to all misdemeanors. Under the laws of California, the district attorney recommends that authority be extended to felonies, but in line with the existing statutes in California at the moment, as I understand it, it extends only to misdemeanors. Unless a criminal procedure is authorized, they use a summons, which is a judicial process to any kind of offense.

Again, in dealing with a tax case, forgery case, embezzlement, whether it is classified as a felony or misdemeanor, is not the important thing. The question is what you know about an offender, what additional information you need in order to have the court see him before he is released.

There is one interesting use of the citation which may give the committee some degree of confirmation. While the court of general sessions will be authorized under this legislation to set down the rules to permit the use of a citation in various types of crimes, it is the police department who will apply it, and the police department which has discretion in the use of citations; only where the police officer felt custody and transportation to be necessary or not.

So the legislation you are preparing today——

The CHAIRMAN. Which we are considering today.

Mr. FREED. Excuse me. Yes, sir.

The CHAIRMAN. Well, I think you have made a very able presentation and I am posing these questions not to indicate whether this is not good legislation, but it is something new to me.

Your testimony indicates that this is pretty generally new around the United States. It may have great merit. We want to strengthen the arms of the police here. I think the last point you make is a good one. That even if the court did over-enlarge it and left it to the sound discretion of the police officer. The police officer is sworn to uphold the law and to apprehend all violators of the law, and I am sure they would not abuse it, but they might not use it often enough. Anyway, it would be a safeguard.

You have been a fine witness and I appreciate you. It is fine to have somebody appear who knows what they are talking about.

Have you been assigned to the other bills?

Mr. FREED. No, sir.

The CHAIRMAN. I was hoping you would come back. You have done your homework well. Who is going to be the speaker on the *Mallory* bill?

Mr. FREED. Senator, that is a determination to be made by the Attorney General.

The CHAIRMAN. Well, I am sure he will be here.
I appreciate the very fine work you have done.
Mr. FREED. Thank you
The CHAIRMAN. Mr. William McGee.
Please come forward.
I am delighted to hear you.

STATEMENT OF WILLIAM McGEE, ACTING CHAIRMAN, COMMITTEE TO REDUCE CRIME NOW, METROPOLITAN WASHINGTON BOARD OF TRADE

Mr. McGEE. I am William McGee, acting chairman of the Committee To Reduce Crime Now, of the Washington Board of Trade.

We appreciate this opportunity of presenting a statement concerning proposals aimed at reducing crime and making our city a safer place in which to live. This is a subject in which the board of trade has long been interested. We strongly supported the crime bill enacted by Congress last session and were one of the groups which urged the President to approve that legislation. We understand that the hearing this morning specifically deals with S. 1509 and S. 1510, and we will have brief comments about those bills.

Meanwhile, we understand that it would be appropriate to make a brief statement to the committee concerning the views of business respecting law and order in the Nation's Capital.

We and 14 other representatives of business testified for approximately 2½ hours yesterday morning before Subcommittee No. 4 of the House District of Columbia Committee and urged prompt and aggressive action to halt and, if possible, reverse the rising crime statistics for this community and most especially for the District of Columbia.

We indicated recognition that many of the basic contributing causes of crime are associated with poverty and lack of opportunity and reviewed a number of projects of the board of trade and other elements of the business community having long-range good citizen building and crime reducing objectives. Appropriate committees of the board of trade and other business groups will continue to pursue these matters.

Meanwhile the crime rate in Washington keeps increasing, and it is perfectly evident that steps must be taken promptly to halt and reverse this increase and, as far as humanly possible, do it now.

Accordingly, just a few weeks ago we set up a new Committee To Reduce Crime Now. It was created because the business community is greatly concerned for the safety of our citizens—their employees, their customers, their homes, and their business properties.

The list of business associations which have joined with us in the Committee To Reduce Crime Now indicates the widespread concern in this matter by the Washington business community:

Building Owners & Managers Association.
D.C. Area Trucking Association.
D.C. Association of Insurance Agents.
D.C. Bankers Association.
D.C. Dental Society.
D.C. Pharmaceutical Association.

D.C. Savings and Loan League.
Food Brokers Association.
Greater Washington Service Station Association.
Home Builders Association.
Hotel Association of Washington, D.C.
Laundry-Dry Cleaning Owners Association.
Medical Society of the District of Columbia.
Printing Industry of Washington.
Restaurant Association of Metropolitan Washington.
Restaurant Beverage Association of Washington, D.C.
Retail Liquor Dealers Association of the District of Columbia.
Washington Automotive Trade Association.
Washington Board of Realtors.
Washington Building Congress.
Washington Parking Association.

We hope that many other Washington community groups will work with us in seeking to make the Nation's Capital a safer place in which to live. Our objective is to deal with the immediate problem of coping with the hard-core criminal element having no regard for the law.

We believe that the best way to deter this criminal element, which is a very small percentage of the generally law-abiding, responsible citizens of this community, is by quick apprehension, speedy trials, and swift, sure, and just punishments which fit the crimes. If this is accomplished, we are confident that there will be a significant reduction in the crime rate.

While these are not matters before this committee today, I think you will be interested in knowing that we hope to see legislation enacted promptly which would place five additional judges on the court of general sessions, increase the salaries paid so that the most capable men can continue to be attracted to that court, and lengthen the current tenure of 10 years' duration. This enlargement of the court will require additional courthouse facilities.

Additionally, in order to speed up the administration of justice, it will be essential to increase the staff of the prosecution offices—both the district attorney's and the corporation counsel's. We believe that the probation department should also be expanded since our information is that the court's probation officers now handle much more work than is recommended as standard.

We will also recommend that starting salaries of policemen be increased in an amount sufficient to attract the needed men and that the department's authorized strength be increased. And this is an objective which salary raises would not cover.

One objective we seek which cannot be legislated is the generation of support and cooperation of the public with the Police Department which it does not now receive in many cases. The public should demonstrate to the police that we appreciate the job they are doing in protecting us from the criminal, and the policeman should be a respected and admired public servant rather than one who is criticized and belittled as so often happens these days. We intend to carry on activities seeking this kind of public support as we firmly believe this is an essential factor in the attraction of competent young men to police careers and in holding those now in the Department.

With respect to the crime legislation now before the District of Columbia Committees of the Congress, we urge readoption of the omnibus crime bill passed in the last session. The recommendations

included in the President's message of February 27 on the Nation's Capital should also be approved. The bills scheduled for consideration represent sections of those recommendations.

We therefore recommend favorable action on S. 1509, a bill relating to the use of citations by the Metropolitan Police force of the District of Columbia, in lieu of formal arrest, and for other purposes; and S. 1510, a bill relating to the obstruction of the administration of justice in the District of Columbia by threats or force, and for other purposes.

The CHAIRMAN. That is a very fine statement, Mr. McGee, and I think you have capsulized this problem very well. You have made excellent suggestions.

For my information, what is your background?

Mr. MCGEE. I am president of McGee & Co. in town. I am a businessman, sir.

The CHAIRMAN. You are a businessman. You serve in this capacity on this particular committee?

Mr. MCGEE. Yes, sir.

We have a legal counsel who found it impossible to be here today. The businessman have provided money to enable us to employ a legal counsel. So, if you have any technical questions——

The CHAIRMAN. I have no particular questions. But I just was wondering what your background was.

Mr. MCGEE. I have lived in Washington for 35 years. I went to school here. I have been in my own business for 22 years.

I am continually apologizing for the apathy of the citizens of Washington. I hope we can do something about it.

The CHAIRMAN. I appreciate your statement. I will not put you on the spot, but I wish you would convey to the board of trade that I think we have got to do many of these things. I think we need more policemen. We need more judges. We need more improvement in our judicial system. We probably need more probation officers. We all certainly have to have more courthouse facilities in which to house them. I think we need new schools. I think many of the schools are run down horribly. I just wish as chairman of your Committee to Reduce Crime Now that you would take that to your board of trade and to your own committee and just come back at some future date and tell us where we are going to get the money to pay for it. This is one of our real problems. It is a critical one. I have sat on the Appropriations Committee and I think you know of my long interest and constant fight to get you more Federal payment; to get you more loan authority. I am afraid Congress will go just so far in that direction. They will probably want revenue from other sources. It must originate on the House side. I think we have got to come to grips with this problem.

I am for what you are saying and I will do my best to help you. But we will also need to get money to pay for it. You are aware of this. We will perhaps have to dig very deep in both areas for a short-time solution and a long-range solution. I hope you will take that message back to your board of trade. You have a very able, very capable general director, Bill Press. I hope you will be able to come up with some concrete ideas and give us some help in trying to get this revenue problem moving along. Because this is the straitjacket. The Appropriations

Committee has to live within a balanced budget which is good but it came up short.

They will probably have to exact more taxes and that is the best way I know of committing political suicide. But this is done nationwide.

I hope you will carry that message back to your board of trade and if you have any more observations I will be happy to hear them.

Mr. McGEE. Yes. I will be happy to take that message back.

The CHAIRMAN. I appreciate your being here. I would be happy for any member of the board of trade to sit through all the hearings and make constructive suggestions as we plow forward. We are going to do it very quickly subject to what I said earlier in the hearing.

Mr. McGEE. Thank you.

The CHAIRMAN. The next witness is Mr. DeLong Harris, chairman of the Legislative Committee of the Washington Bar Association.

Mr. Harris, I am sorry I kept you waiting so long.

STATEMENT OF DE LONG HARRIS, CHAIRMAN, LEGISLATIVE COMMITTEE, WASHINGTON BAR ASSOCIATION

Mr. HARRIS. Thank you, Senator.

For the record, my name is De Long Harris. I am chairman of the Legislative Committee of the Council for the District of Columbia.

(The prepared statement of Mr. De Long Harris follows:)

STATEMENT OF THE WASHINGTON BAR ASSOCIATION URGING ENACTMENT OF S. 1509, PRESENTED BY MR. DE LONG HARRIS, CHAIRMAN, LEGISLATIVE COMMITTEE

Under existing law in the District of Columbia there is no discretion vested in any police officer or other official allowing or permitting an officer or official not to take into custody a citizen for whom an arrest warrant has been issued, or in instances where a misdemeanor has been violated in the presence of the officer. This is true even though the misdemeanor consists of the violation of a minor District of Columbia regulation of any sort other than a traffic regulation. This situation has brought about in the past a multiplicity of inequities the possible remedy to which has been the subject of many discussions in the many Courts, the Corporation Counsel's Office for the District of Columbia, the United States Attorney's Office for the District of Columbia, the Judicial Conference for the District of Columbia Circuit, and the Law Enforcement Council for the District of Columbia. Perhaps an aroused public sentiment was triggered by an article appearing in the Washington Post approximately 1 year ago which demonstrated that graphically the hardship often worked upon the less privileged and more deprived citizens in the District of Columbia by the existing state of the law in this regard. This article told the story of a very poor man who was arrested on a weekend day as a result of his having violated a health regulation of the District of Columbia relating to sanitary facilities, an improperly functioning toilet. This unfortunate citizen was taken into custody, and being unable to make bond or to post collateral, remained in jail until his appearance in Court on the Monday following.

After the Washington Post article the Judicial Conference for the District of Columbia took up the matter upon the motion of Mr. David Bress, United States Attorney for the District of Columbia and some action was taken thereafter by the Judicial Conference insofar as the appointing of a committee to make a study of the matters presented was concerned. The Law Enforcement Council of which undersigned is Chairman thereafter appointed a committee with Co-Chairmen Mr. David Bress, United States Attorney for the District of Columbia, and Mr. Milton Korman, then Acting Corporation Counsel for the District of Columbia and now a Judge of the District of Columbia Court of General Sessions. A tentative report was made to the Council by Messrs. Bress

and Korman which indicated that Mr. Korman, as far as his office was concerned was already following an unofficial procedure whereby summons were being issued in selected cases for the violation of certain minor regulations, et cetera. Judge Korman pointed out that his office handled more than 95% of the cases that might be affected by the proposed legislation and that because of the satisfactory method of handling such matters in his office he did not urge legislation at that time. The Washington Bar Association took up this matter. The Washington Bar Association is of the opinion that the proposed legislation is long overdue, much needed, and will solve a very pressing problem for reasons following:

I.

Not only poverty stricken persons but, indeed, the vast majority of the citizens of the District of Columbia are not likely on weekend nights, or at any other time, for that matter, have sums ranging from $25.00 to $300.00 in cash for the posting of collateral when arrested for very minor misdemeanors. The resultant hardship upon persons of this caliber is immeasurable. Moreover, citizens of moderate or above moderate means who might have available cash for the posting of collateral or funds for the posting of bond premiums are citizens who have never been brought into the toils of the law before and are vastly unfamiliar with the law's mechanical means of operation in conditions of this sort. The result is often that the citizen must remain in custody for periods ranging from an hour or so to a day or so, not because they do not have pecuniary means of obtaining their release but because they are not familiar with criminal law or criminal procedure.

II.

In the former criminal branch in the Municipal Court for the District of Columbia now the District of Columbia Court of General Sessions, on every single Monday morning a sizeable percentage of the persons arrested and charged by police officers are released without any formal charges being placed against them because of a number of reasons: domestic, husband and wife assaults where no charge is placed because the spouse does not desire the placing of charges; cases involving assaults resulting from drunken parties where no one desires to prosecute another participant; other cases in which the officer has been compelled to make an arrest but finds that he does not have evidence or witnesses or Monday morning upon which to make a case. The citizens concerned, by and large, are persons without pervious arrest or criminal record and they leave Court with an arrest record.

III.

It is the feeling of the Washington Bar Association that the proposed legislation will afford persons of the sort above mentioned an opportunity to appear by summons or citation without ever having to answer any question in the future affirmative which would indicate that they had been in fact "arrested." Despite the recent change in the Form 57 of the Civil Service Commission which formerly required an individual to answer a question which sought information, interalia, whether or not the subject had been "arrested." The fact of criminal arrest gives to the citizen a black-eye which under certain conditions is never really removed. To subject citizens to this sort of privation is not feasible, practical, nor effective means of law enforcement. We, believe, further, that more citizens will come to regard the majesty of the law in a more prevalent fashion. When it is demonstrated to the citizen that the law is not merely the instrument of his torture or oppression but that it brings about results calculated to aid in his comfort and well being, he will naturally tend to assist in its enforcement and demand of others its respect.

Mr. HARRIS. This statement is being made on behalf of the Washington Bar Association. I think much has already been said with respect to Senate bill 1509, saving of police time and saving of taxpayers' money.

I think another facet of this coin I desire to present to the committee has perhaps not been adequately covered.

That is the value of this proposed legislation to the citizens of Washington, especially the poor citizens of Washington which perhaps more citizens might be counted among that number than otherwise.

Let me give you first some background of this proposed legislation as I understand it first.

Some focus on the problem which arouses public sentiment was triggered by an article appearing in the Washington Post more than a year ago. It appeared that a certain poor man had a poor toilet. The building inspector or the sanitary department or whatever the bureau is had inspected this place repeatedly and it had no other alternative than to issue a warrant for the man's arrest. He was arrested. He was arrested either on Friday or Saturday and he was unable to raise bond. This was, I think, probably in the early spring of 1966.

He remained in jail, I believe, for perhaps 48 hours and until it became Monday morning, when he made his appearance in court and was released. This story created public sympathy and certainly consideration about this matter which none of the speakers thus far this morning have considered.

The CHAIRMAN. I am very happy to have you comment on that. I can understand that poor man's problem. He had been incarcerated 48 hours?

Mr. HARRIS. Forty-eight hours because he could not raise the $25 collateral. Something was wrong with his toilet.

The CHAIRMAN. That is completely unjust. If this solves that type of problem, I am certainly for it. I suppose there are many such instances as that.

Mr. HARRIS. What I wanted to say, Senator, was this legislation is designed to, I would say, 90 percent of it would have to do with District of Columbia regulations.

For instance, if you have a dog and for some reason he violates one of the dog laws, no tags, or perhaps he has bitten a child, the regulation must be enforced. Now a policeman in order to enforce that regulation can only do one thing. He must issue a warrant. When the warrant is issued the average citizen must go to the stationhouse and post collateral. Sometimes it is only $5 and sometimes it is only $10, but it can go up to $300. Therefore, the vast majority do not keep on hand $25 and they certainly would not have cash in the amount of $300.

Certainly some of the citizens who might have available cash for the posting of collateral or funds for the posting of bond premiums are citizens who have never been brought into the toils of the law before and are vastly unfamiliar with the law's mechnical means of operation and conditions of the sort. The result is often that the citizen must remain in custody for periods ranging from an hour or so to a day or so, not because they do not have pecuniary means of obtaining their release but because they are not familiar with criminal law or criminal procedure.

I am not talking about the hardened criminal.

The CHAIRMAN. I agree with you. I think that would be a bad experience. I would not want to be in custody here or anywhere else.

Mr. HARRIS. The speaker from the Department of Justice mentioned one thing I should reiterate.

This bill gives the full discretion to the police officer. Chief Layton could issue an order to his policeman saying we are not going to release on citations anybody in dog bite cases. No matter what the general sessions court said, the discretion would be given to the police officer.

With respect to the various regulations, most of them have to do with buildings and what not. We see no valid reason why one who violates a traffic sign when a penalty of $300 where the man might be given a traffic ticket and can go home to his family that night; whereas, one who has an improper door on his dwelling the inspector says they must do it. I do not mean to say, Senator, an inspector in the District of Columbia would come up the same night. Usually these things have gone on for many months before a warrant is issued.

But it comes as a shock of surprise.

Getting back to last spring after that story there was a meeting of the Judicial Conference on that. It was Mr. David Bress, U.S. attorney for the District of Columbia, who by motion from the floor—I was present at that meeting—proposed creation of a committee to study this matter. Therefore, at a meeting of the law-enforcement council which consisted of Mr. Bress, we appointed a committee consisting of Mr. Bress and Mr. Korman, who was then Acting Corporation Counsel of the District of Columbia and now is an associate judge of the D.C. court of general sessions.

Mr. Korman pointed out that after the judicial conference session that his office had decided that a large number of these violations, especially housing and health violations, could be processed by summons and there was some authority for him doing it. He said it was unofficial. We in the law enforcement council decided it was working well unofficially, and that more than 90 percent of the cases were handled that way and that there was no need to effect legislation at that particular time.

Since legislation has been proposed, we think it is a magnificent gesture on the part of whoever proposed it. We support it. The Washington Bar Association supports it. We personally support it.

Of course, our support is somewhat different. It may or may not be timesaving to the Police Department. That is not our idea of the purpose of the change in our law. I want that clearly understood.

But we see the citizen who comes into contact with the law for the first time. They do not have the money to post bail. They do not have the cash lying around.

It may take a long time for them to get it from a neighbor or a friend, if they have one, and for them to come down and post the bond.

The citizens will have a greater respect, will have a greater love for the majesty of the law if policemen issue him the same thing as a ticket or citation to come to court. But if he is taken into custody and held until he is to appear, and so forth, a person of moderate means does not have the money on hand.

In our law in the District of Columbia, a police officer cannot take a check. If you do not have the cash it may take an hour or many hours to get it.

These are the things we believe should be considered by the committee. And we favor the enactment of it.

I do not believe there will be any problem about the larger misdemeanors. The chairman mentioned shoplifting. I do not believe it is going to apply. In my 22 years' experience in practice in the District of Columbia, I do not believe any judge is going to make that one of the offenses for which a citation can be issued. Because here in the District, persons make their living, as it were, by shoplifting. These people are highly mobile and they travel from New York to Philadelphia and to Washington and back again. I do not believe shoplifting is one of the offenses that would be included.

If a person is arrested is a known shoplifter, certainly he is not going to let that man out on his personal recognizance.

With respect to the bill, S. 1510, the Washington Bar Association endorses that bill. However, there is one matter we would like to call to the attention of the committee. That is the penalty in this bill to deal with crimes as well as regulations.

The information, as Mr. Tobriner mentioned, might have to do with investigation of a house violation for which the penalty might be $50. It might certainly be not more than $90 and in some rare cases, $300.

We do not feel that the withholding of information on a $25 regulation that a fine of $1,000 is entirely equitable.

We would certainly ask the committee to consider that.

But in the overall picture, we favor S. 1510. We favor its passage. Even in its present form if that amendment cannot be made.

The CHAIRMAN. Thank you very much for your fine statement, Mr. Harris.

I will ask the staff to check that point you made. It might be valid. I do not know.

If there is nothing further, the hearing will be adjourned and we will stand in recess until tomorrow morning when we will hear S. 1513 and S. 1516 tomorrow.

(Whereupon, at 1:10 p.m., the hearing was adjourned, to reconvene tomorrow, Friday, April 21, 1967, at 10 a.m.)

DISTRICT OF COLUMBIA ANTICRIME LEGISLATION—1967

(S. 1513, A Bill To Establish the Commission on Revision of the Criminal Laws of the District of Columbia)

FRIDAY, APRIL 21, 1967

U.S. SENATE,
SUBCOMMITTEE ON THE JUDICIARY
OF THE COMMITTEE ON THE DISTRICT OF COLUMBIA,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10 a.m., in room 6226, New Senate Office Building, Senator Alan Bible (chairman) presiding.

Present: Senator Bible (presiding), and Senator Dominick.

Also present: Chester H. Smith, staff director; Owen J. Malone, associate counsel; Howard A. Abrahams, assistant counsel; Arlene Williams, assistant clerk; and Richard E. Judd, professional staff member.

The CHAIRMAN. The committee will come to order.

We will hear two more of the administration's crime bills this morning.

The first will be S. 1513 and the second will be S. 1516. We will hear them separately.

A copy of S. 1513 will be made a part of the record and copy of the staff memorandums will be made a part of the record.

(S. 1513 and staff memorandum follow:)

U.S. SENATE,
COMMITTEE ON THE DISTRICT OF COLUMBIA,
April 19, 1967.

MEMORANDUM FOR MEMBERS OF THE JUDICIARY SUBCOMMITTEE

(Date of hearing, Friday, April 21, 1967, 10 a.m.)

In re S. 1513, to establish the Commission on Revision of he Criminal Laws of the District of Columbia.

PURPOSE OF THE BILL

The bill would establish an 11-member "Commission on Revision of the Criminal Laws of the District of Columbia". Two of the members would be Senators appointed by the President of the Senate, and two would be Representatives appointed by the Speaker of the House of Representatives. Four members would be appointed by the Board of Commissioners, D.C., one of whom the Board would designate as Chairman. The chief judges of the U.S. Court of Appeals, the United States District Court, and the District of Columbia Court of General Sessions would each appoint one Judge from their respective courts as a member of the Commission.

The Commission's function would be to make a full and complete review and study of the statutory and case law applicable in the District for the purpose

of formulating and recommending to Congress a revised code of criminal law and procedure for the District, including recommendations for the repeal of unnecessary and undesirable laws and such changes in penalties as may better serve the ends of justice.

At least one interim report would be submitted to the Congress and the District Commissioners within two years from the date of the bill's enactment. The final report would be due within three years, and the Commission would expire 60 days after the submission of its final report.

The Commission would be authorized to appoint an Advisory Committee to advise, counsel, make recommendations, and perform other functions for the Commission. Advisory Committee members would not be deemed officers or employees of the United States, would receive no compensation, but would be reimbursed for travel, subsistence, and necessary expenses.

The Chairman would be authorized to appoint and fix the compensation of necessary Commission staff personnel, and to procure outside services at rates up to $100 a day for individuals.

Members of Congress, the Judiciary, and the Federal and District governments would serve on the Commission without compensation, but would be reimbursed for travel, subsistence, and necessary expenses. Commission members from private life would receive $100 per day when actually engaged in performance of Commission work, plus reimbursement for travel, subsistence, and other necessary expenses.

To assist it in carrying out its functions, the Commission would be authorized to request necessary information and assistance from other government agencies generally, which agencies would be authorized to cooperate and, if permitted by law, to furnish such information and assistance.

Funds needed to carry out the purposes of the bill would be authorized to be appropriated to the District of Columbia.

The criminal code now in effect in the District dates back to 1001. The President's Commission on Crime in the District of Columbia found many provisions to be confusing, inconsistent, and lacking in clarity, and strongly urged the establishment of a commission such as that proposed in this bill.

OWEN J. MALONE,
Associate Counsel.

S. 1513

A BILL To establish the Commission on Revision of the Criminal Laws of the District of Columbia

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CREATION OF COMMISSION.—The Commission on Revision of the Criminal Laws of the District of Columbia is hereby established.

SEC. 2. MEMBERSHIP OF COMMISSION.—The Commission shall be composed of eleven members, as follows:

(1) Two Members of the Senate appointed by the President of the Senate;

(2) Two Members of the House of Representatives appointed by the Speaker of the House of Representatives;

(3) Four members appointed by the Board of Commissioners of the District of Columbia one of whom the Board shall designate as Chairman;

(4) (a) One circuit judge appointed by the Chief Judge of the United States Court of Appeals for the District of Columbia Circuit;

(b) One district judge appointed by the Chief Judge of the United States District Court for the District of Columbia; and

(c) One general sessions judge appointed by the Chief Judge of the District of Columbia court of general sessions.

SEC. 3. FUNCTIONS OF THE COMMISSION.—The Commission shall make a full and complete review and study of the statutory and case law applicable in the District of Columbia for the purpose of formulating and recommending to the Congress a revised code of criminal law and procedure for the District of Columbia. The Commission shall include in its recommendations proposals for the repeal of unnecessary or undesirable statutes and such changes in the penalty structure as the Commission may feel will better serve the ends of justice.

SEC. 4. COMPENSATION OF MEMBERS OF THE COMMISSION.—(a) Members of Congress and members of the executive and judicial branches of the Federal or District of Columbia governments who are members of the Commission shall serve without compensation in addition to that received for their services in such other branch of government; but they shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of duties vested in the Commission.

(b) Members from private life shall each receive $100 per diem when engaged in the actual performance of duties vested in the Commission, plus reimbursement for travel, subsistence, and other necessary expenses incurred by them in the performance of such duties.

SEC. 5. ADVISORY COMMITTEE.—(a) The Commission shall have the power to appoint an advisory committee, the functions of which shall include advising, counseling proffering to the Commission appropriate recommendations, and the performance of such other functions, not inconsistent with the purposes of this Act, as may be assigned to it by the Commission.

(b) Members of the advisory committee shall not be deemed to be officers or employees of the United States by virtue of such service and shall receive no compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them by virtue of such service to the Commission.

SEC. 6. STAFF OF THE COMMISSION.—The Chairman of the Commission is authorized to appoint and fix the compensation of such personnel as he deems necessary to carry out the Commission's functions. He is also authorized to procure services to the same extent as is authorized for the executive departments by section 3109 of title 5, United States Code, at rates not to exceed $100 per diem for individuals.

SEC. 7. COOPERATION BY DEPARTMENTS AND AGENCIES.—The Commission is authorized to request from any department, agency, or independent instrumentality of the Government any information and assistance it deems necessary to carry out its functions under this Act; and each such department, agency, or instrumentality is authorized to cooperate with the Commission and, to the extent permitted by law, to furnish such information and assistance to the Commission upon request made by the Chairman or any other member when acting as Chairman.

SEC. 8. REPORT OF THE COMMISSION; TERMINATION.—The Commission shall submit interim reports to the Board of Commissioners of the District of Columbia and the Congress at such times as the Commission may deem appropriate, and in any event within two years after the date of this enactment, and shall submit its final report within three years after the date of enactment. The Commission shall cease to exist sixty days after the date of the submission of its final report.

SEC. 9. AUTHORIZED APPROPRIATION.—There is hereby authorized to be appropriated to the District of Columbia out of any money in the Treasury not otherwise appropriated such sums as may be necessary to carry out the purposes of this Act.

The CHAIRMAN. The letter from President Walter N. Tobriner, District of Columbia Board of Commissioners, April 20, 1967, endorsing S. 1513 will be made a part of the record at this point.

(The letter follows:)

APRIL 20, 1967.

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

DEAR SENATOR BIBLE: The Commissioners of the District of Columbia have for report S. 1513, 90th Congress, a bill "To establish the Commission on Revision of the Criminal Laws of the District of Columbia."

The President's Commission on Crime in the District of Columbia strongly urged that the Congress establish and actively support a Commission to review, modernize, and clarify existing provisions of the District's criminal code.

To illustrate the substantial deficiencies in existing criminal statutes in the District of Columbia, the Crime Commission pointed out that the code now in effect dates back to 1901, that many provisions are archaic, and that it often lacks clarity. Many provisions were found to be confusing and inconsistent.

The President, recognizing that the District requires "a coherent and consistent framework for the arrest and punishment of offenders and control of crime", has proposed an eleven-man Commission to do what is necessary. Two of the members would be Senators appointed by the President of the Senate and two would be Representatives appointed by the Speaker of the House of Representatives. Four members would be appointed by the Board of Commissioners of the District of Columbia, one of whom the Board would designate as Chairman. The chief judges of the United States Court of Appeals, the United States District Court, and the Court of General Sessions would appoint one judge each from among the judges of their respective courts. An Advisory Committee would assist the new Commission in the performance of its duties.

The Commission's functions, generally stated, will be to review case and statutory laws and to recommend to the Congress a revised code of criminal law and procedure for the District, including such changes in the penalty structures as will better serve the ends of justice.

The measure provides for the Commission to submit a final report to the Congress and to the Commissioners in three years, with at least one interim report within two years.

The Commissioners are of the view that such study would be of significant benefit in modernizing the District's criminal statutes and they strongly urge enactment of the bill.

The Commissioners have been advised by the Bureau of the Budget that, from the standpoint of the Administration's program, there is no objection to the submission of this report to the Congress and that enactment of this legislation would be in accord with the program of the President.

Sincerely yours.

WALTER N. TOBRINER,
President, Board of Commissioners,
District of Columbia.

The CHAIRMAN. The first is S. 1513, to establish the Commission on Revision of the Criminal Laws of the District of Columbia.

Our first witness is Mr. Daniel J. Freed, Acting Director, Office of Criminal Justice, U.S. Department of Justice.

Is Mr. Freed here?

Mr. Gimble is Assistant Corporation Counsel. You are going to be accompanied by Mr. Hardy, Mr. Nelson, and Mr. Niles? We will put you on and when Mr. Freed comes we will supplement your testimony.

Mr. GIMBLE. The gentlemen are with me with respect to S. 1516.

The CHAIRMAN. We will hear S. 1513 first, but you gentlemen remain just where you are.

Mr. Gimble, all right. You are the only one who is testifying on S. 1513?

Mr. GIMBLE. Yes.

The CHAIRMAN. Tell us about S. 1513.

STATEMENT OF GILBERT GIMBLE, ASSISTANT CORPORATION COUNSEL, DISTRICT OF COLUMBIA; ACCOMPANIED BY KENNETH L. HARDY, DIRECTOR, DISTRICT OF COLUMBIA DEPARTMENT OF CORRECTIONS; W. R. NELSON, ASSOCIATE DIRECTOR FOR PLANNING RESEARCH, DISTRICT OF COLUMBIA DEPARTMENT OF CORRECTIONS; AND ROBERT A. NILES, DIRECTOR, DISTRICT OF COLUMBIA BAIL AGENCY

Mr. GIMBLE. My name is Gilbert Gimble; I am an Assistant Corporation Counsel for the District of Columbia and I am representing today the Commissioners of the District of Columbia.

S. 1513 would implement one of the most significant recommendations of the President's Commission on Crime in the District of Colum-

bia—the establishment of a special Commission on Revision of the Criminal Laws in the District. The Commissioners of the District of Columbia strongly favor enactment of this bill.

President Johnson, in his message on District of Columbia affairs last February, took note of the District Crime Commission's findings that the city's criminal code—codified in 1901—is badly in need of a modern-day overhaul. The President declared that—

> The District should have a coherent and consistent framework for the arrest and punishment of offenders and the control of crime.

He urged in his message the establishment of an 11-member Commission, representing the Congress, the judiciary, the local government, and the public at large.

Under the provisions of S. 1513 the members of the Commission would be directed to make a full and complete review and study of the statutory and case law applicable in the District and recommended to the Congress a revised code of criminal law and procedure, including proposals for the repeal of unnecessary and undesirable statutes and such changes in criminal penalties as the Commission may feel would better serve the ends of justice. The Commission would also have the assistance of an advisory committee.

The District Crime Commission pointed out in its report that since 1942 many States have undertaken systematic revision of their criminal laws; including the States of Louisiana, Wisconsin, Illinois, Minnesota, and New York, where revised codes have already been enacted into law. Congress has already created a National Commission on Reform of Federal Criminal Law to review the 1948 codification of the Federal criminal law.

The Crime Commission concluded after its study of the District's criminal code that a systematic revision is needed and the Commission found that its opinion was generally shared by lawyers and judges who had responded to inquiries concerning the adequacy of existing laws. The report stated that—

> As in other jurisdictions where comprehensive reform has been undertaken, the District's code needs modernization, clarification, a more rational penalty structure, and thoughtful consideration of many difficult substantive and procedural problems.

The Crime Commission has made these general criticisms of the existing criminal code:

1. The 1901 codification was basically a collection and reorganization of the criminal statutes as they were at that time. The codifiers did not examine general principles of criminal law or undertake a systematic definition of criminal behavior. Now, nearly three-quarters of a century later, the deficiencies of the code are accentuated because of the substantial changes in the criminal law that have been made during the intervening decades. Statutes and judicial decisions have reflected changing public attitudes toward what should be considered criminal behavior. These changes in the law are now found only in the law books containing court decisions and the statutes relating to criminal law are found scattered throughout the entire District of Columbia Code.

2. There are provisions contained in the code which are confusing and inconsistent; these provisions, the Crime Commission stated, often

complicate the law-enforcement responsibilities of the police and prosecutor and foster unnecessary litigation.

3. Penalty provisions contained in the criminal code are frequently inequitable and inconsistent. For example, different penalties are sometime prescribed for essentially the same act; or on the other hand identical penalties are prescribed for acts of wide differences of degree (a pickpocket and an armed robber may get the identical penalty).

The Commissioners of the District agree with the conclusion reached by the Crime Commission members when they stated that revision of the criminal code in itself will not immediately reduce crime in the District.

But it will help define criminal behavior more clearly and in light of modern thinking, it will assist in law enforcement, and it will increase the deterrent and rehabilitative impact of the criminal law, and they recommend enactment of this measure.

The CHAIRMAN. Thank you very much, Mr. Gimble.

Mr. Freed, do you care to comment first on 1513? I understand Mr. Gimble and yourself are the two witnesses on 1513. Your statement is short. I guess you might just as well read that item for the record.

Mr. FREED. If you would like me to read it into the record. It seems that Mr. Gimble covered all of the points.

The CHAIRMAN. Cover the point of the makeup of the Commission. I do not think he mentioned that.

STATEMENT OF DANIEL J. FREED, ACTING DIRECTOR, OFFICE OF CRIMINAL JUSTICE, U.S. DEPARTMENT OF JUSTICE

Mr. FREED. S. 1513 would establish an 11-member Commission composed of two Members of the House of Representatives, two Senators, four members appointed by the District of Columbia Board of Commissioners and one judge each from the U.S. Court of Appeals for the District of Columbia Circuit, the U.S. District Court for the District of Columbia, and the District of Columbia court of general sessions. The Commission would be charged with undertaking the first comprehensive review of the criminal laws of the District of Columbia since 1901.

Section 7 of Chapter 7, pages 626–635 of the District of Columbia Crime Commission report make a powerful case for revision.

The CHAIRMAN. That is a good suggestion and I have them right in front of me here and it seems to me they do state a good case for the bill. Without objection, they will be incorporated as a part of the record at this point in your statement.

(The portion of the District of Columbia Crime Commission report referred to follows:)

FROM THE REPORT OF THE PRESIDENT'S COMMISSION ON CRIME IN THE DISTRICT OF COLUMBIA, CHAPTER 7, SECTION VII: CRIMINAL CODE REVISION

Throughout this Report the Commission has made numerous specific recommendations for improving the effectiveness of the criminal law. In compliance with our Presidential directive, however, we have also considered the general adequacy of the criminal laws in the District of Columbia and have weighed the desirability of their comprehensive revision and reform.

The need for revision and reform

GENERAL CONSIDERATIONS

By means of the criminal law, society identifies that human conduct which will be made the subject of punitive sanctions and selects methods for dealing with it.[1] The fundamental goals are variously articulated in terms of the society's survival, the necessary creation of the "conditions of civilization," and the balancing of the interests of society and the individuals.[2] More immediately, the criminal law seeks to prevent crime by deterring potential criminals and rehabilitating individual offenders.[3]

Achievement of these objectives requires a body of law which is as "simple, clear, uniform, and direct as the needs of our complex society will permit."[4] Offenders should not escape treatment or punishment because of incomplete, confused or overlapping provisions of the law.[5] Administration of the criminal law necessarily involves the exercise of discretionary power by various officials, but there must be standards to guide them.[6] The law must also provide a sound and consistent scheme of sanctions which reflects recent scientific advance and is well designed to achieve deterrence and rehabilitation.[7]

Since 1942 several states have undertaken systematic revision of their criminal laws. Louisiana (1942)[8] Wisconsin (1955)[9] Illinois (1961).[10] Minnesota (1963),[11] and New York (1965) [12] have enacted new criminal codes after lengthy study by legislative committees, state commissions, bar associations, and other agencies. In Pennsylvania a new code has been presented to the General Assembly.[13] In California a Joint Legislative Committee is reviewing the state's 90-year-old code.[14] These efforts have been given considerable impetus by the work of the American Law Institute in preparing its Model Penal Code, which was published in proposed official form in 1962.[15] The Institute's code is not merely a reorganization and restatement of existing law, but it also attempts to achieve new cohesion and consistency for the criminal law by setting forth general principles of criminal liability and responsibility, as well as specifying definitions of crimes and criteria for the sentencing and treatment of convicted offenders.

Although the techniques for accomplishing code revision have varied from state to state, the results appear uniformly successful. In Louisiana it is reported that administration of criminal justice is greatly improved because of new clarity and certainty in the law. In Wisconsin the new code is credited with a substantial reduction in the number of criminal appeals.[16]

The need for revision of the Federal criminal laws has been reflected in recent Congressional action. In a Message on March 9, 1966, the President called for their modernization and stated:

"A number of our criminal laws are obsolete. Many are inconsistent in their efforts to make the penalty fit the crime. Many—which treat essentially the same crimes—are scattered in a crazy-quilt patchwork throughout our Criminal Code.[17]"

In response to this call for a "modern and rational criminal code," Congress created the National Commission on Reform of Federal Criminal Law to review the 1948 codification of Federal criminal law and to recommend repeal of unnecessary or undesirable statutes and appropriate changes in the penalty structure.[18]

This trend toward systematic review and codification of the criminal law reflects recognition of the inadequacy of a body of law which evolves through intermittent legislative action, judicial decision and prosecutive practice. Code revision offers an opportunity to eliminate loopholes, ambiguities and inequities and thereby make the criminal law a more effective and respected instrument of social control.[19]

DISTRICT OF COLUMBIA LAW

After reviewing the criminal code in the District of Columbia, the Commission concludes that a similar systematic revision of our criminal laws is needed. This opinion is generally shared by many lawyers and judges who responded to the Commission's inquiries regarding the adequacy of these laws. As in other jurisdictions where comprehensive reform has been undertaken, the District's code needs modernization, clarification, a more rational penalty structure, and thoughtful consideration of many difficult substantive and procedural problems.

See footnotes, p. 64.

Need for modernization

The District of Columbia criminal law was first codified in 1901 and has not been codified since.[20] This codification was basically a collection and reorganization of the criminal statutes as they then existed. It did not examine general principles of criminal law or undertake a systematic definition of criminal behavior; many significant matters pertaining to the criminal law were ignored.

District statutes today lack the clarity which is afforded by precise definition. Illustrative is the 1901 code's treatment of the crime of manslaughter: The law declares only that manslaughter is a criminal offense punishable by a fine not exceeding $1,000 or imprisonment not exceeding 15 years, or both.[21] Definition of the crime itself was left to the common law and court decisions through the years. Statutory law in the District does not specify or define defenses to criminal charges; the result has been extensive litigation over the validity of particular defenses.[22] These deficiencies in the 1901 code promote public doubt concerning the law and handicap lawyers and judges in the efficient execution of their duties.

The deficiencies of the code are accentuated because the law has changed substantially since 1901. Additional legislative enactments and judicial decisions have reflected changing public attitudes toward behavior which should be considered criminal. Many of these changes are found only in the law books containing court decisions; the criminal laws themselves are scattered throughout all 49 titles of the District of Columbia Code. Included are many outdated code sections such as those which make it unlawful to fly a kite,[23] to play bandy or shindy or any other bat-and-ball game in the street,[24] to challenge to a duel,[25] and to use opprobrious language in branding another as a coward for refusing to accept a challenge to duel.[26] In short, with the passage of 65 years the criminal law in the District of Columbia has become a disorganized patchwork of legislation and case decisions.

Absence of clarity and consistency

The District of Columbia criminal code contains many provisions which are confusing and inconsistent. Such provisions often complicate the law enforcement responsibilities of the policeman and prosecutor and foster unnecessary litigation.

A prime illustration is found in the area of theft. Historically, "larceny" was defined as a furtive taking of property from the possession of another. Where persons entrusted with goods by the owner misappropriated them, courts ruled that this was not larceny. Legislatures remedied this defect by creating the crime of embezzlement, and soon new statutes were enacted covering a number of embezzlement offenses. Other shortcomings in the law of larceny were revealed in those cases where the defrauder persuaded his victim to part with possession and title of his property, which required the creation of the crime of obtaining property by false pretenses. There thus developed three distinct major theft crimes: larceny, embezzlement and false pretenses.

Reflecting these developments, the District Code has a proliferation of theft sections: Six sections cover larceny[27] and two apply to receiving stolen property;[28] ten sections cover embezzlement[29] and one the receiving of embezzled property;[30] one section covers obtaining property by false pretenses,[31] but five cover false personation.[32] Several other sections cover related offenses—forgery,[33] imitating brands,[34] stealing a will,[35] converting assets of an estate,[36] using slugs in machines,[37] making and uttering bad checks,[38] and fraudulent advertising.[39] This surfeit of theft offenses makes it difficult in many cases to determine just what statutory offense has been committed. In a given case a prosecutor might proceed against a defendant on two theories, such as larceny and embezzlement, the difference turning on the nebulous distinction between "custody" and "possession." If a jury convicts on one, the defendant may appeal on the ground that the facts proved the other offense, and the appeal may be successful.

A code which embraced all traditional forms of theft but eliminated overlapping provisions could minimize confusion and litigation. An examination of case law in the District indicates that courts tend to look beyond statutory definitions to the substance of the offense—in effect amending the statutes.[40] The effectiveness of this approach is limited, since the courts are understandably reluctant to set aside the express wording of a statute in order to achieve a unified law of theft. Moreover, statutory amendments are the proper province

of the legislature and not the court; and legislation by the courts on a case-by-case basis rarely contributes to clarity or consistency.[41]

The law of robbery in the District is another illustration. Robbery has been traditionally viewed as larceny in an aggravated form,[42] the aggravation arising from the force or violence used or threatened in order to accomplish the larceny. The District of Columbia Code blurs this robbery-larceny distinction by adding stealthy seizure to its definition of robbery. Thus, the secret taking of property from one's person or from his immediate possession may be either robbery or larceny. In this instance, the exercise of prosecutive discretion in selecting which crime to charge vitally affects the eventual penalty; the possible imprisonment for grand larceny is 1 to 10 years,[43] while robbery has a 6-month mandatory minimum and a 15-year maximum.[44]

The law of attempt is another example of inconsistency in the District Code. Some of the provisions in the code equate an attempted offense with the offense itself, as in the cases of abortion,[45] arson,[46] bribery,[47] forgery,[48] and the use of slugs in coin machines.[49] One provision specifically provides a punishment for an attempt to commit an offense.[50] Other provisions essentially equate attempts with lesser offenses; attempted murder, for example, becomes assault with intent to kill. A majority of criminal attempts, however, are left to the operation of the general attempt statute, which provides that in all cases not otherwise covered an attempted crime may be punished by a fine not exceeding $1,000 or imprisonment for not more than 1 year or both.[51] Thus, one who *attempts* a housebreaking may be jailed for no more than 1 year, while if he succeeded the penalty could be 15 years. A reading of the statutes suggests that one who commits petit larceny can be imprisoned for not more than a year and fined not more than $200, although an attempted petit larceny may result in imprisonment for 1 year and a fine of $1,000. A recent decision eliminates this anomaly in the law,[52] but clear and consistent statutes could have avoided the litigation.

Lack of effective penalty structure

The penalties provided in the District of Columbia Code are inequitable and inconsistent. Various sections of the code provide different penalties for essentially the same act.[53] Conversely the code often prescribes identical penalties for acts which are qualitatively different, in part because there are not degrees of rape, robbery, housebreaking, and other crimes.[54] The multiplicity of comparatively lenient attempt statutes further indicates a lack of rational penalty structure, since offenders who do not complete their crimes frequently pose as great a threat to society as those who are more successful.

The District of Columbia Code also contains mandatory minimum penalties for several offenses,[55] and legislation recently vetoed provided mandatory minimum sentences for four additional offenses.[56] Some members of this Commission believe that all mandatory minimum sentences are inappropriate because they operate to limit judicial discretion and hinder the rehabilitative efforts of correctional officials. Other members believe that in some limited instances mandatory minimum sentences have a significant deterrent effect on specific kinds of crime. The Commission recognizes, however, that the mandatory penalty provisions which now exist are largely obviated by the District's indeterminate sentencing laws.[57] Despite the mandatory minimums provided by statute, suspended sentences may be given, probation is available, and the actual time served may be as little as 1 day. At the very least, the Commission believes that this apparent conflict between the mandatory minimum provisions and the indeterminate sentence law requires review.

More generally, it is the view of this Commission that the District of Columbia Code lacks a unified and contemporary approach towards the rehabilitation of offenders. We find value in the American Law Institute's utilization of consultants from other disciplines in developing its Model Penal Code.[58] An interdisciplinary approach permits review of the criminal code and its penalty provisions in light of recent sociological and scientific advances, and may increase the law's effectiveness in preventing crime and rehabilitating offenders.

Substantive and procedural problem areas

Revision of the District of Columbia Code would provide a needed opportunity to explore procedural and substantive problems which were encountered by this Commission in its work but are not considered in detail in this Report.

See footnotes, p. 64.

Arrest Laws

Under District statutes it is a misdemeanor for a police officer to "neglect making an arrest for an offense against the laws of the United States committed in his presence." [59] Literally construed, this section of the code would prevent the exercise of police discretion not to arrest. In cases such as public intoxication the statute indicates that it would be unlawful for the police officer to send the offender home or deliver him to a medical center for treatment and processing under various non-criminal alternatives. In fact, the statute is not literally construed, and District police officers exercise their discretion not to arrest. The strict language of the statute, however, causes the Metropolitan Police Department to be cautious in entering important experimental projects like the proposed detoxification program for chronic alcoholics.

Police discretion is also limited by another statute which provides that after arrest the police shall "immediately, and without delay, . . . convey in person such offender before the proper court, that he may be dealt with according to law." [60] But other sections authorize release on stationhouse bond or after collateral is posted.[61] These sections have caused some confusion in establishing a basis for the summons program which has been recommended by this Commission and the Judicial Conference.

Revision of these arrest laws could promote substantial improvements in the handling of arrested persons by the police. In addition to consideration of these two particular problems, study of the arrest laws would permit further consideration of the difficult and sensitive issues reviewed in the American Law Institute's tentative draft of its Model Code of Pre-Arraignment Procedure.[62] Similarly, the use and possible abuse of police arrest records should be included in any comprehensive code revision.

Disorderly Conduct Statutes

Next to public intoxication the disorderly conduct statutes account for the largest category of nontraffic offenses in the District of Columbia. In 1965 over 20,000 charges of disorderly conduct were made by the Metropolitan Police Department.[63] Close examination of these provisions is appropriate because of their pervasive impact on police-community relations and their vulnerability to constitutional challenge.

Although there are several disorderly conduct statutes, the most significant ones are sections 1107 and 1121 (title 22, D.C. Code). Enacted in 1898, section 1107 prohibits loud and boisterous talking "or other disorderly conduct," incommoding the sidewalk, cursing, swearing, and engaging in any disorderly conduct in a street, public place, or where it can be heard.[64] Section 1121, passed in 1953 to clarify earlier law, contains the provision requiring individuals to "move on" after having been ordered to do so by a police officer and prohibits acting in a manner "to annoy, disturb, interfere with, obstruct, or be offensive to others." [65]

In our earlier discussion of the Metropolitan Police Department the Commission pointed out that the enforcement of the "move on" provision has been a barrier to the improvement of police-community relations in the District. Frequent complaints have been heard regarding the exercise of police discretion under this and other general provisions of the statute, particularly in the high-crime precincts where the statute is most used.[66] On several recent occasions, use of the disorderly conduct statute has created dangerous incidents involving groups of citizens and police.[67] These considerations have prompted a recommendation by the Complaint Review Board for study of the "move on" provision [68] and the issuance of an opinion by the Corporation Counsel which sets forth guidelines for enforcement of this portion of the statute.[69]

As in the case of the vagrancy laws, broadly-worded disorderly conduct statutes invite constitutional attack. In 1965 the Supreme Court decided two cases which involved breach of peace statutes similar to the District's disorderly conduct laws; in each instance the Court found that the statutes were unconstitutionally vague.[70] In *Jalbert* v. *District of Columbia*, the D.C. Court of Appeals restricted the meaning of "other disorderly conduct" used in the 1898 law to disorderly action such as loud and boisterous talking in order to interpret the law within constitutional limits.[71] The case of *Feeley* v. *District of Columbia*, involving the application of the 1953 act to demonstrators at the U.S. Capitol, is now pending before the U.S. Court of Appeals for the District of Columbia Circuit.[72] Thus legal as well as practical considerations suggest that review of the two disorderly conduct statutes would not only be timely but may become essential. The ALI Model Penal Code and the newly-revised state codes contain possible models for revision.[73]

Alternatives to the Criminal Process

One of the most pressing problems in the administration of criminal justice in the District of Columbia is the congested conditions of the Court of General Sessions. It might be solved in part by amending the statutes which govern the criminal jurisdiction of the court and by finding alternative methods for dealing with certain offenses. For example, elimination of jurisdiction over traffic cases and creation of an administrative agency to dispose of them would relieve the court of over 33,000 cases each year.[74] Dealing with the so-called petty offenses[75] outside the court process might affect upwards of 20,000 cases a year. Offenses such as public intoxication more properly belong in a noncriminal treatment process such as that proposed by this Commission.

We recognize that adequate resolution of these issues will require extensive research and interdisciplinary effort. The handling of traffic matters in the courts is a much debated question.[76] In the District of Columbia it seems anomalous that a very minor traffic infraction can automatically receive judicial attention while the revocation of a driver's license is considered an administrative matter.[77] The American Law Institute has observed that the petty offenses are:

> . . . a most important area of criminal administration affecting the largest number of defendants, involving a great portion of police activity and powerfully influencing the view of public justice held by millions of people.[78]

Yet justice is often displayed at its worst in dealing with these offenses. At least half of the public intoxication, disorderly conduct and moving traffic violations are terminated by forfeiture of collateral and never reach court.[79] Those defendants who do reach the typically overcrowded misdemeanor court, however, often receive "instant justice" and find little cause to respect the legal process.[80] The disparities and incongruities revealed in the handling of such minor criminal offenses should be examined in light of the purposes of the criminal law and the most efficient and fair operation of our system of criminal justice.

A Proposal for Code Revision

We recommend that Congress enact legislation creating a Commission to revise and reform the criminal laws of the District of Columbia. Revision of the necessary scope requires a professional staff and a representative advisory committee. The committee should include judges, representatives of the Metropolitan Police Department, Corporation Counsel, United States Attorney, Legal Aid Agency, Neighborhood Legal Services Project, the District of Columbia Bar Association, local law faculties, Department of Corrections, and Board of Parole, as well as persons representing disciplines other than the criminal law.

We recommend that the proposed code revision extend beyond a reorganization of existing law and consider the broader issues raised above. Like the Commission established by Congress to review the United States Code, the proposed commission should review the entire spectrum of the criminal laws. Its duties might be comparable to those specified by the statute establishing the California code reform commission:

> (1) Appraise and, as necessary or desirable, restate and redefine substantive provisions of law relating to crimes;
>
> (2) Eliminate existing substantive provisions of law which are no longer useful or necessary;
>
> (3) Rearrange and regroup substantive provisions of law in an orderly and logical grouping of subject matter;
>
> (4) Appraise, simplify, and improve present procedures; and
>
> (5) Consider the advisability of drafting and enactment of, and, if deemed advisable, draft a code of criminal procedure to embody existing and proposed procedures governing the disposition of criminal and quasi-criminal actions.[81]

Code revision by itself surely will not immediately reduce crime in the District of Columbia. It will, however, help to define criminal behavior more clearly, assist police, prosecutors and judges, and increase the deterrant and rehabilitative impact of the criminal law.

Summary of recommendations

1. The criminal law of the District of Columbia should be reviewed and reformed. The review should include a reexamination of all substantive and procedural provisions of the law to provide a clear definition of criminal behavior,

See footnotes, p. 64.

to achieve fair and consistent policies in dealing with offenders, and to introduce new concepts of treatment into the code.

2. Congress should create and support a commission to undertake revision of the District of Columbia criminal laws.

FOOTNOTES TO CHAPTER 7, SECTION VII OF THE REPORT OF THE PRESIDENT'S COMMISSION ON CRIME IN THE DISTRICT OF COLUMBIA

1. J. Michael and H. Wechsler, Criminal Law and its Administration, 6 (Foundation Press, 1940); R. M. Perkins, Criminal Law, 4 (Foundation Press, 1957).

2. J. Hall, Studies in Jurisprudence and Criminal Theory, 253 (Oceana Publications, 1958); American Law Institute [hereinafter cited as ALI] Model Code of Pre-Arraignment Procedure, Reporters' Introductory Memorandum, p. xx (Tent. Draft No. 1, 1966).

3. ALI Model Penal Code § 1.02, comment (Tent. Draft No. 2, 1954), citing Indiana Constitution art. 1, § 18 ("The penal code shall be founded on the principles of reformation, and not of vindictive justice"); Montana Constitution art. III. § 24 ("Laws for the punishment of crime shall be founded on the principles of reformation and prevention"); North Carolina Constitution art. XI, § 2 ("The object of punishment being not only to satisfy justice, but also to reform the offender and thus prevent crime . . ."). See also Hall, supra note 2, at 242; Hart, "The Aims of the Criminal Law," 23 Law & Contemp. Prob. 400 (1958).

4. Letter from U.S. Attorney General Nicholas deB. Katzenbach, H.R. Rep. No. 1891, 89th Cong., 2d Sess. 6 (1966).

5. Hall, supra note 2, at 254; H.R. Rep. No. 1891, supra note 4, at 3. See Remington, "Criminal Law Revision—Codification vs. Piecemeal Amendment," 33 Neb. L. Rev. 396 (1954).

6. Wechsler, "The Challenge of a Model Penal Code," 65 Harv. L. Rev. 1097, 1101–02 (1952).

7. Id. at 1103–04.

8. 14 La. Rev. Stat. ch. 1 1950). Louisiana's Criminal Code became effective on July 29, 1942.

9. 41 Wis. Stat. Ann. (1958). Wisconsin's Criminal Code became effective on July 1, 1956. For the legislative background of the Wisconsin revision see Platz, "The Criminal Code," 1956 Wis. L. Rev. 350.

10. 38 Ill. Ann. Stat. div. I (1964). The Illinois Criminal Code became effective on Jan. 1, 1962. For legislative history see 50 Ill. B.J. 34 (1964).

11. 40 and 40A Minn. Stat. Ann. (1964). The Minnesota Criminal Code became effective Sept. 1, 1963.

12. N.Y. Rev. Pen. Law (1965). The Revised Penal Law becomes effective Sept. 1, 1967.

13. House Bill No. 2272, An Act to consolidate, amend, and revise the Penal Laws of the Commonwealth (1965).

14. Cal. Stat. ch. 1797 (1963). See Phil S. Gibson, Chief Justice, "The Revision of Criminal Law in California—A Challenge to Bench and Bar," in Proceedings, California Conference of Judges (Sept. 25, 1963).

15. The ALI's efforts on a Model Code spanned more than 10 years. See Tent. Draft No. 1 (1963); proposed Official Draft (1962).

16. F. J. Remington, "Reform in State Criminal Procedure," 4, 10–13 (White Lectures, Georgetown University, Washington, D.C., 1963) (mimeo).

17. Message of the President on Crime and Law Enforcement, March 9, 1966, 112 Cong. Rec. 5146, 5148.

18. Pub. L. 89–801, 80 Stat. 1516 (1966).

19. See also Remington, supra note 16, at 10–13, where it is suggested that an additional benefit of code revision is the greater willingness of lawyers to participate in criminal cases who would not otherwise do so due to unfamiliarity with the substantive and procedural intricacies of an unrevised criminal code.

20. 31 Stat. 1321 (1901).

21. 22 D.C. Code § 2405 (1961).

22. See, e.g., Guarro v. United States, 237 F. 2d 578 (D.C. Cir. 1956) (consent, entrapment); Durham v. United States, 214 F. 2d 862 (D.C. Cir. 1954) (insanity); Edwards v. United States, 172 F. 2d 884 (D.C. Cir. 1949) (intoxication); Josey v. United States, 136 F. 2d 800 (D.C. Cir. 1943) (self-defense); Smith v. United States, 36 F. 2d 548 (D.C. Cir. 1929) (insanity).

23. 22 D.C. Code § 1117 (1961).
24. Id., § 1108.
25. Id., § 1102.
26. Id., § 1103.
27. Id., §§ 2201–2204a, 2206.
28. Id., §§ 2205, 2207.
29. Id., §§ 1201–1203, 1205–1211.
30. Id., § 1204.
31. Id., § 1301.
32. Id., §§ 1303–1307.
33. Id., § 1401.
34. Id., § 1402.
35. Id., § 1403.
36. Id., § 1404.
37. Id., § 1407.
38. Id., § 1410.
39. Id., § 1411.
40. See e.g., Skantze v. United States, 288 F. 2d 416 (D.C. Cir.), *cert. denied*, 366 U.S. 972 (1961). Miller v. United States, 41 App. D.C. 52, *cert. denied*, 231 U.S. 755 (1913); Woodward v. United States, 38 App. D.C. 323 (1912).
41. Cf. Friendly, "The Bill of Rights as a Code of Criminal Procedure," 53 Calif. L. Rev. 929 (1965).
42. Perkins, supra note 1, at 237.
43. 22 D.C. Code § 2201 (1961).
44. Id., § 2901.
45. Id., § 201.
46. Id., §§ 401, 403.
47. Id., § 701.
48. Id., § 1401.
49. Id., § 1407.
50. Id., § 2902 (attempt to commit robbery).
51. Id., § 103.
52. United States v. Pearson, 202 A. 2d 392 D.C. Ct. App. (1964).
53. For example, larceny from a private citizen is subject to imprisonment up to 1 year if the value of the property stolen is less than $100, and 1 to 10 years if the value of the property is $100 or more. 22 D.C. Code §§ 2201, 2202 (1961). For stealing property of the District of Columbia, however, there is no distinction based on value of the property and all thefts may be punished by terms up to 5 years. 22 D.C. Code § 2206 (1961).
54. For example, robbery, as defined by 22 D.C. Code § 2901 (1961), may include picking a pocket, yoking or an armed hold-up.
55. 22 D.C. Code §§ 1401 (forgery), 2201 (grand larceny), 2404 (murder), 2501 (perjury), 2901 (robbery) (1961). See also 24 D.C. Code § 203 (1961) imposing minimum sentences for violations after previous convictions.
56. District of Columbia Omnibus Crime Bill, H.R. 5688, 89th Cong., 1st Sess. (1965), as passed after conference by the Senate, 112 Cong. Rec. 26231 (Oct. 17, 1966), and the House, 112 Cong. Rec. 26633 (Oct. 19, 1966), titles V and VI. Vetoed by the President, Nov. 13, 1966. See 112 Cong. Rec. 26134 (1966) for the bill as it emerged from conference and passed both houses.
57. 24 D.C. Code, ch. 2 (1961).
58. See the list of special consultants utilized by the ALI in the preparation of its Model Penal Code, pp. iv–vi (Proposed Official Draft, 1962). See also Wechsler, supra note 6, at 1130.
59. 4 D.C. Code § 143 (1961).
60. 4 D.C. Code § 140 (1961).
61. 23 D.C. Code § 610 (1961); 16 D.C. Code § 704 (Supp. V. 1966).
62. ALI Model Code of Pre-Arraignment Procedure §§ 3.02, 4.04(5), 4.07 (Tent. Draft No. 1, 1966).
63. In 1965 the police reported 20,446 charges and 14,885 arrests for disorderly conduct. MPD Ann. Rep., 39, 43 (1965).
64. 30 Stat. 723, ch. 638 (1898), 22 D.C. Code § 1107 (1961).
65. 67 Stat. 98, ch. 159, § 211a, 22 D.C. Code § 1121 (1961). See H.R. Rep. No. 538, 82d Cong., 1st Sess. 10 (1951).
66. Public Hearings, Shaw Junior High School, Feb. 17, 1966. In 1965 there were 3,434 disorderly charges in the 13th Precinct, 2,449 in the 10th, 2,812 in the

9th, and 2,041 in the 2d Precinct. MPD Ann. Rep., 39 (1965). This represented an increase of almost a thousand disorderly conduct charges in the 10th Precinct. See MPD Ann. Rep., 39 (1964). In 1951 and 1955 the 2d Precinct had over 5,000 disorderly conduct arrests, while the 10th had only 475 (1951) and 785 (1955). By 1961 the 2d Precinct had gone down to 3,371 and the 10th had come up to 2,852. MPD Ann. Reps. (1951, 1955, 1961).

67. See The Washington Post, April 2, 1966, p. A1, reporting a policeman slashed with a razor while making a disorderly conduct arrest. He in turn shot the accused. A crowd of 100 people from the 13th Precinct assembled during the fracas. See also The Evening Star (Washington, D.C.) May 18, 1966, p. A2, May 4, 1966, p. C4.

68. Id., May 19, 1966, p. A1.

69. Opinion of the Corporation Counsel, June 7, 1966.

70. Cox v. Louisiana, 379 U.S. 536 (1965); Shuttlesworth v. Birmingham, 382 U.S. 87 (1965).

71. 221 A. 2d 94 (D.C. Ct. App. 1966).

72. No. 20,275, appeal allowed Oct. 19, 1966.

73. See ALI Model Penal Code § 250.2, commentary (Tent. Draft No. 13, 1961). See, e.g., 38 Ill. Stat. Ann. § 26–1 (1964).

74. D.C. Court of General Sessions, Annual Report, Table I (1965).

75. Definitions of petty offenses vary. Federal law identifies them as misdemeanors with a penalty which does not exceed 6 months imprisonment, $500 fine, or both. 18 U.S.C. § 1 (1950).

76. Compare Netherton, "Fair Trial in Traffic Court," 41 Minn. L. Rev. 577 (1957), and Conway, "Is Civil or Criminal Procedure Proper for Enforcement of Traffic Law?", 1959 Wis. L. Rev. 418, 444 (1959), with J. P. Economos, Traffic Court Procedure and Administration (American Bar Association, 1961), and Mueller, "How to Increase Traffic Fatalities: A Useful Guide for Modern Legislators and Traffic Courts," 60 Col. L. Rev. 944 (1960).

77. 40 D.C. Code §302(a) (Supp. V., 1966).

78. ALI Model Penal Code, introduction to § 250 (Tent. Draft No. 13, 1961).

79. See MPD Ann. Rep., 40 (1965). "Other dispositions" shown therein include forfeiture of collateral and court-imposed fines. Most, however, are forfeitures.

80. Address by Hon. Bernard Botein, Governor's Conference on Crime (New York City, April 22, 1966) (mimeo).

81. Cal. Stat., ch. 1797, § 2 (1961). The State of Illinois appears to be the only state which has enacted a completely revised code of criminal procedure, 38 Ill. Ann. Stat. div. III (1964), but California, supra, and New York contemplate revision of criminal procedures. Information supplied by Richard Denzer, Chief Counsel, New York Temporary Commission on Revision of the Penal Law and Criminal Code, Sept. 1963. The ALI is now engaged in developing a model code of criminal procedures. ALI Model Code of Pre-Arraignment Procedure (Tent. Draft No. 1, 1966).

Mr. FREED. They illustrate numerous deficiencies which promote public doubt concerning the law and handicap lawyers and judges in the efficient execution of their duties. They show provisions which, by being confusing and inconsistent, often complicate the law enforcement responsibilities of the policeman and prosecutor and foster unnecessary litigation. They reveal a penalty structure which is a hodgepodge; which brings mandatory minimum sentences and indeterminate sentences into conflict; and which lacks a unified and contemporary approach to the rehabilitation of offenders. They show the need for a new look at our arrest laws and our disorderly conduct statutes. And they suggest a review of our self-defeating overburdening of the criminal justice system which treats as criminal conduct which may be handled more effectively in other ways. The Crime Commission concluded that a code commission should be appointed, and that—

> Its review should include a reexamination of all substantive and procedural provisions of the law to provide a clear definition of criminal behavior, to achieve fair and consistent policies in dealing with offenders, and to introduce new concepts of treatment into the code.

The District is not unique in having an antiquated criminal code. In the last 25 years, five states—Louisiana, Wisconsin, Illinois, Minnesota, and New York—have completed thorough and systematic overhauls of their criminal laws. Similar efforts are presently underway in California, Pennsylvania, and a number of other States. The 89th Congress established the National Commission on Reform of Federal Criminal Laws to perform the same job in the Federal system.

The District of Columbia should join the national effort to overhaul antiquated criminal codes. Our present laws complicate the difficult task of law enforcement and hamper the efficient administration of justice. They produce results which are neither fair to the defendant nor effective for the protection of society.

The CHAIRMAN. Thank you very much. I have just a few questions.

I, too, concur in the establishment of a Commission To Revise Criminal Laws, not only the District of Columbia, but the various States. I am sure they are antiquated and I am sure there are conflicts in them.

As I understand it, there has been no recodification since 1902, was that your satement?

Mr. GIMBLE. 1901.

The CHAIRMAN. Was that a recodification?

Mr. GIMBLE. I believe that was the first and only codification of the District of Columbia Criminal Statutes.

The CHAIRMAN. What does the word "recodification" mean? Do you have a completely new code or do you just hire a bunch of lawyers and pay them a lot of money to put the laws together and call it a new code? Is it a revision or what?

Mr. GIMBLE. I believe that would be exactly what would be done, Mr. Chairman, that there would be a revision of the laws and the systematic compilation of laws as the courts has interpreted the law and new ideas and advances in the law are proposed.

This Commission presumably would go into all these aspects of looking at what has been done by the courts, or has been done by the legislature and what new advances they wish to propose; and this would be an enactment of the Congress.

The CHAIRMAN. That is the point I am driving at. After they recodified the 650 pages, they would then have it introduced into Congress, then the Congress, in its wisdom, would enact into law the 650 pages. That would then be the complete, entire criminal code of the District of Columbia?

Mr. GIMBLE. That would be it. It would be substantive law, and I believe that was what was done with respect to title 18 of the United States Code. Am I right?

Mr. FREED. I am not sure about title 18, but I have the feeling that that title 18 was more of a recodification, a kind of modernization of language and consolidation of provisions, rather than a reexamination of the criminal law, as Mr. Gimble has just described. I think this bill is changing not only the form of the code, but the substance, at least recommending it to the Congress.

The CHAIRMAN. The proposals you are making would change both the form and substance. Would it not? It would not affect the laws until it was enacted by the Congress; am I correct?

Mr. GIMBLE. Yes, it is my opinion, no matter what the Congress proposes, Congress takes a much better look and would have it in better form than exists now.

The CHAIRMAN. I wanted to be clear on that, that this was not an understanding of just simply recodifying without updating and eliminating old and antiquated laws. This is what I want to be sure of.

Mr. GIMBLE. I might point out, Mr. Chairman, that the proposed bill calls for a report by the Commission to the Congress in 3 years, with in interim report to the Congress in 2 years.

The CHAIRMAN. The question has been raised by the staff people that—you mentioned other courts of the District represented on the Commission. Is there any good reason why you do not mention the District of Columbia court of appeals as having a representative on this Commission?

Mr. GIMBLE. I don't know of any reason——

The CHAIRMAN. I assume you do not. The staff tells me you do not, so I assume they are right. It says the chief judges of the U.S. Court of Appeals. We have an appellate court over and above the general sessions, and then we have the appellate court over the regular Federal court system; is that true, so we have two District of Columbia courts of appeal. One has a representative and one does not, if I understand the bill. Why is that?

Mr. GIMBLE. I don't know the answer to that, Mr. Chairman, although it is conceivable that one of the members of the District of Columbia court of appeals could be appointed by the Board of Commissioners, for example, as the four members they could name.

I don't know why they are not added in the bill.

The CHAIRMAN. There may be a good reason. I do not know.

Mr. FREED. I believe, Mr. Chairman, an explanation may be this; although I can't state with certainty. The District of Columbia court of appeals is an intermediate appellate court in this jurisdiction. The bill includes the chief judges of the two base line courts which in many ways handle different kinds of cases and different aspects of the District of Columbia problem. The U.S. court of appeals is the highest appellate court within the jurisdiction. The District of Columbia court of appeals is the smallest of all of these courts, and to consume the time of one of its three members on a commission of this magnitude, particularly in light of the very heavy caseload and backlog of that court, may be an imposition on the members of the court.

Should that court be enlarged or should its role in the criminal law be changed, or change be imminent, it might well be represented. But I believe it was left off at this time in order to avoid imposing on an already overburdened court.

The CHAIRMAN. My only other question would be as to the cost. How much will the total cost be for the complete job of revision?

Mr. FREED. Mr. Chairman, the bill which Mr. Gimble mentioned earlier that created the National Commission on Reform of Federal Crime Laws provides for an appropriation not to exceed half a million dollars to revise the Federal Criminal Code.

I am not aware that any cost has been assessed or any comparison made of the job in the District of Columbia, but it would not surprise me if the costs wouldn't reach several hundred thousand dollars.

The CHAIRMAN. This would be the main concern I would have about this bill. I think legislation of this kind is important, and I think it is wise to recodify, and with the tremendous pressures on for revenue in the District of Columbia—I know by the press that there is that demand and they are having some revenue problems. I read on the editorial side of all the papers and I wonder where you best spend the dollar.

Can you spend $200,000 or $300,000 or $400,000 in codifying the criminal laws that—and I think it is important—but is it as important as building a school building or putting on more schoolteachers or creating a recreation area where you have to give priorities to it?

This would be the only concern that I would have.

Of if you are going to fight crime, is it better to take $500,000 and put $500,000 more on policemen on the streets, than to recodify the laws and make it easier for the lawyers?

I do not know. This is a judgment and I would be glad to have your views if you have any.

Mr. GIMBLE. Mr. Chairman, I would only say that if we do manage to streamline this measure and other measures that are proposed before your committee, streamline this structure of the administration of justice that we have, and make it more effective, perhaps we make it less costly at the same time. It might be money well spent in that regard.

I might add, Mr. Chairman, that the contemplation in this bill and the bill as the administration proposes was that the moneys to be spent on this project would come from the Treasury of the United States and not from funds designated for the District of Columbia.

Your views are quite correct, Mr. Chairman, that we are in bad need of money in the District of Columbia. But I believe that was contemplated by this provision, that the funds, the job is an important one and the funds come from the General Treasury.

The CHAIRMAN. Probably this would be an additional Federal payment, but I do not know. What you are saying, it would be 100-percent federally financed?

Mr. GIMBLE. As I understand the appropriation language in the bill.

The CHAIRMAN. I don't think I looked at the bill in that connection—appropriated out of any money in the Treasury not otherwise appropriated. Is that your understanding, Mr. Freed?

Mr. FREED. That is my understanding.

I might add, in addition, Mr. Niles reminds me that the District of Columbia court of general sessions collects each year several millions of dollars in fines, and it would seem to me that after more than a half century of proceeding with criminal law that was written just at the end of the 19th century, that if we are so concerned with crime, that the major charter under which our police and our courts and our correctional institutions function ought to be rewritten to make sure all the things we do under it make sense. To that extent, perhaps, the cost of this Commission ought to be thought of as amortized over a half century rather than deemed to be an appropriation for 1 year, which might be repeated again.

We are making every effort, as other States have, to really bring up to date concepts in the criminal law which haven't been reexamined in many generations.

The CHAIRMAN. A lot of States have done it—you say five have done it, is that right?

Mr. FREED. I believe five have completed it. But in a recent study conducted by a professor from Marquette University Law School, who is responsible for revising the Wisconsin code, we learned that well over half of all the States——

The CHAIRMAN. Five, you say. I do not know whether they just started and let it lapse or whether they are active in the revision.

Mr. FREED. I believe there are over two dozen and maybe over 30 or 35 States which are today in some stage of reexamining their criminal laws.

The CHAIRMAN. I am satisfied with the showing you have made.

Without objection, and hearing none, S. 1513 will be closed with one exception, if you could furnish to the staff a little more realistic estimate of the total cost—yours was a little flexible, I might say—as to the estimate of the cost—and if you could refine it, I would appreciate it. I don't know whether you can be a little more accurate or not. Ask your people to see if they can put an overall suggested price tag on it.

(Whereupon, at 10:25 o'clock, the subcommittee recessed to proceed to other business.)

DISTRICT OF COLUMBIA ANTICRIME LEGISLATION—1967

(S. 1516, a Bill Authorizing the Commissioners of the District of Columbia To Supervise Persons Released Into Their Custody in Accordance With Judicial Orders Issued Pursuant to Section 3146 or 3148 of Title 18, United States Code; To Authorize the District of Columbia Bail Agency To Provide Reports to the Commissioners of the District of Columbia With Respect to Any Person Released Into Custody of the Commissioners Pursuant to Section 3146 or 3148 of Title 18, United States Code; and for Other Purposes)

FRIDAY, APRIL 21, 1967

U.S. SENATE,
SUBCOMMITTEE ON THE JUDICIARY
OF THE COMMITTEE ON THE DISTRICT OF COLUMBIA,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10:20 a.m., in room 6226, New Senate Office Building, Senator Alan Bible (chairman) presiding.

Present: Senator Bible and Senator Dominick.

Also present: Chester H. Smith, staff director; Owen J. Malone, associate counsel; Howard A. Abrahams, assistant counsel; Arlene Williams, assistant clerk; and Richard E. Judd, professional staff member.

The CHAIRMAN. The subcommittee will come to order.

We will include a copy of the bill, S. 1516; a copy of the staff memorandum dated April 20, 1967; a letter from Robert A. Niles, Director of the District of Columbia Bail Agency; and a letter from Walter N. Tobriner, president of the District Columbia Board of Commissioners, dated April 20, 1967, endorsing S. 1516. Also a reprint of the pertinent portions of the Report of the President's Commission on Crime in the District of Columbia relevant to S. 1516.

(The documents referred to follow:)

[S. 1516, 90th Cong., first sess.]

A BILL Authorizing the Commissioners of the District of Columbia to supervise persons released into their custody in accordance with judicial orders issued pursuant to section 3146 or 3148 of title 18, United States Code; to authorize the District of Columbia Bail Agency to provide reports to the Commissioners of the District of Columbia with respect to any person released into the custody of the Commissioners pursuant to section 3146 or 3148 of title 18, United States Code; and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SUPERVISED RELEASE PRIOR TO TRIAL OF AFTER CONVICTION

SECTION 1. (a) The Commissioners of the District of Columbia or their designated representatives are hereby authorized to supervise persons released into their custody in accordance with judicial orders issued pursuant to section 3146 or 3148 of title 18, United States Code.

(b) The District of Columbia Bail Agency is authorized to provide reports to the Commissioners of the District of Columbia or their designated representatives with respect to any person released into their custody pursuant to section 3146 or 3148 of title 18, United States Code, notwithstanding the provisions of section 4(c) of the Act approved July 26, 1966 (80 Stat. 327, 328). The report so furnished shall be used only in connection with the supervision of released persons.

SUPERVISED RELEASE OF YOUTH OFFENDERS

SEC. 2. (a) Section 5024 of title 18, United States Code, is amended by deleting ", and to youth offenders convicted in the District of Columbia of offenses under any law of the United States not applicable exclusively to such District and to other youth offenders convicted in the District to the extent authorized under section 5025" and substituting therefor: "and in the District of Columbia."

(b) Section 5025 of the title is amended to read:

"§ 5025. Applicability to the District of Columbia

"(a) The Board of Commissioners of the District of Columbia is authorized to provide its own facilities and personnel for the treatment and rehabilitation of youth offenders convicted of any law of the United States applicable exclusively to the District of Columbia; or to contract with the Director of the Bureau of Prisons for their treatment and rehabilitation, the cost of which may be paid from the appropriation for the District of Columbia.

"(b) When facilities of the District of Columbia are utilized by the Attorney General for the treatment and rehabilitation of youth offenders convicted of violation of a law of the United States not applicable exclusively to the District of Columbia, the cost shall be paid from the 'Appropriation for Support of United States Prisoners'.

"(c) All youth offenders committed to institutions of the District of Columbia shall be under the jurisdiction and control of the Board of Commissioners of the District of Columbia, and the Board shall provide for their maintenance, treatment, rehabilitation, supervision, conditional release, and discharge in conformity with the objectives of this chapter."

(c) The analysis of section 5025 is amended to read:

"Sec. 5025. Applicability to the District of Columbia."

FEDERAL PRISON INDUSTRIES

SEC. 3. Section 4122 of title 18, United States Code, is amended by (1) redesignating subsection (d) as subsection (d)(1); (2) redesignating subsection (e) as subsection (d)(2) and amending "subsection (d)" in the last line thereof to read "subsection (d)(1)"; and (3) adding a new subsection (e) as follows:

"(e)(1) The provisions of this chapter shall apply to the industrial employment and training of prisoners confined in any penal or correctional institution under the direction of the Board of Commissioners of the District of Columbia to the extent and under terms and conditions agreed upon by the Board of Commissioners, the Attorney General, and the Board of Directors of Federal Prison Industries.

"(2) The Board of Commissioners of the District of Columbia may, without exchange of funds, transfer to Federal Prison Industries any property or equipment suitable for use in performing the functions and duties covered by an agreement entered into under subsection (e)(1) of this section.

"(3) Nothing in this chapter shall be construed to affect the provisions of the Act approved October 3, 1964 (78 Stat. 1000; D.C. Code, secs. 24–451 et seq.), entitled "An Act to establish in the Treasury a correctional industries fund for the government of the District of Columbia, and for other purposes."

PLEADING INSANITY—ESCAPE OF MENTALLY ILL

SEC. 4. (a) Subsection (c) of section 927 of the Act entitled "An Act to establish a code of law for the District of Columbia", approved March 3, 1901 (D.C. Code, sec. 24–301), is amended to read as follows:

"(c) (1) No accused shall plead or prove insanity at the time of the commission of an offense, unless he or his attorney files with the court and with the United States attorney or the Corporation Counsel of the District of Columbia, whichever officer is charged with prosecuting the accused, written notice of his intention to do so. Such notice shall be filed (a) no later than thirty days prior to trial, if the court has not ordered a mental examination; (b) no later than fifteen days after receipt by the accused or his attorney of the report of the examining psychiatrist, if the court has ordered a mental examination; or (c) at such other time as the court may for good cause direct.

"(2) When any person tried upon an indictment or information for an offense, or tried in the juvenile court of the District of Columbia for an offense, is acquitted solely on the ground that he was insane at the time of its commission, that fact shall be set forth by the jury in their verdict, and the court shall order such person to be confined in a hospital for the mentally ill."

(b) Subsection (d) of said section is amended to read as follows:

"(d) When a person has been ordered confined in a hospital for the mentally ill pursuant to this section and has escaped from such hospital, the court which ordered confinement shall, upon request of the Government, order the return of the escaped person to such hospital. The return order shall be effective throughout the United States. Any Federal judicial officer within whose jurisdiction the escaped person shall be found shall, upon receipt of the return order issued by the committing court, cause such person to be apprehended and delivered up for return to such hospital."

WITNESS FEES AND TRAVEL ALLOWANCES

SEC. 5. (a) Section 15–714(a) of the District of Columbia Code is amended to read as follows:

"(a) The fees and travel allowances to be paid any witness attending in a criminal case in the District of Columbia court of general sessions shall be the same as those paid to witnesses who attend before the United States District Court for the District of Columbia."

(b) Section 15–716 of the District of Columbia Code is amended by striking "not exceeding $500 at any one time,".

EFFECTIVE DATE

SEC. 6. (a) Section 1 and section 2 shall become effective ninety days after the date of enactment of this Act.

(b) Section 5 shall become effective one hundred and eighty days after the date of enactment of this Act.

U.S. SENATE,
COMMITTEE ON THE DISTRICT OF COLUMBIA,
April 20, 1967.

MEMORANDUM FOR MEMBERS OF THE JUDICIARY SUBCOMMITTEE:

In re S. 1516, authorizing the Commissioners of the District of Columbia to supervise persons released into their custody in accordance with judicial orders issued pursuant to section 3146 or 3148 of title 18, United States Code; to authorize the District of Columbia Bail Agency to provide reports to the Commissioners of the District of Columbia with respect to any person released into the custody of the Commissioners pursuant to section 3146 or 3148 of title 18, United States Code; and for other purposes.

Date of hearing: Friday, April 21, 1967, 10:00 A.M.

PURPOSE OF THE BILL

Section 1 of the bill would authorize the District Commissioners or their designated representatives to supervise persons released into their custody prior to trial or after conviction in accordance with judicial orders issued pursuant to the Bail Reform Act of 166. It would also authorize the District of Columbia Bail Agency to provide reports to the Commissioners or designated representatives respecting any person so released into their custody.

Under existing law there is a substantial void with respect to the supervision of persons conditionally released by the courts pending trial or pending appeal.

There is no present provision authorizing the supervision of such persons by the Commissioners and, under present law, reports of the Bail Agency are made available only to judicial officers.

The purpose of section 1 would be to facilitate effective supervision in cases where the Commissioners or their representatives are given custody. It would allow the Commissioners to designate the Department of Corrections, D. C. to supervise such persons, and afford them the benefit of Bail Agency reports concerning the backgrounds of the individuals concerned and their families. The Bail Agency's reports would be usable only in connection with the supervision of the released person.

Section 2 of the bill would place all youth offenders committed to institutions of the District of Columbia under the jurisdiction and control of the Board of Commissioners. It would transfer the authority to provide for the maintenance, treatment, rehabilitation, and conditional release of youth offenders in District institutions from the U.S. Bureau of Prisons and the Youth Corrections Division of the U.S. Board of Parole to the District Commissioners. The Commissioners have authority under Reorganization Plan No. 5 of 1952 to delegate responsibility for administering the youth correction program to the Director of the Department of Corrections, D.C., and the responsibility for release or discharge to the D.C. Board of Parole, in accordance with the recommendations of the District of Columbia Crime Commission.

Under existing law, an offender who is sentenced under the provisions of the Federal Youth Corrections Act and committed to a District institution, is under the supervision of District authorities while in the institution, but under the supervision of the Youth Correction Division of the U.S. Board of Parole for purposes of conditional release. After release, he is supervised by the U.S. Probation Service.

The effect of this provision would be to place such youthful offenders under District supervision, both while committed and after release. Local authorities would have continuing jurisdiction, and be able to maintain a continuity of treatment with a view to bringing about more effective results.

This provision of the bill would also authorize the Board of Commissioners to provide its own facilities and personnel for the treatment of youth offenders convicted of laws applicable only to the District, or to contract with the Director of the Bureau of Prisons for such services, the cost to be paid from District appropriations. When District facilities are utilized by the Attorney General for the care of offenders convicted of a law not applicable solely to the District, the cost would be payable from the appropriations for the support of United States prisoners.

Section 3 of the bill would authorize the District Commissioners to provide for the industrial employment and training of prisoners in District institutions under agreements entered into by the Commissioners, the Attorney General, and the Board of Directors of Federal Prison Industries. This provision would also permit the Commissioners, without exchange of funds, to transfer to Federal Prison Industries property or equipment suitable for performing training under such agreements.

The District of Columbia Crime Commission reported that the work program in District institutions is currently directed toward providing inmates with a job inside the institution, rather than preparing him for opportunities which will be available to him on release. To rectify this, the Commission recommended that the District of Columbia contract with Federal Prison Industries for the reorganization and future operation of its industries program.

Federal Prison Industries is a government corporation, and provides training and employment oriented to the outside market. Its operations involve, among others, electronic repair; the manufacture of clothing, furniture, textiles, tools, and machinery; furniture repair; and printing. Training is also available in business, management, and clerical skills. Various Federal departments and agencies purchase the goods produced. Federal Prison Industries has the technical competence, the financial resources, and the established relationship with industry and government to assist in the development of a model industries system for the District of Columbia.

Section 4 * * * * *

Section 5 of the bill would amend existing law to provide for the payment of witness fees and travel allowances in criminal cases in the District of Columbia

Court of General Sessions equal to the fee paid witnesses before the United States District Court for the District of Columbia, which is presently four (4) dollars per day. The present witness fee in the Court of General Sessions is 75 cents per day in criminal cases.

OWEN J. MALONE, *Associate Counsel.*

APRIL 20, 1967.

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

DEAR SENATOR BIBLE: The Commissioners of the District of Columbia have for report S. 1516, 90th Congress, a bill "Authorizing the Commissioners of the District of Columbia to supervise persons released into their custody in accordance with judicial orders issued pursuant to section 3146 or 3148 of title 18, United States Code; to authorize the District of Columbia Bail Agency to provide reports to the Commissioners of the District of Columbia with respect to any person released into the custody of the Commissioners pursuant to section 3146 or 3148 of title 18, United States Code; and for other purposes."

SUPERVISED RELEASE

The first section of the bill is designed to facilitate effective supervision of persons conditionally released by the courts. At present there is a substantial void with respect to the supervision of persons released by the courts either in advance of their trials or pending appeal. This section will allow the Commissioners to designate the Department of Corrections to supervise such persons. It will also authorize the District of Columbia Bail Agency to make available to the Commissioners or their representatives investigative reports with respect to persons to be released under their supervision.

SUPERVISED RELEASE OF YOUTH OFFENDERS

Section 2 of the bill would transfer the authority to provide for the treatment, rehabilitation, and conditional release of Federal youth offenders who are in institutions of the District of Columbia from the United States Bureau of Prisons and the Youth Corrections Division of the United States Board of Parole to the Board of Commissioners of the District of Columbia. The Board of Commissioners under the authority vested in it by Reorganization Plan No. 5 of 1952 (66 Stat. 824) would delegate responsibility for administering the youth correction program to the Director of the Department of Corrections, and responsibility for release or discharge to the District of Columbia Board of Parole, in accordance with the recommendation of the District of Columbia Crime Commission.

Under existing law, an offender who is sentenced under the provisions of the Federal Youth Corrections Act and committed to a District of Columbia institution, is under the supervision of District authorities while in the institution but under the supervision of the Youth Corrections Divsion of the United States Board of Parole for purposes of conditional release. After release, he is supervised by the United States Probation Service. Section 902 will place such youth offenders under the supervision of the Department of Corrections while committed and after release. Hence, local authorities will have a continuing jurisdiction over such offenders, permitting the maintenance of a continuity of treatment which should bring about more effective results.

FEDERAL PRISON INDUSTRIES

The Crime Commission reported that the work program in the District is currently directed towards providing inmates with jobs inside the institution, rather than preparing them for opportunities which will be available to them on release. To rectify this, the Commission recommended that the District of Columbia contract with Federal Prison Industries for the reorganization and future operation of its industries program.

This government corporation, organized in 1934, provides training and employment oriented to the outside market. Its operations involve, among others, electronic repair; the manufacture of clothing, furniture, textiles, tools and machin-

ery; furniture repair; and printing. Training is also available in business, management, and clerical skills. Various Federal departments and agencies purchase the goods produced. Federal Prison Industries has the technical competence, the financial resources, and the established relationship with industry and government to assist in the development of a model industries system for the District of Columbia. Section 3 of S. 1516 would effectuate this recommendation.

PLEADING INSANITY—ESCAPE OF MENTALLY ILL

Section 4 of the bill would require defendants in the District of Columbia who intend to rely on insanity as a defense to provide adequate notice of such intent to the court and the prosecution. Usually the prosecution becomes aware that a defendant intends to rely on the insanity defense when he files a pretrial motion for a psychiatric examination. In some instances, however, there is no advance notice—as in the case of the defendant who is on bail and is examined by his own psychiatrist. When this happens, the prosecution may be unprepared to meet its burden and must seek a continuance in mid-trial. Since it is generally impossible to obtain a continuance of sufficient length to permit adequate psychiatric diagnosis, the prosecution can be left without any psychiatric evidence. If a continuance is granted, further court congestion results and witnesses and others involved in the matter are seriously inconvenienced.

This section also contains a provision which would enable courts in the District of Columbia to order the return of persons who escape from District mental institutions after confinement in connection with the prosecution of criminal charges. At present there is some doubt as to the authority of the Court of General Sessions to order such a return, and there is considerable doubt as to the authority of any court to order a return when the escapee has been acquitted by reason of insanity and no charges against him remain outstanding. Both provisions of this section are in accord with recommendations of the District of Columbia Crime Commission.

WITNESS FEES AND TRAVEL ALLOWANCES

Section 5 of the bill would amend section 15–714(a) of the District of Columbia Code to increase the present daily witness fee for attendance at criminal cases in the District of Columbia Court of General Sessions and to provide travel allowances for such witnesses. The existing witness fee of 75 cents per day in criminal cases in the District of Columbia Court of General Sessions is too low. The section provides for the payment of fees and travel allowances equivalent to those paid to witnesses who appear before the United States District Court for the District of Columbia, which is presently four dollars a day.

The Commissioners approve of the provisions of S. 1516 and strongly urge enactment of the bill.

The Commissioners have been advised by the Bureau of the Budget that, from the standpoint of the Administration's program, there is no objection to the submission of this report to the Congress and that enactment of this legislation would be in accord with the program of the President.

Sincerely yours,

WALTER N. TOBRINER,
President, Board of Commissioners, District of Columbia.

DISTRICT OF COLUMBIA BAIL AGENCY,
Washington, D.C., April 19, 1967.

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

DEAR SENATOR BIBLE: It is my pleasure to respectfully comment on S. 1516.

I am in total agreement with all provisions of Section 1.

The Bail Reform Act of 1966, Public Law 89–465, requires the committing magistrate, if in his discretion he feels that he cannot safely release the defendant on his personal recognizance, to impose certain conditions of release that will assure appearance at trial, or require the execution of a bail bond. The type of condition, or combination of conditions, that may be imposed are limited only by the imagination of the committing magistrate and/or the defense counsel and the United States attorney.

It is a maximum of discipline that no order be issued that cannot be enforced. There is presently no effective procedure for supervising defendants who have been released after having had conditions or restrictions imposed upon them.

I am of the opinion that the District of Columbia Department of Corrections is the ideal organization to accept the responsibility for supervision of releasees under the Bail Reform Act. The Department is equipped to do the job and has a vested interest in the opportunity to correct outside the jail walls.

I visualize no problem in the D.C. Bail Agency providing reports to the commissioners of the District of Columbia or their designated representatives with respect to any person released into their custody. The reports contain nothing of a confidential nature. The confidentiality provision is designed to protect the defendant from disclosure of damaging information that might be revealed orally to the interviewer. Further, providing the report to the commissioners of the District of Columbia should be considered to be in connection with the release of the defendant.

I have no adverse comment on Section 1 of S. 1516. I endorse it fully and respectfully advocate approval.

Sincerely,

ROBERT A. NILES, *Director.*

[CROSS REFERENCE BETWEEN SECTIONS OF S. 1516 AND THE PERTINENT PORTIONS OF THE REPORT OF THE PRESIDENT'S COMMISSION ON CRIME IN THE DISTRICT OF COLUMBIA]

SECTION 1 OF S. 1516.—SUPERVISED RELEASE PRIOR TO TRIAL OF AFTER CONVICTION (NOT IN REPORT, BUT SEE GENERALLY, CHAPTER 7, SECTION II, "PRETRIAL RELEASE OF PERSONS CHARGED WITH CRIME," HEREWITH REPRODUCED)

CHAPTER 7, SECTION II: PRETRIAL RELEASE OF PERSONS CHARGED WITH CRIME

Persons accused of crime are presumed to be innocent and are generally entitled to their freedom until the charges against them are resolved.[1] Release from police custody after arrest, however, is not automatic, but is governed by the operation of laws and judicial practices which comprise our system of pretrial release. Increasingly in recent years this system has been criticized because its reliance on monetary bail causes the pretrial incarceration of those defendants who are too poor to pay the bondsman and obtain release.[2] The system has also been challenged because it permits the release of many persons who commit additional crimes prior to trial.[3] In this section the Commission evaluates the laws and procedures governing the pretrial release of persons charged with criminal offenses in the District of Columbia.

CURRENT PRACTICE AND PROCEDURE

Persons accused of crime in the District may obtain release from custody in various ways. Some post collateral or monetary bond at the police station; others

---

[1] F.R. Crim. P. 46 (as amended, effective July 1, 1966); Bail Reform Act of 1966, Pub. L. 89-465, 80 Stat. 214 (1966).

[2] See Criminal Justice in Cleveland, 290-92 (1922); Missouri Crime Survey, 189-218 (1926); Beeley, The Bail System in Chicago (1927); Report on Prosecution, 4th Report of the National Commission on Law Observance and Enforcement, 89-92 (1931); "Compelling Appearance in Court: Administration of Bail in Philadelphia," 102 U. Pa. L. Rev. 1031 (1954); "A Study of the Administration of Bail in New York City," 106 U. Pa. L. Rev. 693 (1958); Report of the Attorney General's Committee on Poverty and the Administration of Federal Criminal Justice, 58-89 (1963); Ares, Rankin, and Sturz, "The Manhattan Bail Project: An Interim Report on the Use of Pretrial Parole," 38 N.Y.U. L. Rev. 67 (1963); Rankin, "The Effect of Pretrial Detention," 39 N.Y.U. L. Rev. 641 (1964); D. J. Freed and P. M. Wald, Bail in the United States: 1964, A Report to the National Conference on Bail and Criminal Justice, Washington, D.C. (May 27-29, 1965); Proceedings and Interim Report, National Conference on Bail and Criminal Justice (1965); Hearings on Proposals to Modify Federal Bail Procedures Before the Senate Subcommittee on Constitutional Rights and the Subcommittee on Improvements in the Judicial Machinery, 89th Cong., 1st Sess. (1965); R. Goldfarb, Ransom: A Critique of the American Bail System (Harper & Rowe, 1965).

[3] Freed and Wald, supra note 2, at 49-55; Proceedings, National Conference on Bail and Criminal Justice, pp. xxix-xxxi, 149-219 (1965); Hearings, supra note 2, at 24-26, 29-30, 67-68, 70, 174-178; Foote, "The Coming Constitutional Crisis in Bail," 213 U. Pa. L. Rev. 959 (1965); Ottenberg, "Tighter Bond Laws," The Evening Star (Washington, D.C.), Aug. 30-31, 1965; D. J. Freed, "Preventing Pretrial Release—A Personal Reevaluation," Oct. 14, 1965 (mimeo.); Note, "Preventive Detention Before Trial," 79 Harv. L. Rev. 1489 (1966).

remain in custody until release conditions are set by a judicial officer; a few obtain release upon order of an appellate court. All, however, except those charged with offenses punishable by death, are entitled to bail before conviction and may obtain release by complying with the conditions specified by the court.[4]

Release on bail

Before September 20, 1966, when the Bail Reform Act of 1966 became effective,[5] pretrial release was heavily dependent upon an accused person's ability to pay for a bail bond. The courts were authorized to set bail which would ensure the defendant's presence at trial and, in so doing, could consider such factors as the nature of the offense, character of the defendant and his ability to post bond. The sole purpose of bail was to ensure the defendant's presence at trial. In practice, most bail was conditioned on the posting of a money bond,[6] which in the District generally ranged from $100 to $50,000.[7] Release on personal recognizance without surety bond was rare until January 1964, when the experimental D.C. Bail Project began operation. These traditional bail practices have now been substantially altered by the Bail Reform Act of 1966, the recent amendment of Rule 46 of the Federal Rules of Criminal Procedure,[8] and the creation of the District of Columbia Bail Agency.[9]

Deficiencies of old procedures

The deficiencies of a bail system based on monetary bond have been frequently documented.[10] The experience of the District of Columbia mirrors experience elsewhere in the United States. As shown in Table 1, monetary bonds resulted in substantial pretrial detention because of the defendants' inability to pay bondsmen. Of the 1,321 defendants for whom the United States District Court set bond in calendar year 1965, only 769 (58 percent) were able to obtain release. This contrasts with 43 percent obtaining release in 1960, 38 percent in 1955, and 52 percent in 1950.

Under traditional bail practices in the District, those who were detained pending trial were not as successful in disposing of their criminal charges as those who were released. Although conviction ratios were nearly the same for both groups, those in jail pleaded guilty more often (Table 2). Moreover, the penalties given the two groups of offenders appeared to differ, although it is not known whether the persons detained were in fact more serious offenders. In cases filed in calendar 1965, for example, 40 percent of the 414 convicted persons who had obtained pretrial release were placed on probation, whereas only 18 percent of the 328 convicted defendants who had not been released were granted probation (Table 3). Similarly, only 43 percent of those released before trial went to prison, in contrast to 64 percent of those detained in jail pending trial.

Pretrial detention of large numbers of defendants ensured their appearance in court but at high personal and public cost. As shown in Table 2, 89 persons who were detained in jail in calendar 1965 were acquitted (61 by a verdict of not guilty and 28 by a judgment of acquittal) and 27 ultimately had their cases dismissed. Neither the time which these 116 persons needlessly spent in jail nor the cost of their custody is known precisely, but in fiscal 1962 the average length of detention for persons incarcerated before trial was 51 days and the cost of pretrial detention for all persons accused of crime was over $500,000.[11]

---

[4] This right was embodied in the first Judiciary Act § 33, 1 Stat. 91 (1789), and is currently reflected in Rule 46(a) of the Federal Rules of Criminal Procedure.

[5] Supra note 1.

[6] Freed and Wald, supra note 2, at 3.

[7] These were the highest and lowest bond amounts set during a period of 2 years and 9 months studied by this Commission. The bonds cost $8 per $100 for the first $1,000 and $5 per $100 for greater amounts. See U.S. District Court Order No. 17-59; Court of Gen. Sess., Crim. Div., Rule 5, § 11; Juvenile Court Rule 22, all under the authority of 23 D.C. Code § 608 (1961).

[8] Supra note 1.

[9] District of Columbia Bail Agency Act, Pub. L. 89-519, 80 Stat. 327 (1966).

[10] See sources cited supra note 2.

[11] Report of the Committee on the Administration of Bail of the Junior Bar Section of the Bar Association of the District of Columbia, The Bail System of the District of Columbia, 29 (1963).

TABLE 1.—*Amount of bond initially set compared with amount actually posted to obtain release* [1]

[Calendar years 1950, 1955, 1960, and 1965]

Amount of bond	1950				1955				1960				1965			
	Bond initially set		Bond posted to obtain release		Bond initially set		Bond posted to obtain release		Bond initially set		Bond posted to obtain release		Bond initially set		Bond posted to obtain release	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Personal bond or recognizance	7	0.3	16	0.7	4	0.3	21	1.4	3	0.2	5	0.3	59	3.7	157	9.8
Up to $500	346	14.8	253	11.0	141	9.1	79	5.1	26	1.8	33	2.3	73	4.6	72	4.5
$501 to $1,000	643	28.1	341	14.9	369	23.8	210	13.5	407	28.3	271	18.8	452	28.2	288	18.0
$1,001 to $2,000	495	21.6	235	10.3	338	19.8	101	6.5	263	18.3	109	7.6	279	17.4	117	7.3
$2,001 to $3,000	156	6.8	57	2.5	200	12.9	57	3.7	168	11.7	59	4.1	183	11.4	68	4.2
$3,001 to $4,000	11	.5	2	.1	42	2.7	13	.8	90	6.8	26	1.8	34	2.1	15	.9
$4,001 to $5,000	56	2.4	11	.5	132	8.5	9	.6	172	11.9	22	1.5	139	8.7	38	2.4
$5,001 to $10,000	49	2.1	6	.3	55	3.5	8	.5	61	4.2	5	.3	64	4.0	11	.7
Over $10,000	28	1.2	1	0	41	2.6	----	----	33	2.3	2	.1	38	2.4	3	.2
Total	1,785	77.9	922	40.2	1,292	83.2	498	32.1	1,223	85.0	532	36.9	1,321	82.4	769	48.0
Ratio of release obtained to bond set	51.7%				38.5%				43.5%				58.2%			
Bond data unknown	507		22.1%		260		16.8%		217		15.1%		282		17.6%	
Total defendants	2,292		100%		1,552		100%		1,440		100.1%		1,603		100%	

[1] Because the court may grant a motion to reduce bond, the persons recorded in the bond set columns are not necessarily the same persons who are recorded in the bond posted columns; e.g., a person for whom bond was initially set at $1,000 may obtain release on personal recognizance.

Source: Staff computation based on data collected by C-E-I-R, Inc. from criminal jackets of the U.S. District Court for the District of Columbia.

TABLE 2.—*Type of disposition for persons released and for persons not released prior to trial*

[Calendar years 1950, 1955, 1960, and 1965]

Type of disposition	On bond		Not released		Bail denied or unknown		Total		On bond		Not released		Bail denied or unknown		Total	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
	1950								1955							
Convicted:																
Plea of guilty	459	49.8	468	54.2	249	52.6	1,194	52.1	272	54.6	491	60.7	144	58.8	907	58.4
Finding of guilty	172	18.7	128	14.3	119	25.2	419	18.3	69	13.9	45	5.6	27	11.0	141	9.1
Not guilty, insanity	2	.2	1	.1	1	.2	4	.2	2	.4					2	.1
Not convicted:																
Finding of not guilty	122	13.2	151	16.8	50	10.6	323	14.1	56	11.2	158	19.5	25	10.2	239	15.4
Judgment of acquittal	44	4.8	34	3.8	17	3.6	95	4.1	29	5.8	36	4.4	11	4.5	76	4.9
Dismissal	88	9.5	55	6.1	18	3.8	161	7.0	45	9.0	46	5.7	24	9.8	115	7.4
Other and unknown	35	3.8	42	4.7	19	4.0	96	4.2	25	5.0	33	4.1	14	5.7	72	4.6
Total defendants	922		897		473		2,292		498		809		245		1,552	
Percent convicted	68.4		68.5		77.8		70.4		68.5		66.3		69.8		67.5	
Percent pleading	49.8		54.2		52.6		52.1		54.6		60.7		58.8		58.4	
Percent tried	36.9		35.0		39.5		36.7		31.3		29.5		25.7		29.5	
	1960								1965							
Convicted:																
Plea of guilty	275	51.7	365	54.4	145	61.2	785	54.5	335	43.6	252	46.8	116	39.3	703	43.9
Finding of guilty	69	13.0	58	8.6	19	8.0	146	10.1	113	14.7	104	19.3	50	16.9	267	16.7
Not guilty, insanity	2	.4	1	.1	3	1.3	6	.4	1	.1					1	.1
Not convicted:																
Finding of not guilty	76	14.3	138	20.6	23	9.7	237	16.5	76	9.9	61	11.3	28	9.5	165	10.3
Judgment of acquittal	37	7.1	35	5.2	17	7.2	89	6.2	38	5.0	28	5.2	7	2.4	73	4.6
Dismissal	49	9.2	35	5.2	15	6.3	99	6.9	45	5.9	27	5.0	12	4.1	84	5.2
Other and unknown	24	4.5	39	5.8	15	6.3	78	5.4	161	20.9	67	12.4	82	27.8	310	19.3
Total defendants	532		671		237		1,440		769		539		295		1,603	
Percent convicted	64.7		63.0		69.2		64.7		58.3		66.0		56.3		60.5	
Percent pleading	51.7		54.4		61.2		54.5		43.6		46.8		39.3		43.9	
Percent tried	34.6		34.6		26.2		33.2		29.6		35.8		28.8		31.6	

Source: Staff computation based on data collected by C-E-I-R, Inc., from criminal jackets of the U.S. District Court for the District of Columbia.

Reform experiments

Efforts to reform bail procedures in the District of Columbia were given impetus in 1963 with the creation of the privately financed District of Columbia Bail Project. Patterned after a comparable New York experiment, the Project operated on the premise that circumstances other than monetary bond would frequently assure a defendant's presence at trial. Investigators employed by the Project determined the accused's length of residence in the community, his family ties, and his employment record. If these conditions appeared favorable, the Project recommended that the court release the accused on personal recognizance rather than on money bond. Judicial officers in the District placed increasing reliance on the Project's recommendations as experience demonstrated the value of this approach. As of July 1, 1966, the Project had secured the release of 779 accused felons and 1,382 accused misdemeanants.[12]

Of the 551 persons released on recognizance to the Project between January 1964 and April 1966 in the U.S. District Court, only 7 (1.2 percent) failed to appear when required.[13] This compared with a "no show" rate of 5.7 percent (97 out of 1,695) among those released on money bond in the U.S. District Court between September 23, 1963 and October 8, 1965.[14] These facts confirm the view that the presence of most accused persons can be assured without money bond and that a rational pretrial release system need not accept the sacrifice of personal freedom and the high custodial costs which characterize a money bail system.[15]

Bail Reform Act procedures

Under the Bail Reform Act of 1966, any person charged with an offense other than one punishable by death must be released by a judicial officer on personal recognizance or unsecured appearance bond unless release on these terms will not reasonably assure the accused's presence at trial.[16] The release decision takes place at the accused's first appearance before a judicial officer.

If the accused's promise or an unsecured appearance bond are not deemed appropriate, the judicial officer may impose conditions upon his release in the following order of preference prescribed by the statute:

(1) Place the accused in the custody of a designated person or organization agreeing to supervise him;

(2) Place restrictions on the travel, association or place of abode of the accused during the period of release;

(3) Require the execution of an appearance bond in a specified amount and the deposit in the registry of the court, in cash or other security, of a sum not to exceed 10 percent of the amount of the bond, such deposit to be returned upon the performance of the conditions of release;

(4) Require the execution of a bail bond, or the deposit of cash in lieu thereof; or

(5) Impose any other condition deemed reasonably necessary to assure appearance as required, including a requirement that the accused return to custody after specified hours.[17]

---

[12] Information supplied by Richard J. Molleur, Director, D.C. Bail Project, Nov. 1, 1966.
[13] Information gathered from the Criminal Clerk's Office, U.S. District Court for the District of Columbia, and from the records of the D.C. Bail Project.
[14] Commission Bail Study, supra note 7.
[15] See McCarthy and Wahl, "The District of Columbia Bail Project: An Illustration of Experimentation and a Brief for Change," 53 Geo. L.J. 675 (1965).
[16] Bail Reform Act of 1966, supra note 1, § 3, amending 18 U.S.C. § 3146(a).
[17] Ibid.

TABLE 3.—*Type of sentence for convicted persons released and those not released prior to trial* [1]

[Calendar years 1950, 1955, 1960, and 1965]

Type of sentence	1950						1955						1960						1965					
	On bond		Not released		Bail denied or unknown		On bond		Not released		Bail denied or unknown		On bond		Not released		Bail denied or unknown		On bond		Not released		Bail denied or unknown	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Suspended without probation			1	0.1							3	1.9	2	0.5	1	0.2			3	0.7	5	1.5	1	0.8
Probation	239	37.8	88	13.0	39	13.8	157	43.0	78	11.3	22	13.8	174	45.1	74	13.2	15	9.2	167	40.3	59	18.0	19	14.5
Fine only	9	1.4	1	.1	1	.4	3	.8			7	4.4	3	.8			7	4.3	21	5.1			3	2.3
FYCA [2]							14	3.8	34	4.9	5	3.1	34	8.8	77	13.7	30	18.4	40	9.7	52	15.8	14	10.7
Prison term	372	58.8	581	85.9	239	84.8	173	47.4	561	81.4	121	75.6	168	43.5	401	71.5	105	64.4	179	43.2	209	63.7	92	70.2
Other	13	2.1	5	.7	3	1.1	18	4.9	16	2.3	2	1.3	5	1.3	8	1.4	6	3.7	4	1.0	3	.9	2	1.5
Total	633	------	676	------	282	------	365	------	689	------	160	------	386	------	561	------	163	------	414	------	328	------	131	------
All others	289	------	221	------	191	------	133	------	120	------	85	------	146	------	110	------	74	------	355	------	211	------	164	------

[1] This table does not take cognizance of the types of crime which affect severity of sentence and amount of bond; i.e., the persons who did not make bond may be the persons charged with the most serious crimes.

[2] Federal Youth Correction Act, 18 U.S.C., ch. 402.

Source: Staff computation based on data collected by C-E-I-R, Inc., from criminal jackets of the U.S. District Court for the District of Columbia.

In setting conditions to ensure the accused's appearance, the judicial officer is authorized to consider the nature and circumstances of the offense charged, the weight of the evidence against the accused, the accused's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and his record of appearance at court proceedings including any prior flight to avoid prosecution or failure to appear at court proceedings.[18]

The District of Columbia Bail Agency has been established to provide the judicial officer with information about the accused's background.[19] Reporting to the courts of the District of Columbia, the Bail Agency investigates factors relevant to the judicial officer's consideration and reports to him "with or without a recommendation for release on personal recognizance, personal bond, or other non-financial conditions, but with no other recommendation."[20] Subject to budgetary limitations, the Agency performs this task in the case of any arrested person brought before any court in the District or before the U.S. Commissioner.

If an accused fails to appear in court when required, he is considered a "bail jumper" subject to apprehension by the police and the FBI. If he has been released pursuant to the posting of a bail bond for which a bondsman has acted as surety, the bondsman, who stands to forfeit the bond if the court so orders, searches for the defendant.[21] The accused is subject to a maximum of 5 years imprisonment if he willfully fails to appear as required by the court.[22]

Release at the precinct

Over one-half of those arrested on non-traffic charges in the District of Columbia secure release prior to appearance before a judicial officer.[23] Release is usually obtained by posting collateral or giving money bond at the police precinct and is unaffected by the Bail Reform Act.

Collateral

By statute and order of court, the Metropolitan Police Department is authorized to accept cash collateral and release certain minor offenders.[24] There are nearly 300 offenses, including public intoxication and disorderly conduct, where the offender may obtain release by depositing a nominal sum (frequently $10) at the precinct. The posting of collateral usually terminates the entire law enforcement process because the accused elects not to appear in court and the prosecutor elects to accept forfeiture of collateral. Either the accused or the prosecutor, however, may elect to proceed before the court, in which event the collateral may stand as bail, or other release conditions may be set by the court under the Bail Reform Act.

Stationhouse bond

Police officers are also authorized to accept monetary bonds from persons charged with more serious crimes.[25] In making this determination the police must adhere to a firm court schedule which prescribes a bond amount for each offense and does not permit consideration of other circumstances. Since these bond amounts are generally high, release is not frequently obtained by this method. Among the 11,676 cases filed in the U.S. Branch of the Court of General Sessions in fiscal 1965, 9,021 of the defendants were in custody at the time of their first appearance. Similarly, among the 35,088 cases (exclusive of collateral forfeitures) filed in the D.C. Branch of that court, 26,400 persons were in custody at first appearance.[26]

---

[18] Id., § 3146(b).
[19] District of Columbia Bail Agency Act, supra note 9.
[20] Id., § 4(a).
[21] Note, "Preventive Detention Before Trial," supra note 3, at 1490, n. 10; Freed and Wald, supra note 2, at 22.
[22] Bail Reform Act of 1966, supra note 1, § 3, amending 18 U.S.C. § 3150.
[23] The Metropolitan Police Department [hereinafter MPD] Annual Report, 43 (1965), shows that approximately 86,000 persons were arrested on non-traffic charges in fiscal 1965. The records of the United States Marshal for the District of Columbia and the records of the Criminal Clerk, Court of General Sessions ("Prisoners Received in Cell Blocks and Sent to Jail") for 1965 show that about 40,000 of these persons were in custody at the time of their first apearance in court.
[24] 16 D.C. Code § 704 (Supp. V, 1966).
[25] 23 D.C. Code § 610 (1961).
[26] Records, supra note 23.

Summons or citation

A summons or citation issued in lieu of arrest or detention also achieves the release of some persons charged with crime in the District of Columbia. A summons is a notice to appear for court proceedings and is used in various circumstances in many jurisdictions. It may be issued at the scene of an offense, as in the case of a traffic ticket; it may also be issued by a policeman at the precinct station after the accused is booked; or it may be issued by the court or the prosecutor in lieu of an arrest warrant under Rules 4 and 9 of the Federal Rules of Criminal Procedure.

In the District of Columbia the police use the summons primarily for traffic offenses. They have not used it in other cases because of doubt as to their statutory authority to do so in the absence of specific legislation. Under existing law they have a duty to bring arrested persons to a committing magistrate,[27] and another statute makes it a misdemeanor not to arrest when a crime is committed in an officer's presence.[28] Prosecutors in the District make substantial use of informal summonses to bring potential defendants and witnesses to the prosecutor's office for conferences, but there is very little use of formal summons in lieu of arrest under the Federal rules. Both the Corporation Counsel and the United States Attorney, however, plan to use the summons increasingly in lieu of arrest under Federal and local rules of procedure.[29]

Evaluation

The Commission strongly supports the reforms in the traditional bail system which are embodied in the Bail Reform Act of 1966 and the creation of the District of Columbia Bail Agency. Experience in the District has demonstrated that money bond is neither a necessary nor logical device to ensure an accused's appearing at trial. Pretrial release on personal recognizance is to be encouraged, and initial reports indicate that the Bail Reform Act has resulted in a significant increase in the number of persons so released.[30] We are confident that the procedures prescribed by the Bail Reform Act and supplemented in the Bail Agency Act can achieve a substantially improved and more equitable bail system.

The Commission urges that practices permitting more extensive release at the precinct station without bail be developed by the police and the Court of General Sessions. Release at the precinct relieves the police of responsibility for housing, feeding and transporting thousands of arrested people. Insofar as collateral forfeitures dispose of cases, court congestion is relieved. Most importantly, release at the precinct avoids the adverse personal effects of needless incarceration where the prosecutor decides not to proceed against a person who has been arrested and held in jail overnight or where the court immediately grants him release on bail.

In view of the individual and public benefits which may derive from prompt release, the Commission recommends the increased use of summons procedures in the District of Columbia. Experiments in several major cities indicate that a summons can be used without damage to the public safety and without serious inconvenience to courts, prosecutors or police.[31] In New York City summonses are issued at the police precinct in misdemeanor cases on the same principle as release by the court on personal recognizance: if the accused has substantial community ties he can be released simply on his promise to appear in court at a designated time.[32] The Commission endorses the recent action of the Judicial Conference in establishing a committee to explore and develop the wider use of summons procedures.[33] The committee is currently examining those crimes that should be covered by summons procedures, the problems of issuing a summons on the street or at the stationhouse, and the need for legislative changes, if any, to implement more extensive use of summons procedures in the District of Columbia.

---

[27] F.R. Crim. P. 5(a); 4 D.C. Code § 140 (1961).
[28] 4 D.C. Code § 143 (1961).
[29] Proceedings, Judicial Conference of the District of Columbia Circuit, May 25, 1966.
[30] The Washington Post, Nov. 10, 1966, p. K12.
[31] A Commission survey revealed use of the summons technique in New York City, Cincinnati, Denver, and various California cities. Experiments were planned in Philadelphia, Chicago, Toledo, and Omaha. New York City reports issuance of 1,000 summonses with 20 failures to appear. Glendale, Calif. uses summonses in 60% of its misdemeanor cases and reports a 6% failure to appear. Sunnyvale, Calif. uses summonses in 50% of its misdemeanor cases, with a 7% failure to appear.
[32] See address by Leonard E. Reisman before the 72d Annual Conference of the International Association of Chiefs of Police, Oct. 5, 1965.
[33] Resolution by the Judicial Conference, supra note 29.

THE UNRESOLVED ISSUE

As the bail system was reformed to permit the pretrial release of more defendants, only limited consideration was given to the protection of the public from crimes which may be committed by persons released prior to trial. In the course of its efforts to improve the system of pretrial release, Congress specifically postponed consideration of issues relating to crimes committed by persons released pending trial.[34] The seriousness of the problem, however, is amply documented by newspaper reports of the more sensational instances in which persons released on bail allegedly committed additional crimes.[35] In one 6-week period in early 1966, three separate homicides and a related suicide in the District were attributed to persons released on personal recognizance or on money bond.[36]

Neither the new procedures under the Bail Reform Act nor the old law authorize a judicial officer in setting terms of bail to consider the likelihood that the accused may commit additional crimes before trial. If the accused is arrested for another non-capital offense while he is on pretrial release, he is nevertheless entitled to be admitted to bail on the second offense. Moreover, the first admission to bail may not be revoked, although the conditions of release may be modified to ensure the accused's appearance.[37]

It is generally recognized, however, that in setting high monetary bail judicial officials have considered the defendant's danger to the community, although historically the only purpose of bail was to ensure the defendant's appearance at trial.[38] Under the procedures of the Bail Reform Act this use of monetary bail to detain potentially dangerous persons is substantially curtailed. Application of the Bail Reform Act could result in an increased number of crimes committed by persons released prior to trial who would previously have been detained with no opportunity to commit additional crimes. In light of the seriousness of this problem the Commission has attempted to develop the relevant facts and to evaluate the legal issues raised by possible legislative remedies.

Commission study

In the absence of any collected data on the general incidence of crime among persons released on bail, the Commission undertook a study of all persons who, after being held for action of the grand jury on felony charges, were released on bail with or without surety between January 1, 1963 and October 8, 1965. At the time of the study there were 2,776 such persons who were awaiting action of the grand jury, trial before the District Court, or appellate disposition. The Commission ascertained whether, while released on bail, any of these persons were again held for action of the grand jury on a felony allegedly committed in the District of Columbia. It also examined the nature of the offenses involved, the criminal record of each defendant allegedly committing an offense on bail, the time elapsed between alleged offenses, and the amount of bond set in the initial and subsequent cases.[39]

Because of the difficulty in collecting data, the Commission study included only felony offenses brought to the attention of a District grand jury. It did not include persons who were released pending disposition of misdemeanor charges, or released persons charged with felonies who were not held for the grand jury. Similarly, the study did not reveal misdemeanors allegedly committed while on

---

[34] H.R. Rep. No. 1541, 89th Cong., 2d Sess. 6 (1966).

[35] See Ottenberg, supra note 3; The Washington Post, Apr. 21, 1966, pp. A1, A22, describing the activities on bond of Robert Earl Barnes.

[36] On Mar. 23, 1966, police officer Marvin Lee Stocker was killed; the killer, John Eldridge, then on bond pending appeal in a robbery case, committed suicide to avoid capture. On Mar. 16, 1966, Ella Jackson was shot; her husband, then on bonds totaling $4,500 in the Court of General Sessions in cases of threats and unlawful entry, was charged. On Feb. 9, 1966, Minnie Conte was axed; her husband, then on personal bond in a carnal knowledge case, was charged.

[37] Bail Reform Act of 1966, supra note 1, § 3, amending 18 U.S.C. § 3146(e). See testimony of Hon. Ramsey Clark, Deputy Attorney General of the United States, Hearings on Federal Bail Reform Before Subcommittee No. 3 of the House Committee on the Judiciary, 89th Cong., 2d Sess. 27 (1966).

[38] See Freed and Wald, supra note 2, at [illegible].

[39] Data sources used during the study were the chronological "Bond Book" maintained by the Criminal Clerk's Office of the U.S. District Court, which records the name, case number and release date of the person released on bond with or without surety pending trial and pending appeal; the alphabetical index of defendants, which revealed all subsequent criminal or grand jury case numbers for each person released on bond; the criminal case jackets, which revealed the date of the alleged subsequent offenses; the criminal dockets; and MPD criminal records.

bond, subsequent felony charges not brought to the attention of the grand jury, or matters arising outside the District of Columbia. It was limited also to subsequent offenses allegedly committed prior to the time the court records were examined for each releasee. All such records were examined between November 1, 1965, and March 4, 1966.

Incidence of crime allegedly committed on bail

Among the 2,776 persons who were released on bail pending disposition of felony charges, 207 (7.5 percent) were held for action of the grand jury on one or more felonies allegedly committed while on bail (Table 4).[40] A total of 253 felonies were charged against persons released on bond; 222 of them occurred while the defendant was released on a trial bond. Four persons allegedly committed offenses while released simultaneously on a trial bond in one case and an appeal bond in another case. Three persons were each allegedly involved in 4 separate felony offenses while released, 6 persons allegedly committed 3 offenses while on bond, and 25 persons were charged with 2 offenses each. In all, these 34 persons accounted for 80 of the 253 alleged offenses.

Table 4 also indicates that the incidence of alleged offenses while on bail was highest among those who were on monetary bond with a surety. The lowest rate was among those persons released under the supervision of the District of Columbia Bail Project.

Table 5 shows the dispositions of the release offenses and the offenses allegedly committed on bond. The significant number of dismissals is attributable in large measure to a prosecution policy not to proceed to trial against a person already convicted in either the original or the subsequent case. Only 7 of the 207 persons who allegedly committed crimes while on bail were not convicted of either the original or the subsequent charge at the time of the survey. Among the 21 who allegedly committed crimes while released pending appeal only 6 had their cases reversed, and all 6 were either reconvicted on the original charge or the charge which arose out of activities committed while on bond (Table 5).

TABLE 4.—*Incidence of alleged felonies among persons released on bail*

Method of release	Number of persons released [1]	Persons charged with felonies while on bond [2]		Number of felonies charged against persons released on bond [2]
		Number	Percent	
All releases	2,776	207	7.46	253
Trial bond	(3)	[4] 187		[4] 222
Appeal bond	(3)	[4] 24		[4] 31
With surety	[5] 2,360	[6] 177	7.70	[6] 219
Without surety	571	[6] 35	6.13	[6] 40
District of Columbia bail project	751	26	4.72	28

[1] Released on bond between Jan. 1, 1963, and Oct. 8, 1965.
[2] Limited to those cases where the defendant was held for action of the grand jury as revealed by examination of U.S. district court records from Nov. 1, 1965, through Mar. 4, 1966.
[3] Unknown.
[4] The figures add up to more than 207 offenders and more than 253 offenses because some defendants committed an offense or offenses while on bond in 2 separate cases—1 pending trial and 1 pending appeal.
[5] Estimate: The figure of 2,360 is somewhat larger than the difference between 2,776 total releases and 571 released without surety since some defendants were released twice, once with surety and once without.
[6] The figures add up to more than 207 offenders and more than 253 offenses because some defendants committed an offense or offenses while on bond in 2 separate cases—1 with surety and 1 without surety.

Source: Commission Bail Study.

[40] The 1965 Annual Report of the D.C. Bail Project discloses that 330 (12.6 percent) of 2,683 potential felony releasees were on bond on a prior charge at the time the most recent charge originated—a significantly higher rate than that disclosed by the Commission study—and were excluded from Project consideration for release. The Bail Project figure is not comparable, however, since (1) it includes defendants on bond in cases pending in the Court of General Sessions; (2) the second charge may have stemmed from an offense committed prior to the earlier arrest and release on bond; and (3) not all 330 accused felons excluded by the Bail Project were held for action of the grand jury. The Project's 12.6 percent finding, nevertheless, provides another indication of the extent of the bond offender problem. The Stanford Research Institute study revealed that 4.4 percent of the convicted felons studied were on bail at the time they perpetrated the felony offense for which they were sentenced. App. (SRI), 577.

TABLE 5.—*Disposition of cases where 207 defendants allegedly committed additional offenses while released on bail*

Disposition	Number of cases in which release on bond was obtained [1]	Number of cases arising from offenses allegedly committed while on bond in original case [2]
Trial:		
Convicted	123	97
Convicted on trial	37	26
Plea accepted	86	71
To most serious charge	(61)	(47)
To lesser felony	(3)	(8)
To misdemeanor	(22)	(16)
Not convicted	52	113
Ignored by grand jury	10	36
After another conviction	(6)	(24)
No other conviction	(4)	(12)
Dismissed by prosecutor	35	71
After another conviction	(22)	(62)
No other conviction	(13)	(9)
Acquittal on trial	7	6
Trial pending	40	40
Dead	3	3
Appeal:		
Affirmed	15	
Reversed	16	
Dismissed	1	
Pending	2	
Totals	242	253

[1] Released on bond between Jan. 1, 1963, and Oct. 8, 1965; dispositions obtained from U.S. district court records from Nov. 1, 1965, through Mar. 4, 1966.

[2] Limited to those cases where the defendant was held for action of the grand jury as revealed by examination of U.S. district court records from Nov. 1, 1965, through Mar. 4, 1966; dispositions obtained during same time period.

[3] On remand, 2 defendants were reconvicted as charged, 2 defendants pleaded to misdemeanors, 2 defendants' charges were dropped after they were convicted in other cases.

Source: Commission Bail Study.

Types of offenses involved

Accused felons tend to commit felonies of the same type as the original offense (Table 6). Specifically, 31 of 60 robbery offenses allegedly committed by persons on bond were attributed to persons originally charged with robbery, 32 of the 57 housebreakings to accused housebreakers, 18 of the 30 auto thefts to persons accused of auto theft, and 10 of 28 narcotics offenses to persons accused of narcotics offenses. Of the 11 murder charges against persons on bail, however, 5 were allegedly committed by persons awaiting disposition of robbery cases and 1 each by persons charged with rape, manslaughter, housebreaking, grand larceny, carrying a deadly weapon, and auto theft. The 34 crimes which were allegedly committed by persons on bond pending appeal included 1 murder, 1 rape, 8 robberies, 9 housebreakings, 6 narcotic offenses, and 9 others.

TABLE 6.—*Correlation between felony for which release on bail was obtained and felony charged while released*

Most serious felony pending for which release on bond was obtained [1]	Total	Most serious felony charged while on bond																		
		1st degree murder	Rape	Kidnapping	2d Degree murder	Robbery	Attempted robbery	Aggravated assault	House breaking	Abortion	Grand larceny	Carrying deadly weapon	Counterfeiting	Forgery	Auto theft	Narcotics	Other theft, possession	Bail jumping	Bribery, obstructing justice	Operating a still	Gambling
Total	[2] 253	6	2	1	5	60	1	19	57	4	11	5	1	7	30	28	4	1	4	1	6
1st degree murder	1					1															
Rape	5	1							2						1				1		
Manslaughter	1				1																
Robbery	58	4	1		1	31	1	4	6		2	2	1		2	3					
Attempted robbery	2					1										1					
Aggravated assault	12					2		5	4						1						
Housebreaking	60				1	13		3	32		2	1			6			1	1		
Abortion	7					2				3									2		
Grand larceny	9	1							1		2				2	2	1				
Carrying deadly weapon	2				1	1															
Counterfeiting	1								1												
Forgery	8		1			1			2					4							
Auto theft	37			1	1	4		3	4		2	2			18	1	1				
Narcotics	33					3		3	3		1			2		19	2				
Other theft, possession	4							1	2		1										
Perjury	1													1							
Fraud	2									1	1										
Operating a still	1																			1	
Gambling	9					1										2					6

[1] Felony totals in this column are higher than the actual number of releases on bond since offenders charged with more than 1 felony during the same release on bond are counted more than once.

[2] Committed by 207 persons.

Source: Commission Bail Study.

Characteristics of offenders

While this Commission could not undertake an extensive background study of the accused felons who were charged with committing additional felonies on bail, the readily available information suggests that:

(1) As indicated above, the persons who allegedly committed additional offenses while on bail tended to be charged with crimes similar to the original offense. More than 80 percent committed crimes as serious or more serious than the original offense.

(2) The available data revealed a high incidence of prior arrests and convictions among persons who allegedly committed offenses while on bail. As shown in Table 7, 182 (88 percent) of the 207 had adult arrest or conviction records in the District of Columbia before release on bail; only 25 had no such adult criminal record. In contrast, the Stanford Research Institute (SRI) study shows that 81 percent of convicted felony offenders in 1965 had prior adult records.[41] These percentages are not precisely comparable, however, because the SRI study (unlike the Commission study) covered only convicted persons and included crimes committed outside the District.

(3) The average age of the persons arrested while on bond was 26½ years. Fifty-one percent of them were 24 years or younger, compared with 41 percent of the convicted felons analyzed by SRI.[42]

(4) There is little correlation between flight to avoid prosecution and the incidence of crime allegedly committed on bail. Only 7 (3.4 percent) of the 207 persons allegedly involved in other offenses forfeited bond in connection with their initial offense—less than the average forfeiture rate of 5.7 percent found by the Commission for all persons released to bondsmen.[43] The low rate of forfeiture may be accounted for by the fact that two-thirds of the 207 defendants were not released on bail after apprehension for their second offense.

TABLE 7.—*Prior adult criminal records of persons allegedly committing offenses while released on bail*

Type of prior adult record	Total number of prior offenses	Offenders with 1 or more		Offenders with 2 or more	
		Number	Percent of all offenders	Number	Percent of all offenders
Felony:					
Arrests	499	156	75.4	106	51.2
Convictions	145	89	43.0	29	14.0
U.S. misdemeanors: [1]					
Arrests	370	131	63.3	83	40.1
Convictions	253	108	52.2	57	27.6
District of Columbia misdemeanors: [2] Convictions	335	140	67.6	91	44.0
Total		182	88.0	167	80.7

[1] Misdemeanors prosecuted by the U.S. attorney for the District of Columbia. (See 23 District of Columbia Code, sec. 101 (1961).)
[2] Misdemeanors prosecuted by the Corporation Counsel of the District of Columbia. (See 23 District of Columbia Code, sec. 101 (1961).)

Source: Metropolitan Police Department criminal records.

Time elapsed between alleged offenses

Most offenses allegedly committed while on bond occurred within 60 days after release (Table 8). Among offenses committed while awaiting trial, 121 (54 percent) allegedly occurred within 60 days of release, and 71 (32 percent) within 30 days of release. Persons released on appeal bond, however, did not become involved in additional crimes as quickly.

[41] Id. at 588.
[42] Id. at 519.
[43] Text at note 14 supra.

TABLE 8.—*Time between release on bail and alleged commission of subsequent felony*

Length of time in days	Release on trial bond			Release on appeal bond		
	Number of offenses	Percent of offenses	Cumulative percent	Number of offenses	Percent of offenses	Cumulative percent
0-30	71	32.0		1	2.9	
31-60	50	22.5	54.5	5	14.7	17.6
61-90	42	18.9	73.4	4	11.8	29.4
91-120	25	11.3	84.7	4	11.8	41.2
121-150	11	5.0	89.6	2	5.9	47.1
151-210	16	7.2	96.8	5	14.7	61.8
211 and over	7	3.2	100.0	13	38.2	100.0
Total	222	100.1		34	100.0	

Source: Commission bail study.

Amount of bail

The Commission study verified the general assumption that courts consider danger to the community in setting bail. The average amount of bond set by the court more than doubled in those cases where the defendant appeared before the court a second time for an offense allegedly committed while on bail. The amount of bond increased from an overall average of $1,800 to $3,620 (Table 9). Despite the increase, 76 persons (37 percent) again obtained release.

The Commissioner also found that the average amount of bond set by the court was greater when bail was sought pending appeal. Over 62 percent of the bonds pending appeal were set in the amount of $2,500 or more, compared with only 27 percent of the bonds set for persons awaiting trial. Table 8 shows that bonds pending appeal averaged $3,100 and trial bonds averaged $1,800. Since the types of crime were roughly the same, there was no obvious variable except the different stage of the proceedings at which bail was sought.

Legal issues

The Commission believes that the bail system must be modified in a manner which will give the public greater protection. Possible modifications, however, require careful consideration of the substantial legal questions which underlie any proposal which limits or restrains individual liberty prior to conviction. Whether the proposal imposes special conditions on the release of persons who are likely to commit additional crimes or includes outright "preventive detention" of such persons, the protections of the presumption of innocence, the Eighth Amendment and the Fifth Amendment must be considered.

The presumption of innocence

The presumption of innocence is a basic premise of the criminal law in the United States. Technically, it is a legal rule of evidence that places the burden of proof on the government, but there are those who give it much broader interpretation. It is argued that any pretrial incarceration assumes the guilt of the accused and is, therefore, in conflict with the presumption of innocence; thus the presumption has no real vitality unless it is supported by the accused's liberty prior to trial.[44] These broad contentions, however, are difficult to reconcile with the many pretrial restraints which are now accepted, including the denial of bail to persons charged with offenses punishable by death.

---

[44] See Note, "Preventive Detention Before Trial," supra note 8, at 1500-01.

TABLE 9.—*Comparison of trial bonds, appeal bonds, and bonds set for subsequent offenses*

Most serious crime charged	Original case in which release on bond was obtained				Subsequent case arising from offense charged while on bond in original case				
	Pending trial		Pending appeal		Number where no bond set	Bond set		Bond made	
	Average bond made	Number of bonds made	Average bond made	Number of bonds made		Average	Number	Average	Number
1st degree murder	$7,500	1			6				
Rape	1,400	5			1	$10,000	1		
Kidnapping						11,000	1		
2d degree murder						5,900	5	$3,500	2
Manslaughter	1,500	1							
Robbery	2,790	54	$2,560	9	2	5,130	54	2,560	14
Attempted robbery	1,500	9				1,000	1	1,000	1
Aggravated assault	1,290	15	2,500	1	1	6,790	16	2,340	2
Housebreaking	1,560	55	2,750	2		3,040	57	2,560	13
Abortion	1,250	2	1,000	1		2,500	4	2,500	4
Grand larceny	1,330	6	5,000	1		2,420	10	1,320	4
Carrying deadly weapon	1,000	5				1,400	5	1,400	5
Counterfeiting	500	1				1,000	1	1,000	1
Forgery	2,667	6			1	2,160	5	1,500	1
Auto theft	2,143	14	1,250	2	4	1,440	25	750	6
Narcotics	2,550	4½	3,430	7	4	3,070	28	2,540	12
Other theft or possession	1,000	4				1,830	5	1,000	2
Perjury			1,000	1					
Fraud	750	2							
Bail jumping					1				
Bribery, obstructing justice	2,500	1				2,340	3	1,000	2
Operating a still	1,000	1			1				
Gambling	1,000	9			1	1,000	5	1,000	5
Average for all crimes	1,800		3,190			3,620		2,180	
Total		225		24	22		228		90
Number of persons		187		24					76

Source: Commission bail study.

The eighth amendment

Although the Eighth Amendment provides that "excessive bail shall not be required," it does not contain words explicitly conferring a right to bail. The right to bail was separately legislated in the Judiciary Act of 1789, 2 years before the Amendment was ratified. The Judiciary Act provided that "upon all arrests in criminal cases, bail shall be admitted, except where the punishment may be death."[45]

The meaning of the Amendment, nevertheless, has been much debated. It is argued that the Amendment must create an absolute right to bail if it is to have any meaning at all. Support for this view is found in Justice Black's observation in dissent that a contrary reading would reduce the Amendment to "just about nothing" since Congress could by statute grant or withhold the right to bail as it saw fit.[46] Further, it has been contended that a draftsman's lapse prevented the Eighth Amendment from reflecting the American assumption that every man was entitled to bail in all non-capital cases.[47]

The contrary arguments rely on the literal words of the Amendment, which do not specify a right to bail, and the contention that its progenitor, the English Bill of Rights of 1689, never contemplated an absolute right to bail.[48] It is also argued that the nearly simultaneous drafting of the Eighth Amendment and the Judiciary Act indicates an intention to leave the right to bail in the legislative arena. Furthermore, the constitutional right, if it exists, is already dependent upon the legislature's definition of capital crimes, for which bail may be denied.[49]

The Supreme Court has not resolved the meaning of the Eighth Amendment although language in its opinions supports both sides of the question. In *Stack* v. *Boyle* the Court held that bail set at $50,000 for each of 12 members of the Communist Party charged with violation of the Smith Act was excessive under the Eighth Amendment in the absence of adequate evidence to the contrary.[50] The majority opinion acknowledged the statutory nature of the right to bail, but added: "Unless this right to bail before trial is preserved, the presumption of innocence, secured only after centuries of struggle, would lose its meaning."[51] In *Carlson* v. *Landon* the Court held that bail could be denied pending deportation proceedings against aliens suspected of being members of the Communist Party; although it recognized that deportation proceedings were not criminal, the majority opinion commended the view that the Eighth Amendment did not create an absolute right to bail.[52]

Pretrial detention of any person based on the likelihood of additional crimes is said to violate the Fifth Amendment because it discriminates against the defendant who is detained. Such a defendant is hampered in the preparation of his defense; detention may cause him to plead guilty rather than seek a trial; and his appearance in the courtroom in the custody of a Marshal has an adverse psychological effect on the jury. Further, it is argued that pretrial detention minimizes his chances of probation.[53]

It is also contended that deprivation of liberty based on future criminal conduct is a denial of due process contrary to the Fifth Amendment. Such deprivation assumes, prior to a judicial determination, that the accused has

---

[45] § 33, 1 Stat. 91 (1789).

[46] Carlson v. Landon, 342 U.S. 524, 556–58 (1952) (Black, J., dissenting). Those who believe that the Amendment confers a right to bail in non-capital cases usually also assume that the right is absolute. See, e.g., United States v. Motlow, 10 F. 2d 657, 659 (7th Cir. 1926) (dictum) (Butler, Circuit Justice); Trimble v. Stone, 187 F. Supp. 483 (D.D.C. 1960). The guarantee, if it exists, may simply mean that bail cannot be *unreasonably* denied, as has been held in interpreting the First Amendment. See, e.g., Dennis v. United States, 341 U.S. 494 (1951).

[47] Foote, supra note 3, at 965, 986–87, 1125.

[48] See, e.g., Note, Preventive Detention Before Trial, supra note 3, at 1498–1500. See also Carlson v. Landon, 342 U.S. 524, 545–46 (1952).

[49] Significantly, in 1790 capital crimes for which bail was discretionary included almost all the offenses now known as felonies. See Crimes Act of 1790, 1 Stat. 112.

[50] 342 U.S. 1 (1951).

[51] Id. at 4.

[52] 342 U.S. 524, 537, 544–46 (1952). Other cases suggesting a limited right to bail: Mastrian v. Hedman, 326 F. 2d 708 (8th Cir.), *cert. denied*, 376 U.S. 695 (1964); State v. Konigsberg, 33 N.J. 367, 164 A. 2d 740 (1960) (dictum); People *ex rel.* Shapiro v. Keeper of City Prison, 290 N.Y. 393, 49 N.E. 2d 498, 38 N.Y.S. 2d 526 (1943); Vanderford v. Brand, 126 Ga. 67, 54 S.E. 822 (1906) (dictum). Suggesting an absolute right to bail: Williamson v. United States, 184 F. 2d 280 (dictum) (Jackson, Circuit Justice, 1950); Trimble v. Stone, 187 F. Supp. 483 (D.D.C. 1960).

[53] See statement of David J. McCarthy, Jr., then Director, District of Columbia Bail Project, Senate Hearings on Federal Bail Procedures, supra note 2, at 174–75.

committed a crime and well commit others. In addition, it is asserted that prediction of future criminal conduct is so imprecise that standards of sufficient certainty to satisfy due process cannot be devised. More broadly, it is said that pretrial detention "would go contrary to our whole tradition of bail" [54] and is "unprecedented in this country . . . and fraught with danger of excesses and injustice." [55]

In rebuttal to contentions concerning the effect of detention on a proper defense, it is maintained that any inequity can be eliminated by changes in the judicial process. Specifically,

(1) If a hearing discloses that detention is interfering with case preparation, the court can modify the detention by changing conditions to liberalize visitation privileges or even to grant daytime release. In exceptional cases of prejudice, release might be granted despite the risks of criminal activity.

(2) The liberalized sentence-crediting provisions now incorporated in the Bail Reform Act and other safeguards including limitation on the length of detention, would adequately guard against the possibility of a plea of guilty induced solely by detention.

(3) Administrative and mechanical safeguards can readily be formulated to avoid the appearance of criminality resulting from the defendant's entrance into the courtroom from the cell block.

(4) Sentences are based on the nature of the crime and the character of the defendant. Frequent denial of probation to offenders detained pending trial is attributable to these factors, and not to the mere fact of pretrial incarceration.

With respect to allegations that due process precludes any deprivation of liberty based on future criminal conduct, it is argued that sufficient procedural safeguards can be devised to meet the standards of the Fifth Amendment. The arguments are made in this manner:

(1) The bail system authorizes restraint on liberty prior to judicial determination of guilt by permitting pretrial detention in capital cases and in those cases where the defendant cannot meet the conditions of bail. Insofar as the likelihood of the defendant's appearance at trial is considered in setting terms of bail, a prediction of future conduct is made.

(2) In other contexts deprivation of liberty is constitutional. For example, the defendant who is mentally incompetent is confined prior to a determination of guilt; [56] a mentally ill person may be civilly committed; [57] and a defendant who is being deported may be detained because of the likelihood of future dangerous conduct. [58]

(3) The public interest in protection against crime is equally as great as the other public interests which are protected by the present bail system. [59] More over, the difficulty in accurately identifying persons who are risks to community safety is no greater than identifying persons who may flee to avoid justice.

(4) Procedural safeguards can be established to assure a full judicial hearing on the question of future conduct and to prevent pretrial detention of persons who are not risks to the public safety.

Proposals to curb crime by persons on bail

After consideration of the facts and legal issues, the Commission concludes that the public can be provided substantially increased protection against persons who may commit additional crimes on bail without violating the constitutional right of such individuals. The Commission is unanimous in supporting the first four of the following five recommendations; a majority of the Commission also supports a limited form of preventive detention.

Amendment of the Bail Reform Act

The Commission recommends amendment of the Bail Reform Act to allow the court to consider the defendant's potential danger to the community as well as

---

[54] Statement of Hon. Sam J. Ervin, Jr., U.S. Senator from the State of North Carolina, in House Hearings on Federal Bail Reform, supra note 37, at 19.

[55] Williamson v. United States, 184 F. 2d 280, 282–83 (Jackson, Circuit Justice, 1950).

[56] 24 D.C. Code § 301(a) (1961). See also 22 D.C. Code ch. 35 (1961) (commitment of sexual psychopaths).

[57] 21 D.C. Code ch. 3 (Supp. V, 1966).

[58] Carlson v. Landon, 342 U.S. 524 (1952).

[59] Even Professor Foote, who generally opposes preventive detention on both constitutional and policy grounds, would find it "consistent with the due process demand of fundamental fairness" in situations of extraordinary risk. Foote, supra note 3, at 1182.

the likelihood of flight in setting conditions of release. While it is possible that constitutional objections may be raised against any restrictions on a person's liberty based on a belief that he is a danger to society, we believe that reasonable restrictions would be no more unlawful than those presently imposed to ensure the accused's presence at trial.

Careful selection of conditions of release may serve to reduce crime among those who are granted bail. Conditions of release already available under the Act include close supervision of the accused by a designated organization, restriction on travel, association or place of residence, or night-time custody. We do not, however, believe that courts should be authorized to set a money bond as a condition of release in default of which a court could detain an accused whom it finds might be a future threat to the community. Such a power would be a reversion to the former practive of detention through high bail recently eliminated by the Bail Reform Act. The posting of money bond has little deterrent value since it is usually the bondsman, not the accused, who will suffer financial loss in the event the conditions are breached. Any connection between money bond and lawful conduct appears as tenuous as the now discredited connection between money bond and appearance at trial.

Additional penalties

Legislation should be drafted which authorizes the imposition of additional penalties for an offense committed by a defendant while released on bail. The Commission recommends that the legislation permit the court to double the usual maximum sentence provided for the offense. If the maximum sentence would ordinarily be 1 year, the offense should be tried as an indictable misdemeanor with a maximum of 2 years imprisonment. If such a statute is enacted, the defendant at the time of pretrial release should be precisely notified of the possible consequences if he commits an additional offense while released.

Expedited trial

As discussed in chapter 5, the Commission is generally persuaded that more expeditious handling of criminal cases will enhance the deterrent effect of the law and thereby reduce crime. We believe this technique to be especially applicable in dealing with the problem of additional crimes committed by persons awaiting disposition of criminal charges. According to the Commission's study, 68 percent of the offenses committed by persons on pretrial release occurred after the initial 30 days of release. Expedited processing, of course, will not guarantee that fewer released persons will commit crimes. It will serve, however, to reduce sharply the opportunity for criminal activity and to demonstrate in the most meaningful way that criminal activity is promptly followed by apprehension, prosecution and punishment.

The Commission recommends that the prosecutor and courts should expedite the trial of those persons believed to constitute a serious menace to the community. We believe that cases identified by the prosecutor as requiring expedited handling should be set down for trial within 30 days after indictment. By means of pretrial conferences and prompt handling of motions, preliminary matters should be disposed of within the prescribed timetable. Continuances should be permitted only upon showing of extraordinary cause; if granted, such continuances might also be accompanied by more stringent pretrial release conditions set by the judge under the Bail Reform Act. We believe that the rights of the defendant can be appropriately protected by judicial rulings at the same time that their cases are tried within the recommended time limits.

Revocation of pretrial release

This Commission also recommends legislation which will authorize revocation of pretrial release when an accused who is released on bail is again arrested and held by a committing magistrate or other judicial officer on a felony or serious misdemeanor charge. Forfeiture of a bond and criminal penalties are presently prescribed only upon the defendant's failure to appear in court. We recommend that the Bail Reform Act be amended to allow revocation where subsequent crimes are alleged and probable cause for arrest is found by a judicial officer.

The Commission is not persuaded by the constitutional objections which may be raised to legislation authorizing revocation of pretrial release where the accused is charged with a subsequent crime. Revocation of release is within the court's traditional power: it is presently used to protect the integrity of judicial proceedings and is analogous to the use of contempt powers against persons who

violate court orders. Courts may now detain persons on bond who interfere with the orderly conduct of a trial.[80] We believe that the risk of misuse of the proposed revocation procedures is minimized by requiring a judicial determination of probable cause to hold the defendant on the second charge, so that the police could not accomplish revocation of release by a series of harassing arrests. Since the defendant will be held only on probable cause to believe that he has in fact committed a second offense while released, we believe that the due process problems which would otherwise be involved are substantially decreased.

After such legislation is passed, the prosecutor's offices in the District of Columbia should develop administrative procedures for full utilization of revocation authority. The names of persons held for action of the grand jury and those charged with misdemeanors should be checked daily to determine if they were released on bail in other pending cases; motions for revocation should be filed immediately where appropriate. Pending passage of the legislation, prosecutors should initiate the recommended administrative procedures to check on all persons released in capital cases or those pending appeal, where the court presently has discretion to revoke release. Every effort must be made to avoid repetition of the cases disclosed by the Commission's study in which 34 persons committed one offense while released on bail, secured release once again, and committed further offenses.

*Preventive detention**

In addition to these four proposals, the majority of the Commission believes that the public safety also requires the outright detention in selected cases of persons accused of crime based on the likelihood that they will engage in criminal conduct if released. After considering the opposing arguments, the majority concludes that the courts are presently capable of identifying those defendants who pose so great a threat to the community that they should not be released, and that a constitutionally sound statute authorizing detention in certain cases can be drawn.

The Commission thus recommends legislation authorizing a judicial officer to deny release on bail to a person who is arrested and presented on a felony charge and who, by reason of his prior criminal record, his prior pattern of vicious antisocial behavior, and/or the nature of the offense with which he is charged, evidences a high degree of probability that if released prior to trial he will cause the death of, or inflict serious bodily injury to, another or will be a grave menace to the physical safety of the public. As these criteria suggest, the proposed legislation is designed only for those circumstances where release poses an extremely high danger to the community. It should be enacted only with these additional provisos:

(1) Authority to detain should be exercised only when it is clear that conditional release under the Bail Reform Act, amended as recommended by this Commission, would not provide necessary protection.

(2) Such authorization may be exercised only after a hearing in which the arrested person is represented by counsel and in which the government sustains a burden of proving by a preponderance of the evidence that the accused comes within the exceptional case defined by the statute.

(3) The judicial officer conducting such hearing shall be required to make findings of fact and conclusions of law, and the accused shall have an immediate right of appeal to a U.S. District Court judge and thereafter to the U.S. Court of Appeals for the District of Columbia.

(4) Any evidence taken at such hearing shall not be admissible at the trial either as impeachment or in lieu of *de novo* proof of the facts alleged.

(5) The trial of a person who is detained must commence within 30 days after entry of the order of detention unless extended for extraordinary cause.

(6) During detention the arrested person must be permitted free access to counsel, friends and family and must not be interrogated by any government officer while detained without express permission. He must also be separated from persons already convicted and be given credit for time spent in custody against any sentence eventually imposed.

---

[80] Carbo v. United States, 82 S. Ct. 662 (Douglas, Circuit Justice 1962); Fernandez v. United States, 81 S. Ct. 642 (Harlan, Circuit Justice 1961); United States v. DiPietro, 302 F. 2d 612 (2d Cir. 1962). *Compare* Carbo v. United States, 288 F. 2d 686 (9th Cir. 1961) *with* Carbo v. United States, 288 F. 2d 282 (9th Cir.), *cert. denied*, 365 U.S. 861 (1961).

*The views of the minority of the Commission on this issue are set forth at pp. 930–36.

The majority of the Commission believes that this legislation meets the due process requirements of the Fifth Amendment. It requires a full hearing with right of appeal and is based on a reasonable finding that alternatives to pretrial detention do not adequately protect the community. Further, there are additional procedural safeguards, including adequate provision for case preparation, prompt trial and credit for time served pending trial.

Because of the circumscribed nature of the proposed statute we do not anticipate widespread use of the power to detain. Detention should be limited to the truly high-risk population. It is our firm conviction, however, that our system must be capable of dealing with these potentially dangerous defendants and that the difficult issues involved in preventive detention should be squarely and openly confronted. The criminal law can be neither sound nor respected if it fails to provide needed protection for the public when all other reasonable alternatives are insufficient.

SUMMARY OF RECOMMENDATIONS

1. The Bail Reform Act of 1966 should be amended to permit a judicial officer to consider a defendant's danger to the community if released on bail. However, where danger to the community is a factor, the judicial officer should not be authorized to condition release of a defendant on a monetary bond.

2. The Bail Reform Act should be further amended to authorize revocation of the release of any defendant who is charged with a crime committed while released on bail where there has been a judicial finding of probable cause to believe that the defendant committed the subsequent offense.

3. Legislation should be adopted which doubles the maximum penalty for any offense committed by persons while released on bail pending trial or appeal in a criminal case.

4. Persons who are potentially dangerous to the community should be tried within 30 days after indictment. Continuances should be granted only upon extraordinary cause.

5. The majority of the Commission recommends that legislation be adopted to authorize the pretrial detention of those defendants who present a truly high risk to the safety of the community.

6. In those cases where denial of bail now lies within the discretion of the court, the prosecutor should establish reliable administrative procedures to ensure that relevant facts about a defendant's background are presented to the court and that prompt notification is given to the court whenever there is probable cause to believe the defendant has committed a crime while released.

7. Further study of the type initiated by this Commission should be conducted to determine the characteristics of persons who commit offenses while released pending criminal proceedings, to formulate standards for predicting the criminal activity of persons so released, and to evaluate the effect of any of the above Commission recommendations which may be put into effect. The United States Attorney's Office, the Metropolitan Police Department, the courts, and the District of Columbia Bail Agency should assist in these efforts.

8. Procedures should be developed by the joint efforts of the courts, the Metropolitan Police Department, the United States Attorney, the Corporation Counsel, and the Judicial Conference Committee on Summons to facilitate the release on summons of increased numbers of persons after arrest and prior to presentment before a judicial officer under existing law. If legislative authority is needed, it should be formulated and adopted.

SECTION 2 OF S. 1516.—SUPERVISED RELEASE OF YOUTH OFFENDERS

(Report p. 452 herewith reproduced)

THE UNITED STATES BOARD OF PAROLE

The parole of District youths committed to the Youth Corrections Center under the FYCA is the responsibility of the Youth Corrections Division of the United States Board of Parole.[97] All other District parolees are under the jurisdiction of the D.C. Board of Parole. Parole supervision functions for the U.S. Board of Parole are performed by the U.S. Probation Department of the District Court.

---

[97] 18 U.S. Code § 5005 (1950).

The U.S. Parole Board's procedures differ from those of the D.C. Parole Board. A person committed under the Youth Corrections Act is eligible for parole as soon as his term of confinement begins. He does not need to submit an application for parole, and he cannot waive his parole hearing. The Youth Corrections Division may terminate parole supervision completely after the youth has demonstrated a satisfactory community adjustment for a year.[368] In fiscal 1966 the Division held 110 initial hearings and 59 revocation hearings.

It has been suggested that parole jurisdiction over District Youth Center inmates be transferred to the D.C. Board of Parole.[369] We think the suggestion is sound. The Youth Center is a facility of the Department of Corrections; its parole program should be administered by a District parole agency. Division of parole jurisdiction, requiring close familiarity of Department of Corrections units with the parole procedures and policies of two agencies, has too often resulted in administrative difficulties, inconvenience, unnecessary expense, and procedural errors by the Department.

Representatives of the D.C. Board of Parole have in the past expressed a disinclination to assume responsibility for FYCA cases, citing the part-time status of its members, and its inability to bear an increased caseload. The Commission, however, has recommended that the Board be restructured to consist of three full-time members; this should permit it to assume a responsibility which we think logically belongs to it. Accordingly, the Commission recommends that legislation be submitted to Congress to provide for the transfer.

[From "Summary and Recommendations"—"Parole" p. 471]

36. Responsibility for the parole and parole supervision of District youths committed under the provisions of the Federal Youth Corrections Act should be transferred from the U.S. Board of Parole to the D.C. Board of Parole.

Section 3 of S. 1516.—Federal Prison Industries

(Report pp. 435, 436, and p. 470 herewith reproduced)

WORK EXPERIENCE AND JOB TRAINING

Prison industries in the District are for the most part geared to providing inmates with a job to do within the institution, and are not now designed to prepare the worker for opportunities in the community which will be available to him on release. The ACA has pointed out that there are several reasons for this:

"Industry operations in correction institutions are often handicapped because they must exist on profits rather than on general funds. Supervisors must seek out industries that offer a profitable return, regardless of the training potential for the inmates. Machinery and tools are often outdated because profits are not sufficient to update them. Further problems involve buying equipment, supplies, and raw materials on a 'low-bid' basis rather than from suppliers who can furnish goods to meet exact specifications, delays often experienced in purchasing of raw materials because of governmental 'red tape,' and opposition by some purchasing agents to the use of prison-made goods." [199]

As the site of most of the Department's industries, the Reformatory faces these problems. It maintains 11 industrial operations, including a pattern shop, foundry, print shop, furniture repair shop, broom, brush and mattress shop, machine shop, and tag and sign shop. Skills obtained in these units can rarely be successfully marketed in a city characterized by a paucity of industrial employment opportunities.

The Commission urges the Department to give high priority to inmate development of skills and good work habits in trades and occupations for which there is a need in the community. If the consequence is a reduced prison industry profit, this will be a small price to pay; the cost to the community is far greater when an unemployed releasee returns to criminal pursuits.

To improve prison industries in the District's correctional institutions, the Commission recommends that the Department of Corrections contract with Fed-

---

[368] U.S. Board of Parole, Functions of the U.S. Board of Parole, 9 (undated).
[369] Interview with James C. Neagles, Staff Director, U.S. Board of Parole, Sept. 1, 1966; Interview with Claude S. Nock, Jr., Youth Division Executive, U.S. Board of Parole, Sept. 1, 1966.
[199] App. (ACA), 741.

eral Prison Industries, Inc. for the reorganization and future operation of its industries programs.[200] Federal Prison Industries (FPI), a government corporation organized in 1934, provides training and employment for prisoners in Federal correctional institutions oriented to the outside market. FPI operates industries involving electronics repair; the manufacture of clothing, furniture, textiles, tools and machinery; furniture repair; and printing. Training is also available in business, management and clerical skills.

Various Federal departments and agencies purchase the goods manufactured by FPI. During fiscal 1966 earnings of $10,030,000 were received from total sales of $52,400,000.[201] Most of the earnings are reinvested to improved the vocational training programs, under which more than half of the prisoners receive occupational training. FPI is authorized to used these funds in the vocational training of inmates without regard to their production of FPI goods and to compensate inmates for work performed in institutional operations. At present inmates may earn between $2 and $13 per month, with provision for overtime pay and a production bonus plan in the industrial shops; there is no restriction on the amount of money that an inmate may earn. FJI funds may also be authorized to compensate inmates or their dependents for injuries suffered in any industry. The Commission believes that Federal Prison Industries has the technical competence, the financial resources, and the established relationship with industry and government to develop a model industries system for the District of Columbia.

It must be recognized, however, that some inmates are suited for only the most routine jobs in an industrial operation. They may be handicapped by physical problems, mental or emotional limitations or a lack of motivation for trade or academic training.[202] By careful selection, those who have potential for training should be assigned to jobs offering the greatest opportunity for civilian employment, while the others should be placed in less demanding occupations.

Though the Department is well aware of the importance of meaningful job training, the programs offered in several institutions exhibit some serious shortcomings. Even the Youth Center suffers in this regard. Without a single vocational instructor on its staff, it is forced to use maintenance men, skilled inmates and stewards as instructors in the 11 vocational training courses offered.[203] This accommodation has proven unsatisfactory, as job training has been subordinated to Center maintenance. The job training programs of the Department will be materially improved if responsibility for the operation of the prison industries program is transferred to FPI. We stress the importance of continuing and exhaustive counseling and consultation with inmates whose apparent lack of motivation will keep them from getting or holding jobs.

Although not directly geared to job training, the Department's academic programs offer important support to its employment activities. Academic educational programs, providing courses in remedial reading, basic mathematics and aspects of community living, are important weapons in the battle against recidivism. The Department has been quite successful in developing such programs particularly at the Reformatory, by linking increases in industrial pay to attendance at school and therapy sessions.[204]

23. The Department of Corrections should contract with Federal Prison Industries, Inc. for the reorganization and future operation of the industries programs of the Department.

Section 4 of S. 1516.—Pleading Insanity—Escape of Mentally Ill

(Report pp. 530–560, especially p. 551, p. 555, and p. 560, Nos. 2 and 5, herewith reproduced.)

Section III: The Mentally Ill Offender

The relationship between mental disorder and criminal behavior is a matter of intense public interest, raising fundamental questions regarding the causes

---

[200] Id. at 740.
[201] Federal Prison Industries, Inc., U.S. Dept. of Justice, Schedule of Products, Report No. 160, 6.
[202] Ibid.
[203] Interview with William R. Nelson, Assistant Director, Dept. of Corr., Nov. 22, 1966.
[204] App. (ACA), 742.

of crime and the timely identification and treatment of the mentally deranged. In this section the Commission considers only one of these complex problems—that which arises when the mental condition of a defendant becomes an issue in a criminal proceeding. Few disagreee with the principle that persons suffering from severe mental disorders should not be held legally responsible for their criminal acts. Many, however, disagree with the application of this principle in the District of Columbia, particularly since the 1954 decision of the United States Court of Appeals for the District of Columbia Circuit in *Durham* v. *United States*.[1]

Current Procedures and Practices

THE LEGAL FRAMEWORK

The defendant's mental condition may become relevant at various stages of a criminal prosecution. It may become an issue before trial by a claim that the defendant is not mentally competent to stand trial. In the District of Columbia the test of fitness to stand trial is whether the accused is "unable to understand the proceedings against him or properly to assist in his own defense." [2] At the trial the accused may contend that he is not guilty because he was of unsound mind at the time of the alleged offense. The accused's mental condition may also be relevant the following trial, since a defendant who is found not guilty by reason of insanity in the District is automatically committed to a mental institution.[3] In order to secure unconditional release, he must convince the court by a preponderance of the evidence that he "has recovered his sanity and will not in the reasonable future be dangerous to himself or others." [4] In sum, it is essential to distinguish between (1) competence to stand trial, (2) responsibility for the offense, and (3) eligibility for release from hospital confinement. Different legal standards and separate policy considerations are applicable to each of these problems.

Pretrial procedures

A pretrial mental examination may be ordered by the court on its own initiative or upon the motion of defense counsel or the prosecutor. It is designed to obtain psychiatric opinion both with respect to the accused's competency to stand trial [5] and, in most cases, his mental condition at the time of the alleged crime.[6]

Most pretrial mental examinations in the District are performed at government expense on an inpatient basis at government hospitals. Defendants referred from the United States District Court are examined at Saint Elizabeths Hospital and persons charged in the Court of General Sessions are usually examined at D.C. General Hospital. Commitment to these hospitals for mental examination has ranged from a period of 30 to 90 days.[7] In addition, Legal Psychiatric Services, a division of the D.C. Department of Public Health, performs a few pretrial mental examinations.[8]

Until recently the indigent defendant's primary means of securing evidence on his competence to stand trial or criminal responsibilities was through pretrial mental examination by doctors employed by the government. Now, however, the Criminal Justice Act authorizes payment of fees to private experts on behalf of indigents,[9] the Legal Aid Agency has a grant for this purpose,[10] and the Georgetown Institute of Criminal Law and Procedure has instituted a pretrial clinic.[11]

At the conclusion of the examination, a psychiatric report is submitted to the court, which determines the defendant's competence to stand trial. If any party objects to the psychiatric report, a hearing on the defendant's competence must be held; if the court finds that the defendant is incompetent to stand trial, it must commit him to a mental hospital.[12] The court may later find the defendant competent to stand trial upon certification of the hospital; if there is objection, a hearing is required.[13]

Problems relating to pretrial examinations were the subject of a recent 3-year study by a District of Columbia Judicial Conference Committee. Its report revealed that motions for pretrial mental examination were made in cases involving 1,668 (8.9 percent) of the 18,830 defendants prosecuted in the United States District Court during fiscal years 1952 through 1963. Of these 1,668 motions for an examination, 94.5 percent were granted and 28.2 percent of these examinations ultimately resulted in findings of incompetence. The study shows, therefore,

See footnotes on p. 120.

that the District Court has been liberal in granting applications for psychiatric examination and that approximately 2.1 percent of all defendants during the 12-year period were ultimately adjudged incompetent to stand trial.[14] In recent years the proportion of defendants filing such motions has increased: [15] 17.1 percent of all defendants filed motions for mental examination in calendar 1965.[16]

The Judicial Conference Report also revealed that only 38 of the 370 persons found incompetent to stand trial in fiscal years 1952 through 1962 were not restored to competence by the end of fiscal 1963. The median duration between a judicial finding of incompetence and a finding of restoration of competency was 16.2 months.[17]

Criminal responsibility

There has been relatively little dispute with respect to the standard governing fitness to stand trial. On the other hand, there has been intense controversy for more than a century concerning the appropriate rule to be applied in determining an individual's responsibility for a criminal offense.

Most American jurisdictions follow the test of responsibility formulated in 1843 by the English House of Lords in *M'Naghten's Case*.[18] Under this standard a defendant who pleads insanity must prove that "at the time of the committing of the act, the party accused was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing; or, if he did know it, that he did not know that he was doing what was wrong."

Since 1929 the *M'Naghten* "right-wrong" test has been supplemented in the District by the "irresistible impulse" test, which excuses a defendant if "his reasoning powers were so far dethroned by his diseased mental condition as to deprive him of the will power to resist the insane impulse to perpetuate the deed, though knowing it to be wrong." [19]

The *M'Naghten* test has been attacked for many years. The essence of this criticism has been that the *M'Naghten* rule concentrates upon the accused's intellectual capacity and disregards the psychiatric view that a person may be impelled to commit an unlawful act by deep-rooted emotional factors. Thus, an individual may intellectually know right from wrong, but lack the necessary capacity for self-control because of an emotional disorder. The *M'Naghten* test has recently been rejected as the applicable standard by the Courts of Appeals for the Second, Third and Tenth Circuits and by a number of state courts.[20] The American Law Institute has also recommended adoption of a new standard of criminal responsibility formulated as follows:

"A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law." [21]

The District of Columbia followed the *M'Naghten* and irresistible impulse rules until 1954 when the Court of Appeals in *Durham* v. *United States* announced a new test of criminal responsibility. Under this standard "an accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect." [22] The Court of Appeals found that the "right-wrong" test did not "take sufficient account of psychic realties and scientific knowledge." [23] It also concluded that the irresistible impulse test gave "no recognition to mental illness characterized by brooding and reflection and so relegates acts caused by such illness to the application of the inadequate right-wrong test." [24] The *Durham* rule was designed to reconcile the legal test of criminal responsibility with advances in psychiatric knowledge. Specifically, it was framed to permit psychiatrists to testify in their own terms concerning the accused's mental condition, thereby facilitating the kind of communication between psychiatric experts and the courts which was felt to be impeded by the existing tests.

Various objections were leveled against the *Durham* test.[25] It was argued that there was ambiguity in the requirement that the criminal act be shown to be the "product" of the mental disease. Other critics expressed concern that undue weight was being accorded to the opinions of psychiatrists. These problems were considered by a unanimous en banc decision of the Court of Appeals in 1962 in *McDonald* v. *United States*.[26] In addition to defining more rigorously the amount of evidence required for a defendant to raise the issue of insanity, the court emphasized in *McDonald* that the issue should be left in the hands of the jury; whether a psychiatrist deemed a particular defendant to be mentally diseased

was not dispositive. The court also defined a "mental disease or defect" to include "any abnormal condition of the mind which substantially affects mental or emotional processes and substantially impairs behavior controls." [17] The *Durham* test, as amplified by *McDonald*, is similar to the "substantial capacity" standard of the American Law Institute.

A defendant is presumed to be sane. An accused who claims he is not criminally responsible has the initial duty of introducing "some evidence" showing that he suffered from a mental disease or defect at the time of the alleged offense. If some evidence of lack of mental responsibility is received, then in the trial courts of the District, as in all Federal courts, the prosecution bears the burden of proof on the sanity issue.[18] In such a case the prosecution must prove beyond a reasonable doubt either that the accused was not mentally diseased, or that the crime was not the product of mental disease. If the prosecution does not carry its burden, the jury, after finding that the defendant committed the act, may then find him not guilty by reason of insanity.[19]

Posttrial hospitalization and release

In 1955 Congress enacted a statute making hospitalization automatic and mandatory in every case tried in the District where a defendant is found not guilty by reason of insanity.[20] The statute is designed to guard against imminent repetition of a criminal act by persons acquitted on insanity grounds and to discourage frivolous insanity pleas.[21] However, if the insanity issue is raised against the accused wishes by the court or the prosecution, as may be necessary if his actions cast insufficient doubt upon his mental state,[22] the defendant may not be automatically committed to a mental hospital; the only recourse in such a case after an acquittal on insanity grounds is a civil commitment proceeding.[23]

The automatic commitment statute authorizes unconditional and conditional releases from compulsory hospitalization. For an unconditional release the hospital superintendent must certify to the District Court that the defendant "(1) . . . has recovered his insanity, (2) that, in the opinion of the superintendent, such person will not in the reasonable future be dangerous to himself or others, and (3) in the opinion of the superintendent, the person is entitled to his unconditional release from the hospital . . . ." [24] The court may authorize release solely on the basis of this certification, but a hearing must be held if the prosecutor objects. Construing this statute, the Court of Appeals has held that to secure a release "there must be freedom from such abnormal mental condition as would make the individual dangerous to himself or the community in the reasonably foreseeable future." [25]

Conditional release may be authorized if the superintendent certifies that the defendant is fit "to be conditionally released under supervision." [26] The court is vested with ultimate authority to determine whether, and under what conditions, probationary release will be allowed.

EXPERIENCE UNDER THE DURHAM RULE

Number of defendants acquitted

In the 13-year period from fiscal 1954 through 1966, 387 defendants were found not guilty by reason of insanity in the United States District Court for the District of Columbia. As shown by Table 1, this represents 2.1 percent of all cases terminated and 6.5 percent of all cases tried. The number of persons acquitted by reason of insanity since *Durham* has ranged from a high of 66 each year in fiscal 1961 and 1962 to a low of 7 in 1957. The number of persons absolved on grounds of insanity has declined since the decision by the Court of Appeals in *McDonald* in fiscal 1963.

Since 1958, the first year for which Saint Elizabeths Hospital records an admission of a patient found not guilty by reason of insanity in the Court of General Sessions, 230 persons have been so acquitted through fiscal 1965. As in the District Court, the Court of General Sessions insanity acquittals fluctuated considerably from year to year. They ranged from 5 acquittals in fiscal 1958 to a high of 51 in 1960. Most of the insanity acquittals in the Court of General Sessions have occurred in the United States Branch (184 defendants), yet in the peak year of fiscal 1960 acquittals constituted only 0.48 percent of the cases filed in that branch. In fiscal 1966 there were 24 defendants found not guilty by reason of insanity in the Court of General Sessions.

TABLE 1.—*Persons found not guilty by reason of insanity*

[U.S. District Court for the District of Columbia, fiscal years 1954-66]

Fiscal year	Defendants in cases terminated [1]	Defendants in cases tried [1]	Defendants NGI [2]	NGI as percent of defendants in cases terminated	NGI as percent of defendants in cases tried
1954 [3]	1,870	673	3	0.2	0.4
1955	1,384	453	8	.6	1.8
1956	1,595	456	16	1.0	3.5
1957	1,454	456	7	.5	1.5
1958	1,666	522	17	1.0	3.3
1959	1,642	528	32	1.9	6.1
1960	1,367	400	35	2.6	8.8
1961	1,337	457	66	4.9	14.4
1962	1,282	480	66	5.1	13.8
1963	1,183	398	53	4.5	13.3
1964	1,142	393	23	2.0	5.9
1965	1,286	372	35	2.7	9.4
1966	1,230	380	26	2.1	6.8
Total	18,438	5,968	387	2.1	6.5

[1] Source: Administrative Office of the U.S. Courts.
[2] "NGI" means not guilty by reason of insanity in this and subsequent tables.
[3] The fiscal year preceding the decision in *Durham* v. *United States*. Prior to this year, insanity patients were not recorded separately from all other prisoner patients at St. Elizabeths Hospital.

Persons found not guilty by reason of insanity are usually involved in the more serious crimes. Table 2 shows that 52 percent of the persons acquitted by reason of insanity in the United States District Court were charged with crimes of murder (14.7 percent), robbery (13.6 percent), housebreaking (13.6 percent), or aggravated assault (10.5 percent). No other crime accounts for more than 10 percent of the total. Table 2 also shows that 54 percent of the insanity findings in the Court of General Sessions involved simple assault and petit larceny.

The relationship between crime and the insanity defense is further amplified in Table 3. Since fiscal 1954, 17 percent of the persons charged with murder have been found not guilty by reason of insanity. This proportion is considerably higher than the ratio for any other crime. In only two other categories, rape and other sex offenses, did insanity acquittals exceed 3 percent of the total dispositions.

TABLE 2.—*NGI admissions to Saint Elizabeths Hospital, by crime charged*

U.S. district court, fiscal year 1954 [1]-65			Court of general sessions, fiscal year 1958 [1]-65		
Crime charged	Number	Percent	Crime charged	Number	Percent
Murder	53	14.7	Simple assault	65	28.3
Rape	16	4.4	Petit larceny	59	25.7
Other sex offenses	25	6.9	Carrying deadly weapon or possession of prohibited weapon.	17	7.4
Manslaughter	6	1.7			
Robbery	49	13.6	Unlawful entry	11	4.8
Aggravated assault	38	10.5	Sex offenses	10	4.3
Housebreaking	49	13.6	Destroying private or movable property.	8	3.5
Grand larceny	16	4.4			
Forgery	31	8.6	Threats	7	3.0
Auto theft	28	7.8	Other U.S. offenses [2]	7	3.0
Narcotics	30	8.3	Drunk and/or disorderly	33	14.3
Other felonies	20	5.5	Traffic violations	7	3.0
			Other D.C. offenses [3]	6	2.6
Total	361	100.0	Total	230	99.9

[1] Earliest year for any separately recorded not guilty by reason of insanity admission.
[2] "U.S. offenses," in this and following tables, are misdemeanors prosecuted by the U.S. Attorney for the District of Columbia. See 23 District of Columbia Code 101 (1961).
[3] "D.C. offenses," in this and following tables, are misdemeanors prosecuted by the Corporation Counsel of the District of Columbia. See 23 District of Columbia Code 101 (1961).

Source: St. Elizabeths Hospital.

TABLE 3.—*Persons found NGI, by crime charged*

[U.S. district court: fiscal years 1954-1965]

Crime charged	Defendants in cases terminated	Defendants NGI	
		Number	Percent
Murder	319	53	16.6
Rape	448	16	3.6
Other sex offenses	328	25	7.6
Manslaughter	393	6	1.5
Robbery	2,429	49	2.0
Aggravated assault	1,379	38	2.8
Housebreaking	2,005	49	2.4
Grand larceny	1,148	16	1.4
Forgery	1,190	31	2.6
Auto theft	1,438	28	1.9
Narcotics	1,678	30	1.8
Total	12,755	341	2.7

Source: Staff computations based on data maintained by the Administrative Office of the U.S. Courts

Psychiatric diagnosis

Of the 591 persons admitted to Saint Elizabeths Hospital from the two courts after verdicts of not guilty by reason of insanity during fiscal years 1954 through 1965, 326 (55 percent) were diagnosed as suffering from schizophrenia or other psychoses, organic disorders, or mental deficiency (Table 4). Of the remainder, 85 (14 percent) were psychoneurotic, 141 (24 percent) were suffering from personality disorders, and 39 (7 percent) were diagnosed on admission as "without mental disorder."

TABLE 4.—*Psychiatric diagnoses of NGI admissions to St. Elizabeths Hospital*

Psychiatric diagnosis	U.S. district court, fiscal year 1951-65 [1]		Court of general sessions, fiscal year 1958-65 [1]		Total	
	Number	Percent	Number	Percent	Number	Percent
Organic disorder	37	10.2	26	11.3	63	10.7
Schizophrenia	141	39.1	97	42.2	238	40.3
Other psychoses	5	1.4	9	3.9	14	2.4
Mental deficiency	6	1.7	5	2.2	11	1.9
Psychoneurotic	65	18.0	20	8.7	85	14.4
Personality disorder	87	24.1	54	23.5	141	23.9
Without mental disorder	20	5.5	19	8.3	39	6.6
Total	361	100.0	230	100.1	591	100.2

[1] Earliest year for any separately recorded not guilty by reason of insanity admission.

Source: St. Elizabeths Hospital.

The Commission is informed that defendants admitted "without mental disorder" fall into four categories: (1) Those examined by Saint Elizabeths before trial where the psychiatrists disagree on the diagnosis; if the majority agrees that the defendant is without mental disorder his diagnosis will be so recorded even if testimony of the psychiatric staff who believe otherwise results in an insanity acquittal; (2) those examined by Saint Elizabeths before trial where the psychiatrists are unanimously of the view that the defendant is without mental disorder but testimony of a psychiatrist hired by the defendant results in an insanity acquittal; (3) those who are not examined by Saint Elizabeths psychiatrists until after trial where testimony of other psychiatrists produces an insanity acquittal; and (4) those defendants who refuse to cooperate in a pretrial mental examination, are found not guilty by reason of insanity through psychiatric testimony from other sources, and when examined by Saint Elizabeths psychiatrists after admission are found to be without mental disorder. This last category consists of very few defendants; most defendants examined

before trial who are characterized as without mental disorder do cooperate fully.[37]

Defendants suffering from personality disorders are also of particular interest since there is controversy whether such persons should be absolved of criminal responsibility.[38] Personality disorders are not characterized by gross distortions and falsifications of external reality as in psychoses, nor by anxiety as in psychoneuroses; the disorder is manifested by a "lifelong pattern of action or behavior, rather than by mental or emotional symptoms."[39] Persons suffering from a sociopathic (or psychopathic) personality disturbance, in particular, "are ill primarily in terms of society and of conformity with the prevailing cultural milieu."[40] Some psychiatrists regard sociopaths as mentally diseased; other psychiatrists disagree. There is, however, widespread consensus among pyschiatrists that sociopaths are significantly less capable of self-control than normal persons.[41] Under the *Durham* test it is for the jury to determine whether a defendant with the personality traits of a sociopath suffers from a mental disease such that he should not be held criminally responsible.

As shown by Table 5, the number of persons found not guilty by reason of insanity who were diagnosed as having personality disorders increased after fiscal 1958, where Saint Elizabeths Hospital began classifying personality disorders as mental disease.[42] Since fiscal 1963, when the 20 admissions so diagnosed were 38 percent of all not-guilty-by-reason-of-insanity admissions coming from the District Court, the number of individuals suffering from personality disorders found not guilty by reason of insanity has declined. The same trend is evident in the Court of General Sessions. The Clinical Director of the maximum security prisoner-patient facility at Saint Elizabeths Hospital reports that patients suffering from personality disorders are generally confined at the hospital as long as patients in many other categories.[43] Since they have a tendency to get in trouble when they are given greater freedom and privileges, their progress toward release is slow.[44]

TABLE 5.—*Incidence of personality disorder among persons found NGI*

Fiscal year	U.S. district court		Court of general sessions	
	Number	Percent of all NGI's	Number	Percent of all NGI's
1954	3	100.0	.....	.....
1955	5	62.5	.....	.....
1956	2	12.5	.....	.....
1957	1	14.3	.....	.....
1958	5	29.4	1	20.0
1959	5	15.6	1	9.1
1960	5	14.3	10	19.6
1961	12	18.2	13	28.3
1962	12	18.2	9	33.3
1963	20	37.7	7	41.2
1964	7	30.4	3	10.3
1965	10	28.6	10	22.7
Total	87	24.1	54	23.5

Source: St. Elizabeths Hospital.

Tables 6 and 7 compare psychiatric diagnoses by type of crime. Among the crimes prosecuted in the District Court, manslaughter has a high proportion of mental deficients (33 percent) but no psychoneurotics; rape, other sex offenses and grand larcency show a high proportion of psychoneurotics (over 30 percent in each); and forgery and narcotics show a high proportion of personality disorders (48 percent and 53 percent respectively) (Table 6).

80-853—67——8

TABLE 6.—*Psychiatric diagnoses of NGI admissions to St. Elizabeths Hospital, by crime charged*

[U.S. district court, fiscal years 1954-65]

Crime charged	Total	Psychiatric diagnosis													
		Organic disorder		Schizophrenic		Other psychoses		Mental deficiency		Psychoneurotic		Personality disorder		Without mental disorder	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Murder	53	10	18.9	25	47.2	2	3.8			7	13.2	6	11.3	3	5.7
Rape	16	2	12.5	6	37.5					6	37.5	2	12.5		
Other sex offenses	25	4	16.0	8	32.0			1	4.0	8	32.0	3	12.0	1	4.0
Manslaughter	6	1	16.7	2	33.3			2	33.3			1	16.7		
Robbery	49	3	6.1	25	51.0					8	16.3	10	20.4	3	6.1
Aggravated assault	38	5	13.2	14	36.8	1	2.6	1	2.6	4	10.5	8	21.1	5	13.2
Housebreaking	49	2	4.1	23	46.9	1	2.0			9	18.4	13	26.5	1	2.0
Grand larceny	16	1	6.3	4	25.0	1	6.3			5	31.3	3	18.8	2	12.5
Forgery	31	2	6.5	6	19.4					7	22.6	15	48.4	1	3.2
Auto theft	28	3	10.7	12	42.9			1	3.6	5	17.9	4	14.3	3	10.7
Narcotics	30	2	6.7	8	26.7					3	10.0	16	53.3	1	3.3
Other felonies	20	2	10.0	8	40.0			1	5.0	3	15.0	6	30.0		
Total	361	37	10.2	141	39.1	5	1.4	6	1.7	65	18.0	87	24.1	20	5.5

Source: St. Elizabeths Hospital.

TABLE 7.—*Psychiatric diagnoses of NGI admissions to St. Elizabeths Hospital, by crime charged*

[Court of general sessions, fiscal years 1958–65]

Crime charged	Total	Psychiatric diagnosis													
		Organic disorder		Schizophrenic		Other psychoses		Mental deficiency		Psychoneutotic		Personality disorder		Without mental disorder	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Simple assault	65	7	10.8	41	63.1	1	1.5	2	3.1	3	4.6	9	13.8	2	3.1
Petit larceny	59	3	5.1	12	20.3	3	5.1	1	1.7	12	20.3	20	33.9	8	13.6
Carrying deadly weapon or possession of prohibited weapon	17	3	17.6	9	52.9					1	5.9	2	11.8	2	11.8
Unlawful entry	11	3	27.3	4	36.4							1	9.1	3	27.3
Sex offenses	10	1	10.0	3	30.0					2	20.0	4	40.0		
Destroying private or movable property	8	1	12.5	6	75.0							1	12.5		
Threats	7	1	14.3	4	57.1							1	14.3	1	14.3
Other U.S. offenses	7			1	14.3					1	14.3	4	57.1	1	14.3
Drunk and/or disorderly	33	6	18.2	14	42.4	4	12.1	1	3.0			7	21.2	1	3.0
Traffic violations	7			2	28.6					1	14.3	3	42.9	1	14.3
Other District of Columbia offenses	6	1	16.7	1	16.7	1	16.7	1	16.7			2	33.3		
Total	230	26	11.3	97	42.2	9	3.9	5	2.2	20	8.7	54	23.5	19	8.3

Source: St. Elizabeths Hospital.

DIAGNOSTIC AND TREATMENT FACILITIES

Persons committed indefinitely to a mental hospital as a result of criminal proceedings in the District of Columbia are admitted to Saint Elizabeths Hospital. Since Saint Elizabeths also performs almost all the pretrial mental examinations for District Court defendants and, more recently, some examinations for Court of General Sessions defendants,[45] it is the principal diagnostic and treatment facility in the District used in connection with the insanity issue in criminal cases.

Saint Elizabeths is a Federal mental hospital, part of the Department of Health, Education, and Welfare. The hospital was opened in 1855, and now consists of over 125 buildings on 365 acres of land. Its operating budget for fiscal 1967 is $32.6 million. The institution has approximately 7,500 patients on its rolls, nearly ten percent of whom are prisoner patients—including persons under mental examination, those found mentally incompetent to stand trial,[46] those adjudged not guilty by reason of insanity (slightly more than half of the criminal patients), persons under sentence,[47] and those held as sexual psychopaths.[48]

Facilities and treatment

Prisoner patients are kept in three separate divisions of Saint Elizabeths Hospital: the John Howard Pavilion (a maximum security facility for potentially dangerous male prisoner patients); the West Side Service (for other male prisoner patients, especially those from the Court of General Sessions); and the Cruvant Division (for women prisoner patients and transfers from John Howard).[49]

John Howard Pavilion

This five-story structure, opened in 1959, has a capacity of 396 beds distributed among 12 wards. On July 5, 1966, the patients at John Howard included 44 undergoing mental examination, 50 who were mentally incompetent, 140 persons found not guilty by reason of insanity, 54 who were under sentence, 13 sexual psychopaths, and 64 potentially dangerous civil patients. Less than 10 patients were on conditional release.

The Pavilion has excellent security features; there are only two guard-operated entrances to the building and all interior doors are key-operated. There have been only two escapes since the Pavilion opened.

John Howard Pavilion has a staff of six psychiatrists and three psychologists. Based on the patients in custody in July 1966, there were approximately 60 patients for each staff psychiatrist. Between six and nine resident psychiatric interns are also assigned to the Pavilion one day a week. The staff at John Howard conducts medical examinations for all defendants referred from the District Court. The staff psychiatrists are regularly called as expert witnesses by both prosecution and defense, and spend about half their time testifying or preparing to testify.

The staff also includes two full-time teachers, volunteer teachers who visit regularly, two social workers, one recreational therapist, three occupational therapists, one physician, one chaplain, and seven nurses. In the daytime there are at least two male nursing assistants for each ward and four in each of three wards where the patients are severely disturbed.

Many patients participate in the institution's educational program, which includes vocational classes in typing, barbering and tailoring, as well as weaving and woodworking shops. Plans are also being made for appliance repair, radio-TV, and auto mechanic shops. Most of the Pavilion patients are unschooled and, i released conditionally, work at laboring jobs in the city or participate in vocational training programs.

There is almost no individual psychotherapy carried on with patients at John Howard Pavilion. The large number of patients, the limited psychiatric staff and the staff's court commitments preclude such treatment as a practical matter. There are four or five group therapy sections, three guided by psychologists. Alcoholics Anonymous meetings are held weekly, and there is a special discussion group for drug addicts. Many patients are taking tranquilizing drugs.

West Side Service

All patients committeed to Saint Elizabeths by the Court of General Sessions are admitted to West Side Service except those who may be particularly unmanageable or dangerous. The West Side Service is housed in the original hospital building, which was constructed in 1855 and is a rambling, four-story structure. The Service has a 422-bed capacity distributed among 8 wards, and has slightly more civil than criminal patients. In July 1966 patients committed as a result of criminal proceedings included 7 persons committed for mental examination, 68 found to be mentally incompetent to stand trial, 103 persons who were found not guilty by reason of insanity, and 27 sexual psychopaths; 25 patients were on unauthorized leave and 24 were conditionally released. The prisoner patients are not segregated from civil patients.

As suggested by its age, the building has limited physical facilities. There is one gymnasium used for athletics and social activities. Only two wards have their own dining room; in the other wards patients must eat in the halls or in their rooms. Physical arrangements for security are also limited. The admission ward has security screens and separate locks; entrances to the other wards are locked, providing the only security protection throughout the Service.

In contrast to those at the John Howard Pavilion, the patients in West Side Service are somewhat older and have more advanced illnesses. The largest ward is described as an "open ward," which the patients may leave when accompanied by a hospital attendant. Three wards, containing only a few prisoner patients, house persons with physical as well as mental disabilities who require continual assistance for the simplest of daily tasks. Another ward consists of seriously regressed patients. One ward is a therapeutic community experiment where the patients in return for certain privileges govern themselves and participate in a "buddy system" in which each patient is responsible for another patient.

The staff at the Service consists of nine phychiatrists, including three psychiatric residents. The supporting staff is comparable to that at the John Howard Pavilion. There is a negligible educational program offered, primarily because there is little demand. The various group therapy and rehabilitation sections provided for patients, however, are substantial in number and in participation. Each staff psychiatrist has two or three patients for individual psychotherapy.

Cruvant Division

This facility has four wards with a total capacity of 123. One of the four wards is composed entirely of male patients transferred from John Howard Pavilion; another consists primarily of long-term female civil patients. On July 5, 1966, the patients included 4 individuals committed for mental examination, 15 persons found to be mentally incompetent to stand trial, 70 found not guilty by reason of insanity, 4 under sentence, 4 sexual psychopaths, and 36 civil patients. Twenty-five patients were on conditional release and seven were on unauthorized leave.

The Cruvant Division was opened to patients involved in crimial cases on December 1, 1965. For its first eight months of operation the Division had only one psychiatrist (who was also director of another service) and one part-time

psychiatric intern; one additional part-time psychiatrist has recently been assigned. There are two social workers, but no recreational therapists, occupational therapists or educational specialists. There is a medical officer who spends approximately one-quarter of his time at Cruvant Division.

The security of the building itself is adequate. However, Cruvant's lack of facilities and personnel with which to occupy its patients' time means that grounds privileges are necessary if a patient is to be able to participate in programs offered elsewhere at the hospital. Since there are insufficient personnel to supervise limited grounds privileges, "walk-offs" from the hospital by Cruvant patients are not uncommon.

Types of treatment

Three forms of therapy utilized in treating mentally ill patients are available at Saint Elizabeths Hospital in varying degrees. The first type, somatic therapy, is physical treatment which affects the mental disease or disorder. It includes shock therapy, prefrontal lobotomy, hydrotherapy, and drug therapy. Drug therapy is now the predominant mode of somatic therapy.

The second kind of therapy is psychotherapy, which is usually treatment designed to make the patient aware of unconscious conflicts. It may be on an individual or group basis, and in some cases can only be supportive rather than curative therapy. Individual psychotherapy may be the preferred mode of treatment; it is, however, costly and may require hundreds of hours of individual attention by a psychiatrist. For that reason, most of the psychotherapy in public mental hospitals today, including Saint Elizabeths Hospital, can only be group psychotherapy.

A third form of treatment is milieu therapy, or treatment by providing an environment conducive to recovery. The mere removal of a mentally disturbed person from the stresses and strains of everyday living in the outside world is a form of milieu therapy. For some illnesses, such as personality disorders, this may be the best therapy. Because of limitations of medical personnel, milieu therapy is the most widely practiced therapy at Saint Elizabeths Hospital. Vocational, occupational and educational rehabilitation are an important part of milieu therapy, and are essential to enable most prisoner-patients eventually to attain self-sufficiency.

Duration of confinement

The amount of time spent at Saint Elizabeths by persons found not guilty by reason of insanity has been the subject of much controversy in the District of Columbia. As noted above, no such individual may be released from hospital confinement without prior approval of the court, and the hospital does not recommend release except where there is unanimity among psychiatrists and other staff members regarding the appropriateness of release. The results of the Commission's inquiry regarding the length of confinement are set forth in Tables 8, 9 and 10. Table 8 shows how many persons acquitted of felonies on insanity grounds in the District Court have been released from the hospital and how long they were confined; Table 9 compares hospital confinement of these persons with prison confinement for convicted felons; and Table 10 shows the length of hospital confinement for persons charged with misdemeanors and found not guilty by reason of insanity.

TABLE 8.—*Time until 1st release of felony NGI patients admitted to St. Elizabeths Hospital, by crime charged*

Crime charged	Total NGI, fiscal year 1954–65	Not released	Not released, died	Total released as of Dec. 31, 1965	Time until 1st release (conditional or unconditional)						
					Less than 6 months	6 months, less than 1 year	1 year, less than 2	2 years, less than 3	3 years, less than 4	4 year, less than 5	5 years or more
Murder	53	25	1	27	3	4	7	5	5	3	0
Rape	16	12	0	4	0	0	1	1	1	0	0
Other sex offenses	[1] 28	15	0	13	0	2	5	0	1	1	0
Manslaughter	6	4	0	2	0	1	0	1	0	0	0
Robbery	49	14	0	35	3	4	5	5	6	3	4
Aggravated assault	[1] 35	8	1	26	4	4	6	3	3	3	0
Housebreaking	49	13	0	36	1	3	9	5	3	4	3
Grand larceny	16	3	1	12	1	1	3	0	1	0	1
Forgery	31	8	0	23	6	1	8	5	1	1	1
Auto theft	28	12	0	16	2	2	4	4	2	1	0
Narcotics	30	23	0	7	0	0	3	2	2	0	0
Other felonies	20	7	2	11	3	3	5	0	0	0	0
Total	361	153	5	203	23	25	60	42	29	15	9

[1] 3 patients charged with assault with intent to rape have been removed from the "aggravated assault" category, where they appear in tables 2, 3, and 6 above, and placed in the "Other sex offenses" category. This was necessary for purposes of comparison in table 9.

Source: St. Elizabeths Hospital.

As of December 31, 1965, 203 of the 361 persons who were charged with felonies and found not guilty by reason of insanity in the United States District Court had been released from Saint Elizabeths Hospital; 144 of these obtained their first release conditionally and 59 were released the first time unconditionally. Table 8 shows that 23 persons originally charged with felonies were released from the hospital in less than six months and 25 more were released in less than a year; 19 of the 48 were conditionally released and 29 were unconditionally released. Thus, among the 361 persons found not guilty by reason of insanity in the District Court, 13 percent (48 of 361) were released in less than a year. The table also shows that 153 (42 percent) of the 361 persons committed to Saint Elizabeths have not been released, conditionally or unconditionally.

Limitations of available data prevent a precise comparison of confinement in Saint Elizabeths Hospital with length of time spent by convicted felons in prison. Information concerning average (or median) prison sentences is based on the time served by all prisoners released in a given year, some of whom may have been in prison for 5, 10, 20 or more years. However, Saint Elizabeths did not keep separate records for patients found not guilty by reason of insanity until the beginning of fiscal 1954. As of December 31, 1965, therefore, no such identified patient at Saint Elizabeths could have been confined longer than 12½ years (since the beginning of fiscal 1954). In fact, more than two-thirds of the 361 patients had been admitted since July 1960 (Table 1). For these reasons, plus the fact that those who have already been released are most likely those who have recovered their sanity the most rapidly, a comparison only between *released* insanity patients and released prisoners would give a distorted picture.

However, an approximate comparison can be made by the use of three separate groups of insanity patients, as is done in Table 9. Column 1 shows the median time of confinement until first release, conditional or unconditional, of the 203 released patients shown in Table 8. The medians in this column are low in comparison with felons released from prison, because of the recognized differences in the two groups analyzed.

The medians in column 2 are for the 153 patients (Table 8) not yet released from the hospital, undoubtedly including many of the recent admissions to the hospital who have not yet had time to recover their sanity. Many of the medians in this column are more than double the corresponding medians in column 1 and reflect the fact that the patients not yet released are those with the deepest illnesses, who have been, and probably will continue to be, in the hospital for the longest period of treatment.

TABLE 9.—*Comparison of length of commitment of felon, NGI patients until first release with time served by felons in prison*

Crime	Median time served in months							
	Felony patients NGI, fiscal years 1954–65						Felons released from prison	
	1. Patients released [1]		2. Patients not released [2]		3. All patients [1]		District of Columbia [3] 1964	National [4] (1960)
	Persons	Median time	Persons	Median time	Persons	Median time		
Homicide	29	23.1	29	47.3	58	Not reached [5]	(6)	32.0
Murder	27	23.1	25	48.5	53	58		
Manslaughter	2	9.0	4	42.3	6	Not reached		
Sex offenses	17	20.7	27	46.4	44	do	35.2	30.0
Rape	4	30.0	12	49.1	16	do		
Other sex offenses	13	18.8	15	23.2	28	do		
Robbery	35	30.0	14	39.5	49	42.8	38.1	33.9
Aggravated assault	29	20.6	8	51.7	36	29	26.7	19.5
Housebreaking (burglary)	27	34.0	12	42.7	42	More than 60 months.	34.0	29.4
Grand larceny	12	18.9	3	17.5	16	22.3	15.0	16.7
Forgery	23	18.8	8	45.4	31	28.2	18.1	17.4
Auto theft	16	22.5	12	54.3	28	45	23.5	15.9
Narcotics	7	37.0	23	35.5	30	Not reached	47.4	29.4
Other felonies	11	11.0	7	24.9	20	21.6	24.9	14.1
All crimes	203	22.7	153	42.4	361	42.2	33.4	21.9

[1] Calculated from table 8.
[2] Patients who died before release are excluded.
[3] Information supplied by Donald L. Miller, supervisor, national prisoner statistics program, Federal Bureau of Prisons, Sept. 15, 1966. This and other 1964 data is scheduled for publication in early 1967 in a form similar to the Bureau of Prisons publication, National Prisoner Statistics, Characteristics of State Prisoners, 1960 (1965).
[4] Source: Federal Bureau of Prisons, National Prisoner Statistics, Characteristics of State Prisoners, 1960 (1965).
[5] "Not reached" indicates that the median release time cannot be calculated because 50 percent of the patients had not yet been released as of Dec. 31, 1965.
[6] More than 180 months.
[7] Includes embezzlement and fraud as well as forgery.

The figures in column 3 of Table 9 are calculated for all insanity patients, whether released or not. Statisticians at Saint Elizabeths Hospital have advised the Commission that these medians most accurately reflect the duration of confinement of the patient population and are most comparable to prison sentences served by felons. If this measure is relied upon, the median confinement at Saint Elizabeths Hospital appears to be greater than the median confinement of District felons in prison in every crime category with the very important exception of homicide and the less important exceptions of forgery, "other felonies," and possibly narcotics.

Medians may also be calculated for the length of time spent in the hospital by persons charged with misdemeanors in the Court of General Sessions (Table 10). Whereas the maximum prison sentence for a misdemeanor is 12 months or less, the median length of confinement for *released* misdemeanor patients is 15.8 months.

TABLE 10.—*Length of commitment of misdemeanor NGI patients from District of Columbia court of general sessions*

[Admissions for fiscal years 1955-66]

Crime charged	Median time served in months			
	Patients released as of Dec. 31, 1966		All misdemeanor patients	
	Persons	Median time	Persons	Median time
Simple assault	26	17.5	65	25.2
Petit larceny	46	17.3	70	21.7
Carrying deadly weapon or possession of prohibited weapon	10	18.0	17	20.0
Unlawful entry	9	7.4	11	18.0
Sex offenses	8	16.8	10	19.2
Destroying private or moveable property	7	12.0	8	12.0
Threats	3	15.0	7	(1)
Other U.S. offenses	4	30.0	7	42.0
Drunk and/or disorderly	24	10.5	32	18.0
Traffic violations	4	9.0	7	(2)
Other D.C. offenses	6	5.0	6	5.0
All crimes	157	15.8	220	22.8

[1] Not reached, indicates that the median release time cannot be calculated because 50 percent of the patients have not yet been released.
[2] More than 60.

Source: St. Elizabeths Hospital.

The Commission does not purport to judge whether persons committed to Saint Elizabeths Hospital as not guilty by reason of insanity are confined for too long or too short a time. That is a medical question which is properly entrusted to the specialists at the hospital. These comparisons have been made by the Commission primarily in response to criticisms that persons found not guilty under the *Durham* rule are avoiding confinement or escaping punishment for their acts. The majority of the Commission believes that the facts do not support such a conclusion.

*Evaluation**

ADEQUACY OF THE DURHAM RULE

For nearly a decade following announcement of the *Durham* rule in 1954, there was widespread debate in the District concerning the desirability of the new test. Over a hundred appellate decisions involving the insanity issue were decided by the United States Court of Appeals; judges, juries, lawyers, and psychiatrists struggled with the application of the new standard for criminal responsibility. Much of the debate, however, was stilled by the 1962 decision of the Court of Appeals in *McDonald* v. *United States*. Appellate cases involving the *Durham* rule have decreased since then and insanity acquittals have stabilized at two or three percent of all defendants in the United States District Court.

*The views of the minority of the Commission on issues discussed in this section are set forth at pp. 892–921.

Although we are unable to judge whether too many of too few persons are being found not guilty by reasons of insanity, the number of defendants whose criminal behavior is excused under the *Durham* standard is relatively small. The *Durham* rule does not appear to offer a readily available opportunity for criminal offenders to escape the consequences of their acts, particularly in view of the statute requiring commitment of those found not guilty by reason of insanity. Experience at Saint Elizabeths Hospital demonstrates that most persons found not guilty by reason of insanity under the *Durham* rule are indeed suffering from mental disease or defect and that they are sufficiently ill to remain in the hospital for substantial periods of time.

The majority of the Commission therefore concludes that there is no pressing need for change in the law. As an original proposition, several members of the Commission might favor replacement of the *Durham* rule with the American Law Institute standard of criminal responsibility or the very similar formulation passed by Congress in the recently vetoed Omnibus Crime Bill.[62] The majority does not believe, however, that the advantages of such a substitution clearly outweigh the possible disadvantages. Even a comparatively minor change in the wording of the legal test might spawn another decade of litigation without any assurance that it would produce a significant change in the number of persons found not guilty by reason of insanity or would improve the accuracy of those determinations.

The Commission is concerned, however, about the nature of the psychiatric testimony elicited under the *Durham* rule. *Durham* was intended to enable psychiatrists to testify freely and completely without the evidentiary limitations of a right wrong or irresistible impulse test. Based on such expert testimony, the jury was supposedly equipped to reach a just decision concerning the defendant's mental condition. Due to failures by both lawyers and psychiatrists, this essential testimony has often evolved into a series of complex, unexplained psychiatric conclusions of little value to the jury.[63] In order to remedy this deficiency, lawyers must make every effort to ask questions which promote lucid testimony and psychiatrists must in turn attempt to translate their professional terminology into lay language and explain reasons for their conclusions.

PROPOSED PROCEDURAL CHANGES

Notice of insanity defense

In most cases the prosecuting attorney becomes aware that the defendant intends to rely on an insanity defense as a result of a pretrial motion for a psychiatric examination. In some instances, however, there is no advance notice, as in the case of a defendant who is on bond and is examined by a private psychiatrist. When this happens, the prosecution is unprepared to meet an insanity defense and must often seek a continuance in mid-trial.[64] Since it is usually impractical to grant a continuance long enough to enable adequate psychiatric diagnosis, the Government may be left without any psychiatric evidence.

The recent Omnibus Crime Bill included a provision prohibiting an insanity defense if the accused or his attorney does not file with the court and serve upon the prosecuting attorney,

"written notice of his intention to rely upon such defense (A) no later than thirty days prior to trial if there has been no court order for mental examination or fifteen days after receipt by the court of the report of the examining physician if there was a court order for mental examination, or (B) at such other time as the court may for good cause permit."[65]

The Commission supports this proposal. It creates a more orderly procedure for raising the insanity issue, and avoids potential trial delays when the Government must seek a continuance to obtain evidence with which to carry its burden of proving insanity beyond a reasonable doubt.

Burden of proof

If the defendant introduces "some evidence" that he was suffering from mental disease or defect, the prosecution must prove beyond a reasonable doubt either that the defendant had no mental disease or defect or that the crime was not the product of the illness. This is the traditional burden on the prosecution with respect to all elements of a crime, including criminal intent, and is similar to the prosecutor's burden to disprove beyond a reasonable doubt defenses such as mistake, duress or self defense.

It has been suggested, however, that the burden in insanity cases is too heavy because of the complex nature of expert psychiatric testimony, the ease with

which a reasonable doubt about the defendant's sanity can be raised in the jurors' minds, and the difficulty which the prosecution faces when the defendant refuses to cooperate in a mental examination by Government psychiatrists. To reduce these difficulties it has been proposed that the defendant should be required to prove by a preponderance of the evidence that he suffered from a mental disease or defect and that his act was the product thereof.[44] This suggestion accords with the law of several states and statutes so providing have been sustained by the Supreme Court,[45] but it is not the rule in Federal courts or that adopted by The American Law Institute.[46]

The majority of the Commission concludes that the traditional burden of proof on this issue in the District should not be shifted to the defendant for the following reasons.

(1) There is no evidence of widespread injustice under *Durham* as it presently operates. We are not persuaded that altering the burden of proof would bring about any desirable change; it might only mean that defendants with valid insanity defenses would be unable to meet the burden.

(2) The smaller number of persons acquitted by reasons of insanity since *Wetbrooks* suggests that the prosecution is not encountering any substantial difficulty in meeting the burden of proof. As a practical matter, many observers believe that jurors tend to be skeptical of the insanity defense and that defendants in fact already bear a substantial burden in order to convince the jury of the validity of their claims under the *Durham* rule.

(3) A change in the burden of proof would place an unfair burden on the indigent accused. Although legislation has ameliorated some of the handicaps of impoverished defendants,[47] we believe that a change in the burden of proof might require substantial public expenditures to provide independent psychiatrists and other experts for indigent defendants.

(4) The majority of the Commission also believes that the views of the dissenting justices in *Leland* v. *Oregon* are grounds for caution. Although the majority of the Supreme Court upheld the Oregon statute which required the defendant to prove insanity beyond a reasonable doubt, the dissenting judges concluded that to place the burden of proof upon the defendant "is to obliterate the distinction between civil and criminal law."[48] We believe that there is at least a substantial question whether requiring the defendant to prove insanity in a Federal court would be upheld by the Supreme Court.[49]

We are aware that problems inevitably result from the legal inconsistency of committing a defendant to a mental hospital on the basis of a reasonable doubt about his mental condition at some time in the past when he committed a crime. This inconsistency, however, would be reduced only in part by a change in the burden of proof. Even with such a change, a defendant institutionalized after an insanity acquittal might still claim that he was recovered. Such deliberate manipulations of the insanity defense as now occur arise not from deficiencies in the burden of proof but primarily from the infrequent problem of the uncooperative defendant discussed below. We do not see how altering the burden of proof would affect the result in these few cases. It would, however, have the effect of making legitimate insanity defenses much more difficult to sustain. For the reasons stated above, the majority of the Commission does not favor such a change.

The uncooperative defendant

There have been some cases in the District of Columbia in which the accused person has refused to cooperate in a judicially ordered mental examination.[50] This failure to cooperate may be a symptom of mental disorder; however, it may also result from the advice of the defendant's lawyer who plans to interpose the insanity defense but wishes to prevent prosecution experts from examining the accused.

The number of cases involving uncooperative defendants is not known, but such instances have been described as "insignificant in number."[51] There are no formal sanctions which compel a defendant to cooperate in a mental examination. To meet the special problem of the uncooperative defendant, various sanctions have been proposed. It is urged that the uncooperative defendant be barred from raising the insanity defense at trial, that he be held in contempt of court, or that the burden of proof on the insanity issue be shifted to him upon failure to cooperate in the mental examination.

Sanctions which aim at compelling cooperation are permeated with constitutional problems. Any sanction may be held to penalize the defendant's exercise of his Fifth Amendment privilege against self-incrimination.[52] To compel a

defendant to provide evidence of his mental condition could result in a criminal conviction rather than an acquittal by reason of insanity if the examiners conclude that there was no mental disease or that the offense was not the product of the disease. Similarly, a sanction preventing the insanity defense or transferring the burden of proof could have the same penalizing effect. A change in the burden of proof may also be prohibited by the due process clause of the Fifth Amendment, and criminal conviction after a denial of opportunity to raise the insanity defense may constitute cruel and unusual punishment under the Eighth Amendment.[85]

Because of these constitutional considerations, the majority of the Commission does not support sanctions proposed to meet the problem of the uncooperative defendant. We do believe, however, that the prosecution should be permitted to prove and comment upon the defendant's refusal to cooperate in the examination.[86] The Commission endorses this procedure as a limited and effective response by the prosecution in the occasional case involving an uncooperative defendant.

ADEQUACY OF TREATMENT AND SUPERVISION

In the debate over the proper test of criminal responsibility and the appropriate procedures for raising the insanity defense, the essential question of treatment for the mentally ill offender is often subordinated. Treatment resources, rather than legal rules, may be far more important in the successful rehabilitation of these offenders.

Staff and facilities

There are several major deficiencies in the program for the mentally ill offender at Saint Elizabeths Hospital. Physical facilities at the West Side Service are seriously inadequate. The Cruvant Division is grossly understaffed and lacks supportive facilities, including occupational training. Generally, increased staff is the single greatest need at the hospital. The clinical director of the John Howard Pavilion estimates that the psychiatric staff in that division alone should be at least doubled in order to provide treatment of high quality.[87]

There is also need for greater continuity of treatment for prisoner-patients admitted to the John Howard Pavilion. Greater privileges and freedom are increasingly important as the patient improves, but such freedom can only be obtained at the present time by transfer from the Pavilion to another service or by conditional release directly into the community. The latter method is too abrupt for most patients conditioned to the tight security at the Pavilion. Transfer to the Cruvant Division is not currently desirable because the Division is understaffed and Pavilion psychiatrists find it difficult to treat patients once they are transferred. Such a transfer results in a loss of critical patient-staff relationships, since

"one of the most important tools in conducting therapy with many psychiatric patients is the development of a meaningful human relation between the therapist and patient. It is self-evident that the maintenance of such a relation is made difficult if there is a continual change of therapists during the treatment. . . . There are rarely valid reasons to transfer a patient from one therapist or group of therapists to another within the hospital setting."[88]

The change in staff relationships, and the freedom given to Cruvant patients to enable them to participate in group therapy, education and vocational rehabilitation programs available elsewhere at the hospital, contribute to the escape problem.

Plans are being developed by Saint Elizabeths to remedy the lack of treatment continuity and satisfactory security. The Commission supports these efforts and urges that the necessary funds for facilities and personnel be made available as quickly as possible. As part of a comprehensive program, resources should be provided for greater post-release services and experimentation with release procedures should be authorized. For example, the release of all patients constituting a therapeutic group together with a trained leader might provide the kind of self-sustaining support needed for successful re-entry into the community. We believe that the hospital should have the authority to experiment with various treatment and release alternatives, so long as it is also provided with the personnel necessary to supervise the patients and the hospital conducts its release program with due regard for community safety.

Escapes

The Commission has concluded that the number of escapes from Saint Elizabeths Hospital is a serious problem which requires immediate attention and

remedial action. During the calendar years 1955 through 1965, 202 (34 percent) of the 591 persons committed after a finding of not guilty by reason of insanity left the hospital without permission. As detailed in Table 11, 139 (39 percent) of the persons who had been charged with felonies eloped, and 63 (27 percent) of those who had been charged with misdemeanors eloped. As of December 31, 1965, Saint Elizabeths had 384 insanity acquittal patients on its rolls and 39 (10 percent) were on unauthorized leave.

TABLE 11.—*Elopements from St. Elizabeths Hospital by NGI patients*

[Calendar years 1955-65]

Committing court and crime	Number of elopers	Number of elopements	Total patients
ELOPEMENTS PRIOR TO ANY CONDITIONAL RELEASE			
District court:			
Murder	7	8	53
Rape	7	14	16
Other sex offenses	4	7	28
Manslaughter	2	4	6
Robbery	26	60	49
Aggravated assault	10	17	35
Housebreaking	25	43	49
Grand larceny	7	13	16
Forgery	13	23	31
Auto theft	17	42	28
Narcotics	14	32	20
Other felonies	3	9	20
Total, district court	139	262	361
Court of general sessions	63	117	230
Grand total	202	379	591
ELOPEMENTS AFTER A CONDITIONAL RELEASE			
District court	27	82	[1] 144
Court of general sessions	20	44	[1] 100
Total	47	126	[1] 244

[1] Total patients conditionally released.

Source: St. Elizabeths Hospital.

TABLE 12.—*Arrests for new crimes of escaped NGI patients* [1]

[Escapes in Calendar Years 1955–65; Arrests Through March 1966]

Kind of arrest	District court		Court of general sessions		Total	
	Number of persons	Number of arrests	Number of persons	Number of arrests	Number of persons	Number of arrests
Felony	35	42	6	9	41	51
2 or more felonies	(5)		(1)		(6)	
U.S. misdemeanor	(20)	29	(4)	12	(24)	41
Whose most serious arrest was for a U.S. misdemeanor	14		3		17	
District of Columbia misdemeanor	(14)	17	(8)	13	(22)	30
Whose most serious arrest was for a District of Columbia misdemeanor	4		5		9	
Total	53	88	14	34	67	122
	Elopers	Elopements	Elopers	Elopements	Elopers	Elopements
Number	139	262	63	117	202	379
Percent:						
Persons arrested/elopers	38.1		22.2		32.2	
Arrests/elopements		33.6		29.1		32.2

[1] Escapes before any conditional release.

Source: FBI identification records.

Although 30 percent of these escapes lasted for a day or less, 7 percent lasted longer than a year. Many had serious consequences. As shown by Table 12, approximately one-third of the escaped persons were arrested on criminal charges.

Most of the escapes from Saint Elizabeths Hospital are made from the West Side Service or from other facilities housing prisoners-patients; they are not made from John Howard Pavilion. These escapes are usually "walk-offs," which occur when the patients are enjoying ground privileges incident to progress in the treatment program, and are generally attributable to the lack of staff and proper facilities.

The Commission recommends that Saint Elizabeths Hospital take steps at once to improve supervision over prisoner-patients. Architectural and engineering studies are under way for new facilities, or modifications of present facilities, which will provide for contiguous maximum security, medium security and minimum security facilities—in effect, a sub-campus for prisoner-patients within the hospital. We urge more rapid implementation of these plans and adoption of interim measures by the hospital which will curtail the number of escapes.

The Commission also recommends statutory clarification of the judicial authority to direct the return of an escaped prisoner-patient to the hospital. There is currently no problem with the return of the District Court patients against whom charges are pending, but warrants for Court of General Sessions patients are of doubtful efficacy outside the District of Columbia. In the case of elopements by persons found not guilty by reason of insanity, bench warrants from both courts are of questionable authority since no charges are pending against the individual.[67] The Commission recommends that legislation be enacted which would require any state or Federal magistrate to return an escaped patient to the District upon receipt of a proper document issued by the District of Columbia court which committed him to a mental institution.[68]

Criminal conduct after release

One of the few available measures of the effectiveness of treatment at Saint Elizabeths of patients found not guilty by reason of insanity is the extent to which persons released subsequently engage in criminal conduct. Of the 360 patients who were released conditionally or unconditionally prior to December 31, 1965, 134 (37 percent) were rearrested a total of 406 times after their release (Table 13). Ninety-five of these arrests were for felonies.

TABLE 13.—*Arrests for new crimes of released*[1] *NGI patients*

[Releases through Dec. 31, 1965; Arrests through March 1966]

Kind of arrest	Committed from district court		Committed from court of general sessions		Total	
	Number persons	Number arrests	Number persons	Number arrests	Number persons	Number arrests
Felony	41	68	18	27	59	95
2 or more felonies	(16)	.....	(8)	.....	(24)	.....
U.S. misdemeanor	(37)	50	(22)	33	(59)	83
Whose most serious arrest was for a U.S. misdemeanor	26	.....	16	.....	42	.....
District of Columbia misdemeanor	(22)	67	(35)	156	(57)	223
Whose most serious arrest was for a District of Columbia misdemeanor	9	.....	24	.....	33	.....
Total	76	185	58	221	134	406
Number releases	203	.....	157	.....	360	.....
	Number persons	Percent of releasees	Number persons	Percent of releasees	Number persons	Percent of releasees
More serious than NGI charge	12	5.9	18	11.5	30	8.3
Equally serious	22	10.8	40	25.5	62	17.2
Less serious	42	20.7	.....	.....	42	11.7
Total	76	37.4	58	37.0	134	37.2

[1] Conditionally or unconditionally.

Source: FBI identification records.

Although these figures are alarmingly high, they are roughly comparable to the incidence of rearrest of felons after a prison term. A leading authority on recidivism statistics has reported that about 50 percent of male felons released from prison acquire a record of subsequent arrests within 2 to 5 years after release.[69] Any comparison with the 37 percent subsequent arrest rate for persons charged with felonies in the United States District Court and released from Saint Elizabeths Hospital must be qualified, since only 52 percent of the District Court releasees had been out more than 3 years and only 69 percent had been released for more than 2 years as of April 1966.

The same authority on recidivism also concludes that about one-third of the felons released from prison are convicted of subsequent felonies. Forty-one of 203 District Court insanity releasees (20 percent) acquired a record of felony assets (Table 13), and their convictions can only be a smaller proportion. The Commission recognizes the limitations of such statistical comparisons, which suggest that treatment at Saint Elizabeths Hospital is at least as effective a means of rehabilitation as imprisonment after conviction. These facts certainly do not permit complacency with the treatment record at Saint Elizabeths Hospital; the substantial rate of recidivism persuades the Commission that greater support must be given by the community to the hospital's efforts to enlarge its staff and improve its treatment facilities.

Conclusion

This Commission has considered the problem of the adult mentally ill offender whose condition becomes an issue in criminal proceedings. Other aspects of the relationship between mental illnesses and criminal activity are equally important, however, and must in the future command greater attention.

Notwithstanding the *Durham* rule, many people with "mental problems" are convicted and sent to correctional institutions rather than Saint Elizabeths Hospital. The study by the Stanford Research Institute reveals that 1.7 percent of adult felons convicted in the District of Columbia in fiscal 1965 had been in mental institutions, 2.7 percent had had psychiatric treatment, 1.4 percent had "serious mental illness," and 12.5 percent had "other mental problems."[70] These persons either did not raise the insanity defense or the defense was rejected by the judge or jury. A substantial number of children adjudicated as juvenile delinquents also show signs of emotional disturbance.[71]

Whether the offender is confined in prison, juvenile training school or mental hospital, one aim of the community must be to help him become a useful law-abiding person. Yet there is not a single psychiatrist on the staff of the Receiving Home, the facility in the District in which juvenile offenders are detained following arrest, and only one on the staff at the Children's Center, which serves about 2,000 retarded, delinquent or dependent persons.[72] There is no psychiatrist on the staff of the Youth Correction Center at Lorton.[73] Diagnosed psychotics are often kept in our prisons for months before transfer to Saint Elizabeths Hospital; pre-psychotics are given no hospitalization.[74] These shortages rate a high priority among the community's concerns.

The Commission recognizes that the *Durham* rule or other formulations of criminal responsibility are not the only mechanisms for handling the mentally ill offender; other alternatives must be constantly explored. For example, in Maryland procedures have been devised for committing mentally ill offenders and incorrigibles to a special treatment-oriented institution until "it is reasonably safe for society to terminate the confinement and treatment."[75] It has also been proposed that the criminal process be separated into two steps, the first limited to ascertaining whether the defendant committed the alleged crime without consideration of his mental condition, and the second involving selection by experts of the appropriate course of treatment.[76] Underlying these and other alternatives is the growing recognition that the dichotomies which now characterize the law's handling of this problem—sane or insane, guilty or not guilty, prison or hospital—must be replaced by emphasis on gradations of mental condition and the need for a wide range of specialized correctional and treatment facilities.

Summary of Recommendations

1. The majority of the Commission recommends that the *Durham* rule, as modified by the United States Court of Appeals for the District of Columbia Circuit in *McDonald* v. *United States* and other cases, should not be changed by legislation.

2. Legislation should be enacted to require defendants intending to raise the insanity defense to give notice of that intention in advance of trial.

3. In the case of defendants who refuse to cooperate with psychiatrists in a court-ordered mental examination, the prosecutor should be permitted to introduce evidence of such non-cooperation.

4. The majority of the Commission recommends that the traditional burden of proof which requires the prosecution to prove all elements of an alleged criminal offense, including criminal intent, should not be altered by placing the burden of proving insanity upon the defendant.

5. Legislation should be enacted to facilitate the return to the District of escaped patients who have been committed to a mental hospital in connection with criminal proceedings.

FOOTNOTES TO CHAPTER 7, SECTION III

1. 214 F. 2d 862 (D.C. Cir. 1964).
2. 24 D.C. Code § 301(a) (1961). See American Law Institute [hereinafter cited as ALI] Model Penal Code § 4.04, comment, p. 194 (Tent. Draft No. 4, 1955), where the criterion of fitness to proceed to trial is described as "universally accepted in existing law." But see Hansford v. United States, 365 F. 2d 920 (D.C. Cir. 1966).
3. 24 D.C. Code § 301(d) (1961).
4. 24 D.C. Code § 301(e) (1961).
5. 24 D.C. Code § 301(a) (1961).
6. Winn v. United States, 270 F. 2d 326 (D.C. Cir. 1959), *cert. denied*, 365 U.S. 848 (1961).
7. Report to the Judicial Conference of the District of Columbia Circuit of the Committee on Problems Connected With Mental Examination of the Accused in Criminal Cases, Before Trial [hereinafter cited as Judicial Conference Report], 29–31 (1965).
8. Id. at 178–79.
9. 78 Stat. 552 (1964), 18 U.S.C. § 3006A.
10. Judicial Conference Report, 78, n. 2.
11. The clinic, in cooperation with the Legal Aid Agency and the Georgetown Legal Interns, is engaged in research on the standards for competency to stand trial. Information supplied by Dr. Barry A. Bukatman, Research Psychiatrist, Georgetown Institute of Criminal Law and Procedure, Nov. 16, 1966.
12. 24 D.C. Code § 301(a) (1961).
13. 24 D.C. Code § 301(b) (1961).
14. Judicial Conference Report, tables 1, 5 and 9.
15. For the last three years of the Judicial Conference study (fiscal years 1961, 1962 and 1963), motions for mental examination were made for 15.6% of the defendants, 94.7% of the motions were granted, and 11.5% of the mental examinations ultimately resulted in findings of incompetence (1.6% of *all* defendants in those three years).
16. Staff computation based on data collected by C–E–I–R, Inc., from criminal case jackets of the United States District Court for the District of Columbia. Of these, 89.8 were granted, but it is not known how many defendants were eventually found incompetent.
17. Judicial Conference Report, tables 14, 15 and 16.
18. 10 Clark & Finelly 200, 1 C. & K. 130 (1843).
19. Smith v. United States, 36 F. 2d 548, 549 (D.C. Cir. 1929).
20. United States v. Freeman, 357 F. 2d 606, 623, n. 56 (2d Cir. 1966); United States v. Currens, 290 F. 2d 751 (3d Cir. 1961); Wion v. United States, 325 F. 2d 420 (10th Cir. 1963), *cert. denied*, 377 U.S. 946 (1964).
21. ALI Model Penal Code § 4.01 (1) (Tent. Draft No. 4, 1955) (Proposed Official Draft, 1962).
22. 214 F. 2d 862, 874–75 (D.C. Cir. 1954).
23. Id. at 874.
24. Ibid.
25. A number of jurisdictions have rejected the *Durham* test of criminal responsibility. See Krash, "The Durham Rule and Judicial Administration of the Insanity Defense in the District of Columbia," 70 Yale L.J. 905, 906, n. 8 (1961). Only Maine and the Virgin Islands have adopted the *Durham* Rule. 15 Me. Rev. Stat. Ann. § 102 (1964); 14 Virgin Islands Code Ann. § 14(4) (1957). See also State v. Pike, 49 N.H. 399 (1869).

26. 312 F. 2d 847 (D.C. Cir. 1962).
27. Id. at 851.
28. Davis v. United States, 160 U.S. 469, 488 (1895); Douglas v. United States, 239 F. 2d 52, (D.C. Cir. 1956).
29. 24 D.C. Code § 301(c) (1961).
30. 69 Stat. 609, ch. 673, § 1 (1955), 24 D.C. Code § 301 (1961).
31. See Krash, supra note 25, at 941–42.
32. Rollerson v. United States, 343 F. 2d 269 (D.C. Cir. 1964). See also Whalem v. United States, 346 F. 2d 812 (D.C. Cir.) (dictum), *cert. denied*, 382 U.S. 862 (1965).
33. Lynch v. Overholser, 369 U.S. 705 (1962).
34. 24 D.C. Code § 301(e) (1961).
35. Overholser v. Leach, 257 F. 2d 667, 670 (D.C. Cir. 1958), *cert. denied*, 359 U.S. 1013 (1959); Karsh, supra note 25, at 943–46.
36. 24 D.C. Code § 301(e) (1961).
37. Information supplied by Dr. David J. Owens, Clinical Director, John Howard Pavilion, Saint Elizabeths Hospital, Oct. 28, 1966.
38. Section 4.01(2) of the ALI Model Penal Code (Proposed Official Draft, 1962) provides that "mental disease or defect" shall not include "an abnormality manifested only by repeated criminal or otherwise antisocial conduct." Comments to this section indicate that it was designed to exclude the "so-called 'psychopathic personality.'" Tentative Draft No. 4, p. 160 (1955). This language does not, however, exclude all personality disorders, nor even all psychopathic personality disorders, since it is a rare person whose mental abnormality is manifested *only* by repeated criminal or antisocial conduct. See Address by Dr. David J. Owens, Clinical Director, John Howard Pavilion, Saint Elizabeths Hospital, before Prosecuting Attorney's Seminar, National District Attorneys Association, Washington, D.C. June 7, 1966, pp. 7, 11–12, 17 (mimeo.).
39. American Psychiatric Association, Diagnostic and Statistical Manual—Mental Disorders (1952), reprinted in app. E of the Judicial Conference Report, 182–87.
40. Ibid.
41. Report of the Royal Commission on Capital Punishment 1949–1953, p. 137 (1953).
42. See H.R. Rep. No. 176, 89th Cong., 1st Sess., 39 (1965); Blocker v. United States, 274 F. 2d 572, 573–82 (D.C. Cir. 1959) (Miller, J., dissenting).
43. Information supplied by Dr. David J. Owens, supra note 37.
44. Ibid.
45. Some judges of the D.C. Court of General Sessions have expressed dissatisfaction with the facilities and examinations performed at D.C. General Hospital. Therefore, some patients have been referred from that court to Saint Elizabeths Hospital for mental examination.
46. 24 D.C. Code § 301(a) (1961). This category also includes patients admitted as incompetent prior to the amendment of section 301 in August 1955, supra note 30, against whom criminal charges are no longer pending.
47. 24 D.C. Code § 302 (1961).
48. 22 D.C. Code § 3508 (1961).
49. The description in the text of the facilities and treatment at Saint Elizabeths is based on information collected from Saint Elizabeths' records, personal observation, and interviews with Dr. Dale C. Cameron, Superintendent, Dr. David J. Owens, Clinical Director, John Howard Pavilion, and Dr. Charles E. Smith, Chief of Service, West Side Service, July 1, 1966, and with Dr. Elizabeth R. Strawinsky, Clinical Director, Cruvant Division and Clinical Branch #2. July 7, 1966.
50. District of Columbia Omnibus Crime Bill, H.R. 5688, 89th Cong., 1st Sess. (1965), as passed after conference by the Senate, 112 Cong. Rec. 26231 (Oct. 17, 1966), and the House, 112 Cong. Rec. 26033 (Oct. 19, 1966), title II. Vetoed by the President, Nov. 13, 1966. See 112 Cong. Rec. 26134 (1966) for the bill as it emerged from conference and passed both houses.
51. See Carter v. United States, 252 F. 2d 608, 617 (D.C. Cir. 1957); Watson, "Durham Plus Five Years: Development of the Law of Criminal Responsibility in the District of Columbia," 116 Am. J. Psychiatry 289 (1959); Rollerson v. United States, supra note 32; Arens, "The Defense of Walter X Wilson: An Insanity Plea and a Skirmish in the War on Poverty," 11 Villanova L. Rev. 259 (1966); Arens, "Psychiatric Testimony and Evolving Standards of Criminal Re-

sponsibility" (tentative title), scheduled for 1967 publication in Review of Law and Social Science (ed. Richard Schwartz, Northwestern U. Law Sch., Chicago).

52. Hearings Before the Senate Committee on the District of Columbia, 88th Cong., 1st Sess. 98–99, 104, 245 (1963).

53. Supra note 50.

54. See, e.g., Hearings, supra note 52, at 244–45, 247–49. The Omnibus Crime Bill, supra note 50, provided: "Mental disease or defect excluding responsibility is an affirmative defense which the defendant must establish by showing of substantial evidence." Although H.R. Rep. No. 2295, 89th Cong., 2d Sess. 16 (1966), states that this language "in no way changes the traditional requirement of the prosecution to prove beyond a reasonable doubt all elements of the crime, including necessary intent," the statutory language is possibly subject to a different interpretation.

55. Leland v. Oregon, 343 U.S. 790, 798 (1952).

56. When section 4.03(1) of the ALI Model Penal Code (Tent. Draft No. 4) was first presented in 1955, it was proposed that mental disease or defect excluding responsibility should be "an affirmative defense [which the defendant must establish by a preponderance of the evidence]." The bracketed phrase was not approved. Section 1.12 of the Model Penal Code (Proposed Official Draft, 1962) now requires the prosecution to disprove an affirmative defense beyond a reasonable doubt once there is "evidence supporting such defense."

57. Criminal Justice Act of 1964, 78 Stat. 552, 18 U.S.C. § 3006A.

58. Leland v. Oregon, 343 U.S. 790, 806 (1952) (Frankfurter and Black, JJ., dissenting).

59. Apart from any constitutional attack which would require reconsideration of *Leland*, Federal courts and Federal criminal procedures are held to higher standards by the Supreme Court. See e.g., Ker v. California, 374 U.S. 23, 33–34 (1963).

60. E.g., United States v. Schurmann, Crim. No. 688–64, United States District Court for the District of Columbia. The problem of the uncooperative defendant usually arises in a pretrial mental examination to determine criminal responsibility, not competency to stand trial. The latter raises similar issues, however.

61. Interview with Dr. David J. Owens, supra note 49. See also Judicial Conference Report, 35.

62. See 18 U.S.C. § 3481; Wilson v. United States, 149 U.S. 60 (1893); Malloy v. Hogan, 378 U.S. 1 (1964).

63. See notes 58 and 59 supra. See also Robinson v. California, 370 U.S. 660 (1962); Easter v. District of Columbia, 361 F. 2d 50, 55 (D.C. Cir. 1966).

64. Directed at the integrity of the insanity defense, proof and comment upon a defendant's refusal to cooperate may be analogized to use of an otherwise inadmissible confession for impeachment purposes. See Walder v. United States, 347 U.S. 62 (1954); Tate v. United States, 283 F. 2d 377 (D.C. Cir. 1960).

65. Interview with Dr. David J. Owens, supra note 49. See Rouse v. Cameron, — F. 2d — (Oct. 10, 1966), holding that a misdemeanor insanity patient is entitled to habeas corpus relief upon a showing that he is not receiving reasonably suitable and adequate treatment; lack of facilities is no justification.

66. Saint Elizabeths Hospital, Ann. Rep., 3 (1964).

67. See 18 U.S.C. §§ 3041, 3042; F.R. Crim. P. 4, 20, 40; 16 D.C. Code § 703 (Supp. V, 1966). Some states have refused to honor such warrants.

68. See 18 U.S.C. § 3041.

69. D. H. Glaser, The Effectiveness of a Prison and Parole System, 13–35, particularly at p. 31 (Bobbs-Merrill, 1964).

70. App. (SRI), 568.

71. See chapter 8.

72. Ibid.

73. See chapter 6.

74. App. (ACA), 664.

75. Defective Delinquency Law, Md. Code art. 31B, § 5 (1957). See Boslow, "The Team Approach in a Psychiatrically Oriented Correctional Institution," The Pennsylvania Prison Journal (Autumn 1964); Boslow, Rosenthal, Kandel, and Manne, "Methods and Experiences in Group Treatment of Defective Delinquents in Maryland," 7 Journal of Social Therapy, No. 2 (1961); Roy, "An Outline for Research in Penology," Operations Research (Jan–Feb. 1964).

76. Cameron, "Did He Do It? If So, How Shall He Be Managed?", Fed. Prob. (June 1965). See Holmes v. United States, 363 F. 2d 281 (D.C. Cir. 1966).

SECTION 5 OF S.1516—WITNESS FEES AND TRAVEL ALLOWANCES

[From p. 285, par. 4, p. 287, par. 1, and p. 364, No. 11, herewith reproduced]

Even in the matter of witnesses, the court has less than adequate support. The authorized witness fee for this court is 75 cents a day,[155] compared with $4 in the District Court.[156]

* * * * * * *

Excellence, however, requires more than a few additional judges and money for patchwork programs. First and foremost, it requires consistent expenditure of more public funds for the benefit of the court. The court should not again experience years of inadequate services. Additional probation services and physical facilities are imperative. Funds are also needed to expand the services of the Legal Aid Agency in representing indigents before the court. Witnesses should be paid at least as much as the $4 received by District Court witnesses. Judges' salaries should keep pace with salaries paid other high government officials, and should be significantly increased. Money should also be available for social service units which, in cooperation with the court, can reach beyond apparent criminal behavior to basic causes.

* * * * * * *

11. Attendance of witnesses should be facilitated by enactment of legislation authorizing increased fees.

The CHAIRMAN. Mr. Daniel J. Freed.

STATEMENT OF DANIEL J. FREED, ACTING DIRECTOR, OFFICE OF CRIMINAL JUSTICE, U.S. DEPARTMENT OF JUSTICE; KENNETH L. HARDY, DIRECTOR, DISTRICT OF COLUMBIA DEPARTMENT OF CORRECTIONS: ROBERT A. NILES, DIRECTOR, DISTRICT OF COLUMBIA BAIL AGENCY

Mr. FREED. May I, Mr. Chairman, go on here omitting the parts we have already covered?

I appreciate the opportunity to appear again on behalf of the Department of Justice to testify in support of two additional proposals introduced by your chairman and Senator Dominick.

S. 1513 would establish a Commission on Revision of the Criminal Laws of the District of Columbia. S. 1516 has five parts, four of which I understand were being considered today. Section 1 deals with the supervision of persons released under the Bail Reform Act.

The CHAIRMAN. The only reason for not considering section 4 today is that there is pending another bill on pleading insanity. I want to consider that and section 4 of this bill together at an early date. This amounts to deferring consideration of section 4 of this bill and I think we ought to make an explanation of why we're doing it.

Mr. FREED. Section 2 concerns the supervised release of convicted youthful offenders. Section 3 would authorize Federal prison industries to contract with the District of Columbia with respect to the industrial employment and training of prisoners confined in District of Columbia correctional institutions. Section 5 would increase the fees payable to witnesses in criminal cases in the District of Columbia court of general sessions.

All of these measures flow out of findings or recommendations of the President's Commission on Crime in the District of Columbia. All

[155] 15 D.C. Code § 714 (Supp. V, 1966).
[156] 28 U.S.C. § 1821 (1964).

were recommended to the Congress in the President's special message on the Nation's Capital. Each was contained in the proposed District of Columbia Crime Reduction Act of 1967 submitted to the Congress on March 1. Each will contribute to the more effective operation of the criminal law in the District of Columbia.

S. 1516. Section 1: Bail Supervision

The Bail Reform Act of 1966 was designed by the 89th Congress to enable courts to fashion release conditions suitable to the risk presented by each defendant. A major condition authorized by the act is release into the custody of a third party agreeing to supervise the defendant. Judges of the District of Columbia have been often unable to use this provision because adequate supervisory facilities to enforce release conditions are almost nonexistent.

Much has been said about the problems of crime on bail and failure to appear in court when required. Equally troubling is the fact that pretrial detention has actually risen in the District of Columbia since the advent of the Bail Reform Act. Both situations reflect the difficulty of fully using flexible release conditions when adequate supervision is unavailable.

Section 1 of S. 1516 would attempt to meet that need by authorizing the District of Columbia Department of Corrections to supervise persons released into its custody under the Bail Reform Act. The Department of Corrections alone of all District agencies has had experience in dealing with individuals both prior to and subsequent to trial. Supervision of pretrial releases will be facilitated by the Department's expansion of its community-based activities, now in progress under the very able leadership of Mr. Kenneth Hardy.

Corrections Department supervision would be particularly appropriate with respect to defendants believed to be unreliable or dangerous. Department of Corrections supervision could fill an unmet need. They could develop release conditions and innovate forms of supervision. They could secure counseling and other referral services, and help releasees obtain jobs. They could keep the court advised of successes in the program as well as of breaches of release conditions. They could, in short, contribute both to the greater security of pretrial release and the greater likelihood of offender rehabilitation.

The proposal, if enacted, would require additional appropriations. One estimate prices a casework capability of 300 at nearly $100,000 per year. These, however, would be offset both by savings in pretrial detention cost as well as in the increased likelihood that carefully selected and supervised releasees can be assisted in conducting useful and law-abiding lives.

The Chairman. How does the suggestion that you make in this area differ from the present practice? I'm not quite clear on this. Maybe Mr. Hardy or someone could develop that later.

Mr. HARDY. I'll be glad to speak on that, if you wish.

The CHAIRMAN. I think now might be the correct point to do it because we are dealing with section 1 and this is the section dealing with the reformation of bail.

Mr. HARDY. I am interested in this bill because as administrator of the Correctional Department, I find it necessary to explore every means of reducing the population of the District of Columbia jail, and such cases as we are talking about this morning are crowding the cellblocks of the District of Columbia jail.

When I look at the men over at the District of Columbia jail and find we have 627 there, and the majority of these men are waiting trial, and when we look at our figures we find men have been there 2 years, 3 years in a couple of cases, 6 to 8 months in other cases——

The CHAIRMAN. They have been there 2 years pending what?

Mr. HARDY. Pending some legal action, some adjudication of cases, or they are still in litigation with the courts, or have made appeals from their convictions. There are so many legal blocks, I would say, from moving these men to the reformatory at Lorton.

The CHAIRMAN. That is a rather startling statement. If I understand you correctly, you say there are men over in the District of Columbia jail right today who have been there for either 2 or 3 years?

Mr. HARDY. Yes, sir.

The CHAIRMAN. How many fit into that category?

Mr. HARDY. I see one man who has been there for 4 years, but I feel this man has been there because he has continuously submitted writs of habeas corpus. This action is due to his initiative to stay in the jail.

The CHAIRMAN. How about other examples?

Mr. HARDY. Another man in the same category has been there for 3 years. Now, we move into the cases awaiting action of the U.S. district court. There are three men who have been there 2 years in this category. Twenty-one have been there from 8 to 12 months, 21 for 6 to 8 months, 22 from 5 to 6 months, 37 from 4 to 5 months, awaiting action of the U.S. district court. Certainly, this concerns me.

The CHAIRMAN. For what reasons are these men there? Would you document the reasons—if it's not too undue a burden for the record? You do not need to do it right now. I do not know how many men that totals up to, who are there for various periods of 4 months up to 4 years. You named one that has been there 4 years, one for 3 years, two for 2 years.

Why are each of those men in there for what seems to be an unusually long period of time? Why?

Mr. HARDY. I would be glad to submit for the record each man's period and give you the reasons for it.

(The following material was received for the record:)

Length of time spent at the District of Columbia jail by persons awaiting disposition of criminal charges as of Apr. 11, 1967

	Less than 1 month	1 to 2 months	2 to 3 months	3 to 4 months	4 to 5 months	5 to 6 months	6 to 8 months	9 to 12 months	1 year-2 years	2 years-3 years	3 years-4 years	Total
Number of persons awaiting action by the Court of General Sessions U.S. branch	123	20	12	2	1							158
District of Columbia branch intoxicants	18	1		1								20
Number of persons awaiting action of the grand jury	58	60	7	4	1							130
Number of persons awaiting action by U.S. district court	37	30	54	43	37	22	21	21	3			268
Number of persons awaiting action by the U.S. Court of Appeals for the District of Columbia circuit				1		1		3				5
U.S. Commissioners	25											25
Writ of (under sentence) habeus corpus pending			2			3	3	5	6	1	1	21
Total	261	111	75	51	39	26	24	29	9	1	1	627

DETAILS RESPECTING INMATES HELD AT DISTRICT OF COLUMBIA JAIL FOR PERIODS OF FROM 1 TO 4 YEARS, AS OF APRIL 11, 1967

Inmate D.C. Department of Corrections # 137845 (4 years): Committed 9-29-62 charged with Rape in Criminal Case #895-62. Transferred to St. Eliz. Hosp. 12-7-62, returned from St. Eliz. Hosp. 3-7-63. Transferred D.C. Gen. Hosp. 3-26-63, returned from D.C. Gen. Hosp. 5-7-63. Sentenced 6-28-63 to six (6) years to eighteen (18) years. Elected not to serve 7-23-63 pending Appeal. Number of Writs of Habeas Corpus filed: eleven (11). Number of Writ Denials Appealed: five (5).

Inmate D.C. Department of Corrections # 108602 (3 years): Committed 9-29-63 charged with Robbery in Criminal Case #711-63. Sentenced 11-15-63 to two (2) years to six (6) years. Transferred to the D.C. Reformatory 2-2-65. Granted New Trial 9-14-65 (notice received at the Jail 1-13-65). Re-sentenced 1-8-65 to two (2) years to six (6) years. Elected not to serve 6-3-65. Judgment affirmed 10-28-65. Number Writs of Habeas Corpus Filed: five (5). Number of Writ Denials Appealed: two (2).

Inmate D.C. Department of Corrections # 101059 (2 years): Committed 7-19-63 charged with violation of Federal Narcotic Laws in Criminal Case # 857-63. Released on Bond 7-26-63. Committed 2-26-64 in above entitled case. Sentenced 4-9-64 to ten (10) years, and released on Appeal Bond 8-18-64. Committed 4-23-65 charged with Vagrancy in US 3566-65, case Nolle Prosequi in open Court 5-20-65. While in Jail delivered to serve in Criminal Case # 857-63. Number Writs of Habeas Corpus Filed: eight (8) Number of Writ Denials Appealed: two (2).

Inmate D.C. Department of Corrections # 154014 (2 years): Committed 7-15-65 charged with Assault With Intent to Rob in Criminal Case # 931-65. Sentenced 11-19-65 to three (3) years to nine (9) years. Number of Writs of Habeas Corpus Filed: thirteen (13). Number of Writ Denials Appealed: seven (7).

Inmate, D.C. Department of Corrections # 97613 (2 years): Committed 9-10-64 charged with violation of Harrison Narcotic Act in Criminal Case # 880-64. Transferred to St Eliz Hosp 1-19-65, returned from St Eliz Hosp 3-16-65. Sentenced 7-23-65 to five (5) years. Transferred to U. S. Penitentiary, Atlanta Georgia 9-28-65, while at Atlanta elected not to serve 12-2-65. Recommitted to the Jail 1-17-66 pursuant to orders of Bureau of Prisons pending disposition of election not to serve. Judgment affirmed 6-28-66. Number of Writs of Habeas Corpus Filed: three (3). Number of Writ Denials Appealed: two (2).

Inmate, D.C. Department of Corrections # 98000 (2 years): Committed 5-8-64 charged with Possession/Sale of Narcotic Drug in Criminal Case # 570-64. Sentenced 6-18-65 to ten (10) years. While in Jail commitment received 6-20-64 charging Violation Federal Narcotic Law in Criminal Case # 598-64. Sentenced 10-1-65 to ten (10) years to run concurrent with sentence imposed in Criminal Case # 570-64. Number of Writs of Habeas Corpus Filed: five (5). Number of Writ Denials Appealed: two (2).

Inmate, D.C. Department of Corrections # 105680 (2 years): Committed 2-8-65 charged with Mail Theft in Criminal Case #309-65. While in Jail commitment received 2-18-65 charging Petit Larceny in Criminal 403-65, and on 4-12-65 charging Grand Larceny in Criminal Case # 399-65. Sentenced 4-12-65 in CC 399-65 to two (2) years to six (6) years. Sentenced 10-18-65 in CC 309-65 to twenty (20 months to five (5) years to run consecutive with sentence imposed in CC 39-65. Sentenced 12-2-65 to one (1) year in CC 403-65 to run consecutive with sentence imposed in CC 399-65 and 309-65. Elected not serve 12-20-65 in CC 399-65. Sentence Vacated 6-22-66 and Dismissed 8-18-66. Number of Writs of Habeas Corpus Filed: twelve (12). Number of Writ Denials Appealed: one (1).

Inmate, D.C. Department of Corrections # 130983 (2 years): Committed 7-21-65 charged with Unauthorized Use of Vehicle in Criminal Case # 972-65. Sentenced 12-17-65 to one (1)year to three (3) years. Number of Writs of Habeas Corpus Filed: seventeen (17). Number of Writ Denials Appealed: nine (9).

APRIL 13, 1967.

STATEMENT OF KENNETH L. HARDY, DIRECTOR, D.C. DEPARTMENT OF CORRECTIONS, TO THE COMMITTEE ON THE JUDICIARY, UNITED STATES SENATE, SUBCOMMITTEE ON IMPROVING THE JUDICIAL MACHINERY

S 388. A Bill to authorize the Attorney General to transfer an inmate of the District of Columbia Jail to any other institution under the control and supervision of the Director of the D.C. Department of Corrections notwithstanding the pendency of a petition for a writ of habeas corpus with respect to such inmate, and for other purposes.

Last year my distinguished predecessor, Director of Corrections Thomas R. Sard, testified in favor of S 3404, legislation substantially similar to that now before the 90th Congress. Likewise, I view this bill, if enacted into law, as a useful step in allowing the Department of Corrections a greater administrative flexibility and control over the inmate population of its institutions

It is our understanding that at the present time it is a legal requirement that an inmate filing a petition for writ of habeas corpus must be physically kept within the jurisdiction in which he files such petition and must remain there until such time as the matter is disposed of. This has had the effect of prohibiting the transfer of certain inmates already convicted and sentenced in the courts from the D.C. Jail to our institutions on the Lorton Reservation. The situations resulting from this are not desirable from a penological point of view.

First of all, insofar as it causes inmates otherwise transferrable to remain at the Jail, it adds to our well-known problem of overcrowding. It is true that, due to certain changes and procedure made within the past year, our total population at that institution has declined from 1048 on April 11, 1966 to 831 inmates held on April 11 of this year. However, this 831 population figure is still approximately 130 over the Jail's rated capacity, therefore, the overcrowding while less dramatic is still a serious concern. Furthermore, and more specifically, of this present inmate population, 21 individuals are being kept at the Jail solely by virtue of their habeas corpus petitions to the court. They have all been convicted and yet due to this litigation many of these men have remained at the Jail more than year following date of sentence. These 21 inmates are largely felons, thus taxing our felony cell blocks and in turn contributing to overcrowding in that particular area of the Jail.

There is, in addition, another unsatisfactory situation caused by these convicted felons remaining at the Jail. That facility, due to its character as a holding institution and because of structural inadequacies in the plant itself, cannot and does not offer substantial programs geared to the eventual rehabilitation of the inmates incarcerated therein. Inmates once convicted should not, under ordinary circumstances, serve their sentences at that type of institution. They should, instead, have the opportunity to involve themselves in the many programs of an educational, vocational, and social nature, offered at the institutions intended to house sentenced prisoners.

Unfortunately, many inmates appear to prefer being held at the Jail and we have reason to believe that in many cases they implement this wish by filing habeas corpus actions. For example, ten of the 21 inmates now held in this status have been so held for over one year. They have filed a total of 84 habeas corpus petitions and appeals. In fact, one inmate convicted one year and four months ago has in that time, to the best of our knowledge, filed at least 17 habeas corpus petitions and appealed 8 decisions.

If the Department of Corrections is granted this authority to transfer inmates with pending habeas corpus actions to other institutions, we believe it should not result in any substantial inconvenience to the petitioners, their lawyers, or the court. In the event that attorneys might not be able to consult with their clients at the nearby Lorton Reservation, this Department will undertake to transfer the petitioner back to the Jail, upon due notice given by the attorney.

For the above reasons, the Department of Corrections favors the passage of S 388. It would provide us with an additional alternative in the handling and control of inmates entrusted to our care.

The CHAIRMAN. That is a problem that is rather startling, one that seems to cry out for some type of remedy. How would section 1 help that?

Mr. HARDY. I feel section 1 would help it a great deal in that some of these men, I would feel, would be good risks for the community, instead of a man remaining in the institution all of that time. They could be productive citizens until their trial or whatever court action is pending comes to a head.

This sort of, not prisoner, but a man who is charged with an offense and not convicted, or hasn't been before the court, we look at him differently from a man who has been to court in our institution. If we can give him certain assistance in finding jobs or job, we can give him assistance about his family problems—many things that cause these men, if they were out on bond without this assistance would probably fall back into criminal careers or commit some criminal act. We would give them supervision in cases where it is necessary and where necessary, surveillance.

The CHAIRMAN. Can you not do that under the present law?

Mr. HARDY. No, sir; we cannot supervise men who are out on the bail bond. This is not our function.

The CHAIRMAN. If you did have that supervision, then your statement is, based on your experience, that they would be more apt to be rehabilitated, is that correct?

Mr. HARDY. I wouldn't want to use the word "rehabilitated." Because I think when we use that, we are assuming the man has been convicted of some offense, some crime, some misdemeanor and needs rehabilitation. I am always going to look at these men as men who are waiting for adjudication, whether the man is guilty or not. The fact that they have been charged and the fact that there is some reluctance to place these men on bail bond under the act, because they do not get supervision, I feel our agency can help the community by giving supervision to this sort of person on the street.

If we can supervise him in the institution, I feel we can very well supervise him on the streets.

The CHAIRMAN. Of course, there has been an almost continuous criticism since the enactment of this bail reform act, namely that many of the accused released under it are simply released to go out and commit other crimes. Do you have records of that? Who has those records? Maybe I am directing this to the wrong person.

Mr. NILES. Mr. Chairman. I am Robert A. Niles, Director of the District of Columbia Bail Agency.

There are several factors in the statistics that are presented about people on bail that are confusing, because of the fact that there have been several avenues of release outside of the Bail Agency, and the Bail Reform Act, both subsequent to and prior to September 20.

Now, the Agency went into operation on the 20th of September 1966, and since that time through April 7, 1967, the Agency had interviewed and reported upon approximately 4,200 defendants, of whom 1,800 were released. It is up to a little over 2,000 at the present time.

As of April 7, our records indicate that 83 of those defendants released subsequent—pursuant to reports of the Bail Agency—had been rearrested for subsequent offenses. That figures out to 4.6 percent of those released.

Now, our experience of the bail project, which is a 3-year project under the Ford Foundation shows that over 90 percent of what we call subsequent offenders were not rearrested for an offense until after 30 days after their arrest, and many of them were arrested as much as 3 months and 6 months after their initial arrest for which they were released on bond.

I would say this. We show about 4.6 percent had been rearrested for subsequent offenses.

The CHAIRMAN. How long have you been in operation?

Mr. NILES. We have been operating in the courts since September 20, 1966. The Agency was not created by Act of Congress until the 2d of November, and we became an Agency on the 2d of November 1966. But through the Ford Foundation and the Meyer Foundation, we were able to go into the courts under private grants at that time.

The CHAIRMAN. How many personnel does the District of Columbia Bail Agency have?

Mr. NILES. We have a total of 10 people: myself, an assistant, two secretaries, and six interviewers.

The CHAIRMAN. Specifically, how does this bill become of assistance to you?

Mr. NILES. Well, sir; as Mr. Freed said, one of the provisions of the Bail Reform Act is that if the committing magistrate in his discretion does not feel he can release a defendant on his own personal recognizance, that means completely on reliance on his responsibility to return, then he should select one of several conditions—custody to another person or agency willing to accept him, restrictions as to travel, residence, his employment, and any other restrictions which occur to the committing magistrate to be effective in having this defendant appear at trial.

As I have said in my letter, I think that restrictions should not be placed upon someone unless they can be enforced, because to place restrictions of residence and travel and employment on an 18- to 23-year-old in the city when he knows no one is going to check up on him is probabaly breeding disrespect for authority rather than creating respect. I feel that Mr. Hardy's department could do this job very well. With only six interviewers working all day, we, of course, are not in a position to do any such thing and I don't think any other department is in a position to do it as well as Mr. Hardy's.

The CHAIRMAN. Do you care, or any of you care to supplement or add anything as to why the addition of section 1 helps in this area?

Mr. FREED. I would like to add a word, if I may, Mr. Chairman.

The Bail Reform Act was intended by Congress to give judges a much wider choice in the way in which they could set release conditions when a man appears for bail. The old system, in which the choice was money bail or jail was found by the Congress on the basis of a number of hearings to be very unfair and inadequate.

However, although the Bail Reform Act lists five different ways in which a judge can release an accused person, the fact is that the system today has only two choices for release when you are looking at large numbers of people—either the old money bail system or personal bond—all of these conditions in the middle, which enable the court to have some assurance that he is restricting the defendant in

some way, supervising the defendant in some way to keep him out of trouble and make him come back are useless except in those rare cases where the individual lawyer and individual defendant are able to produce a restriction which is enforceable.

Mr. Niles' agency is authorized to recommend to the court release on any kind of condition other than money. Yet the Agency can't effectively help the court release people under supervision if there aren't any supervisors. What Mr. Hardy's agency would be authorized to do here is to make the Bail Reform Act effective with the very group of offenders who right now are either released and prove to be unreliable in terms of not appearing or misbehaving, or they get locked up in jail. Mr. Hardy's program would enable the court to look with greater discrimination at each defendant who comes before it and see whether some kind of supervised release might not better serve the interests of the community.

The problem of crime on bail, which has been in the newspapers in the past few weeks, has also been in the newspapers over the past few centuries.

The problem of people being released on money bail and committing subsequent crimes has been rampant for generations. The holdup at the navy yard last week—which again was publicized as a crime-on-bail problem and which many people would blame on the Bail Reform Act, happens to be charged against three people who were released on money bail. That could have happened before the Bail Reform Act. So we are not really talking about a Bail Reform Act problem. We are talking about a way in which to make the new system workable by giving courts a choice between letting the man off on his own promise or letting him off with some more supervision.

The CHAIRMAN. How is it generally done throughout the United States? The judge can, as I understand it, release the man simply on his own recognizance, or he can release him to the District of Columbia Department of Corrections, if they have the supervisory staff to supervise him.

Now, how do they do it in other jurisdictions?

Mr. FREED. I think it is fair to say that the recent developments in bail throughout the country over the last half dozen years have seen enormous increases in the release of accused persons on personal recognizance, because those persons have been screened by some kind of a bail agency or some kind of court operation. Those that are being released are the most reliable people who have the firmest roots in the communities, families, jobs, et cetera. Those projects have been very successful. They have had a very low rate of default, a comparatively low rate of crime repetition. But those records have been good because they have been only hitting the very cream of the defendant population—the rates of detention in most parts of the United States still remains very high.

And what the proposed section here would do would enable you to get down below the level of the fully rooted individual and get into that part of higher risk the population which may very well be safely released if there is some way of assuring return. For example, the court of general sessions has had quite a bit of difficulty over the past few months in people not showing up in court on time. These figures are

sometimes reflected as defaults or bail jumping. Most of them are not. Most of them concern individuals who have been released perhaps by recommendation of the bail agency or on the judge's own motion, who have not committed any subsequent crime, who have not fled the jurisdiction, but who simply don't remember which day to come back or which courtroom to show up in or whether the time is 9 or 9:30. It doesn't make any difference to the court whether the man is purposely not appearing on time or accidently not appearing. That slows up the operation of the court.

What this bill would do with respect to people like that, is enable the Department of Corrections, with a minimum expenditure of personnel, to help the agency develop some kind of notification system, or perhaps that could be developed by the bail agency if it got more adequate personnel.

There are all kinds of problems presented by people who are released, and this would, for the first time, give some significant capacity on the part of the District of Columbia to minimize the troubles caused by not releasing people, or by releasing them within adequate supervision. I might add that the figures quoted by Mr. Niles about the length of time during which people are released as related to the incidence of subsequent arrests, are really quite important. The findings over the past several years in the District of Columbia and elsewhere show that as release time while awaiting court appearance increases, the likelihood of subsequent arrests increases and that is usually going to be found among people who have not found jobs, who have begun to forget about the dignity and sanctity of being under court order of release. And these are people who need help, if we are going to make a difference in the way in which we deal with offenders. We have tried not only to release people, but to let them keep jobs, let them get jobs, let them get counseling, in short—let them establish firmer roots than they had before.

And one of the major thrusts of the new program of the Department of Corrections is to reintegrate convicted offenders into the community, get them jobs, get them help. What this bill would do is let the Department of Corrections do the same job for people who aren't convicted, who are waiting for some determination of whether they are guilty or innocent. And the success of a program like this may not only increase the benefit to the community pretrial, it may also help establish the very kind of roots in job stability which will lead a judge to put a man on probation who otherwise might go to jail.

The CHAIRMAN. Do you think the District of Columbia is in a better position since the enactment of the Bail Reform Act than it was before?

Mr. FREED. The District certainly has a great deal more flexibility and a great deal more opportunity.

The CHAIRMAN. It might have more flexibility, but I do not know if that means it is in a better position in its determination to try to do something about the crime situation. Do you think it is in a better position to do something about the crime situation since the Bail Reform Act has been in existence?

Mr. FREED. Without question. Without question. The Bail Reform Act has increased the opportunities available for the courts. It didn't

take away any power that ever existed. It only added to the arsenal of choices which are available to the courts; and this bill before you today will increase the meaningfulness of that statute.

The CHAIRMAN. Is this additional tool in law enforcement normally used by the judges that can use it? Do they avail themselves of this opportunity?

Mr. NILES. Are you speaking to the Bail Reform Act?

The CHAIRMAN. The Bail Reform Act. They would not have any experience with anything else.

Mr. NILES. In the court of general sessions, I would say it is uniformly used. In the district court, it is uniformly used, but to a wide degree of variance between the individual judges as to how they apply it. We find that a great many more defendants come before the judges who are sitting in the assignment branch or criminal branch of the court of general sessions, and I think that they quite uniformly use this act. Last week, they released 94 defendants.

The weekly average has been going up steadily. I think one thing that should be impressed is the fact that all of these people are not guilty of any crime. They are all prior to any conviction.

The CHAIRMAN. I understand.

Mr. NILES. They have that presumption of innocence. And I think we do a great deal more damage by placing someone who is innocent, and there are a great many of them who are innocent, by placing them in jail for as little time as a month, because we will run a very good chance of making a criminal out of someone who is definitely not, if we place them in jail before they are committed when they are actually innocent.

The CHAIRMAN. I appreciate what you are saying, gentlemen, and I am going to ask Mr. Smith to assign someone of his staff to meet with you on a case-by-case basis to look into what you are saying, and to develop information similar to that I asked of you, Mr. Hardy. I am not going to take the time of the committee to develop it here.

But I would like to see the statistics on this to try to determine, if possible, whether some of this backup is due to insufficient personnel in the prosecutors office or court facilities or judges, or whatever it is. I have heard it blamed on everything, and I think the statistics could be helpful. The statistics of the District of Columbia Crime Commission in that field could be correlated. Mr. Malone who is newly aboard in place of Mr. McIntyre could work with you on it.

If you could give us information to try and find the real cause of this, I think it would be very helpful to the committee. Everybody is inclined to blame either inadequate courtrooms or insufficient judges, lack of prosecutors—and other causes—and I think maybe statistics could be revealing in this area. I would ask that a statistical study be made.

The CHAIRMAN. Let us proceed to section 2.

Mr. FREED. S. 1516, section 2:

TRANSFER OF PAROLE SUPERVISION OF YOUTHFUL OFFENDERS

This legislation would transfer parole decisionmaking and supervision for youthful offenders in the District of Columbia correction institutions from Federal responsibility to agencies of the District of

Columbia. Under a recently proposed reorganization order, this means that the parole decision would be made by the District of Columbia Board of Parole, and the parolee's supervision would be administered by the District of Columbia Department of Corrections.

The present situation with these youthful offenders is anomalous. While at the Lorton Youth Reformatory, they are in the custody of the District of Columbia Corrections Department. The reason for their incarceration is almost always violation of a law applicable only in the District of Columbia. Yet when their parole is decided it is by the U.S. Board of Parole and, when released, their supervision is by the U.S. Probation Service.

The thrust of the new reorganization of District correctional services is in the direction of placing one department in charge of the offender throughout the entire rehabilitation process, rather than diffusing responsibility. This principle should apply equally to those District youths sentenced under the Youth Corrections Act. The District of Columbia Crime Commission so recommended, the District of Columbia Government supports it and we believe the correctional process will be substantially improved by its effectuation.

The CHAIRMAN. Do any of you have any thinking to add to what Mr. Freed has said on this point?

Mr. Hardy?

Mr. HARDY. From our observations, with the Department over 12 years, on the 6 or 7 years the center has been in operation, we had hoped there would be a closer relationship between the U.S. Probation Office and the classification officer who is known as a social worker at the institution, regarding the inmates problems within the institution and his problems on outside as far as family and other things in the community. I respect the fact that the probation office has been overloaded with work, and it has not been possible for them to make the contacts that we had hoped they would make on inmates going through the correction process down there.

I feel that should we have this responsibility from the time the men are sentenced through the time of his parole experience, until discharge, that it would be an unfragmented or unfractured course of treatment with one philosophy following the man throughout the whole period that he is under the law.

I would feel that we could so structure our program that the classification and parole officers in the institution would also work with the man as he is released from the institution, thereby eliminating the problem of the man moving from one supervisor or other personality looking over his progress and helping him to adjust in his problems to one sole person who would take him into tow for the full period.

The CHAIRMAN. It would seem to me, offhand, that what you say makes good commonsense. What cost factors are involved? You are certainly going to have to have more supervisory personnel if this transfer is made to you.

Mr. HARDY. I would say this would cost about $75,000.

The CHAIRMAN. Per year, that you are not now required to pay, because the U.S. Government is handling it under their U.S. probation officers; is that right?

Mr. HARDY. That is correct, unless there is some transfer from the U.S. Probation Office, and I am afraid that would not be possible.

The CHAIRMAN. I am afraid they would not agree to that. It is just amazing how many of these problems boil down time and time again to the money that is required to get the job done and it is amazing in the District of Columbia, what tremendous burdens are placed upon the dollars. I guess maybe it is the same everywhere in the United States, but so many things could be done if there was more money to do them, and do them more promptly.

I would think you make a good case there. The only thing that occurs to me is this: Is there anything to be gained by a change in supervision from one agency to another? You're dealing with men who are in industrial schools or correctional institutions who, I think, by human nature, get a little harder as they go along. Would a change or transfer to a new atmosphere be more helpful? Maybe the people down in your area have dealt with so many of these people that you are casehardened and the milk of human kindness has run out. If they were transfered to another branch of the government, would there be the opportunity of having somebody deal a little differently with their problems—maybe rehabilitate the lost soul who has been frustrated and not making headway because of the feeling in your area? I am just using this as an example, and am not suggesting it is true or not. Would a change of climate into a different area help rather than hurt this man that you are trying to rehabilitate and make into a good citizen?

Mr. HARDY. I appreciate your remarks about human kindness and I think it comes at a time when we are looking for such remarks because of the happenings over the past weekend—many people think we are too kind.

I am referring to the escapes from the District of Columbia jail and the episode on Shirley Highway on Monday.

The CHAIRMAN. I read about the District of Columbia jail. What happened on Shirley Highway?

Mr. HARDY. We had three men in transfer going from Lorton Reformatory to the U.S. district court in Alexandria to answer the marshal's papers, that asked for his appearance in that court. These men were all escapees. They had escape records, and were going to answer charges on escape. One was going as a material witness and he overpowered the officers in the vehicle transporting him and escaped with the vehicle. One was killed sometime later.

The CHAIRMAN. I think I did read about that. Yes, I did read about that.

Mr. HARDY. I assure you, sir, the Department of Corrections has a balanced program, wherein we do not give too much weight to either the custodial factors, disciplinary program over the treatment program and vice versa. We try to keep it balanced. We have a stratification program, if a man doesn't adjust in one of our institutions, we can move him from one institution to another, even at the Youth Center, we can move a man to Lorton for a little bit and back to the Youth Center.

I would say, sir, that we are not overflowing with the milk of human kindness nor are we being vindictive nor sadistic in the approach in the treatment of the offender.

I would like to go on record as saying this Department has been recognized as being very much dedicated, according to the report of

the President's Commission on Crime in the District of Columbia. I think it is cited some place in the report—and I would hope that we will continue with the philosophy that was established by Mr. Clemmer in 1946. This is our base, and I hope there will be no wavering in any direction from what Mr. Clemmer did over the past 20 years.

The CHAIRMAN. How many people do you have under supervision in the Department of Corrections?

Mr. HARDY. Our count, institutional count, is 2,750.

The CHAIRMAN. 2,750 in your institutions?

Mr. HARDY. Yes.

The CHAIRMAN. How many supervisory personnel do you have?

Mr. HARDY. Including all divisions, the service divisions and institutional divisions, our supervisory personnel runs to approximately 1,000 personnel—that is business, industries, transportation, all the services—health, plus the correctional offices, teachers, psychologists, social workers, and administrators.

The CHAIRMAN. You have 1,000 personnel with the supporting services to take care of 2,750 inmates?

Mr. HARDY. This is our lowest count we have had over the period—since World War II. The count a year ago or two years ago was around 4,000. It has been gradually going down as it has been going down nationwide, the number of prisoners incarcerated.

The CHAIRMAN. Do you have a record of what happens to the personnel under your supervision in later life?

Mr. HARDY. We can only go by our recidivism rate of return, repeaters, to reflect in any way the progress being made for the treatment of the offenders. I would say the rate is a 60–40 rate. I would say 40 percent, 60 percent failure.

The CHAIRMAN. You mean of the 2,750 inmates that you have at your institution today, 60 percent will be repeaters in some type of a crime violation?

Mr. HARDY. To correct myself on that, I would say a good 80 percent of the men with us at one time are known to a correctional institution, either in the District of Columbia or some other jurisdiction. They have served sentences elsewhere.

The CHAIRMAN. Eighty percent of those with you today have a prior criminal record of some kind?

Mr. HARDY. Some sort of record, misdemeanor or felony.

The CHAIRMAN. Whatever it might be. That of the 2,750 with you today, do I understand you to say that of that number when discharged, 60 percent of them will again be in some type of difficulty with the law, be a repeater, or recidivist?

Mr. HARDY. I am being conservative with that estimate.

The CHAIRMAN. Is that so? Is that a nationwide statistic in correctional institutions?

Mr. HARDY. This is nationwide. This is a national problem, recidivism.

The CHAIRMAN. What is the average length of time that you hold people in your institution?

Mr. HARDY. I would say at Lorton Reformatory, the average stay is over 36 months.

The CHAIRMAN. I'm sorry—I do not think I caught that.

Mr. HARDY. At the Lorton Institution, but the one where the adult offender, felony offender is staying, we run an average of 36 months—

32 to 36 months a man will serve on his sentence before being released, either by conditional release or parole.

The Crime Commission Report also states that we have had the highest rate of holding a man under penitentiary or reformatory programs—we are the highest in the Nation. At the Youth Center, I would say the average stay is about 15 months on the indeterminant sentence given the youthful offender. The success rate there is much better, Mr. Chairman. I would say—I would not be overstating it or understating it if I used the 40–60 figure for their recovery in the community; that is, 40 percent success and 60 percent failure.

Mr. NILES. A study was made of the 1963 releases, two-year follow up study, and it was found 46 percent of those released in 1963 were returned to prison.

The CHAIRMAN. Did I understand you to say that nationwide the prison population is down?

Mr. HARDY. I know in the Federal system, that is, the Bureau of Prisons, the population is beginning or has dropped considerably.

The CHAIRMAN. Is there a percentage figure on that that is available from your study?

Mr. FREED. I don't have the percentage figure, but Mr. Hardy is absolutely right. It has declined appreciably.

Mr. GIMBLE. This is from the Annual Report of the Federal Industries, which is a matter that is before the committee in this bill.

In 1963, the inmate population of the Federal prisons was about 24,000. Thereafter it has decreased by more than a thousand each year and at the end of this year stood at 20,598. This is a 1966 report.

The CHAIRMAN. The purpose of my question was this, and I generally understood this to be the situation, that throughout the entire United States the prison population was going down, but unquestionably the crime rate is going up. So can you make a direct relationship to the fact that the prison population is going down and the crime rate is going up? Are we releasing so many that they go out and commit more crimes?

Mr. NILES. I am not sure the crime rate is going up.

The CHAIRMAN. You will have a time convincing them of that here in the District of Columbia.

Mr. NILES. That is correct. It may be the fact that more crimes are being reported today. An independent study which we have made, which is not official, shows that only two-thirds as many defendants are being presented in court in the District of Columbia as were 3 years ago.

Now, you can arrive at many conclusions from that. It may be that only made cases are being presented, and maybe less people are being arrested for crimes which are considered serious enough today. I am not throwing out anything of any significance in that. But it is a fact that less people are being presented in court in the District of Columbia today than there were 3 years ago, appreciably less.

The CHAIRMAN. Many people think that is due to the court decisions. I think you would have a great deal of difficulty in telling the general public that in the District of Columbia or in the United States, as a matter of fact, that there is less crime today than there was last year or 5 years ago. This is a general impression. I do not know what the statistics show, but I think you have a difficult time putting that across.

Mr. NILES. I am not trying to. I am just saying I don't think the figures prove anything.

The CHAIRMAN. Well, nevertheless, you do not think there is any necessary relationship between the fact that the prison population is going down and crime is going up, if my assumption that crime is going up is true. I personally think it is.

Mr. FREED. Mr. Chairman, if I might add a word on this. There is something in between the prison population and the commission of crime. Almost everybody who goes into prison comes out. What Mr. Hardy's program is under this bill is the interim period between release from an institution and release into a community without any kind of supervision. The National Crime Commission discovered that a disproportionate amount of all the money being spent in the United States on corrections is going into penitentiaries and prison wards rather than in the payoff area which is the supervised release into the community. And the $75,000 estimate which Mr. Hardy gave you is one of those areas in which the transition of an offender back into the community can be made to pay off in terms of reduced crime or can fail. I think one of the major recommendations of the Commission, and many people think the most important area dealt with by the National Crime Commission, was its emphasis on the much greater need for the community-based services and supervision when a person is released.

The CHAIRMAN. Do we have anything further to add? Do you have an observation you want to make, Mr. Hardy?

Mr. HARDY. Yes, Mr. Chairman.

I would like to make this observation, and that is, that in some years in the future, 3 to 5 years, come back to this problem of recidivism, that's responsibility for rehabilitation, and when you need someone to answer what has happened to these cases that would have gone through this correctional process, someone has to stand the blame for it for the failure or the success.

Now, if the responsibility of treatment of these offenders is going to be divided between two agencies, such as the U.S. probation officers and the Department of Corrections, then which of us is going to be blamed some 4 years hence, when the recidivist rates have not been cut down? I feel that if the Department is given this responsibility throughout the correctional continuum, then when we come back we will hope that we will come back for a medal pinned on us for doing something about it, but in the event it does not turn out that way, we stand to have our heads chopped off.

The CHAIRMAN. Then you have someone else to kind of share the blame. You feel that if they are going to pin roses, you ought to have them; and if they want to chop heads, you ought to have your head chopped.

If there is nothing further on section 2, let us proceed with section 3.

Mr. FREED. S. 1516.

SECTION 3: FEDERAL PRISON INDUSTRIES

This legislation would extend title 18, United States Code, section 307, which establishes the Federal Prison Industries, to allow its operation in correctional institutions run by the District of Columbia gov-

ernment. Any such operations would require the consent of the Board of Commissioners, the Attorney General, and the Board of the Prison Industries. Consent for Prison Industries to operate some aspects of the District of Columbia industry training program would not affect the District of Columbia Department's authority to run other industry programs on its own.

Authorization for Federal Prison Industries to enter the District of Columbia institutions was recommended by the District of Columbia Crime Commission. It found the industry training programs of the local prisons outmoded, underequipped and not geared to training inmates for jobs on the outside. Federal Prison Industries has a top-notch reputation for training and producing for sale useful products—clothing, furniture, textiles, electronic equipment, and repair, printing, management, and clerical skills. It has an established market and longstanding relationships with industry and government throughout the country.

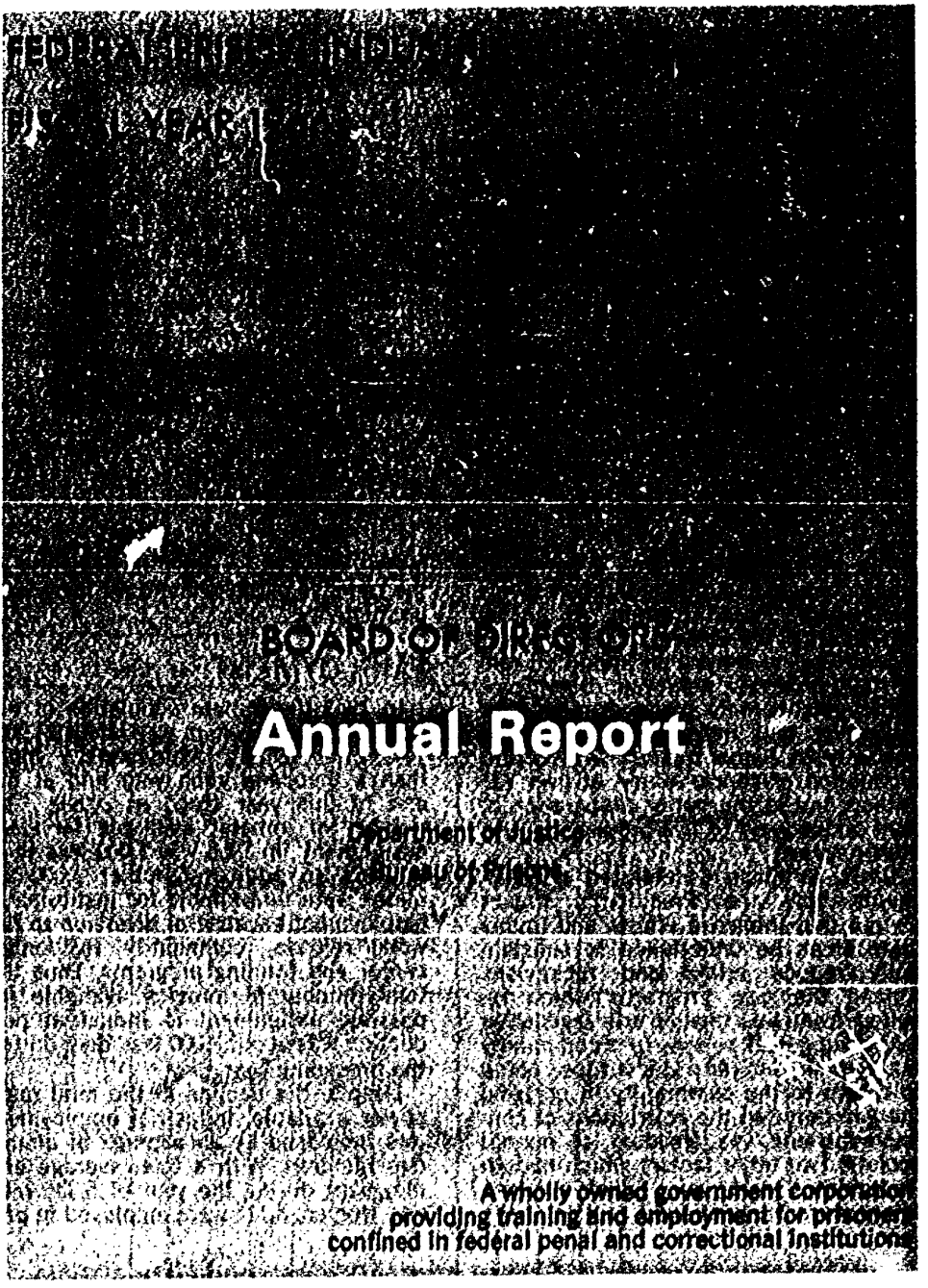
The CHAIRMAN. Do we have any records of how successful Federal Prison Industries has been in the rehabilitation field? I think generally this program is pretty well accepted throughout the Federal prisons.

Mr. GIMBLE. Mr. Chairman, I can't give you any statistics on this, but I do know it is considered a highly successful operation. I can give you some of the statistics with regard to the number of men that are in the program—some 5,335 men and women were in the industrial programs conducted by the FPI.

Mr. FREED. If you wish, we could supply additional data about the success of the program.

The CHAIRMAN. I think it would be helpful if it is available without too much effort. I think there is more curiosity than anything else. It seems to me you make a good point on section 3. I do not want you to spend a lot of time and effort on it. If it is available in the annual report or document of other document, I think it would be helpful for the committee.

(The 1966 Annual Report of the Federal Prison Industries, Inc., is as follows:)


Annual Report
Department of Justice
A wholly owned government corporation
providing training and employment for prisoners
confined in federal penal and correctional institutions

TO THE CONGRESS OF THE
UNITED STATES:

Pursuant to the provisions of Section 4127 of Title 18, United States Code, the Board of Directors of Federal Prison Industries, Inc., submits its report on the conduct of the business of the Corporation and the condition of its funds for Fiscal Year 1966.

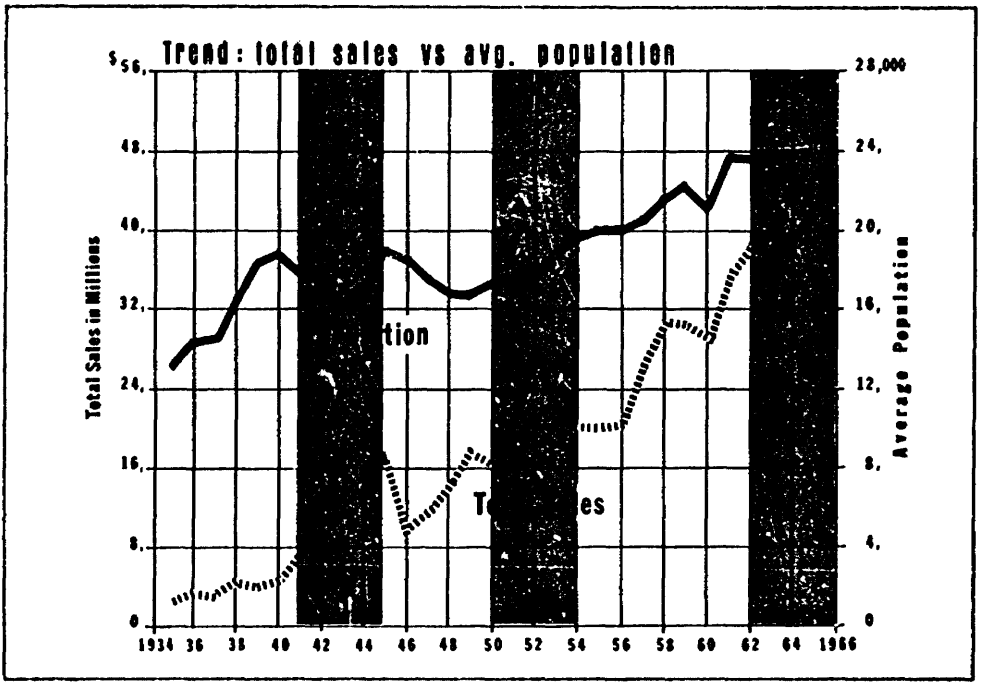
The fiscal year 1966 was a period of rapid change and marked progress for the Federal Prison System. As an integral part of the System, Federal Prison Industries, Inc. played an important role in the progress achieved. Significant improvements were made in manpower utilization and training. This resulted not only in higher quality and record production of goods valued at over $52 million, but in the better preparation of men and women to live productive lives after release.

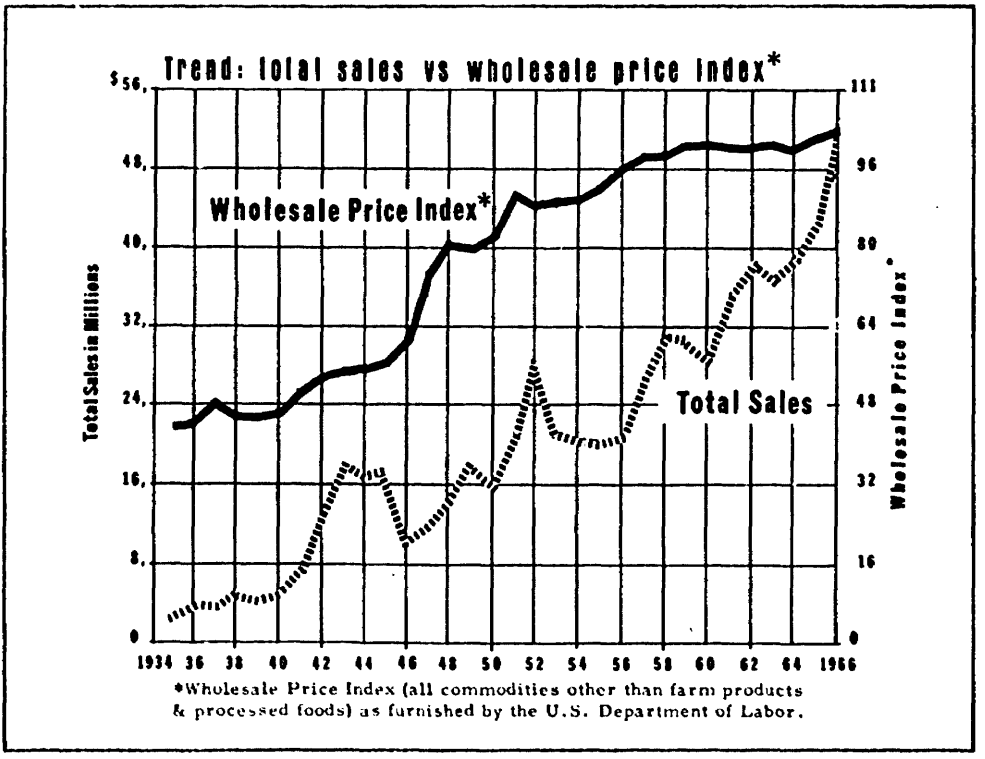
Basic to these accelerated developments was the President's urgent charge that intensive efforts and immediate steps be undertaken to substantially reduce crime and recidivism. Among the new programs which resulted from this charge was legislation authorizing work release and community residential centers to assist those about to return to the community in bridging the gap between the restrictions of confinement and the freedom of normal society. Two other factors which had an important bearing on industrial operations were the continued decline in the inmate population and the demands of the Defense establishment for increased productivity.

EMPLOYMENT

In 1963 the inmate population of the Federal Prison System was about 24,000. Thereafter it has decreased by more than a thousand each year and at the end of this year stood at 20,598. The number of inmates available for work assignments in 1966 was 1,000 less than in 1965. In addition another 1,000 inmates were unavailable for institutional employment because of diversion to the work release, community residential center and training programs. Thus the total number of inmates available for possible assignment to industrial production was about 2,000 less than during the preceding year.

Despite the decline in the total manpower available, industrial employment was increased by an average of almost one hundred. With a total average employment during the year of 5,335 men and women, 5,114 were employed in pro-





*Wholesale Price Index (all commodities other than farm products & processed foods) as furnished by the U.S. Department of Labor.

duction and related activities in Bureau of Prisons institutions, 81 were similarly employed in the U. S. Disciplinary Barracks, Ft. Leavenworth, Kansas, and 140 were engaged in constructing new facilities.

While the Corporation gears its operations to meet the employment and training needs of the institutions, Defense and Post Office requirements were critical and it was essential that these requirements be timely met. Institutional staffs cooperated fully and undertook intensive studies to improve the utilization of manpower both in industries and in all areas of maintenance. It was found that many inmates were still only partially employed—particularly in farming, food service and clothing maintenance—and that additional manpower could be made available by reducing specialization. The net result was that all manpower requirements were met without interfering with programs designed to meet treatment needs.

This experience prompted a reevaluation of the effectiveness of the total work program and the outcome was a revised concept of the level of expectations and the development of higher performance standards. It is generally agreed that the work program has been greatly improved and many feel that further improvements are indicated and possible.

The development of higher performance standards directly affects planning for the future of the industrial program in the Federal Prison System. While it had been felt that the decline in population and the evolvement of other programs would reduce the needs for industrial employment when Defense requirements return to normal, the changed concepts as to the need to provide full employment indicate that the industrial work program will have to be continued at a relatively high level.

For these reasons, the Corporation is reexamining its program planning to be able to employ a higher percentage of the total inmate population, even during periods when Defense procurement is not at emergency levels. Further planning is directed at adjusting operations to provide better training in developing saleable skills and in meeting the rapid technological changes of the economy. If the employment needs of a particular institution are reduced, an industry which does not meet the above criteria may be discontinued whereas one with high training value may be transferred either to augment the work program of another institution or to replace a less desirable operation.

This policy may be illustrated by the actions taken this year when industries were no longer needed at the Federal Reformatory, Chillicothe, Ohio, after a tentative decision was made to phase out this facility. Three industries had been operated at this institution: a foundry, a shop producing feather products, and a factory producing wood chairs. First, as the population decreased and less manpower was available, the foundry was evaluated. Because of limited Government requirements for gray iron castings, production was low and much of the program was devoted to vocational training. However, in recent years relatively few placements were made and the training value of the operation was questionable. Thus the decision was reached to completely abandon foundry operations.

Next, when manpower availability was reduced further, the feather products operation was transferred to the Federal Correctional Institution at Texarkana, Texas. The Texarkana institution population included a number of older limited-duty men who could not perform effectively in the heavier industrial and maintenance activities. This light industry was ideally suited to their needs and it is now productively employing about forty limited-duty men.

In view of the need the feather products operation is filling at Texarkana,

the suitability of this work program for the active youth population at Chillicothe might be questioned. However, its application at Chillicothe was quite different although its function was equally useful. It was used almost exclusively for the employment of the more difficult problem inmates most of whom had never worked productively at any task. It offered a closely controlled situation with high incentives where these young men could learn a simple productive task and begin to function in a group situation. At the time of the transfer the Warden stated, "There is no program in the institution that I hate so much to lose. It has had a stabilizing influence on our problem youngsters. After working there for a time we have been able to redirect their programs into vocational training or other activities designed specifically to meet release needs. Many who seemed almost hopeless are now doing well and their prospects for making successful release adjustments are favorable."

Finally, the Chillicothe population was reduced to the point that no industrial employment was required. At that time the chair factory was discontinued. Final assembly operations carried over into fiscal 1967, but the action was essentially completed this year. This obsolescent industry also was abandoned as it offered little potential to improve program effectiveness at other institutions.

Recording hard data for use on computers is a new industry offering excellent training and employment potential for female inmates while providing a needed service to other government agencies.

One other industry was discontinued this year. The laundry at Alderson ceased to function as an industry at the end of the year and was converted into a small maintenance operation. The laundry offered little training or placement potential. It has been replaced with a modern shop processing data for other Government agencies. This unit furnished approximately the same employment as the laundry and has excellent placement potential while providing needed service. The ADP unit records raw data on cards or tapes, prints it out if necessary and collates the processed data for use on computers.

The thrust of the programs of the Bureau of Prisons today is to prepare men and women to function constructively in free society rather than simply to make satisfactory adjustments in an institutional setting. The Corporation's activities are essential to this release preparation process.

PRODUCTION

Production this year increased by $10 million over the preceding year and reached an all time high of $52.4 million. This increase is attributed to two factors. First, the added sorting required by the ZIP Code mailing system resulted in higher procurements of mail bags and duck by the Post Office Department. Second, the armed forces build-up for the Vietnam conflict created urgent demands by Defense agencies for increased productivity. More than 40 percent of the Corporation's total production went directly into the de-

Rebuilding road wheels at Texarkana is a service presently of critical importance to the defense effort. Road wheels being loaded for shipment from Texarkana Federal Correctional Institution.

fense effort. We are proud to report that with minor exceptions all delivery commitments were met and that in several cases we were able to expedite deliveries to meet emergency needs.

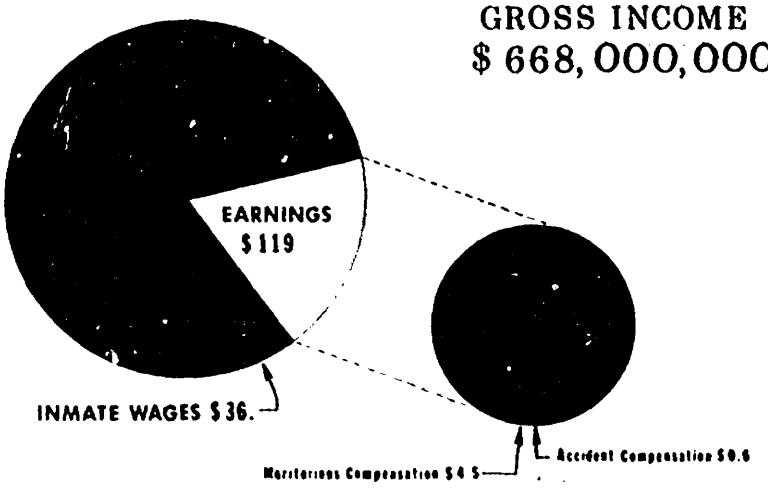
Record production also resulted in record gross earnings of $10.9 million which was $3.5 million higher than last year. Net earnings were $7.3 million after deducting construction costs and the expenses for the programs approved by the Congress for vocational training, meritorious compensation and accident compensation. The Board of Directors authorized the transfer of $4 million to the U. S. Treasury. This brings the total dividends paid to $63 million which represents 53 percent of the Corporation's total earnings. The remaining earnings were invested in equipment modernization or retained to meet the increased operational needs of a higher level of production. In addition large expenditures next year are anticipated to meet construction obligations and to purchase equipment for establishing a major industry in the Bureau's newest institution at Marion, Illinois.

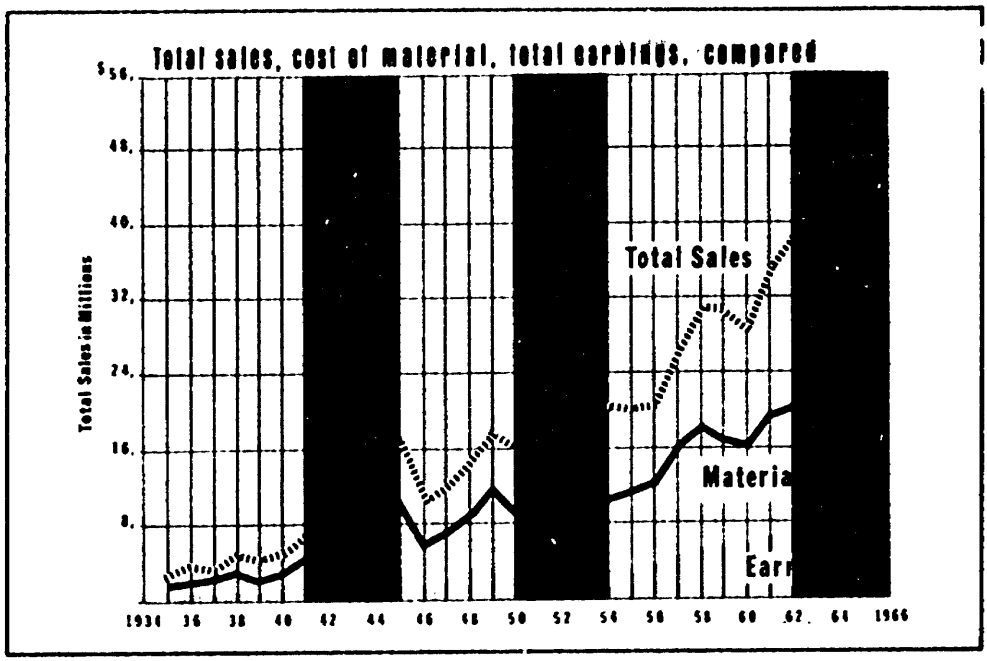
The accompanying chart graphically shows the disposition of total earnings

FEDERAL PRISON INDUSTRIES, INC.

DISTRIBUTION OF INCOME & EARNINGS 1935 - 1966

in millions of dollars





since operations began in 1935 with assets of about $4 million. The present net worth of almost $41 million results primarily from the expenditure of about 30 percent of the total earnings for plant and equipment. Thus almost 85 percent of the Corporation's earnings have been paid into the U. S. Treasury or represent increased assets. The remaining earnings have been expended to support authorized programs with the bulk of the expenditures, more than 13 percent, going for vocational training.

The Corporation entered the new fiscal year with balanced production scheduled in most of its operations for at least six months. While it is anticipated that some adjustments will be made to meet the changing needs of the populations of the various institutions, the production requirements of Defense agencies will be met. Thus it is expected that sales and earnings will remain high during the fiscal year 1967.

INMATE WAGES

The inmate workmen assigned to industrial production are paid wages based on standard hourly rates ranging from 14 cents to 35 cents. All positions are described and classified and the rate of pay depends upon the skills required, difficulty of the work and the responsibility entailed in each particular job. Workmen are promoted and progress to higher pay levels as they develop proficiency and the ability to accept a greater degree of responsibility. Most workers who are directly involved in production are paid on an incentive basis which enables those who apply themselves to exceed the standard hourly rates.

This year the average annual production per inmate employed increased by almost $2,000 to about $10,000. This high rate of productivity also resulted in increased inmate wages with a total of $2.75 million being paid. This was a monthly average of over $40 per inmate employed, which was more than $2 higher than during the previous year. This record was achieved despite the fact that more than 80 percent of the men assigned were unskilled and untrained, that the rate of turnover exceeded 100 percent and that the average daily productive time available was about seven and one-quarter hours.

While the ratio of wages to production might be considered low, in the have-not society of a prison they are meaningful and constitute a powerful incentive. In addition to teaching work skills and job demands which assist in preparing an inmate for release to a free community, these wages make other contributions to program effectiveness. Men regain their self-respect by being able to assist their families. Wives feel that their husbands are doing all they can to help under the circumstances. Thus family ties are strengthened and an important social force in motivating acceptable behavior is preserved. Also, but for accumulated industrial wages, many men would be indigent upon release. If no resources are available to them through families or friends, they are forced to turn to charity or may return to crime. Too often, the choice is the latter alternative. With adequate industrial employment available, institutional staffs are able to plan release programs with the releasees in possession of sufficient funds to bridge the critical post-release period from the time they leave the prison gates until they become self-supporting wage earners in private industry.

Polishing molds in the McNeil Island cable assembly shop. One of several industries supporting the defense effort.

MERITORIOUS AWARDS

In addition to paying wages to inmates engaged in industrial production, each year the Corporation sets aside a sum which institutions use to make meritorious awards. These awards go to deserving inmates assigned to institutional maintenance and to those whose efforts result in significant savings to the Government or who perform heroic acts in protecting life or property. This year about 10 percent of the total funds available were used for the latter two purposes. For example, an award was made to a female resident of the Federal Reformatory for Women at Alderson when she came to the aid of employees and was instrumental in preventing the escape of a potentially dangerous inmate from the close security quarters. Another award was made to a male inmate at the U. S. Penitentiary, McNeil Island for devising a conveyor system to move cable assemblies which resulted in increased production and greater economy.

Although the lump sum awards for special acts are more dramatic, the bulk of the funds are used to pay continuing

The plastic-fiberglass industry now in the beginning stages at Terre Haute, should provide civilian employers of that area with a reservoir of experienced plastic workers.

monthly compensation and also serve a most useful purpose. These awards which range from $5 to $25 per month narrow the gap to some extent between the incentives of industrial and maintenance employment. Not only do the awards encourage better performance and improved proficiency, but they recognize and direct the inmates toward the development of constructive attitudes after release. Factors such as progress in completing treatment goals are considered equally with job performance in making the awards.

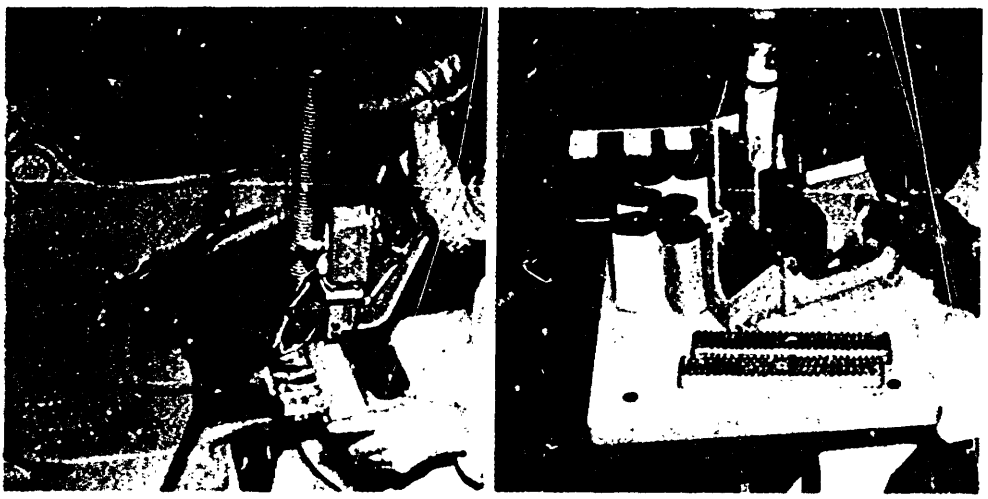
For the past several years the Board of Directors has set aside $400,000 from the Corporation's earnings for the payment of meritorious awards. This year, as the result of the recommendations of a number of wardens an increase was considered on the basis that the incentive gap between industrial and maintenance employment should be further reduced. However, it was determined that no increase should be granted at this time, on the grounds that a strong incentive must be maintained to produce quality goods and to reward men for meeting the heavier demands of industry. Also the decreased population made proportionally greater awards possible and in addition several hundred inmates were earning even higher wages on work release.

This year $394,481 of the $400,000 available for meritorious compensation was expended. Either monthly or lump sum awards were made to 9,331 different inmates. With the industrial employment turnover rate exceeding 100 percent it is estimated that more than 8,000 inmates received industrial wages. When more than 9,000 receiving meritorious compensation and about 1,000 inmates participating in the work release program are added, it will be seen that adequate opportunity exists for all inmates to obtain wages at some time during their periods of confinement.

VOCATIONAL TRAINING

The concerted drive to reduce crime by reducing recidivism which resulted in the emphasis now being placed on

Psychotic patients at the Springfield, Missouri, institution engaged in the production of brushes.



release preparation has had a marked impact on vocational training concepts. This has led to a reevaluation of the effectiveness of a vocational program devoted essentially to on-the-job maintenance and industrial training in preparing inmates to function satisfactorily in private employment after release. It was determined that much of the present training was useful and should be retained, but that dynamic supplemental courses were required to meet the rapidly changing needs of industry in different lines and locations.

These studies and findings resulted in several noteworthy developments. New leadership was appointed to direct the vocational programs. A program to reallocate personnel and other resources was initiated and is still in progress. Plans were developed to establish short term courses to meet specific needs.

A key element in the success of the release program is obtaining suitable employment. This requires trained placement personnel to make contacts and conduct negotiations. The present staff is too small to meet present needs and Congressional authorization is being sought to increase the number of placement officers from eight to about twenty. The need for change was brought sharply into focus by the first year of experience with the work release program. Legislation authorizing prisoners to work for private employers in the free community during the day while continuing to serve their sentences and residing in correctional facilities was signed by the President on September 10, 1965. Implementation of this legislation began within a month

Vocational trainees screen printing "Open House" posters for the El Reno, Oklahoma, Federal Correctional Institution.

Attorney General Katzenbach's interest in corrections was demonstrated by his visits to institutions at every opportunity. Here he views a student's handiwork at the dental technician's laboratory school in Lewisburg, Pennsylvania.

thereafter. During the remainder of the year more than 1,400 inmates participated in work release with less than five percent failing to meet the requirements of the program. A study of those terminated from work release, usually by parole, showed that two-thirds obtained jobs as a direct result of their participation in the program either with the same employer or in similar work in other communities. This and other factors substantiate the effectiveness of the program in assisting the participating inmates to make the transition from confinement to freedom. An interesting sidelight is that of the $760,000 earned by the participants, more than $400,000 was used to support families or saved for release purposes and over $120,000 was paid in taxes, social security contributions or returned to the U. S. Treasury from the payments made by the participants to the institutions for their support.

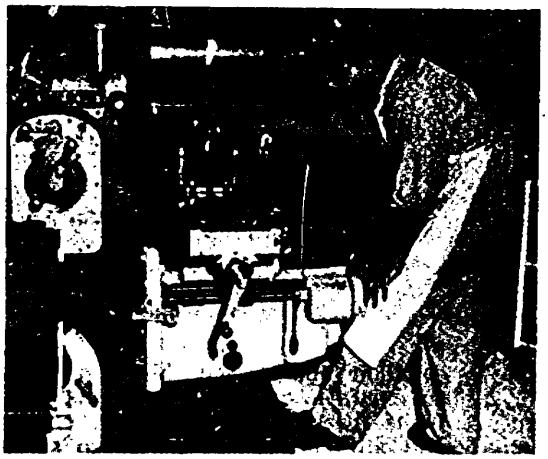
The work release program has received excellent cooperation from labor unions and private industry. Many more requests were made for workers than could be supplied. Although many requests were for skills in short supply, at least two-thirds of the work releasees were employed in unskilled or semi-skilled capacities. With more adequate training programs and placement staffs, it is planned to improve the quality of the placements next year.

The need to provide training which meets the demands of industry is apparent if the Federal Prison System is to attain its objectives. In recognition of present inadequacies great emphasis has been placed on program improvement. New program designs have been developed for each institution. Demon-

Masonry trainees at the Federal Correctional Institution, Lompoc, California.

stration projects have been initiated and are being evaluated. For example, speciality training in auto mechanics is aimed at developing competence in limited areas such as transmission repair, engine tune-up and brake maintenance. Programmed instructional materials related to a number of trades are being tested. New training areas previously unknown to our vocational program are being explored such as a short course in micro-welding to prepare men in two institutions to realistically perform to the standards of the industrial-business communities in those locations.

An inmate operating a horizontal milling machine in Lompoc, FCI, vocational training machine shop.



Vocational training this year in the Federal Prison System can best be described as a period in which traditional methods were continued while the planning discussed above was being carried out. Approximately 10,500 inmates participated in 550 vocational courses. The related employment placement service carried a very heavy load. In addition to the added responsibility of finding jobs for work releasees, the placement officers found jobs for 943 men at the time of full release and 392 of these placements were in work areas directly related to the training received in the institutions. The Corporation expended $1.65 million in supporting the vocational training and placement services.

Correctional education and training must be correctional. It must not only equip men with vocational skills and the required supplemental academic knowledge, but it must benefit them socially. The development of strong motivational characteristics which encourage behavioral change is the key to success. While our knowledge of methods to produce positive social change is less precise than that of teaching skills, some means are available. These must be expanded and improved. Skills without emotional and behavioral stability will not solve the problem of recidivism.

While this report deals more with expectations than accomplishments, the identification of educational-vocational deficiencies and the development of plans to correct the defects represent real progress. The intensified program planned is designed to make available practical educational-vocational opportunities to every inmate capable of profiting from participation.

SAFETY

Fires are of particular concern in correctional institutions because of the concentrated populations and the resultant security considerations. For these reasons only highly fire resistant buildings are constructed, spaces are protected by sprinkler systems and other devices and an alert trained firefighting crew is always standing by. Most fires result from arson and they are usually set in flammable stores. This year three such fires were set in

Periodic safety checks and demonstrations are emphasized.

Industries spaces which resulted in total losses of $16,300.

To preserve future productive capacity and to keep accident compensation at a minimum, the Corporation conducts an intensive safety and sanitation program designed to make all operations and spaces as safe and healthful as possible. Effectiveness of the safety program is based on training which begins with assignment orientation and is continuous thereafter. Most of this training is carried out by the work supervisors. Every effort is made to make both supervisory and inmate workers safety conscious. Each year Department of Labor experts representing the Bureau of Labor Standards conduct a 30-hour training course for our work supervisors. About half of the current supervisory force has participated in this training to date and it is hoped to reach the remainder within three years.

In addition to the assistance received from the Department of Labor, many other experts from state and local governments, private agencies, the National Safety Council and the U. S. Public Health Service are consulted for inspection and advice. Many of these sources also provide training materials. While awareness of potential hazards and attitudes are the keys to safety, safety devices, good lighting and color warning methods are fully utilized.

The success of this program is attested by the record compiled this year. In 12.7 million hours of work exposure, 295 accidents were reported which resulted in lost time of 5,384 days. Most of these injuries were minor and six hand and finger injuries accounted for almost half of the total time lost. The severity rate decreased significantly this year to 424 which compares very favorably with an average of 695 for private industry as a whole according to the National Safety Council.

The Corporation has always paid accident compensation to inmates employed in industries and in 1962 this benefit was extended to inmates assigned to institutional maintenance activities. This year 169 claims were filed of which 61 were approved, with 18 of the approved claims resulting from injuries sustained while working in industrial operations. The approved claims re-

Sanford Bates, President
Representing the Attorney General

James L. Palmer, Vice President
Representing Retailers and Consumers

George Meany
Representing Labor

Berry N. Beaman
Representing Industry

John Marshall Briley
Representing the Secretary of Defense

William E. Morgan
Representing Agriculture

Attest:

Harold Reep, Secretary/Deputy
Associate Commissioner

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-114826 September 30, 1966

TO
The Board of Directors
Federal Prison Industries, Inc.
Department of Justice

The General Accounting Office has made an examination of the financial statements of Federal Prison Industries, Inc., Department of Justice, for the fiscal year ended June 30, 1966, pursuant to the provisions of the Government Corporation Control Act (31 U.S.C. 850, 851).

Our examination was made in accordance with generally accepted auditing standards and included such tests of the accounting records and financial transactions and such other auditing procedures as we considered necessary in view of the nature and volume of the transactions and the effectiveness of the internal controls, including the internal audit function.

The corporation, in preparing its financial statements, did not follow the usual accounting practice of eliminating inter-industry transactions. However, the net effect on the results of operations is not significant.

In our opinion, the accompanying financial statements (exhibits A, B, and C) present fairly the financial position of the Federal Prison Industries, Inc., at June 30, 1966, and the results of its operations and the sources and application of its funds for the year then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year and with applicable Federal laws.

Elmer B. Staats
Comptroller General
of the United States

Dr. William E. Morgan, president of Colorado State University, was born in Fort Worth, Texas, on May 30, 1909. He received his B.S. degree from Texas A. and M. College in 1930 and his M.S. degree from the University of California in 1933. He attended Harvard University in 1940 and received an LL.D. degree from the University of Peshawa in Pakistan in 1956.

He served as assistant registrar at Texas A. and M. College; as associate agricultural economist for the United States Department of Agriculture; as professor of economics at the University of Texas; as extension economist for Texas A. and M. College; and as president of Arkansas A. and M. College. He was appointed to his present position as president of Colorado State University in 1949.

Dr. Morgan was deputy chief of food and agriculture for the European Recovery Program in 1948. From 1942 to 1946 he served with the U. S. Army Air Force.

Mr. Schram

In recognition of the valuable public service rendered by the members of the Board of Directors of Federal Prison Industries, Inc., the officers and employees of the Corporation wish to make this statement:

We wish to acknowledge our appreciation and pay tribute to the important, but selfless men who serve as members of our Board of Directors. Perhaps, neither the Congress nor the public realize how much they have contributed to the achievements of the Federal Prison System in salvaging and redirecting the lives of so many of the nation's citizens. In the correctional world, Federal Prison Industries, Inc., is generally recognized as the best of its kind. It is one of the solid foundation stones on which the programs of the Bureau of Prisons rest. Its accomplishments would not have been possible without the advice and support of these dedicated public spirited men. Their invaluable services have won our affection and respect. Our sincere thanks and deep appreciation!

This tribute is particularly appropriate at this time as we passed a milestone this year with the resignation of Mr. Emil Schram as a member of the Board and the appointment of a distinguished educator, administrator and conservation expert, Dr. William E. Morgan, President of Colorado State University, as his successor.

Mr. Schram was the first replacement member and his tenure is exceeded only by that of Dr. Sanford Bates who has represented the Attorney General continuously since the Board was established in 1934. Mr. Schram was appointed in 1938 and faithfully performed his duties for almost 28 years. He brought with him a wealth of knowledge of business, industry and agriculture and always contributed generously of his time and talents.

Upon leaving the Board, Mr. Schram stated, "I have been a member of many boards and frequently I have felt that I was overcompensated. While I have received no compensation for my services to Federal Prison Industries, Inc., I'm not sure that I wasn't overpaid even more in this instance. This has been the most interesting and rewarding experience of my life."

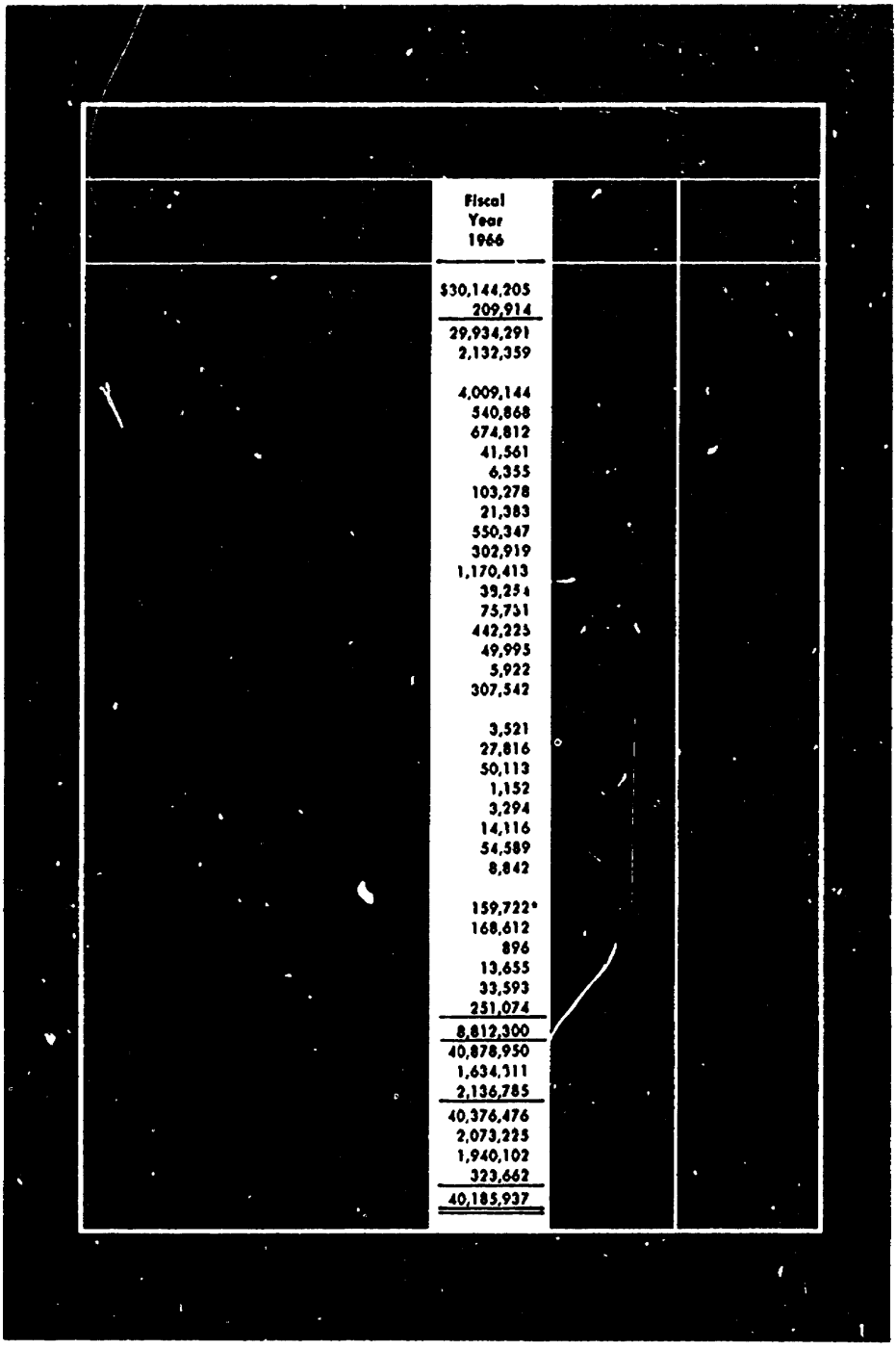
Commissioner Myrl E. Alexander (left) and Associate Commissioner T. Wade Markley (right) brief Dr. William E. Morgan after his appointment to the Federal Prison Industries Board of Directors.

In more than 31 years there have been only 14 members of the Board of Directors including the six incumbents. The average length of service of the members is 17 years and most appointments have been terminated by death or ill health. Although the members serve without compensation they have always been available for consultation by mail and have made long tiresome trips to attend semiannual meetings at which the average attendance has been 80 percent.

This, we believe is a truly remarkable record which belies the charge that Americans are mercenary with little interest in public service. We appreciate Mr. Schram's remarks and are grateful for his many valuable contributions. Our thanks and gratitude extend equally to all of those who served in the past as well as to the present members.

	1966		
	6,211,267		
	212,534		
	4,864,820		
	1,940,102		
	2,136,785		
	9,316,925		
	13,393,812		
	6,156,048		
	11,464,540		
	1,456,812		
	19,077,400		
	345,706		
	44,105,539		
	1,645,974		
	498,661		
	561,058		
	212,534		
	2,918,227		
	4,176,040		
	2,085,420		
	6,261,460		
	97,925,852		
	63,000,000		
	34,925,852		
	41,187,312		
	44,105,539		

Fiscal Year 1966		
$44,247,088		
8,158,591		
52,405,679		
40,185,937		
12,219,742		
183,056		
8,406		
450,234		
56,774		
46,177		
22,228		
11,560		
46,468		
51,460		
196,162		
1,792		
249,414		
453,257		
26,836		
27,500		
25,346		
58,348		
591,287		
4,301		
519		
596,107		
3,730		
10,928,512		
98,875		
1,648,270		
394,481		
8,786,886		



	Fiscal Year 1966		
	$30,144,205		
	209,914		
	29,934,291		
	2,132,359		
	4,009,144		
	540,868		
	674,812		
	41,561		
	6,355		
	103,278		
	21,383		
	550,347		
	302,919		
	1,170,413		
	39,254		
	75,731		
	442,223		
	49,995		
	5,922		
	307,542		
	3,521		
	27,816		
	50,113		
	1,152		
	3,294		
	14,116		
	54,589		
	8,842		
	159,722*		
	168,612		
	896		
	13,655		
	33,593		
	251,074		
	8,812,300		
	40,878,950		
	1,634,311		
	2,136,785		
	40,376,476		
	2,073,225		
	1,940,102		
	323,662		
	40,185,937		

Mr. FREED. In submitting this data, it is clear at this point that the industrial program of the correctional institution is only one phase of its work. It would be unfair to either credit or blame any one part of the correctional program for its overall success. It really deals with the quality of the overall correctional program.

This bill would not only permit FPI to modernize and upgrade job training in the District prisons but would remove from the local corrections department an administrative burden which it has difficulty in carrying through. If this legislation is passed and a contract follows, Prison Industries plans to undertake a comprehensive survey of the present facilities and programs in the District prisons, including an analysis of job training needs and placement opportunities in the District, and build a new model prison industries program around such needs. Since FPI operates on a revolving fund basis, its expansion into the District of Columbia will not require any additional appropriations and will undoubtedly save the District money in the administration of its own prisons.

Meaningful job training which leads to placement on release is one of the most vital crime prevention measures that we can design. The District of Columbia Crime Commission statistics showed that among those convicted of serious felonies, 65 percent had been to prison before. Yet one-half were unemployed at the time they were arrested for the present offense. Fifty-seven percent of the felony offenders had no job skills. Recidivism has been linked in study after study to the inability of the prison releasees to find satisfactory and useful work upon release. Lack of skills and a criminal record continue to hinder him in any bona fide attempts to find work, and the lack of any special skills to offer a prospective employer is a vital disadvantage. If we wish to make a successful inroad on the District's deplorable recidivism rate which contributes so heavily to the crime problem, a complete overhaul of our prison job training program is an excellent first step.

The CHAIRMAN. I have no questions on the FPI. I think that certainly is a fine updating recommendation. Likewise, I have no questions on section 5, the witness fees.

It is amazing to me to find that they have never been increased more than they have in the District; and certainly I thoroughly concur that something must be done about that. I think your remarks or that are 100 percent correct. They will be incorporated in full in the record, and unless you gentlemen have something else to add, we will stand on that.

(The balance of Mr. Freed's prepared statement is as follows:)

BALANCE OF STATEMENT OF DANIEL J. FREED, ACTING DIRECTOR, OFFICE OF CRIMINAL JUSTICE, U.S. DEPARTMENT OF JUSTICE

S. 1516. SECTION 5: WITNESS FEES

Section 5 of S. 1516 would enable witnesses attending a criminal case in the District of Columbia Court of General Sessions to be paid the same fees as witnesses who attend before the United States District Court. At present government witnesses in the Court of General Sessions are paid only $.75 per day. Defense witnesses are paid nothing. All District Court witnesses are paid $4.00 per day. While $4.00 may itself be inadequate, there is no reason for the discrepancy in fees between the two courts. As the bill is drawn, however, any increase in the

fees paid to witnesses in the District Court would apply automatically in the Court of General Sessions.

The General Sessions fee schedule was established at least as early as 1901 and does not even pay bus fare in many instances. Much less does it cover the citizen's losses in salaries, babysitters and meals. The D.C. Crime Commission stated that some witnesses have been called back to court ten or twelve times before their testimony was heard. It reported one case of a day laborer who lost $520 in wages while doing his duty as a citizen. The Crime Commission recommended this as one of many steps for improving the image of the Court of General Sessions as a vital part of the system for administering criminal justice in the District of Columbia.

The CHAIRMAN. My primary concern is with section 1 and, as I have indicated, on the parole supervision of the youthful offenders. I am going to ask Mr. Malone to meet with you and develop the statistics that you have on both section 1 and on the bail supervision, and section 2, on the parole of youthful offenders. They are somewhat interlocked.

I will ask you to meet with him and get more statistical information.

If there is nothing further, we will stand in recess, subject to the call of the Chair.

(Whereupon, at 11:20 a.m., the subcommittee recessed, subject to the call of the Chair.)

DISTRICT OF COLUMBIA ANTICRIME LEGISLATION—1967

(H.R. 10783 and Related Senate Bills)

MONDAY, JULY 24, 1967

U.S. SENATE,
SUBCOMMITTEE ON THE JUDICIARY
OF THE COMMITTEE ON THE DISTRICT OF COLUMBIA,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 6226, New Senate Office Building, Senator Alan Bible, chairman, presiding.

Present: Senator Bible and Senator Tydings.

Also present: Chester H. Smith, staff director; Owen J. Malone, associate counsel; Howard A. Abrahams, assistant counsel; Arlene Williams, assistant clerk; and Richard E. Judd, professional staff member.

The CHAIRMAN. The subcommittee will come to order.

This is the time for the regularly noticed hearings on the House-passed bill, H.R. 10783. The bill will be made a part of the record at this point.

(H.R. 10783 follows:)

[H.R. 10783, 90th Cong., first sess.]

AN ACT Relating to crime and criminal procedure in the District of Columbia

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I

SEC. 101. Section 397 of the Revised Statutes of the United States, relating to the District of Columbia (D.C. Code, sec. 4–140), is amended to read as follows:

"SEC. 397. (a) An officer or member of the Metropolitan Police force may arrest without a warrant and take into custody any person who commits, or threatens or attempts to commit, in the presence of, or within the view of, such officer or member any breach of the peace or offense directly prohibited by an Act of Congress or by any other law in force in the District.

"(b) An officer or member of the Metropolitan Police force may arrest a person without a warrant if he has probable cause to believe that such person (1) has committed any offense listed in subsection (c) of this section, and (2) unless immediately arrested, may not be apprehended, may cause injury to others or damage to property, or may tamper with, dispose of, or destroy evidence.

"(c) The offenses referred to in subsection (b) of this section are—

"(1) those offenses specified in the following sections of the Act of March 3, 1901: Section 806 (relating to assault) (D.C. Code, sec. 22–504), section 824 (relating to unlawful entry) (D.C. Code, sec. 22–3102), and section 829 (relating to receiving stolen goods) (D.C. Code, sec. 22–2205); and

"(2) attempts to commit the offenses specified in the following sections of the Act of March 3, 1901: Section 823 (relating to housebreaking) (D.C. Code, sec. 22–1801), section 826 (relating to grand larceny) (D.C. Code, sec.

22-2201), and section 820b (relating to unauthorized use of vehicles) (D.C. Code, sec. 22-2204)."

TITLE II

SEC. 201. Section 927 of the Act entitled "An Act to establish a code of law for the District of Columbia," approved March 3, 1901 (D.C. Code, sec. 24-301), is amended to read as follows:

"SEC. 927. (a)(1) A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law.

"(2) The term 'mental disease or defect' does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

"(b) Evidence that the defendant in a criminal proceeding suffered from a mental disease or defect shall be admissible whenever it is relevant to prove that the defendant did or did not have a state of mind which is an element of the offense.

"(c)(1) Mental disease or defect excluding responsibility is an affirmative defense which the defendant must establish by the preponderance of the evidence.

"(2) Mental disease or defect excluding responsibility shall not be a defense unless the accused or his attorney files with the court and serves upon the prosecuting attorney written notice of his intention to rely upon such defense and the accused submits himself to examination (at such reasonable place and time as the court may determine) by psychiatrists selected by the prosecuting attorney and answers questions asked by such psychiatrists in such examination, except that if the accused refuses to answer such questions and the court determines after a hearing that the accused's refusal to answer such questions is a result of the mental condition of the accused, the accused's refusal to answer such questions shall not prevent him from asserting the defense of mental disease or defect excluding responsibility. Such notice shall be filed and served (A) no later than thirty days prior to trial if there has been no court order for mental examination or fifteen days after receipt by the court of the report of the examining physician if there was a court order for mental examination, or (B) at such other time as the court may for good cause permit. The court may extend the time for such notice in order to prevent injustice.

"(3) Whenever mental disease or defect excluding responsibility is asserted as a defense the prosecuting attorney may demand a trial by jury.

"(4) When the defendant is acquitted on the ground of mental disease or defect excluding responsibility, the verdict and the judgment shall so state.

"(d)(1) Whenever a person is arrested, indicted, charged by information, or is charged in the Juvenile Court of the District of Columbia, for or with an offense and, prior to the imposition of sentence or prior to the expiration of any period of probation, it shall appear to the court from the court's own observations, or from prima facie evidence submitted to the court, that the accused is of unsound mind or is mentally incompetent so as to be unable to understand the proceedings against him or properly to assist in his own defense, the court may order the accused committed to the District of Columbia General Hospital or other mental hospital designated by the court, for such reasonable period as the court may determine for examination and observation and for care and treatment if such is necessary by the psychiatric staff of said hospital. For purposes of this paragraph, the term 'court' includes any officer empowered to commit persons charged with offenses against the laws of the United States (including such laws which apply only to the District of Columbia).

"(2) If, after such examination and observation, the superintendent of the hospital, in the case of a mental hospital, or the chief psychiatrist of the District of Columbia General Hospital, in the case of the District of Columbia General Hospital, shall report to the court having jurisdiction of the offense charged that in his opinion the accused is of unsound mind or mentally incompetent, such report shall be sufficient to authorize the court to commit by order the accused to a hospital for the mentally ill unless the accused or the Government objects, in which event, the court, after hearing without a jury, shall make a judicial determination of the mental condition of the accused. If the court shall find the accused to be then mentally incompetent to stand trial, the court shall order the accused confined to a hospital for the mentally ill subject to the provi-

sions of subsection (e) of this section. If the court shall find the accused to be then competent to stand trial, but of unsound mind the court shall order the accused confined to a hospital for the mentally ill pending trial.

"(3) For purposes of this subsection, a person of unsound mind is a person who is mentally ill and is likely by reason of such illness to cause injury to himself or others.

"(e) Whenever an accused person confined to a hospital for the mentally ill is restored to mental competency in the opinion of the superintendent of said hospital, the superintendent shall certify such fact to the clerk of the court in which the indictment, information, or charge against the accused is pending and such certification shall be sufficient to authorize the court to enter an order thereon adjudicating him to be competent to stand trial, unless the accused or the Government objects, in which event the court, after hearing without a jury, shall make a judicial determination of the competency of the accused to stand trial.

"(f) If any person tried upon an indictment or information for an offense is acquitted on the ground of mental disease or defect excluding responsibility, the court shall order such person to be confined in a hospital for the mentally ill whether or not such person relied in such trial on the defense of mental disease or defect excluding responsibility.

"(g) In the case of any person who has been confined in a hospital for the mentally ill pursuant to subsection (f) of this section, if (1) the superintendent of such hospital certifies that (A) such person has recovered his sanity, (B) in the opinion of the superintendent, such person will not in the reasonable future be dangerous to himself or others, and (C) in the opinion of the superintendent, the person is entitled to his unconditional release from such hospital, and (2) such certificate is filed with the clerk of the court in which the person was tried, and a copy thereof served on the United States Attorney or the Corporation Counsel of the District of Columbia, whichever office prosecuted the accused, such certificate shall be sufficient to authorize the court to order the unconditional release of the person so confined from further hospitalization at the expiration of fifteen days from the time such certificate was so filed and served; but the court in its discretion may, or upon objection of the United States or the District of Columbia shall, after due notice, hold a hearing at which evidence as to the mental condition of the person so confined may be submitted, including the testimony of one or more psychiatrists from such hospital. The court shall weigh the evidence and, if the court finds that such person has recovered his sanity and will not in the reasonable future be dangerous to himself or others, the court shall order such person unconditionally released from further confinement in such hospital. If the court does not so find, the court shall order such person returned to such hospital. Where, in the judgment of the superintendent of such hospital, a person confined under subsection (f) above is not in such condition as to warrant his unconditional release, but is in a condition to be conditionally released under supervision, and such certificate is filed and served as above provided, such certificate shall be sufficient to authorize the court to order the release of such person under such conditions as the court shall see fit at the expiration of fifteen days from the time such certificate is filed and served pursuant to this section. The provisions as to hearing prior to unconditional release shall also apply to conditional releases, and, if, after a hearing and weighing the evidence, the court shall find that the condition of such person warrants his conditional release, the court shall order his release under such conditions as the court shall see fit, or, if the court does not so find, the court shall order such person returned to such hospital.

"(h) If an accused person is acquitted solely on the ground of mental disease or defect excluding responsibility and ordered confined in a hospital for the mentally ill, such person and his estate shall be charged with the expense of his support in such hospital.

"(i) Nothing herein contained shall preclude a person confined under the authority of this section from establishing his eligibility for release under the provisions of this section by a writ of habeas corpus.

"(j) The jury shall not be told by the court or counsel for the Government or the defendant at any time regarding the consequences of a verdict of not guilty or acquittal on the ground of mental disease or defect excluding responsibility.

"(k) The provisions of subsections (d) through (i) of this section shall supersede in the District of Columbia the provisions of any Federal statutes or parts thereof inconsistent with this section.

"(l) This section shall apply only to proceedings brought by information or indictment in the United States District Court for the District of Columbia and the District of Columbia Court of General Sessions and, except for the provisions of subsections (a), (b), and (c), to proceedings brought in the Juvenile Court of the District of Columbia."

SEC. 202. Nothing contained in the amendment made by section 201 of this title shall be deemed to alter, amend, or repeal section 928 or section 929 of the Act of March 3, 1901 (D.C. Code, secs. 24-302, 24-303), or the Act entitled "An Act relating to the testimony of physicians in the courts of the District of Columbia", received by the President May 13, 1896 (D.C. Code, sec. 14-308).

TITLE III

SEC. 301. (a) An officer or member of the Metropolitan Police force of the District of Columbia may arrest or detain any person abroad whom he has probable cause to believe is committing or has committed a crime, and may demand of him his name, address, business abroad, and whither he is going.

(b) Any person so questioned who fails to identify himself and explain his action to the satisfaction of the officer or member (as the case may be) may be further interrogated with respect to any matter for a period not to exceed four hours. In the case of a person detained under this section, such detention shall not be recorded as an arrest in any official record. At the end of such detention the person so detained shall be released or be arrested and charged with a crime.

TITLE IV

SEC. 401. Section 802 of the Act entitled "An Act to establish a code of law for the District of Columbia", approved March 3, 1901 (D.C. Code, sec. 22-703), is amended to read as follows:

"SEC. 802. (a) Whoever corruptly, by threats or force, endeavors to influence, intimidate, or impede any juror, witness, or officer in any court in the District in the discharge of his duties, or, by threats or force, in any other way obstructs or impedes or endeavors to obstruct or impede the due administration of justice therein, or whoever willfully endeavors by means of bribery, misrepresentation, intimidation, or force or threats of force, to obstruct, delay, or prevent the communication to an investigator of the District of Columbia government by any person of information relating to a violation of any criminal statute in effect in the District of Columbia, or injures any person or his property on account of the giving by such person or by any other person of such information to any such investigator in the course of the conduct of any criminal investigation, shall be fined not more than $1,000 or be imprisoned not more than three years, or both.

"(b) As used in this section, the term 'criminal investigation' means an investigation relating to a violation of any criminal statute in effect in the District of Columbia, and the term 'investigator' means an individual duly authorized by the Commissioners or their designated agent to conduct or engage in such an investigation."

TITLE V

SEC. 501. The definition of "crime of violence" contained in section 1 of the Act entitled "An Act to control the possession, sale, transfer, and use of pistols and other dangerous weapons in the District of Columbia, to provide penalties, to prescribe rules of evidence, and for other purposes", approved July 8, 1932 (D.C. Code, sec. 22-3201), is amended by inserting immediately after "burglary," the following: "robbery,".

TITLE VI

SEC. 601. Section 803 of the Act entitled "An Act to establish a code of law for the District of Columbia", approved March 3, 1901 (D.C. Code, sec. 22-501), is amended by inserting immediately after "for not" the following: "less than two years or".

SEC. 602. Section 823 of the Act entitled "An Act to establish a code of law for the District of Columbia", approved March 3, 1901 (D.C. Code, sec. 22-1801), is amended to read as follows:

"SEC. 823. BURGLARY.—(a) Whoever shall, either in the nighttime or in the daytime, break and enter, or enter without breaking, any dwelling, or room used as a sleeping apartment in any building, with intent to break or carry away any part thereof, or any fixture or other thing attached to or connected thereto or to commit any criminal offense, shall, if any person is in any part of such dwelling or sleeping apartment at the time of such breaking and entering, or entering without breaking, be guilty of burglary in the first degree. Burglary in the first degree shall be punished by imprisonment for not less than five years nor more than thirty years.

"(b) Except as provided in subsection (a) of this section, whoever shall, either in the night or in the daytime, break and enter, or enter without breaking, any dwelling, bank, store, warehouse, shop, stable, or other building or any apartment or room, whether at the time occupied or not, or any steamboat, canalboat, vessel, or other watercraft, or railroad car or any yard where any lumber, coal, or other goods or chattels are deposited and kept for the purpose of trade, with intent to break and carry away any part thereof or any fixture or other thing attached to or connected with the same, or to commit any criminal offense, shall be guilty of burglary in the second degree. Burglary in the second degree shall be punished by imprisonment for not less than two years nor more than fifteen years."

SEC. 603. Section 810 of the Act entitled "An Act to establish a code of law for the District of Columbia", approved March 3, 1901 (D.C. Code, sec. 22–2001), is amended by striking out "six months" and inserting in lieu thereof "four years".

SEC. 604. Section 869e of the Act entitled "An Act to establish a code of law for the District of Columbia", approved March 3, 1901 (D.C. Code, sec. 22–1513), is amended by adding the following new subsection at the end thereof:

"(f) Nothing in this section shall be construed to prohibit the giving or offering of any bonus or extra compensation to any manager, coach, or professional player, or to any league, association, or conference for the purpose of encouraging such manager, coach, or player to a higher degree of skill, ability, or diligence in the performance of his duties."

SEC. 605. Section 2 of the Act entitled "An Act to control the possession, sale, transfer, and use of pistols and other dangerous weapons in the District of Columbia, to provide penalties, to prescribe rules of evidence, and for other purposes", approved July 8, 1932 (D.C. Code, sec. 22–3202), is amended to read as follows:

"SEC. 2. If any person shall commit a crime of violence in the District of Columbia when armed with or having readily available any pistol or other firearm, or other dangerous or deadly weapon, including but not limited to, sawed-off shotgun, shotgun, machinegun, rifle, dirk, bowie knife, butcher knife, switchblade knife, razor, blackjack, billy, metallic or other false knuckles, he may in addition to the punishment provided for the crime be punished by imprisonment for an indeterminate number of years up to life as determined by the court. If a person is convicted more than once of having committed a crime of violence in the District of Columbia when armed with or having readily available any pistol or other firearm, or other dangerous or deadly weapon, including but not limited to, sawed-off shotgun, shotgun, machinegun, rifle, dirk, bowie knife, butcher knife, switchblade knife, razor, blackjack, billy, metallic or other false knuckles, then, notwithstanding any other provision of law, the court shall not suspend his sentence or give him a probationary sentence."

SEC. 606. Section 872 of the Act entitled "An Act to establish a code of law for the District of Columbia", approved March 3, 1901 (D.C. Code, sec. 22–2001), is amended to read as follows:

"SEC. 872. OBSCENITY.—(a)(1) It shall be unlawful in the District of Columbia for a person knowingly—

"(A) to sell, deliver, distribute, or provide, or offer or agree to sell, deliver, distribute, or provide any obscene, indecent, or filthy writing, picture, sound recording, or other article or representation;

"(B) to present, direct, act in, or otherwise participate in the preparation or presentation of, any obscene, indecent, or filthy play, dance, motion picture, or other performance;

"(C) to pose for, model for, print, record, compose, edit, write, publish, or otherwise participate in preparing for publication, exhibition, or sale, any obscene, indecent, or filthy writing, picture, sound recording, or other article or representation;

"(D) to sell, deliver, distribute, or provide, or offer or agree to sell, deliver, distribute or provide any article, thing, or device which is intended for or represented as being for indecent or immoral use;

"(E) to create, buy, procure, or possess any matter described in the preceding subparagraphs of this paragraph with intent to disseminate such matter in violation of this subsection;

"(F) to advertise or otherwise promote the sale of any matter described in the preceding subparagraphs of this paragraph; or

"(G) to advertise or otherwise promote the sale of material represented or held out by such person to be obscene.

"(2)(A) For purposes of subparagraph (E) of paragraph (1) of this subsection, the creation, purchase, procurement, or possession of a mold, engraved plate, or other embodiment of obscenity specially adapted for reproducing multiple copies or the possession of more than three copies, of obscene, indecent, or filthy material shall be prima facie evidence of an intent to disseminate such material in violation of this subsection.

"(B) For purposes of paragraph (1) of this subsection, the term 'knowingly' means having general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry of, the character and content of any article, thing, device, performance, or representation described in paragraph (1) of this subsection which is reasonably susceptible of examination.

"(3) When any person is convicted of a violation of this subsection, the court in its judgment of conviction may, in addition to the penalty prescribed, order the confiscation and disposal of any materials described in paragraph (1), which were named in the charge against such person and which were found in the possession or under the control of such person at the time of his arrest.

"(b)(1) It shall be unlawful in the District of Columbia for any person knowingly—

"(A) to sell, deliver, distribute, or provide, or offer or agree to sell, deliver, distribute, or provide to a minor—

"(i) any picture, photograph, drawing, sculpture, motion picture film, or similar visual representation or image of a person or portion of the human body, which depicts nudity, sexual conduct, or sado-masochistic abuse and which taken as a whole is patently offensive because it affronts prevailing standards in the adult community as a whole with respect to what is suitable material for minors; or

"(ii) any book, magazine, or other printed matter however reproduced or sound recording, which depicts nudity, sexual conduct, or sado-masochistic abuse or which contains explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct, or sado-masochistic abuse and which taken as a whole is patently offensive because it affronts prevailing standards in the adult community as a whole with respect to what is suitable material for minors; or

"(B) to exhibit to a minor, or to sell or provide to a minor an admission ticket to, or pass to, or to admit a minor to, premises whereon there is exhibited, a motion picture, show, or other presentation which, in whole or in part, depicts nudity, sexual conduct, or sado-masochistic abuse and which taken as a whole is patently offensive because it affronts prevailing standards in the adult community as a whole with respect to what is suitable material for minors.

"(2) For purposes of paragraph (1) of this subsection:

"(A) The term 'minor' means any person under the age of seventeen years.

"(B) The term 'nudity' includes the showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering, or the showing of the female breast with less than a full opaque covering of any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state;

"(C) The term 'sexual conduct' includes acts of sodomy, masturbation, homosexuality, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person be a female, breast.

"(D) The term 'sexual excitement' includes the condition of human male or female genitals when in a state of sexual stimulation or arousal.

"(E) The term 'sado-masochistic abuse' includes flagellation or torture by or upon a person clad in undergarments or a mask or bizarre costume, or

the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed.

"(F) The term 'knowingly' means having a general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry or both of—

"(i) the character and content of any material described in paragraph (1) of this subsection which is reasonably susceptible of examination by the defendant; and

"(ii) the age of the minor.

"(c) It shall be an affirmative defense to a charge of violating subsection (a) or (b) of this section that the dissemination was to institutions or individuals having scientific, educational, or other special justification for possession of such material.

"(d) A person convicted of violating subsection (a) or (b) of this section shall for the first offense be fined not more than $3,000 or imprisoned not more than one year, or both. A person convicted of a second or subsequent offense under subsection (a) or (b) of this section shall be fined not less than $1,000 nor more than $5,000 or imprisoned not less than six months or more than three years, or both."

SEC. 607. Section 825a of the Act entitled "An Act to establish a code of law for the District of Columbia", approved March 3, 1901 (D.C. Code, sec. 22-3105), is amended by striking out "or by imprisonment not exceeding ten years." and inserting in lieu thereof the following: "and by imprisonment for not less than four years or more than ten years.".

SEC. 608. Whoever shall make or cause to be made to the Metropolitan Police force of the District of Columbia, or to any officer or member thereof, a false or fictitious report of the commission of any criminal offense within the District of Columbia, or a false or fictitious report of any other matter or occurrence of which such Metropolitan Police force is required to receive reports, or in connection with which such Metropolitan Police force is required to conduct an investigation, knowing such report to be false or fictitious; or who shall communicate or cause to be communicated to such Metropolitan Police force, or any officer or member thereof, any false information concerning the commission of any criminal offense within the District of Columbia or concerning any other matter or occurrence of which such Metropolitan Police force is required to receive reports, or in connection with which such Metropolitan Police force is required to conduct an investigation, knowing such information to be false, shall be punished by a fine of not exceeding $300 or by imprisonment not exceeding thirty days.

TITLE VII

SEC. 701. Section 10 of the Act of March 3, 1933 (D.C. Code, sec. 23-610), is amended by inserting "(a)" immediately after "SEC. 10.", and by adding the following new subsections:

"(b) An officer or member of the Metropolitan Police force who, in accordance with section 397 of the Revised Statutes of the United States, relating to the District of Columbia, arrests without a warrant a person for committing a misdemeanor may, instead of taking him into custody, issue a citation requiring such person to appear before an official of the Metropolitan Police force designated under subsection (a) of this section to act as a clerk of the District of Columbia Court of General Sessions.

"(c) Whenever a person is arrested without a warrant for committing a misdemeanor and is booked and processed pursuant to law, an official of the Metropolitan Police force designated under subsection (a) of this section to act as a clerk of the District of Columbia Court of General Sessions may issue a citation to him for an appearance in court or at some other designated place, and release him from custody.

"(d) No citation may be issued under subsection (b) or (c) of this section unless the person authorized to issue the citation has reason to believe that the arrested person will not cause injury to persons or damage to property or that he will make an appearance in answer to the citation.

"(e) Whoever willfully fails to appear as required in a citation, shall be fined not more than the maximum provided for the misdemeanor for which such citation was issued or imprisoned for not more than one year, or both.

Prosecution under this subsection shall be by the prosecuting officer responsible for prosecuting the offense for which the citation is issued."

SEC. 702. (a) Section 2 of the Act entitled "An Act to establish the District of Columbia Bail Agency, and for other purposes" approved July 26, 1966 (80 Stat. 327) is amended to read as follows:

"SEC. 2. There is hereby created for the District of Columbia the District of Columbia Bail Agency (hereinafter referred to as the 'agency') which shall secure pertinent data and provide for any judicial officer in the District of Columbia or any officer or member of the Metropolitan Police force issuing citations, reports containing verified information concerning any individual with respect to whom a bail or citation determination is to be made."

(b) (1) Section 4 of such Act is amended by redesignating subsections (d) and (e) as subsections (e) and (f), respectively, and by inserting the following new subsection after subsection (c):

"(d) The agency, when requested by a member or officer of the Metropolitan Police force acting pursuant to court rules governing the issuance of citations in the District of Columbia, shall furnish to such member or officer a report as provided in subsection (a)."

(2) The second sentence of subsection (f) of such section 4 (as so redesignated by paragraph (1) of this subsection) is amended by inserting ", including requiring the execution of a bail bond with sufficient solvent sureties," immediately after "such conditions".

TITLE VIII

SEC. 801. (a) The Commissioners of the District of Columbia or their designated representatives are hereby authorized to supervise persons released into their custody in accordance with judicial orders issued pursuant to section 3146 or 3148 of title 18, United States Code.

(b) Notwithstanding the provisions of section 4(c) of the Act of July 26, 1966, the District of Columbia Bail Agency is authorized to provide reports to the Commissioners of the District of Columbia or their designated representatives with respect to any person released into their custody pursuant to section 3146 or 3148 of title 18, United States Code. The report so furnished shall be used only in connection with the supervision of released persons.

SEC. 802. (a) Section 5024 of title 18, United States Code, is amended by striking out ", and to youth offenders convicted in the District of Columbia of offenses under any law of the United States not applicable exclusively to such District and to other youth offenders convicted in the District to the extent authorized under section 5025." and inserting in lieu thereof the following: "and in the District of Columbia."

(b) Section 5025 of such title is amended to read as follows:

"§ 5025. Applicability to the District of Columbia

"(a) The Board of Commissioners of the District of Columbia is authorized to provide its own facilities and personnel for the treatment and rehabilitation of youth offenders convicted of violations of any law of the United States applicable exclusively to the District of Columbia or to contract with the Director of the Bureau of Prisons for their treatment and rehabilitation, the cost of which may be paid from the appropriation for the District of Columbia.

"(b) When facilities of the District of Columbia are utilized by the Attorney General for the treatment and rehabilitation of youth offenders convicted of violations of laws of the United States not applicable exclusively to the District of Columbia, the cost shall be paid from the 'Appropriation for Support of United States Prisoners'.

"(c) All youth offenders committed to institutions of the District of Columbia shall be under the supervision of the Board of Commissioners of the District of Columbia, and the Board shall provide for their maintenance, treatment, rehabilitation, supervision, conditional release, and discharge in conformity with the objectives of this chapter."

(c) The table of sections of chapter 402 of such title is amended by striking out the item relating to section 5025 and inserting in lieu thereof the following:

"5025. Applicability to the District of Columbia."

SEC. 803. Section 4122 of title 18, United States Code, is amended—

(1) by inserting in subsection (d) "(1)" immediately after "(d)",

(2) by amending subsection (e) by striking out "(e)" and inserting in lieu thereof "(2)", and by striking out "subsection (d) of this section" and inserting in lieu thereof "paragraph (1) of this subsection", and

(3) by adding at the end the following new subsection:

"(e)(1) The provisions of this chapter shall apply to the industrial employment and training of prisoners confined in any penal or correctional institution under the direction of the Board of Commissioners of the District of Columbia to the extent and under terms and conditions agreed upon by the Board of Commissioners, the Attorney General, and the Board of Directors of Federal Prison Industries.

"(2) The Board of Commissioners of the District of Columbia may, without exchange of funds, transfer to the Federal Prison Industries any property or equipment suitable for use in performing the functions and duties covered by an agreement entered into under subsection (e)(1) of this section.

"(3) Nothing in this chapter shall be construed to affect the provisions of the Act approved October 3, 1961 (D.C. Code, sections 24–451 et seq.), entitled 'An Act to establish in the Treasury a correctional industries fund for the government of the District of Columbia, and for other purposes.'"

SEC. 804. (a) Section 15–714(a) of the District of Columbia Code is amended to read as follows:

"(a) The fees and travel allowances to be paid any witness attending in a criminal case in the District of Columbia Court of General Sessions shall be the same as those paid to witnesses who attend before the United States District Court for the District of Columbia."

(b) Section 15–716 of the District of Columbia Code is amended by striking "not exceeding $500 at any one time,".

TITLE IX

SEC. 901. Whoever, prior to the date of enactment of this Act, commits any act or engages in any conduct which constitutes an offense under provision of law amended by this Act, shall be sentenced in accordance with the law in effect on the date he commits such act or engages in such conduct.

SEC. 902. Nothing in this Act shall be construed so as to affect the authority vested in the Board of Commissioners of the District of Columbia by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824). The performance of any function vested by this Act in the Board of Commissioners or in any office or agency under the jurisdiction or control of said Board of Commissioners may be delegated by said Board of Commissioners in accordance with section 3 of such plan.

SEC. 903. If any provision of or any amendment made by this Act or the application thereof to any person or circumstance is held invalid, the other provisions of or other amendments made by this Act and the application of such provisions and amendments to other persons or circumstances shall not be affected thereby.

Passed the House of Representatives June 26, 1967.

Attest: W. PAT JENNINGS,
Clerk.

The CHAIRMAN. Our hearings today will conclude at the noon hour. In these next 2 hours, two murders will have been committed in the United States, 40 rapes perpetrated, 120 automobiles stolen, and 240 robberies carried out. At least, this is the statistical certainty based upon today's skyrocketing nationwide crime rate.

In the next 2 hours, each person here—man, woman, and child alike—will also be running up a bill they will pay one way or another before the year is out. Crime each year in this country costs every person $143, each family $574, and the American people $27 billion. How do you pay your part of the bill? By increased costs on all items purchased, taxes, insurances, utilities, and countless hidden ways.

Obviously, the misery and human suffering that crime inflicts cannot be measured in terms of statistics or money. Three million Americans were crime victims last year, and more than 3 million Americans

are expected to be physically harmed, killed, robbed, or stolen from in 1967.

Succinctly, this is the tragic but true atmosphere that pervades any examination these days into the question: What can we do to reduce crime?

Members of the committee and some of you witnesses sitting out there have spent more time trying to wrestle with this enigma the last 5 years than in any other single legislative endeavor. We have made progress in some areas, but these achievements have not showed up affirmatively on the District's criminal scoreboard. Possibly, without that progress, the crime scores today would be worse.

These are some of my thoughts as I think back over the hundreds and hundreds of hours we have spent in the last 5 or 6 years of hearings, private talks, executive committee sessions, Senate floor debate, House-Senate conferences, and in private thought about what to do more effectively about crime in the Nation's Capital City and around this country.

But to make headway against this enemy, try we shall, and try we must. We are perfectly aware of the over-riding concern of Members of Congress, residents of, and visitors to, this great National Capital City about the unanswered questions of this crime picture and what to do about it. We hope these hearings we continue today will help.

Crime in Washington, D.C., at the present rate, will set another all-time record in 1967. Crime here last month increased sharply with a 40 percent jump over June 1966. Murder was up by 23 percent, rape by 87 percent, robbery by 97 percent, housebreaking by 60 percent, and larceny by 32 percent.

The hearings we resume today are designed to examine into the various provisions of the House-passed omnibus crime bill, H.R. 10783 and into certain Senate bill alternatives.

I want to make it clear that I do not intend in this hearing to get into the various bills for increasing the judiciary here, that, is increasing the number of judges, increasing salaries, and related questions. We very definitely will go into that, but in this hearing we will keep as closely as we can to the matters tied to the House-passed bill, and, as I say, the related Senate bills and the various subjects that are embraced within the nine or 10 titles of the House-passed bill.

At this point in the record, in addition to H.R. 10783 which I have already placed in the record, there will be included in the record the related Senate bills, S. 1509, S. 1510, S. 1512, S. 1513, S. 1516, S. 1517, S. 1518, S. 1519, S. 1520, S. 1521, S. 1522, S. 1523, S. 1524, and S. 1825 and S. 484.

(The bills referred to follow:)

[S. 1509, 90th Cong., first sess.]

A BILL Relating to the use of citations by the Metropolitan Police force of the District of Columbia, in lieu of formal arrest, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 10 of the Act of March 3, 1933 (47 Stat. 1485; D.C. Code, sec. 23–610), is amended by designating the present text as subsection "(a)" and by adding the following new subsections:

"(b) An officer or member of the Metropolitan Police force acting without a warrant who has grounds for arrest authorized by law may, instead of taking

him into custody, issue a citation requiring a person to appear before an official of the Metropolitan Police force designated to act as a clerk of the District of Columbia court of general sessions.

"(c) Whenever a person is arrested without a warrant and has been booked and processed pursuant to law, an official of the Metropolitan Police force designated to act as a clerk of the District of Columbia court of general sessions may issue a citation to him for an appearance in court or at some other designated place, and release him from custody.

"(d) The District of Columbia court of general sessions shall prescribe rules specifying the offenses for which and the circumstances under which citations may be issued, as well as rules governing the issuance of and compliance with citations.

"(e) Whoever willfully fails to appear as required in a citation, shall, (1) if cited for a felony be fined not more than $5,000 or imprisoned not more than five years, or both, or (2) if cited for a misdemeanor be fined not more than the maximum provided for such misdemeanor or imprisoned for not more than one year, or both. Prosecution under this subsection shall be by the prosecuting officer responsible for prosecuting the offense for which the citation is issued."

SEC. 2. (a) Section 2 of the Act entitled "An Act to establish the District of Columbia Bail Agency, and for other purposes", approved July 26, 1966 (80 Stat. 327) is amended by striking out section 2 and inserting in lieu thereof the following new section:

"SEC. 2. There is hereby created for the District of Columbia the District of Columbia Bail Agency (hereinafter referred to as the 'Agency') which shall secure pertinent data and provide for any judicial officer in the District of Columbia or any officer or member of the Metropolitan Police force issuing citations, reports containing verified information concerning any individual with respect to whom a bail or citation determination is to be made."

(b) Section 4 of said Act is amended by redesignating subsections "(d)" and "(e)" as "(e)" and "(f)", respectively, and by inserting the following new subsection (d):

"(d) The Agency, when requested by a member or officer of the Metropolitan Police force acting pursuant to court rules governing the issuance of citations in the District of Columbia, shall furnish to such member or officer a report as provided in subsection (a)."

[S. 1510, 90th Cong., first sess.]

A BILL Relating to the obstruction of the administration of justice in the District of Columbia by threats or force, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 802 of the Act of March 3, 1901, establishing a code of law for the District of Columbia (31 Stat. 1330; D.C. Code, sec. 22-703), is amended to read as follows:

"SEC. 802. (a) Whoever corruptly, by threats or force, endeavors to influence, intimidate, or impede any jurors, witness, or officer in any court in the District in the discharge of his duties, or, by threats or force, in any other way obstructs or impedes or endeavors to obstruct or impede the due administration of justice therein, or whoever willfully endeavors by means of bribery, misrepresentation, intimidation, or force or threats of force, to obstruct, delay, or prevent the communication to an investigator of the District of Columbia government by any person of information relating to a violation of any criminal statute or regulation in effect in said District, or injures any person or his property on account of the giving by such person or by any other person of such information to any such investigator in the course of the conduct of any criminal investigation, shall be fined not more than $1,000 or be imprisoned not more than three years, or both.

"(b) As used in this section, 'criminal investigation' means an investigation relating to a violation of any criminal statue or regulation in effect in the District of Columbia, including, without limitation, any regulation for the internal administration of the government of the District of Columbia or any department or agency thereof, and 'investigator' means an individual duly authorized by the Commissioners or their designated agent to conduct or engage in such an investigation."

[S. 1512, 90th Cong., first sess.]

A BILL Relating to material witnesses in the District of Columbia

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 401 of the Revised Statutes of the United States relating to the District of Columbia (D.C. Code, sec. 4-144), is amended to read as follows:

"SEC. 401. (a) Whenever there is probable cause to believe that (1) a person witnessed the commission of a crime punishable by imprisonment for more than one year, (2) his testimony will be material at the trial of a person charged with the crime, and (3) he will not be available to testify at the trial, such person may be taken into custody pursuant to a warrant, unless taken into custody at the scene of the crime, by an officer or member of the Metropolitan Police force and immediately brought before a judicial officer as defined in section 3152 of title 18, United States Code. If the judicial officer determines that (1) the person witnessed the commission of a crime punishable by imprisonment for more than one year, and (2) his testimony will be material at the trial of a person charged with the crime, he shall treat the witness in accordance with the Bail Reform Act of 1966 (18 U.S.C. 3140 and 3150).

"A person who is detained under this subsection shall, for the period of his detention, be entitled to the same fees which are paid to witnesses attending before the United States District Court for the District of Columbia.

"(b) The Board of Commissioners shall provide suitable accommodations within the District of Columbia for persons detained as material witnesses. Such accommodations shall be separate and apart from quarters used for the confinement of persons charged with or convicted of crime. The Commissioners may, in their discretion, enter into agreements with any Federal agency, including a United States court, for the use of suitable space under the jurisdiction of any such agency, and such agency is hereby authorized to allow the use of such space for the purpose of providing the accommodations required by this subsection. The Commissioners may also utilize appropriate space which is owned privately or which is owned or leased by the government of the District of Columbia."

[S. 1513, 90th Cong., first sess.]

A BILL To establish the Commission on Revision of the Criminal Laws of the District of Columbia

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CREATION OF COMMISSION.—The Commission on Revision of the Criminal Laws of the District of Columbia is hereby established.

SEC. 2. MEMBERSHIP OF COMMISSION.—The Commission shall be composed of eleven members, as follows:

(1) Two Members of the Senate appointed by the President of the Senate;

(2) Two Members of the House of Representatives appointed by the Speaker of the House of Representatives;

(3) Four Members appointed by the Board of Commissioners of the District of Columbia one of whom the Board shall designate as Chairman;

(4) (a) One circuit judge appointed by the Chief Judge of the United States Court of Appeals for the District of Columbia Circuit;

(b) One district judge appointed by the Chief Judge of the United States District Court for the District of Columbia; and

(c) One general sessions judge appointed by the Chief Judge of the District of Columbia court of general sessions.

SEC. 3. FUNCTIONS OF THE COMMISSION.—The Commission shall make a full and complete review and study of the statutory and case law applicable in the District of Columbia for the purpose of formulating and recommending to the Congress a revised code of criminal law and procedure for the District of Columbia. The Commission shall include in its recommendations proposals for the repeal of unnecessary or undesirable statutes and such changes in the penalty structure as the Commission may feel will better serve the ends of justice.

SEC. 4. COMPENSATION OF MEMBERS OF THE COMMISSION.—(a) Members of Congress and members of the executive and judicial branches of the Federal

or District of Columbia governments who are members of the Commission shall serve without compensation in addition to that received for their services in such other branch of government; but they shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of duties vested in the Commission.

(b) Members from private life shall each receive $100 per diem when engaged in the actual performance of duties vested in the Commission, plus reimbursement for travel, subsistence, and other necessary expenses incurred by them in the performance of such duties.

SEC. 5. ADVISORY COMMITTEE.—(a) The Commission shall have the power to appoint an advisory committee, the functions of which shall include advising, counseling, proffering to the Commission appropriate recommendations, and the performance of such other functions, not inconsistent with the purposes of this Act, as may be assigned to it by the Commission.

(b) Members of the advisory committee shall not be deemed to be officers or employees of the United States by virtue of such service and shall receive no compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them by virtue of such service to the Commission.

SEC. 6. STAFF OF THE COMMISSION.—The Chairman of the Commission is authorized to appoint and fix the compensation of such personnel as he deems necessary to carry out the Commission's functions. He is also authorized to procure services to the same extent as is authorized for the executive departments by section 3109 of title 5, United States Code, at rates not to exceed $100 per diem for individuals.

SEC. 7. COOPERATION BY DEPARTMENTS AND AGENCIES.—The Commission is authorized to request from any department, agency, or independent instrumentality of the Government any information and assistance it deems necessary to carry out its functions under this Act; and each such department, agency, or instrumentality is authorized to cooperate with the Commission and, to the extent permitted by law, to furnish such information and assistance to the Commission upon request made by the Chairman or any other member when acting as Chairman.

SEC. 8. REPORT OF THE COMMISSION; TERMINATION.—The Commission shall submit interim reports to the Board of Commissioners of the District of Columbia and the Congress at such times as the Commission may deem appropriate, and in any event within two years after the date of this enactment, and shall submit its final report within three years after the date of enactment. The Commission shall cease to exist sixty days after the date of the submission of its final report.

SEC. 9. AUTHORIZED APPROPRIATION.—There is hereby authorized to be appropriated to the District of Columbia out of any money in the Treasury not otherwise appropriated such sums as may be necessary to carry out the purposes of this Act.

[S. 1516, 90th Cong., first sess.]

A BILL Authorizing the Commissioners of the District of Columbia to supervise persons released into their custody in accordance with judicial orders issued pursuant to section 3146 or 3148 of title 18, United States Code; to authorize the District of Columbia Bail Agency to provide reports to the Commissioners of the District of Columbia with respect to any person released into the custody of the Commissioners pursuant to section 3146 or 3148 of title 18, United States Code; and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SUPERVISED RELEASE PRIOR TO TRIAL OR AFTER CONVICTION

SECTION 1. (a) The Commissioners of the District of Columbia or their designated representatives are hereby authorized to supervise persons released into their custody in accordance with judicial orders issued pursuant to section 3146 or 3148 of title 18, United States Code.

(b) The District of Columbia Bail Agency is authorized to provide reports to the Commissioners of the District of Columbia or their designated representatives with respect to any person released into their custody pursuant to section 3146 or 3148 of title 18, United States Code, notwithstanding the provisions of

section 4(c) of the Act approved July 20, 1966 (80 Stat. 327, 328). The report so furnished shall be used only in connection with the supervision of released persons.

SUPERVISED RELEASE OF YOUTH OFFENDERS

SEC. 2. (a) Section 5024 of title 18, United States Code, is amended by deleting ", and to youth offenders convicted in the District of Columbia of offenses under any law of the United States not applicable exclusively to such District and to other youth offenders convicted in the District to the extent authorized under section 5025" and substituting therefor: "and in the District of Columbia."

(b) Section 5025 of the title is amended to read:

"§ 5025. Applicability to the District of Columbia

"(a) The Board of Commissioners of the District of Columbia is authorized to provide its own facilities and personnel for the treatment and rehabilitation of youth offenders convicted of any law of the United States applicable exclusively to the District of Columbia; or to contract with the Director of the Bureau of Prisons for their treatment and rehabilitation, the cost of which may be paid from the appropriation for the District of Columbia.

"(b) When facilities of the District of Columbia are utilized by the Attorney General for the treatment and rehabilitation of youth offenders convicted of violation of a law of the United States not applicable exclusively to the District of Columbia, the cost shall be paid from the 'Appropriation for Support of United States Prisoners.'

"(c) All youth offenders committed to institutions of the District of Columbia shall be under the jurisdiction and control of the Board of Commissioners of the District of Columbia, and the Board shall provide for their maintenance, treatment, rehabilitation, supervision, conditional release, and discharge in conformity with the objectives of this chapter."

(c) The analysis of section 5025 is amended to read:

"Sec. 5025. Applicability to the District of Columbia."

FEDERAL PRISON INDUSTRIES

SEC. 3. Section 4122 of title 18, United States Code, is amended by (1) redesignating subsection (d) as subsection (d)(1); (2) redesignating subsection (e) as subsection (d)(2) and amending "subsection (d)" in the last line thereof to read "subsection (d)(1)"; and (3) adding a new subsection (e) as follows:

"(e)(1) The provisions of this chapter shall apply to the industrial employment and training of prisoners confined in any penal or correctional institution under the direction of the Board of Commissioners of the District of Columbia to the extent and under terms and conditions agreed upon by the Board of Commissioners, the Attorney General, and the Board of Directors of Federal Prison Industries.

"(2) The Board of Commissioners of the District of Columbia may, without exchange of funds, transfer to Federal Prison Industries any property or equipment suitable for use in performing the functions and duties covered by an agreement entered into under subsection (e)(1) of this section.

"(3) Nothing in this chapter shall be construed to affect the provisions of the Act approved October 3, 1964 (78 Stat. 1000; D.C. Code, secs. 24–151 et seq.), entitled "An Act to establish in the Treasury a correctional industries fund for the government of the District of Columbia, and for other purposes."

PLEADING INSANITY—ESCAPE OF MENTALLY ILL

SEC. 4. (a) Subsection (c) section 927 of the Act entitled "An Act to establish a code of law for the District of Columbia", approved March 3, 1901 (D.C. Code, sec. 24–301), is amended to read as follows:

"(c) (1) No accused shall plead or prove insanity at the time of the commission of an offense, unless he or his attorney files with the court and with the United States attorney or the Corporation Counsel of the District of Columbia, whichever officer is charged with prosecuting the accused, written notice of his intention to do so. Such notice shall be filed (a) no later than thirty days prior to trial, if the court has not ordered a mental examination; (b) no later than fifteen days after receipt by the accused or his attorney of the report of

the examining psychiatrist, if the court has ordered a mental examination; or (c) at such other time as the court may for good cause direct.

"(2) When any person tried upon an indictment or information for an offense, or tried in the juvenile court of the District of Columbia for an offense, is acquitted solely on the ground that he was insane at the time of its commission, that fact shall be set forth by the jury in their verdict, and the court shall order such person to be confined in a hospital for the mentally ill."

(b) Subsection (d) of said section is amended to read as follows:

"(d) When a person has been ordered confined in a hospital for the mentally ill pursuant to this section and has escaped from such hospital, the court which ordered confinement shall, upon request of the Government, order the return of the escaped person to such hospital. The return order shall be effective throughout the United States. Any Federal judicial officer within whose jurisdiction the escaped person shall be found shall, upon receipt of the return order issued by the committing court, cause such person to be apprehended and delivered up for return to such hospital."

WITNESS FEES AND TRAVEL ALLOWANCES

SEC. 5. (a) Section 15-714(a) of the District of Columbia Code is amended to read as follows:

"(a) The fees and travel allowances to be paid any witness attending in a criminal case in the District of Columbia court of general sessions shall be the same as those paid to witnesses who attend before the United States District Court for the District of Columbia."

(b) Section 15-716 of the District of Columbia Code is amended by striking "not exceeding $500 at any one time,".

EFFECTIVE DATE

SEC. 6. (a) Section 1 and section 2 shall become effective ninety days after the date of enactment of this Act.

(b) Section 5 shall become effective one hundred and eighty days after the date of enactment of this Act.

[S. 1517, 90th Cong., first sess.]

A BILL Relating to material witnesses in the District of Columbia

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 401 of the Revised Statutes of the United States, relating to the District of Columbia (D.C. Code, sec. 4-144), is amended to read as follows:

"SEC. 401 (a) Whenever, in a criminal case in the District of Columbia, there is reasonable ground to believe that any person is a material and necessary witness to the commission of any crime or attempt to commit any crime punishable by imprisonment for one year or more, and there is a reasonable probability that such person will not be available to testify at the trial of the person charged with such offense, such person so believed to be a material and necessary witness may be taken, pursuant to a subpena, by an officer or member of the Metropolitan Police force, within a reasonable time, before a judge of the United States District Court for the District of Columbia or a judge of the District of Columbia Court of General Sessions or a United States commissioner; except that no such subpena shall be required if such person is taken into custody at the scene of the crime. Such judge or commissioner shall afford such person a hearing and shall, prior to commencing the hearing, advise that person as to his constitutional rights and that he is entitled to consult with, and be represented by, counsel. Such judge or commissioner shall, after a hearing is afforded to such person and the judge or commissioner is satisfied by testimony given under oath that such person is a material and necessary witness and that there is reasonable probability that he will not be available at the trial as provided in this subsection, require such witness to post bond or collateral as security that he will appear and testify at such trial. Upon the failure of such witness to post such bond or collateral after a reasonable opportunity to do so, the judge or commissioner shall order the further detention of such witness until such time as he appears and gives testimony in such criminal case or until such criminal

case has been finally disposed of otherwise. Notwithstanding any other provision of this subsection, upon the motion of any witness detained under this section and a showing that he has been detained for an unreasonable length of time, such judge or commissioner may order the release of such witness. The detention, as herein provided, of any such witness shall not constitute an arrest within the meaning of that term as used in any other law or in any rule or regulation. Any witness who, following such hearing, is ordered detained under this subsection shall, during that period of his detention following such hearing, be entitled to be paid amounts equivalent to the amounts payable to witnesses testifying in the court in which such trial with respect to such witness is ordered detained is to be conducted.

"(b) The Board of Commissioners shall provide suitable accommodations within the District of Columbia for the detention of persons who are unable or who refuse to furnish security for their appearance as witnesses, as provided in subsection (a). Such accommodations shall be separate and apart from quarters used for the confinement of persons charged with crime. The said Commissioners may, in their discretion, enter into agreements with any Federal agency, including the United States courts, for the use of suitable space in a building under the jurisdiction of any such agency, and such agency is hereby authorized to allow the use of such space for the purpose of providing the accommodations required by this subsection. In carrying out the purposes of this Act, the said Commissioners may utilize any appropriate space in any building which is owned privately or which is owner leased by the government of the District of Columbia. In the case of any witness detained by an officer other than an officer or member of the Metropolitan Police force, the District of Columbia shall be reimbursed for the accommodations furnished such witness at rates to be determined by the Commissioners."

[S. 1518, 90th Cong., first sess.]

A BILL Relating to the admissibility of evidence, including statements and confessions, in the courts of the District of Columbia

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) in the courts of the District of Columbia, evidence, including, but not limited to, statements and confessions, otherwise admissible, shall not be inadmissible solely because of delay in taking an arrested person before a commissioner or other officer empowered to commit persons charged with offenses against the laws of the United States.

(b) If a person in the custody of a law-enforcement officer makes a confession or other statement during any pretrial questioning by a law-enforcement officer, such confession or other statement shall be admissible only if—

(1) immediately prior to any questioning of such person he is advised that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the assistance of an attorney (either retained by or appointed for him) prior to and during such questioning; and

(2) in the case of such person who makes a valid waiver of his right to have the assistance of an attorney during questioning, the aggregate period of such questioning, exclusive of interruptions—

(A) during the absence of an attorney, and

(B) prior to the time such person is taken before a commissioner or other officer empowered to commit persons charged with offenses against the laws of the United States,

does not exceed four hours.

[S. 1519, 90th Cong., first sess.]

A BILL Designating robbery in the District of Columbia as a crime of violence

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the definition of "crime of violence" contained in section 1 of the Act entitled "An Act to control the possession, sale, transfer, and use of pistols and other dangerous weapons in the District of

Columbia, to provide penalties, to prescribe rules of evidence, and for other purposes", approved July 8, 1932 (D.C. Code, sec. 22-3201), is amended by inserting immediately after "burglary," the following: "robbery,".

[S. 1520, 90th Cong., first sess.]

A BILL To amend section 823 of the Act entitled "An Act to establish a code of law for the District of Columbia", approved March 3, 1901 (31 Stat. 1323; D.C. Code, sec 22 1801), relating to burglary

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 823 of the Act entitled "An Act to establish a code of law for the District of Columbia", approved March 3, 1901 (31 Stat. 1323; D.C. Code, sec. 22-1801), is amended to read as follows:

"SEC. 823. BURGLARY.—(a) Whoever shall either in the nighttime or in the daytime, break and enter, or enter without breaking, any dwelling, or room used as a sleeping apartment in any building, with intent to break or carry away any part thereof, or any fixture or other thing attached to or connected thereto or to commit any criminal offense, shall, if any person is in the actual occupation of any part of such dwelling or sleeping apartment at the time of such breaking and entering, or entering without breaking, be guilty of burglary in the first degree. Burglary in the first degree shall be punished by imprisonment for not less than two years nor more than twenty years.

"(b) Except as provided in subsection (a) of this section, whoever shall, either in the nighttime or in the daytime, break and enter, or enter without breaking, any dwelling, bank, store, warehouse, shop, stable or other building, or any apartment or room, whether at the time occupied or not or any steamboat, canalboat, vessel, or other watercraft, or railroad car, or any yard where any lumber, coal, or other goods or chattels are deposited and kept for the purpose of trade, with intent to break and carry away any part thereof or any fixture or other thing attached to or connected with the same, or to commit any criminal offense, shall be guilty of burglary in the second degree shall be punished by imprisonment for not less than one year nor more than fifteen years."

[S. 1521, 90th Cong., first sess.]

A BILL Relating to the making of false or fictitious reports of the commission of criminal offenses in the District of Columbia, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whoever shall make or cause to be made to the Metropolitan Police Department of the District of Columbia, or to any officer or member thereof, a false or fictitious report of the commission of any criminal offense within the District of Columbia, or a false or fictitious report of any other matter or occurrence of which such Metropolitan Police Department is required to receive reports, or in connection with which such Metropolitan Police Department is required to conduct an investigation, knowing such report to be false or fictitious; or shall communicate or cause to be communicated to such Metropolitan Police Department, or any officer or member thereof, any false information concerning the commission of any criminal offense within the District of Columbia or concerning any other matter or occurrence of which such Metropolitan Police Department is required to receive reports, or in connection with which such Metropolitan Police Department is required to conduct an investigation, knowing such information to be false, shall be punished by a fine not exceeding $300 or by imprisonment not exceeding thirty days.

SEC. 2. Section 869e of the Act entitled "An Act to establish a code of law for the District of Columbia," approved March 3, 1901 (D.C. Code, sec. 22-1513), is amended by adding the following new subsection at the end thereof:

"(f) Nothing in this section shall be construed to prohibit the giving or offering of any bonus or extra compensation to any manager, coach, or professional player, or to any league, association, or conference for the purpose of encouraging such manager, coach, or player to a higher degree of skill, ability, or diligence in the performance of his duties."

[S. 1522, 90th Cong., first sess.]

A BILL To amend section 872 of the Act entitled "An Act to establish a code of law for the District of Columbia", approved March 3, 1901 (D.C. Code, sec. 22-2001)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 872 of the Act entitled "An Act to establish a code of law for the District of Columbia", approved March 3, 1901 (D.C. Code, sec. 22-2001), is amended to read as follows:

"SEC. 872. INDECENT PUBLICATIONS. (a) Whoever, with knowledge of the obscene character of the material, sells, or offers to sell, or give away, in the District, or has in his possession with the intent to sell, or give away or to exhibit to another, any obscene, lewd, or indecent book, pamphlet, drawing engraving, picture photograph, instrument magazine story paper, writing, card, print, motion picture film, image, cast slide figure statute, phonograph record, wire, tape, or other sound recording, or other presentation or article of indecent or immoral use or advertises the same for sale, or writes or prints any letter, circular, handbill, book, pamphlet, or notice of any kind stating by what means any such articles may be obtained, or advertises any drug, nostrum, or instrument intended to produce abortion, or otherwise participates in, or by bill, poster, or otherwise advertises, any public exhibition, show, performance or play offending the public decency shall be fined not more than $5,000, or imprisoned not more than one year, or both.

"(b) Whoever in the District acts in, poses for, models for, prints, records, composes, edits, writes, publishes, or offers to publish, or produces or participates in the production of any obscene, lewd, or indecent book, pamphlet, drawing, engraving, picture, photograph, instrument, magazine, story, paper, writing, card, print, motion picture film, image, cast, slide, figure, statue, phonograph record, wire, tape, or other sound recording, or other presentation or article of indecent or immoral use, or advertises the same for sale, or writes or prints any letter, circular, handbill, book, pamphlet, or notice of any kind stating by what means any such articles may be obtained, with knowledge that the same is obscene and is for the purpose of being sold, given away, or exhibited to another, shall be fined not more than $5,000, or imprisoned not more than one year, or both.

"(c) Any obscene, lewd, or indecent matter seized or impounded by any officer or member of the Metropolitan Police Department shall be disposed of in such way as the court, in its discretion, may determine desirable (including the destruction of such matter), but in no event shall such matter be destroyed until after the expiration of the period during which an appeal may be taken or, if an appeal is taken, during the pending of such appeal.

"(d) Nothing in this section shall apply to a licensee under the Communications Act of 1934, as amended, while engaging in activities regulated pursuant to such Act."

[S. 1523, 90th Cong., first sess.]

A BILL To amend the Act of March 3, 1901, as amended, regarding the defense of insanity in the District of Columbia

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 927 of the Act entitled "An Act to establish a code of law for the District of Columbia", approved March 3, 1901, as amended (D.C. Code, sec. 24-301), is amended by adding at the end thereof the following new subsection:

"(f)(1) Insanity is an affirmative defense which the defendant must establish by showing of substantial evidence.

"(2) Insanity shall not be a defense unless the accused or his attorney files with the court and serves upon the prosecuting attorney written notice of his intention to rely upon such defense (A) no later than thirty days prior to trial if there has been no court order for mental examination or fifteen days after receipt by the court of the report of the examining physician if there was a court order for mental examination, or (B) at such other time as the court may for good cause permit. The court may extend the time for such notice in order to prevent injustice.".

[S. 1824, 90th Cong., first sess.]

A BILL Authorizing arrests without a warrant in the District of Columbia in connection with certain misdemeanors, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 897 of the Revised Statutes of the District of Columbia (section 4–140, D.C. Code, 1961 edition) is amended (a) by designating its present text as subsection "(a)", (b) by deleting the words "police force" wherever they appear therein and by substituting the words "Metropolitan Police force", and (c) by adding the following subsections:

"(b) An officer or member of the Metropolitan Police force may arrest a person without a warrant if he has probable cause to believe that such person has committed any violation listed in subsection (c) hereof, and, unless immediately arrested, will not be apprehended, or may cause injury to others or damage to property, or may tamper with, dispose of, or destroy evidence.

"(c) Subsection (b) shall apply with respect to violations of sections 806 (assault; sec. 22–504, D.C. Code), 824 (unlawful entry; sec. 22–3102, D.C. Code), and 829 (receiving stolen goods; sec. 22–2205, D.C. Code); and attempts to violate sections 823 (housebreaking; sec. 22–1801, D.C. Code), 826 (grand larceny; sec. 22–2201, D.C. Code), and 826b (unauthorized use of vehicle; sec. 22–2204, D.C. Code), punishable under section 906 (sec. 22–103, D.C. Code)."

[S. 1825, 90th Cong., first sess.]

A BILL Relating to the sale or loan of certain indecent material to minors in the District of Columbia, and to the admission of such minors to certain motion pictures, shows, and other presentations

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act entitled "An Act to establish a code of law for the District of Columbia", approved March 3, 1901 (31 Stat. 1189), as amended, is amended by adding immediately after section 872 thereof the following new section:

"SEC. 872A. INDECENT MATTERS AFFECTING MINORS.—(a) As used in this section, the term—

"(1) 'minor' means any person under the age of eighteen years;

"(2) 'nudity' means the showing of the human male or female genitals, pubic area, or buttocks with less than a full opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state;

"(3) 'sexual conduct' means acts of sexual intercourse, homosexuality, masturbation, or physical contact by a person with another person's clothed or unclothed genitals, pubic area, buttocks, or, if such person be a female, breast;

"(4) 'sexual excitement' means the condition of human male or female genitals when in a state of sexual stimulation or arousal;

"(5) 'sado-masochistic abuse' means flagellation or torture by or upon a person in a state of nudity or clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound, or otherwise physically restrained on the part of any such person;

"(6) 'harmful to minors' means that quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sado-masochistic abuse, when it—

"(A) predominantly appeals to the prurient, shameful, or morbid interest of minors;

"(B) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and

"(C) is utterly without redeeming social importance for minors;

"(7) 'knowingly' means having general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry of, both—

"(A) the character and content of any material described in this section which is reasonably susceptible of examination; and

"(B) the age of the minor.

"(b) It shall be unlawful for any person knowingly—

"(1) to sell or loan for a monetary consideration to a minor in the District of Columbia—

"(A) any picture, photograph, drawing, sculpture, motion picture film, or similar visual representation or image of a person or portion of the human body which depicts nudity, sexual conduct, or sado-masochistic abuse, and which is harmful to minors; or

"(B) any book, pamphlet, magazine, printed matter (however reproduced), or sound recording, which contains any matter enumerated in clause (A) of this subsection, or an explicit and detailed verbal description or narrative account of sexual excitement, sexual conduct, or sado-masochistic abuse, and which, taken as a whole, is harmful to minors; or

"(2) to sell to a minor an admission ticket or pass, or knowingly to admit a minor for a monetary consideration to premises within the District of Columbia upon which there is exhibited a motion picture, show, or other presentation which, in whole or in part, depicts nudity, sexual conduct, or sado-masochistic abuse, and which is harmful to minors.

"(c) If any provision of this section or the application thereof to any person or circumstances is held invalid, the other provisions of this section and the application of any such provisions to other persons or circumstances shall not be affected thereby.

"(d) Any person who violates any provision of this section shall be fined not more than $5,000, or imprisoned not more than one year, or both."

[S. 484, 90th Cong., first sess.]

A BILL To authorize the detention of certain persons charged in the District of Columbia with the commission of an offense punishable as a felony, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) chapter 207 of title 18, United States Code, is amended by inserting immediately after section 3146 the following new section:

"§ 3146A. Detention in certain felony cases in the District of Columbia

"(a) If any judicial officers in the District of Columbia determines at the time of the appearance before him of any person charged with an offense punishable as a felony (other than an offense punishable by death) that such person is one who, by reason of his prior criminal record, his prior pattern of vicious antisocial behavior, or the nature of the offense with which he is charged, evidences a high degree of probability that if released prior to trial he will cause the death of, or inflict serious bodily injury to, another, or will be a grave menace to the physical safety of the public, and that a conditional release of such person under section 3146 of this title would not provide necessary protection to the public, such officer may, notwithstanding the provisions of section 3146 of this title, order an evidentiary hearing to be held for the purpose of determining whether such person should be detained pending trial. It shall be the duty of the judicial officer to set the time for such hearing at the earliest possible date and to cause the hearing to be in every way expedited. The judicial officer shall cause a written notice of the time and place of such hearing to be served personally upon the person and his attorney. Any person with respect to whom a hearing has been set under this section may be detained until after such hearing has been concluded (including any appeal resulting therefrom).

"(b) In conducting any hearing under this section, the judicial officer shall receive and consider all relevant evidence and testimony which may be offered. Any person with respect to whom such hearing is held shall be entitled to testify without waiving the privilege against self-incrimination at a future proceeding, and to present and cross-examine witnesses, and shall be represented by counsel.

"(c) If the judicial officer conducting such hearing under this section determines on the basis thereof that the person with respect to whom such hearing was conducted is a person who, by reason of his prior criminal record, his prior pattern of vicious antisocial behavior, or the nature of the offense with which he is charged, evidences a high degree of probability that if released prior to trial he will cause the death of, or inflict serious bodily injury to, another, or will be a grave menace to the physical safety of the public, and that a conditional release of such person under section 3146 of this title would not provide necessary protection to the public, such officer may order the detention of such person for a period of not to exceed thirty days prior to his trial. Such period may be ex-

tended by such judicial officer for a reasonable time if he determines that, in the interest of justice, there are extraordinary reasons for such extension.

"(d) Any person detained pursuant to this section shall, during his detention, be permitted to consult with counsel, friends, and members of his family."

(b) The analysis of chapter 207 of title 18, United States Code, is amended by inserting immediately after

"3146. Release in noncapital cases prior to trial"

the following:

"3146A. Detention in certain felony cases in the District of Columbia.".

SEC. 2. (a) That part of subsection (a) of section 3146 of title 18, United States Code, which precedes the colon is amended to read as follows:

"§ 3146. Release in noncapital cases prior to trial

"(a) Any person charged with an offense, other than an offense punishable by death, shall, at his appearance before a judicial officer, be ordered released pending trial on his personal recognizance or upon the execution of an unsecured appearance bond in an amount specified by the judicial officer, unless the officer determines, in the exercise of his discretion, that such a release (1) will not reasonably assure the appearance of the person as required, or (2) will pose a danger to any other person or to the community. When such a determination is made, the judicial officer shall, either in lieu of or in addition to the above methods of release, impose the first of the following conditions of release which will reasonably assure the appearance of the person for trial or provide the necessary protection against such danger, as the case may be, or, if no single condition gives that assurance or protection, any combination of the following conditions".

(b) Clause (5) of subsection (a) of section 3146 of title 18, United States Code, is amended by inserting immediately after "appearance", the following: "or to provide such protection".

(c) Subsection (b) of section 3146 of title 18, United States Code, is amended by inserting immediately before the first comma the following: "or provide such protection".

The CHAIRMAN. An analysis of H.R. 10783, the House-passed bill, the so-called omnibus crime bill, and a cross reference between portions of H.R. 10783 and the Senate related bill will be made a part of the record at this point.

(The items referred to follow:)

AN ANALYSIS OF H.R. 10783

H.R. 10783 passed the House June 26, 1967. The bill contains 9 titles covering 17 substantive matters, 12 of which are addressed by pending Senate bills. Other Senate bills treat subjects not included in H.R. 10783, namely, material witnesses (S. 1512 and S. 1517), revision of criminal law and procedure (S. 1513), admissibility in evidence of statements and confessions (S. 1518), and amendment of the Bail Reform Act of 1966 (S. 484).

Title I of H.R. 10783 and S. 1524—Arrest Without a Warrant.—Both bills restate existing law in authorizing nonwarrant arrests for offenses committed, attempted, or threatened within an officer's presence or view. Both enlarge present law to permit such arrests on probable cause to believe the subject has committed certain named misdemeanors, and unless immediately arrested "may not" (House bill) or "will not" (Senate bill) be apprehended, may cause injury, damage property, or tamper with evidence. The House bill would eliminate a present requirement, retained by S. 1524, that the subject be immediately taken to court.

Title II of H.R. 10783, S. 1523, and S. 1516 (sec. 4)—Insanity.—The House bill is a general rewriting of the existing statute relating to insanity defenses in criminal cases, and the pre-trial and post-trial confinement for examination of accused persons, and their release. S. 1523 would change present law in only two respects, namely, by making insanity an affirmative defense to be established by "substantial evidence," and by requiring the defense, within stated time limits, to file, and serve the prosecution, notice of its intent to rely on an insanity defense. H.R. 10783 includes these changes, but requires the defense to be established by "preponderance of the evidence." Sec. 4 of S. 1516 contains a closely similar notice provision, and duplicates the House bill in requiring verdicts and judg-

ments to note the fact of insanity acquittals, and the confinement of persons so acquitted. S. 1516 also provides that, at the request of the Government, the committing court shall order the return to hospitalization of mental patients who escape, which order would be effective and enforceable by Federal judicial officers throughout the United States.

H.R. 10783 is generally the same as Title II of the 1966 omnibus crime bill (H.R. 5688, 89th Cong.). The salient differences are: (1) the quantum of proof required to establish the insanity defense is changed from "a showing of substantial evidence" to "the preponderance of the evidence", (2) as a precondition of the right to assert an insanity defense, the accused would be required to submit to psychiatric examination by prosecution doctors and answer their questions, (3) the Government would be permitted to demand a jury trial whenever the insanity defense is raised, and (4) U.S. Commissioners as well as judges would be authorized to order accused persons committed for mental examination.

Title III of H.R. 10783 (no comparable Senate bill)—Arrest or Detention for Questioning.—This title is similar to Title III of the 1966 omnibus crime bill. It would empower police to arrest or detain a person on probable cause to believe he has committed or is committing a crime, and demand that he identify himself and explain his actions. If the officer is not satisfied by the response, the person would be subject to detention for further questioning respecting any matter for up to 4 hours. Detentions would not be recorded as arrests, and at the end thereof, the subject would have to be released or arrested and charged.

Title IV of H.R. 10783 and S. 1510—Obstruction of Justice.—Existing law makes it an offense to intimidate or impede jurors, witnesses, and court officials, and is limited to obstructing administration of justice in the courts. Both Title IV and S. 1510 amend present law and enlarge its scope to include obstructing official investigations of violations of criminal statutes. The bills differ only in that S. 1510 covers investigations of D.C. regulations as well, and Title IV does not. Both would increase the maximum fine for the offense from $200 to $1000.

Title V of H.R. 10783 and S. 1519—Robbery—A Crime of Violence.—Both bills would define robbery as a crime of violence for purposes of laws relating to the possession and use of pistols and other dangerous weapons, and laws relating to added penalties for armed offenses. They are identical to Title V of the 1966 omnibus crime bill.

Title VI of H.R. 10783—Minimum Sentences, Burglary (S. 1520), Bribery (Sports Events) (S. 1521), Obscenity (S. 1522 and S. 1825), False Reports (S. 1521).—

Sec. 601 is the same as sec. 601 of the 1966 bill. It provides a minimum sentence of 2 years for assault with intent to kill, or to commit certain other offenses including rape and robbery. Present law provides a maximum penalty of 15 years, but no minimum. There is no comparable Senate bill.

Sec. 602 and S. 1520 would define and establish the crime of burglary in two degrees and penalties therefor. First degree burglary would be the breaking and entering or entering without breaking of any dwelling or room used as a sleeping apartment in any building, with intent to take property or commit any criminal offense when any person is within such building. The House bill provides for 5 year minimum and 30 year maximum sentences. S. 1520 provides a 2 year minimum and a 20 year maximum. Second degree burglary would relate to unoccupied and other premises. H.R. 10783 provides a minimum sentence of 2 years and a maximum of 15, and S. 1520 a minimum of 1 year and the same maximum. The new crime of burglary would replace the present crime of housebreaking, which carries a maximum penalty of 15 years and no minimum. Except for the lesser penalties contained in S. 1520, both bills are the same as section 602 of the 1966 bill.

Sec. 603 (there is no comparable Senate bill) is the same as sec. 603 of the 1966 bill. It increases the minimum sentence for the crime of robbery from 6 months to 4 years. The present maximum penalty is 15 years.

Sec. 604 and S. 1521 are the same as sec. 604 of the 1966 bill. They would amend existing law relating to corrupt influence in connection with athletic contests so as to exclude from existing prohibitions giving or offering incentive bonuses and incentive compensation to managers, coaches, professional players, and any league, association or conference.

Sec. 605 (there is no comparable Senate bill) is the same as sec. 605 of the 1966 bill. It would authorize imprisonment for an indeterminate period up to life for crimes of violence committed while armed with or having readily available a firearm, specified types of knives, razors, blackjacks, metal knuckles, and other dangerous or deadly weapons. Upon conviction more than once, the bill would prohibit suspension of sentence and probation. Existing law authorizes added penal-

ties for crimes of violence while armed with a firearm ranging from 5 to 30 years, depending upon whether a first or subsequent conviction is involved.

Sec. 606 of H.R. 10783, S. 1522, and S. 1825 relate to obscenity, and differ materially from the 1966 bill. Generally, existing law prohibits the sale, offer or possession for sale, giving away, exhibition, and advertisement of lewd and indecent materials, articles for immoral use, and participation in obscene performances. No distinction is made between adults and minors. The present penalty is a fine of not less than $50 nor more than $500 or 1 year imprisonment, or both. S. 1522 restates and broadens the present law by specifying the matter proscribed provides no minimum penalty, but would increase the maximum. S. 1825 retains existing law and adds a new section making it an offense to knowingly sell or loan for a monetary consideration to any minor under 18 years old any visual, written, or sound portrayal of nudity, sexual excitement or conduct, and sadomasochistic abuse as defined in the bill, and to sell such minors tickets or admit them for monetary consideration to any film or performance containing such matter. The House bill includes the general subject matter of both Senate bills, and more. Like S. 1522, it is more specific than present law in defining what is proscribed, and enlarges the scope to include "other articles and representations". Also, in addition to things per se obscene, H.R. 10783 covers matter "represented" as obscene or for indecent or immoral use. The bill incorporates and broadens S. 1825's provision respecting minors by reducing the age to 17 and eliminating the requirement for "monetary consideration". It would make possession of reproducible copy or more than 3 copies of proscribed matter prima facie evidence of intent to violate the law, would increase the equality for a first offense, and provide a mandatory minimum penalty for second and subsequent offenses. Following conviction, both S. 1522 and H.R. 10783 authorize court disposition of proscribed matter found in the accused's possession. S. 1522 would exempt from operation of the section licensees under the Communications Act of 1934 while engaged in activities regulated thereunder. H.R. 10783 would not.

Sec. 607 (there is no comparable Senate bill) was included in the 1966 bill, and would establish a minimum sentence of a fine up to $1000 *and* imprisonment for not less than 4 nor more than 10 years for placing explosives with intent to injure property. The present maximum is up to $1000 fine *or* 10 years. There is no minmum.

Sec. 608 and sec. 1 of S. 1521 are the same and were part of the 1966 bill. Both make it an offense to make false reports to the police department, and provide a fine not exceeding $300 or imprisonment for up to 30 days.

Title VII of H.R. 10783 and S. 1509—Police Citations.—Both bills would permit D.C. police, who have lawful grounds for arrest, to issue the accused a citation for later appearance instead of taking him into custody. Persons would be releasable on the street for later appearance at a precinct, and persons arrested and booked would be releasable at a precinct for later appearance in court. Except for certain minor violations such as traffic matters, present law requires the police to take custody of all arrested persons for booking, and processing through court when collateral or bond is required. The bills are an outgrowth of the recommendations of the D.C. Crime Commission, and are designed to permit policemen to devote more time to crime detection and prevention and less to transporting, housing, and attending arrested persons in court. They differ in that the House bill woud limit citations to misdemeanors and contains standards for their issuance, while the Senate bill does not. S. 1509 would leave it to the D.C. Court of General Sessions to specify the offenses and prescribe rules controlling the issuance of and compliance with citations. Both bills would amend the D.C. Bail Agency Act to permit that agency to provide reports to the police on persons considered for release on citation. The House bill goes further and would also amend the Act to permit judicial officers in the District to condition releases thereunder on the execution of a bail bond. Both contain the same penalty provision respecting failure to comply with a misdemeanor citation. S. 1509 includes a penalty of $5000 or 5 years, or both, for noncompliance with a felony citation.

Title VIII of H.R. 10783 and S. 1516 (exclusive of sec. 4)—Supervision of Released Persons, Federal Prison Industries, Witness Fees.—Except for sec. 4 of S. 1516, which relates to insanity, both bills are the same. They authorize the D.C. Commissioners to accept supervision of persons released under the Bail Reform Act, and would authorize the D.C. Bail Agency to provide the Commissioners reports on persons released to their care. Present law does not authorize such supervision by the Commissioners and limits Bail Agency reports to judicial officers. The bills also amend the Federal Youth Corrections Act to permit the Commissioners to supervise youthful offenders both while inmates in D.C. institutions and when conditionally released. At present, the District is respon-

sible for such offenders while inmates, but they are under Federal supervision when so released. The bill seeks continuity of D.C. supervision. The District would bear the expense of caring for offenders convicted under laws applicable only in D.C., and Federal payment would be authorized respecting those convicted of the laws having national application. Both bills would also authorize the D.C. Commissioners to utilize the services of Federal Prison Industries in D.C. institutions, subject to agreement by the Commissioners, the Attorney General, and FPI. Finally, the bills would authorize payment to criminal case witnesses in the D.C. Court of General Sessions of the fees and travel allowances as are paid in the U.S. District Court, D.C. ($4 per day and 2 cents per mile). The present witness fee in General Sessions Court is 75 cents per day, and the Court pays no travel allowance.

The bills' provisions respecting youthful offenders, Federal Prison Industries, and witness fees would implement recommendations of the President's Commission on Crime in D.C.

Title IX of H.R. 10783—Miscellaneous.—This title would prevent ex post facto application of the proposed Act, preserves the authority of the D.C. Commissioners under the 1952 Reorganization Plan, and contains a standard separability provision.

SENATE BILLS NOT COVERED BY H.R. 10783

S. 1512 and S. 1517 relate to material witnesses. S. 1512 is an Administration bill. It would authorize a D.C. policeman to take a person into custody pursuant to a warrant, or if at the scene of a crime without a warrant, upon probable cause to believe he witnessed the commission of a felony, his testimony will be material at trial, and he will not be then available. Immediate presentment would be required. A judicial officer would determine whether probable cause exists. If not, the person would be released. If so, the witness would be treated in accordance with the Bail Reform Act of 1966. S. 1517 is broader and similar to Title IV of the 1966 omnibus crime bill. A person would be detainable upon reasonable ground to believe he is a necessary and material witness to the commission or attempt to commit a crime punishable by imprisonment for more than 1 year, and reasonable probability exists that he will not be available for the trial. Such a person would be taken, under subpoena, or without process if at the scene, before a judge or Commissioner "within a reasonable time", where he would be advised of his rights, including right to counsel. Following a hearing and determination that he is a material and neecssary witness, the person would be required to post bond or collateral, or be detained until the case is disposed of. He would be releasable on a showing that his detention has been unreasonably long, and detention would not constitute arrest. Detained persons would be entitled to the witness fees paid in the court where the case is tried. Under S. 1512, the fees in U.S. District Court would apply. Both bills require the D.C. Commissioners to provide suitable accommodations separate from those used for persons under charges or convicted of crimes.

S. 1513, an Administration bill, was recommended by the D.C. Crime Commission. It would establish an 11 member Commission on Revision of the Criminal Laws of the District of Columbia, including 2 Senators, 2 Representatives, 4 members appointed by the D.C. Commissioners, and 1 judge each from the U.S. Court of Appeals, D.C., the U.S. District Court, D.C., and the D.C. Court of General Sessions. The Commission would formulate and recommend to Congress a revised code of criminal law and procedure for the District. Its report would be due within 3 years after enactment. Private members would receive $100 a day for actual service. All members would be entitled to reimbursement for expenses. The Commission would also be authorized to appoint an uncompensated advisory committee whose members would be entitled to reimbursement for expenses, to employ a staff, and engage outside consultants at up to $100 per day. Necessary appropriations would be authorized.

S. 1518 is the same as Title I of the 1966 omnibus crime bill, except that it would authorize 4 hours of post-arrest interrogation instead of 6 hours. Its purpose is to provide a rule of evidence for the courts of the District of Columbia governing the admissibility of statements obtained from an accused following arrest and prior to his presentment before a U.S. Commissioner or committing magistrate. Under the bill, voluntary statements and confessions would not be inadmissible in the District solely because of delay in presentment. At the same time, pre-trial statements or confessions would be admissible only if certain safeguards adopted by the U.S. Supreme Court in the case of *Miranda v. Arizona* (decided June 13, 1966) were adhered to, namely, that prior to any questioning

the accused was advised (1) that he has the right to remain silent, (2) that any statement made may be used as evidence against him, and (3) that he has the right to assistance of retained or appointed counsel prior to and during such questioning. In case of a person who validly waives his right and agrees to being questioned without out counsel present, the bill would limit aggregate period of questioning, exclusive of interruptions, during absence of counsel and prior to arraignment to 4 hours.

S. 484 is an outgrowth of a recommendation of the D.C. Crime Commission. The bill would amend the Bail Reform Act of 1966 as it applies to the District of Columbia, and would apply to persons accused of offenses punishable as felonies (other than offenses punishable by death). It would permit judicial officers to deny pre-trial conditional release to such persons when, after hearing, the court determines by reason of prior criminal record, prior pattern of vicious antisocial behavior, or the nature of the offense charged, that the accused evidences a high degree of probability that if released he will cause the death of, or seriously injure, another, or be a grave menace to physical safety of the public, and that pre-trial release under the Act will not provide necessary public protection. Such detention would be limited to 30 days, but would be extendable for extraordinary reasons. The accused would be entitled to testify at the pre-detention hearing without waiver of his privilege against self-incrimination respecting subsequent proceedings, to be represented by counsel and present evidence. The bill specifically accords such persons visitation rights by counsel, friends, and family during detention. The D.C. Commissioners recommend three changes, the effect of which would be (1) that rules as to admissibility of evidence in court not be applicable at pre-detention hearings, (2) that visitation be subject to reasonable regulation by the Commissioners, and (3) that the Bail Reform Act be further amended to specifically allow for an appeal of detention orders. As so amended, the Commissioners support the bill.

OWEN J. MALONE, *Associate Counsel.*

CRIME LEGISLATION SUMMARY

A COMPARISON OF THE SECTIONS OF H.R. 10783 AND RELATED SENATE BILL

H.R. 10783	*Senate related bill*
Title I—Arrest Without Warrant	S. 1524.
Title II—Insanity Defense	S. 1523. Section 4 of S. 1516.
Title III—Detention and/or Arrests	No Senate bill. (S. 1518 on Mallory subject only.)
Title IV—Obstruction of Criminal Investigation	S. 1510.
Title V—Robbery as Crime of Violence	S. 1519.
Title VI:	
Sec. 601—Minimum Sentence for Assault with Intent, etc	No Senate bill.
Sec. 602—Burglary in 2 Degrees	S. 1520.
Section 603—Increase Minimum Sentences for Robbery, etc	No Senate bill.
Sec. 604—Exempts Sports Incentive Bonuses from Bribery	Section 2 of S. 1521.
Sec. 605—Additional Punishment for Armed Crimes	No Senate bill.
Sec. 606—Indecent Publications—Obscenity	S. 1522. S. 1825.
Sec. 607—Mandatory Minimum Sentences for Placing Explosives	No Senate bill.
Sec. 608—Fictitious Reports to Police	Section 1 of S. 1521.
Title VII:	
Sec. 701—Police Citations Issuance	Section 1 of S. 1509.
Sec. 702—Bail Agency Act Amendments	Section 2 of S. 1509. S. 484.
Title VIII—Supervision of Release Prisoners, Youth Offenders, Witness Fees, etc	S. 1516, exclusive of section 4.
Title IX—Separability clause, ex post facto, etc	No Senate bill.

PENDING SENATE BILLS NOT COVERED IN H.R. 10783

S. 1512—Material Witnesses (D.C. Crime Commission recommendation).
S. 1513—D.C. Crime Commission Law Revision (D.C. Crime Commission recommendation)—Subcommittee hearings held April 21, 1967.
S. 1517—Material Witnesses (from Senate bill of 89th Congress).
S. 1518—Mallory Provisions (from Senate bill of 89th Congress).

SUBJECTS FOR POSSIBLE SINGLE HEARING NOT TREATED ABOVE

S. 1514 Narcotic Act Ambiguity (D.C. Crime Commission recommendation).
S. 1515 Intoxicated Persons Not Subject to Arrest (D.C. Crime Commission recommendation).
S. 1740 Program for Drunkenness Control and Treatment (Senator Tydings' bill, including S. 1515 and broader than Congressman Hagan's bill in House).

JULY 24, 1967.

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

DEAR SENATOR BIBLE: The Commissioners of the District of Columbia have for report H.R. 10783, a bill "Relating to crime and criminal procedure in the District of Columbia", passed by the House of Representatives June 26, 1967.

TITLE I

Title I of the bill amends section 307 of the Revised Statutes of the United States relating to the District of Columbia (D.C. Code, sec. 4-140). This section presently reads as follows:

"The several members of the police force shall have power and authority to immediately arrest, without warrant, and to take into custody any person who shall commit, or threaten or attempt to commit, in the presence of such member, or within his view, any breach of the peace or offense directly prohibited by Act of Congress, or by any law or ordinance in force in the District, but such member of the police force shall immediately, and without delay, upon such arrest, convey in person such offender before the proper court, that he may be dealt with according to law."

The bill rewrites this section to include three subsections. Subsection (a) contains similar language to the existing law, except that the provision for immediate conveyance of offenders before the proper court is deleted.

The proposed subsection (b) authorizes arrest by police without a warrant on probable cause that (1) a person has committed any offense specified in subsection (c), and (2) unless the person is immediately arrested, he may not be apprehended, may cause injury to others or damage to property or may tamper with, dispose of, or destroy evidence.

Subsection (c) specifies the offenses for which an arrest may be made on probable cause without a warrant as including simple assault, unlawful entry, receiving stolen goods and attempts to commit housebreaking, grand larceny and unauthorized use of vehicles.

The proposed subsections (b) and (c) are identical to the provisions of S. 1524 and title II of H.R. 7327, H.R. 7422, and H.R. 10441, the proposed District of Columbia Crime Reduction Act sponsored by the Administration and the Commissioners. The Commissioners, accordingly, recommend their retention in H.R. 10783.

However, the Commissioners cannot support the proposed subsection (a) of section 307 of the Revised Statutes, contained in section 101 of the bill, since it would appear to remove persons arrested without a warrant in the District of Columbia from the protection of Rule 5(a) of the Federal Rules of Criminal Procedure, which require the arrested person to be brought before a judge or United States Commissioner without unnecessary delay. Prompt presentation before a judicial officer will be discussed at greater length in connection with the Commissioners' comments on title III of this bill.

TITLE II

Title II of the bill is patterned after the formulation recommended by the American Law Institute as the test of insanity as a defense in criminal cases, sometimes referred to as the test of criminal responsibility. This title is intended to apply to criminal cases in the District of Columbia, replacing the test of criminal responsibility stated for the District of Columbia by the United States Court of Appeals in the line of cases beginning with *Durham* v. *United States* (94 U.S. App. D.C. 228, 214 F. 2d 862 (1954) and ending with *McDonald* v. *United States* (312 F. 2d 847), decided October 8, 1962. The language of the title is similar to that in title II of H.R. 5688, 89th Congress.

Title II changes existing law in a number of respects. The title places on the defendant the burden of proof of establishing a mental illness or defect excluding responsibility, instead of leaving the burden of proof on the prosecutor to prove a lack of mental illness or defect, when mental illness becomes an issue. The title also requires that a defendant give written notice at the time of his plea or within 30 days thereafter, or at such later time as the court may for good cause permit, of his intention to rely on the defense of mental disease or defect, or else be precluded from having evidence of mental disease or defect introduced. Further, the title requires that when a defendant is acquitted on the ground of a mental disease or defect excluding criminal responsibility, the court shall order him committed to a hospital for custody and care. If the superintendent of such hospital determines that such person is no longer suffering from such mental illness, the superintendent must make application to the court for the discharge or release of such person.

The Commissioners question the desirability of changing existing law in the District of Columbia with respect to the test of criminal responsibility, as set forth in the *Durham-McDonald* line of cases. The Commissioners are informed that from a public health point of view, the so-called "*Durham Rule*" as modified by *McDonald* seems to be working very well, because any person acquitted by reason of his plea of insanity at the time of the commission of the alleged crime, or any person determined to be incapable of contributing toward his defense because of mental illness or defect at the time of trial, must be sent to a mental hospital for treatment, and continue to receive treatment for his mental illness or defect. The Commissioners are informed that while the treatment of such persons has not been a complete success in every case, nevertheless it can be said that experience indicates that there is less likelihood of recidivism on the part of such persons than there is on the part of those sent to prison.

For the foregoing reasons, the Commissioners oppose title II of H.R. 10783.

TITLE III

Title III, patterned after the so-called "Uniform Arrest Act", permits an officer or member of the Metropolitan Police force to arrest or detain any person found abroad whom such officer or member has "probable cause to believe" is committing or has committed a crime, and who, upon demand of him of his name, address, business abroad, and whither he is going, fails to identify himself or explain his actions to the satisfaction of the officer or member. The person so arrested or detained can be interrogated with respect to any matter for a period not to exceed four hours. Under the provisions of the bill, such a detention is not an arrest and is not to be recorded as an arrest in any official record.

On March 9, 1961, the Commissioners appointed Charles A. Horsky, Esq., Roger Robb, Esq., and William B. Bryant, Esq.,—three distinguished members of the Bar of the District of Columbia—as a Committee "to inquire into the policy and practices of the Police Department that lead to arrests for 'investigation' and to make recommendations to the Commissioners in respect thereto." In its Report and Recommendations to the Commissioners, submitted in July, 1962, the Committee concluded "that arrests for investigation, as presently practiced in the District of Columbia, are not sanctioned by any District statue, and are in violation of the constitutional rights of persons thus arrested." The report of the committee is an exhaustive and excellent study of the problem of police arrests for investigation, and its conclusion that arrests for investigation are illegal is amply supported by authority.

The Commissioners are in accord with the conclusion contained in the report of this committee, and are unalterably opposed to enactment of legislation along

the lines of the Uniform Arrest Act, which permits a police officer to detain a person whom he has "reasonable ground to suspect" is committing or has committed a crime. The Commissioners are of the opinion that "arrests for investigation" such as would be permitted under the Uniform Arrest Act are unconstitutional in that such arrests sanction the search and seizure of any person thus detained without the requirement of "probable cause" as a basis therefor. They note, however, that section 301 attempts to cure this basic, constitutional flaw in the Uniform Arrest Act by utilizing the phrase "probable cause to believe" in place of the highly questionable "reasonable ground to suspect". But in the view of the Commissioners, the use of the phrase "probable cause to believe" makes the entire section unnecessary, since the Metropolitan Police already possess the power to make arrests on the basis of probable cause. However, if the phrase "probable cause to believe", within the context of the section, is intended and designed, despite the plain language of the phrase, to connote something less than probable cause, and is intended to authorize "arrests for investigation", then the Commissioners are of the view that the provisions of section 301 do not conform with the requirements of the Fourth Amendment.

As reasons in support of their belief that arrests for "investigation" and the detentions authorized by section 301, are unconstitutional (assuming "probable cause to believe" within the context of the section connotes something less than "probable cause", within the ordinary meaning of the phrase), the Commissioners adopt, in part, the following considerations advanced by its Committee on Police Arrests for Investigation:

1. Such arrests cannot be reconciled with the Fourth Amendment to the Constitution of the United States in that there is not a requirement of "probable cause" and that they permit the police to subjectively determine whom to detain, and under what circumstances, without the participation of a judicial officer at any stage.

2. Such arrests deny to the person so detained the opportunity to secure his liberty by seeking bail or by posting collateral.

3. Such arrests may permit the person so detained to be held incommunicado and thus, in effect, denied the right of habeas corpus.

4. Such arrests deprive the person so detained of the right to have the assistance of counsel.

5. Such arrests tend to impair the right of the person, under the Fifth Amendment to the Constitution, not to be compelled in any criminal case to be a witness against himself.

The Commissioners therefore oppose the enactment of title III of H.R. 10783.

TITLE IV

Title IV amends section 862 of the Act of March 3, 1901, establishing a code of law for the District of Columbia (31 Stat. 1330; D.C. Code, sec. 22-703), which presently provides that it shall be a criminal offense to endeavor, by threats or force, to influence, intimidate, or impede any juror, witness, or officer in any court in the District in the discharge of his duties. The section also makes it a criminal offense, by threats of force, in any other way to obstruct or impede, or endeavor to obstruct or impede, the due administration of justice in the courts of the District. But neither this section, nor any other provision of law applicable in the District of Columbia, provides that it shall be a criminal offense to endeavor to obstruct, delay, or prevent the communication by any person to an investigator of the District of Columbia government, including the officers and members of the Metropolitan Police force, of information relating to a criminal offense, prior to the institution of proceedings in a court of the District of Columbia.

The Commissioners support this legislative provision expanding existing law relating to the obstruction of justice so as to make it applicable not only to the obstruction of justice, but also to the obstruction of an investigation relating to a violation of any criminal statute or regulation in effect in the District of Columbia. As so expanded, the legislation would be applicable not only to those investigations made by the Metropolitan police, but to all criminal investigations made by any individual duly authorized by the Commissioners or their designated agent to conduct or engage in such an investigation, including, without limitation, investigations involving the violation of regulations for the internal administration of the government of the District of Columbia or any department or agency of such government.

In the belief that title IV will effectively operate to prevent or impede the obstruction of justice and the obstruction of criminal investigations in the District of Columbia, the Commissioners recommend its enactment, or the enactment of S. 1510, a bill identical to the provisions of title IV.

TITLE V

Title V of the bill has the effect of including the crime of robbery among the crimes specified in the definition of "crime of violence" set forth in the first section of the Act approved July 8, 1932 (D.C. Code, sec. 22–3201), thereby bringing into operation, with respect to robbery, the provisions of section 2 of that Act (D.C. Code, sec. 22–3202), providing additional punishment for committing a crime of violence while armed.

The Commissioners favor the enactment of title V of H.R. 10783, or of S. 1519, which contains an identical provision.

TITLE VI

Section 601 of Title VI amends a provision of District of Columbia law relating to crimes of assault with intent to kill, rob, rape, or poison. The statute presently provides for a maximum penalty of fifteen years imprisonment upon conviction or any of such offenses. Section 601 adds a minimum penalty of two years. The Commissioners oppose minimum penalties in this and subsequent sections for reasons hereinafter set out.

Section 602 amends section 823 of the Act approved March 3, 1901 (31 Stat. 1323; D. C. Code, sec. 22–1801), now captioned "Housebreaking", to define the offense of "Burglary" and to further define such offense as either "first degree" or "second degree", depending on whether the offense occurs in a residence which is occupied by one or more of the residents at the time the offense takes place. If a place of residence is occupied, the offense is that of burglary in the first degree. Any other breaking and entering, or entering without breaking, of the various specified premises is defined as burglary in the second degree. The Commissioners favor enactment of this section. The Commissioners note, incidentally, that the penalty for burglary in the first degree is imprisonment for not less than five years, nor more than thirty years, as compared with the present penalty for housebreaking of imprisonment for not more than fifteen years. While the Commissioners favor enactment of section 602, they nevertheless, for the reasons set forth below, question so much thereof as establishes mandatory minimum sentences.

The Commissioners note that if section 602 be enacted, replacing the offense of "housebreaking" with the offense of "burglary", section 798 of the Act approved March 3, 1901, as amended by the Act approved June 12, 1940 (54 Stat. 347; D. C. Code, sec. 22–2401), defining the offense of "Murder in the first degree", should be amended by striking "housebreaking" and inserting in lieu thereof "burglary".

Section 603 amends section 810 of the Act of March 3, 1901 (31 Stat. 1322; D. C. Code, sec. 22–2901), establishing the penalty to be imposed for conviction of the offense of robbery, so as to provide a mandatory minimum sentence of not less than four years in place of the present mandatory minimum sentence of not less than six months. Again, for the reasons set forth below concerning the efficacy of the mandatory minimum sentences, the Commissioners question this section of the bill.

Section 604 amends section 869e of the Act of March 3, 1901 (D. C. Code, sec. 22–1513) relating to bribing or offering to bribe persons participating in athletic contests, so as to make such section inapplicable to bonuses paid to coaches, managers, players, leagues, associations, or conferences to encourage a higher degree of skill, ability, or diligence in the performance of their duties. The Commissioners see no need for the enactment of this section, but they have no objection to it.

Section 605 makes it mandatory (rather than at the discretion of the judge, as under existing law) that when any person commits a crime of violence when armed with or having readily available any pistol or other firearm, he shall, in addition to the punishment provided for the crime, also be punished by the penalties prescribed in section 2 of the Act of July 8, 1932 (D. C. Code, sec. 22–3202). Further, section 605 adds to such section 2 language prohibiting the court from suspending sentence upon conviction of a crime of violence when armed

with or having readily available any pistol or other firearm, or from giving the defendant a probationary sentence. The Commissioners question the desirability of removing from the judges the discretion they have under existing law and therefore oppose this section.

Section 606 amends section 872 of the Act approved March 3, 1901 (D. C. Code, sec. 22–2001), reading as follows:

"Whoever sells, or offers to sell, or give away, in the District, or has in his possession with intent to sell or give away or to exhibit to another, any obscene, lewd, or indecent book, pamphlet, drawing, engraving, picture, photograph, instrument, or article of indecent or immoral use, or advertises the same for sale, or writes or prints any letter, circular, handbill, book, pamphlet, or notice of any kind stating by what means any of such articles may be obtained, or advertises any drug, nostrum, or instrument intended to produce abortion, or gives or participates in, or by bill, poster, or otherwise advertises, any public exhibition, show, performance, or play containing obscene, indecent, or lascivious language, postures, or suggestions, or otherwise offending public decency, shall be fined not less than fifty dollars nor more than five hundred dollars, or imprisoned not more than one year, or both."

The foregoing provision does not, however, take into account certain relatively modern means of publication or communication, nor does it affect persons engaged in the production of indecent publications.

Section 606 rewrites section 872 to include two subsections. Subsection (a) has for its purpose the expansion of existing law relating to indecent publications so as to make it applicable to publishing and communicating techniques developed since the enactment of the 1901 Act; to extend its provisions to persons engaged in the production or dissemination of obscene materials; to provide that possession of a means of reproducing multiple copies of obscenity or possession of more than three copies of the obscene material is prima facie evidence of an intent to disseminate the material; and to provide for disposing of obscene material upon conviction, as determined by the court. The Commissioners favor these provisions of the bill.

The proposed subsection (b) of section 872 would establish standards for determining obscenity in materials sold to minors. This subsection is identical to the provisions of S. 1825, which the Commissioners also support.

Section 607 amends existing law (Act of March 3, 1901, as amended; D. C. Code, sec. 22–3105), making it an offense to place explosives or cause them to be placed at certain specified locations, with the intent to cause damage, so as to provide a mandatory minimum sentence of not less than four years imprisonment upon conviction of the offense. Again, for the reasons set forth below, the Commissioners question the efficacy of mandatory minimum penalties.

Section 608 provides that it shall be an offense to make a false or fictitious report to the Metropolitan Police Department of any criminal offense, knowing such report to be false or fictitious, or to communicate or cause to be communicated to such department any false information concerning the commission of any criminal offense within the District of Columbia, or concerning any other matter or occurrence of which such department is required to receive reports or conduct an investigation, knowing such information to be false. This section is substantially similar to section 5 of Article 19 of the Police Regulations of the District of Columbia, except for the penalty. The existing police regulation, which has been in effect for many years, provides a penalty of a fine not exceeding $300 or imprisonment for not exceeding ten days. Section 608 provides for a penalty of a fine not exceeding $300 or imprisonment not exceeding thirty days. While the Commissioners have no objection to the enactment of section 608, they consider it unnecessary, in view of the fact that the situation seems to be adequately taken care of by the existing Police Regulation. However, should the Congress, despite this recommendation of the Commissioners, determine to enact section 608, the Commissioners believe there is need to include in the section language allowing the Commissioners to consider false report cases arising from complaints filed against officers or members of the Metropolitan Police force, along the lines set forth in paragraph numbered 11 of the Commissioners' April 13, 1965 action relating to the reorganization of the civilian Complaint Review Board which the Commissioners established to review complaints against officers or members of such force. Accordingly, the Commissioners recommend that section 608 be amended by inserting immediately before the period at the end of such section, in line 4 on page 22, the following:

"*Provided,* That no person filing a complaint against an officer or member of the Metropolitan Police force shall, by reason of such complaint, be charged with filing a false or fictitious report until the Commissioners are satisfied that there is probable cause to believe that such person filed such complaint with knowledge that it was false or fictitious".

The Commissioners note that a number of the sections of the bill provide for the establishment of a mandatory minimum penalty. They are of the view that any such penalty may in its effect be self-defeating, in that if the mandatory minimum penalty is considered excessive by a jury, it may tend to acquit the defendant rather than subject him to what the jury may consider an excessively high mandatory minimum penalty. The Commissioners are cognizant of the fact that some effort is made to keep from the jury the knowledge of the penalty to which a defendant may be subject, in view of the fact that this knowledge is irrelevant to the question of whether the defendant committed the offense with which he is charged. However, the Commissioners recognize that sooner or later the jurors in attendance at court acquire knowledge concerning the maximum and minimum penalties for the more common offenses, and carry this knowledge with them into the jury room at the time they begin their consideration of a case. In view of this, the Commissioners question whether a mandatory minimum penalty, or an increase in an existing mandatory minimum penalty, will operate in such manner as to affect materially the crime situation in the District of Columbia.

Much more important, however, is the fact that the mandatory minimum penalty operates to deprive judges from exercising their discretion in the imposition of sentences, and tends to limit them to a narrower range of action than may be desirable. The Commissioners believe that the court should be able to exercise its discretion in selecting the kind of sentence to be imposed in a particular case, depending on the circumstances of that case, and depending on whether there are extenuating or aggravating circumstances, without being limited in its action by a requirement that it impose some prescribed minimum sentence. For this additional reason, the Commissioners recommend against the inclusion, in any of the provisions of the bill, of a mandatory minimum sentence.

TITLE VII

Section 701 of title VII relates to police citations. At present the police are required to bring to the precinct for booking all persons who are arrested and, except where collateral or bond is allowed, to take them before a judicial officer. Section 701 would authorize members of the Metropolitan Police Department, in misdemeanor cases, to release a person, either without formally arresting him or after an arrest without a warrant, by issuing him a citation for later appearance. The citation could be issued either at the precinct after arrest or on the street without taking the accused into custody. The person issuing the citation must believe that the arrested person will not be a danger to the community or not be likely to flee. Persons who fail to respond to citations would be subject to a prescribed penalty of not more than the maximum fine for the misdemeanor, or one year's imprisonment, or both.

To assiste the police in implementing the proposed citation authority, the District of Columbia Bail Agency Act would be amended to authorize the agency fo furnish them information concerning persons being considered for release on citation, pursuant to section 702.

This proposal will permit policemen to devote a greater portion of their time to the most important tasks of crime prevention and detection, and less to feeding, housing, transporting and attending in court with arrested persons. Also, accused persons released on citation will no longer suffer the obvious disadvantages flowing from unnecessary incarceration in the time between their arrest and bail hearing. This legislation is consistent with recommendations of the President's Commission on Crime in the District of Columbia and is supported by the Commissioners, although the Commissioners would prefer enactment of S. 1509, a bill identical to the provisions of the proposed District of Columbia Crime Reduction Bill.

TITLE VIII

Title VIII of the House bill and S. 1516 authorize the Commissioners to supervise persons released into their custody under the authority of the Bail Reform Act. These provisions also authorize the District of Columbia Bail Agency to

provide reports to the Commissioners with respect to any such person. The title and the bill both also transfer from the United States Bureau of Prisons and the Youth Corrections Division of the United States Board of Parole to the Commissioners authority to provide for the treatment, rehabilitation and conditional release of Federal youth offenders in District institutions. The title and the bill also authorize the District to contract with Federal Prison Industries for the reorganization and future operation of the District's industries program. Finally, the title and the bill amend existing law relating to fees paid witnesses attending criminal cases in the District of Columbia Court of General Sessions, so that such fees shall be the same as those paid to witnesses who attend before the United States District Court for the District of Columbia.

The provisions of title VIII are identical with the provisions of title IX of the proposed D.C. Crime Reduction legislation, except that title VIII does not include a section contained in such proposed legislation and in S. 1516 relating to pleading insanity and dealing with the escape of mentally ill persons acquitted of offenses on the ground of insanity. The Commissioners therefore recommend the enactment of S. 1516, rather than title VIII of H.R. 10783.

TITLE IX

Title IX contains provisions respecting offenses committed prior to the effective date of the bill, coordinates the bill with Reorganization Plan No. 5 of 1952, and provides a separability provision.

With the foregoing proposed amendments, and subject to the foregoing recommendations for enactment of specified Senate bills or specified provisions of the proposed D.C. Crime Reduction Act in lieu of certain provisions of H.R. 10783, the Commissioners favor enactment of H.R. 10783.

The Commissioners have been advised by the Bureau of the Budget that, from the standpoint of the Administration's program, there is no objection to the submission of this report to the Congress.

Sincerely yours,

WALTER N. TOBRINER,
President, Board of Commissioners, D.C.

The CHAIRMAN. The letter from Walter N. Tobriner, president of the Board of District of Columbia Commissioners, dated July 20, 1967, will be made a part of the record at this point. Mr. Tobriner's letter recommends enactment of S. 1512.

(The letter referred to follows:)

JULY 20, 1967.

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

DEAR SENATOR BIBLE: The Commissioners of the District of Columbia have for report S. 1512, a bill "relating to material witnesses in the District of Columbia."

Present law applicable in the District of Columbia fails to provide guidance for the police in connection with their taking into custody material witnesses. The only statutory provision applicable to material witnesses is section 401 of the Revised Statutes relating to the District of Columbia (Act approved June 11, 1878; 20 Stat. 107; D.C. Code, sec. 4–144), and this section relates only to the providing of suitable accommodations for the detention of witnesses who are unable to furnish security for their appearances in criminal proceedings.

S. 1512 amends existing District law to authorize the police to take a person into custody pursuant to a warrant if there is probable cause to believe that (1) such person witnessed the commission of a felony, (2) his testimony will be material at the trial of a person charged with the crime, and (3) he will not be available to testify if not taken into custody. A police officer may on the same grounds act without a warrant if his action is taken at the scene of the crime. The officer would be required to immediately bring the witness before a judicial officer, as defined in section 3152 of title 18, United States Code, and if it is determined that the person taken into custody actually witnessed the commission of a felony and that his testimony will be material at the trial, he shall treat the witness as required by the Bail Reform Act of 1966.

The Bail Reform Act provides for the release of any such person pending trial or detention pending depositions, and provides penalties for their willful failure to appear after release.

S. 1512 provides compensation for material witnesses equivalent to that for witnesses attending before the United States District Court for the District o. Columbia.

The Commissioners believe that the bill will improve procedures relating to the custody and treatment of material witnesses, and they therefore recommend its enactment.

The Commissioners have been advised by the Bureau of the Budget that, from the standpoint of the Administration's program, there is no objection to the submission of this report to the Congress and that enactment of this legislation would be in accord with the program of the President.

Sincerely yours,

WALTER N. TOBRINER,
President, Board of Commissioners, D.C.

The CHAIRMAN. Likewise, a letter from Mr. Tobriner, dated July 20, 1967, recommending the enactment of S. 1524, will be made a part of the record at this point.

(The letter referred to follows:)

JULY 20, 1967.

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

DEAR SENATOR BIBLE: The Commissioners of the District of Columbia have for report S. 1524, 90th Congress, a bill "Authorizing arrests without a warrant in the District of Columbia in connection with certain misdemeanors, and for other purposes."

The bill would authorize the police to arrest without a warrant when they have probable cause to believe that any of certain specified misdemeanors has been committed and that the accused, if not immediately arrested, will flee or cause injury to others, damage to property, or destruction of evidence.

Under existing law, a police officer may arrest a person without a warrant when he has probable cause to believe such person has committed a felony or when such person has committed a felony or a misdemeanor in the officer's presence. The authority to arrest without a warrant also extends to cases in which there is probable cause to believe that one of a limited number of misdemeanors is being committed (D.C. Code, sec. 23–306). These misdemeanors include possession of the implements of crime (section 22–3601), unlawful possession of a pistol (section 22–3203), carrying concealed weapons (section 22–3204), possession of prohibited weapons (section 22–3214), possession of lottery slips (section 22–1502), and certain offenses involving narcotics (sections 33–402(b) and 416a(c)).

S. 1524 would authorize a police officer to arrest a person without a warrant if he has probable cause to believe that the person has committed an offense involving simple assault, unlawful entry, receiving stolen goods, attempted housebreaking, attempted grand larceny, or attempted unauthorized use of a motor vehicle. In addition, the officer must have probable cause to believe that unless the suspect is arrested immediately he will not be apprehended or he may cause injury to others or damage to porperty or may destroy evidence.

Although the bill speaks of conferring arrest authority only on officers and members of the Metropolitan Police force, it actually confers similar authority on officers and members of the Park Police (see section 4–201, D.C. Code) and the White House Police (see 3 U.S.C. 202).

The Commissioners favor the enactment of the bill.

The Commissioners have been advised by the Bureau of the Budget that, from the standpoint of the Administration's program, there is no objection to the submission of this report to the Congress and that enactment of the legislation would be in accord with the program of the President.

Sincerely yours,

WALTER N. TOBRINER,
President, Board of Commissioners, D.C.

The CHAIRMAN. A letter from Miss Joyce Capps, who was then president of the Women's Bar Association of the District of Columbia, dated April 19, 1967, endorsing S. 1509 insofar as it shall apply to certain lesser misdemeanors and no felonies; endorsing in principle S. 1513, and endorsing S. 1510, will be made a part of the record at this point.

(The letter referred to follows:)

WOMEN'S BAR ASSOCIATION OF THE DISTRICT OF COLUMBIA,
Washington, D.C., April 19, 1967.

Senator ALAN BIBLE,
Senate District Committee,
Senate Office Building, Washington, D.C.

DEAR SENATOR BIBLE: The Board of Directors of the Women's Bar Association of the District of Columbia wishes to be put on record as endorsing S. 1510, and as endorsing in principle S. 1513, and as being in favor of S. 1509 only insofar as it shall apply to certain lesser misdemeanors and no felonies.

Very truly yours,

JOYCE CAPPS, *President.*

The CHAIRMAN. I wish to include in the record at this point seven letters from Miss Capps, then president of the Women's Bar Association of the District of Columbia, recommending the enactment of S. 1517, S. 1518, S. 1519, S. 1520, S. 1521, S. 1523, and S. 1524. These letters are dated May 10, 1967.

(The letters referred to follow:)

WOMEN'S BAR ASSOCIATION OF THE DISTRICT OF COLUMBIA,
Washington, D.C., May 10, 1967.

Re S. 1517.

Senator ALAN BIBLE,
Chairman, Senate District Committee,
Senate Office Building, Washington, D.C.

DEAR SENATOR BIBLE: The Women's Bar Association wishes to go on record as endorsing the above legislation.

Respectfully yours,

JOYCE CAPPS, *President.*

WOMEN'S BAR ASSOCIATION OF THE DISTRICT OF COLUMBIA,
Washington, D.C., May 10, 1967.

Re S. 1518.

Senator ALAN BIBLE,
Chairman, Senate District Committee,
Senate Office Building, Washington, D.C.

DEAR SENATOR BIBLE: The Women's Bar Association wishes to go on record as endorsing the above legislation.

Respectfully yours,

JOYCE CAPPS, *President.*

WOMEN'S BAR ASSOCIATION OF THE DISTRICT OF COLUMBIA,
Washington, D.C., May 10, 1967.

Re S. 1519.

Senator ALAN BIBLE,
Chairman, Senate District Committee,
Senate Office Building, Washington, D.C.

DEAR SENATOR BIBLE: The Women's Bar Association wishes to go on record as endorsing the above legislation.

Respectfully yours,

JOYCE CAPPS, *President.*

WOMEN'S BAR ASSOCIATION OF THE DISTRICT OF COLUMBIA,
Washington, D.C., May 10, 1967.

Re S. 1520.

Senator ALAN BIBLE,
Chairman, Senate District Committee,
Senate Office Building, Washington, D.C.

DEAR SENATOR BIBLE: The Women's Bar Association wishes to go on record as endorsing the above legislation.

Respectfully yours,

JOYCE CAPPS, *President.*

WOMEN'S BAR ASSOCIATION OF THE DISTRICT OF COLUMBIA,
Washington, D.C., May 10, 1967.

Re S. 1521.

Senator ALAN BIBLE,
Chairman, Senate District Committee,
Senate Office Building, Washington, D.C.

DEAR SENATOR BIBLE: The Women's Bar Association wishes to go on record as endorsing the above legislation.

Respectfully yours,

JOYCE CAPPS, *President.*

WOMEN'S BAR ASSOCIATION OF THE DISTRICT OF COLUMBIA,
Washington, D.C., May 10, 1967.

Re S. 1523.

Senator ALAN BIBLE,
Chairman, Senate District Committee,
Senate Office Building, Washington, D.C.

DEAR SENATOR BIBLE: The Women's Bar Association wishes to go on record as endorsing the above legislation.

Respectfully yours,

JOYCE CAPPS, *President.*

WOMEN'S BAR ASSOCIATION OF THE DISTRICT OF COLUMBIA,
Washington, D.C., May 10, 1967.

Re S. 1524.

Senator ALAN BIBLE,
Chairman, Senate District Committee,
Senate Office Building, Washington, D.C.

DEAR SENATOR BIBLE: The Women's Bar Association wishes to go on record as endorsing the above legislation.

Respectfully yours,

JOYCE CAPPS, *President.*

The CHAIRMAN. And a letter from Miss Capps dated May 10, 1967, then president of the Women's Bar Association of the District of Columbia, opposing S. 1512; also a letter from Miss Capps dated May 10, 1967, opposing S. 1522, will be included in the record at this point.

(The letters referred to follow:)

WOMEN'S BAR ASSOCIATION OF THE DISTRICT OF COLUMBIA,
Washington, D.C., May 10, 1967.

Re S. 1512.

Senator ALAN BIBLE,
Chairman, Senate District Committee,
Senate Office Building, Washington, D.C.

DEAR SENATOR BIBLE: The Women's Bar Association wishes to go on record as opposing the above legislation.

Respectfully yours,

JOYCE CAPPS, *President.*

WOMEN'S BAR ASSOCIATION OF THE DISTRICT OF COLUMBIA,
Washington, D.C., May 10, 1967.

Re S. 1522.

Senator ALAN BIBLE,
Chairman, Senate District Committee,
Senate Office Building, Washington, D.C.

DEAR SENATOR BIBLE: The Women's Bar Association wishes to go on record as opposing the above legislation. Although a new obscenity statute is needed in the District of Columbia, we are of the opinion that this proposed legislation will not serve the purpose for which it was designed. Inclusion of the words "with knowledge" would render it virtually impossible to enforce.

Respectfully yours,

JOYCE CAPPS, *President.*

The CHAIRMAN. I also wish to include in the record at this point a letter dated April 24, 1967, from William H. Press, executive vice president, Metropolitan Washington Board of Trade, recommending enactment of S. 1512, S. 1516, S. 1517, S. 1519, S. 1520, S. 1521, S. 1522, S. 1523, and S. 1524, and stating that they would like to present a statement on S. 1518.

(The letter referred to follows:)

THE METROPOLITAN WASHINGTON BOARD OF TRADE,
Washington, D.C., April 24, 1967.

Mr. CHESTER H. SMITH,
Staff Director, Committee on the District of Columbia,
U.S. Senate, Washington, D.C.

DEAR MR. SMITH: In response to your letter of April 18th respecting a series of bills concerning crime pending before the Committee, let me give you the following comments.

S. 1511. We favor increasing the salaries of policemen and will appreciate being notified when hearings are held on this bill so that we may place our comments in the record.

S. 1518. We are deeply concerned respecting this bill relating to the admissibility of evidence and consider it the most important one under consideration. We will appreciate it also if you will advise us when hearings are held on S. 1518 as we would like to present a statement.

The following bills relate to matters which the Board of Trade has endorsed in testimony before the House Committee. Unless your Committee specifically desires additional testimony from us, we suggest that we be recorded as favoring their enactment. We see no particular necessity of appearing at hearings.

S. 1512, S. 1516, S. 1517, S. 1519, S. 1520, S. 1521, S. 1522, S. 1523, S. 1524.

Sincerely,

WILLIAM H. PRESS.

The CHAIRMAN. We are in receipt of a resolution approved by the Federation of Citizens Associations of the District of Columbia on June 8, 1967, recommending the enactment of S. 1522, which will be made a part of the record at this point.

(The resolution referred to follows:)

FEDERATION OF CITIZENS ASSOCIATIONS OF THE DISTRICT OF COLUMBIA

REPORT OF THE LAW AND LEGISLATION COMMITTEE—SUBJECT: S. 1522

This Bill, introduced by Senator Bible, would amend the Indecent Publications Section of our Code (Section 22–2001).

The present law is aimed only at those who sell, give away, or exhibit or possess with intent to sell, give away, or exhibit any obscene, lewd, or indecent book, pamphlet, picture, etc. or advertise same for sale.

The proposed legislation amending the present law adds a number of other categories of indecency, including motion pictures, slides, tape recordings, etc., and makes it a crime to write, publish, compose, model for, act in, record,

etc., thus reaching not only the sellers but the producers of filth and obscenity. It also provides for the seizure and destruction of such matter and increases the penalties from $50 to $500 fine or 1 year imprisonment or both to a maximum of $5000 fine or 1 year or both.

If it now be a crime to sell, give away, or exhibit lewdness, then it should also be a crime to produce it, for without its production there could be no exhibition. The Law and Legislation Committee believes that the easy availability of various types of pornographic, indecent materials to children and persons of limited mentality cannot help but have a bearing upon the illegitimacy and sexual crimes which flourish in this community, and therefore recommends the following:

BE IT RESOLVED by the Federation of Citizens Associations of the District of Columbia in meeting assembled this 8th day of June 1967 that it endorses S. 1522 and urges its prompt enactment into law, and that copies of this resolution be sent to the Commissioners of the District of Columbia and the appropriate Committees of the Congress.

The CHAIRMAN. Our first witness this morning is the Honorable Fred M. Vinson, Assistant Attorney General. Mr. Vinson is accompanied by Mr. Hugh M. Durham, special assistant to the Assistant Attorney General.

Mr. Vinson, would you like to have Mr. Durham sit with you?

Mr. VINSON. This is all right.

The CHAIRMAN. Very well. You may proceed.

STATEMENT OF FRED M. VINSON, JR., ASSISTANT ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE, ACCOMPANIED BY HUGH M. DURHAM, SPECIAL ASSISTANT TO THE ASSISTANT ATTORNEY GENERAL

Mr. VINSON. Mr. Chairman, I appreciate very much the opportunity of testifying before you today on H.R. 10783. As you know, the President is keenly aware of and concerned deeply over the crime situation in the District of Columbia.

I have a prepared statement which I would like to submit for the record.

The CHAIRMAN. The statement will be incorporated in full in the record, and you may proceed in your own manner.

Mr. VINSON. Thank you, Mr. Chairman.

The bill before the subcommittee today contains measures which the administration proposed in the District of Columbia Crime Reduction Act of 1967. It includes items which were contained in last year's District of Columbia omnibus crime bill. In fact, of the eight substantive titles of H.R. 10783, there are four from the administration's proposal and four are from last year's bill.

In my testimony I shall first treat those items from the President's program, then the other substantive items, and, finally, I would like to mention several items which we recommend adding to the bill, several of which are pending before the Senate as introduced by Senator Bible, the chairman.

Title I deals with arrest without a warrant, and follows substantially the administration bill's title II which authorizes an officer or a member of the Police Department, under certain conditions, to arrest without a warrant and take into custody a person for certain serious misdemeanors not committed in his presence. The arresting officer must have probable cause to believe that the suspect has committed one of the enumerated misdemeanors and must also have probable cause to be-

lieve that unless the arrest is made immediately the person will not be apprehended or may cause injury to others or to property or may destroy evidence. We strongly support this provision.

It is noted that H.R. 10783, in incorporating this new authority, rewrites all of the District of Columbia Code, section 4–140, and deletes that language which has to do with prompt presentment. However, we feel that rule 5–A of the Federal Rules of Criminal Procedure and a corresponding rule in the court of general sessions both require prompt presentment of arrested persons and there appears to be no need for a specific presentment requirement in the District code.

The CHAIRMAN. Title I, as passed by the House, has the strong support of the Department of Justice; is that correct?

Mr. VINSON. That is correct.

The CHAIRMAN. Unchanged?

Mr. VINSON. That is correct.

Title IV deals with the obstruction of justice and, substantially, is similar to title III of the administration's proposal which makes it a crime to obstruct investigations relating to violation of any criminal statute in effect in the District of Columbia. The administration proposal would have gone slightly further by also protecting investigations of violations of "regulations"; however, this, as passed, we feel covers the primary area concerned and we support title IV.

Title VII has to do with citations. This title, in substance, follows title IV of the administration's bill. It authorizes the Police Department officers, when arresting without a warrant in misdemeanor cases, to issue a citation in lieu of taking an offender into custody. The administration bill would have authorized citations with the court of general sessions prescribing the offenses and circumstances under which such citations could be used. We feel that would be preferable, but we support title VII as passed by the House, and we concur in the limitation of the authority to misdemeanors.

The citation function is somewhat like a traffic ticket. We feel that they will result in a substantial saving of police time spent in transporting persons from the scene of the arrest to station house to headquarters to the court in minor cases. It will also reduce the costs of supervising the arrested person. We find that this procedure has been used very successfully in New York City and in various California communities.

The CHAIRMAN. Will you qualify that just a little further?

I remember in a previous hearing on this particular subject covered in legislation introduced by myself as an administration proposal. How long has the city of New York been using this citation procedure?

Mr. VINSON. I can tell you that they had a project which they ran in two precincts which was so successful to their way of thinking that they plan to expand it into the entire city. I cannot tell you precisely when they started.

The CHAIRMAN. Are you talking in the range of 1 year or 6 months?

Mr. VINSON. I think we are talking within the range of at least a year, Mr. Chairman. I will be glad to furnish you statistics.

The CHAIRMAN. Will you supply that information for the record?

Mr. VINSON. Yes.

The CHAIRMAN. I think that the purpose of the question is rather obvious, to see what type of experience we have with this somewhat new concept. And it seems to me that it might be very meritorious. If you would, supply it, please.

I would likewise direct that same question, as to where in California it was used, and, again, how long.

You say it has a fine record of success. How do you draw that conclusion?

Mr. VINSON. Well, we feel, first, it has the police issue the citation rather than taking the man to the station house, which saves police time. The data from other experiments indicates that between 30 minutes and an hour of police time is involved in this sort of procedure which would be eliminated by this proposal. When you multiply that by perhaps some 16,000 potential uses of the citation, I think it means a significant saving.

In California, I think there are four California cities that have used this procedure, and one interesting facet of their data leads to the fact that they did not lose many people. Those failing to appear were a very insignificant percentage.

The CHAIRMAN. You will supply that and get the factual background and the backup for this, under title VII—that is, the citation section—any additional information that you have on it, which will be helpful when the committee considers this bill.

Mr. VINSON. We will be glad to supply that.

(The following information was subsequently received from the Department of Justice, Legislative and Legal Section, office of the Deputy Attorney General:)

INFORMATION ON USE OF CITATIONS IN OTHER JURISDICTIONS

Information was requested on use of citations in other jurisdictions. Attached is a summary of experience elsewhere based on data collected by the District of Columbia Crime Commission in May, 1966. Also included is a report on citation use in Contra Costa County, California and materials on New York use of citations. We have been informally advised by a member of the New York City Police Department that New York City has used citations for many years for certain minor offenses. For the past three years, it has used citations in a larger number of more serious misdemeanors in one or two of the precincts. As of July, the use of citations in the more serious misdemeanors was commenced on a city wide basis. It appears that use of citation is successful: it saves police time and the no show rate has been about 2-2.5%.

INFORMATION ON USE OF SUMMONS IN OTHER JURISDICTIONS

The President's Commission on Crime in the District of Columbia collected information on the use of summons in criminal cases in other jurisdictions.[1] It may be summarized as follows:

New York City: The Manhattan Summons Project, sponsored by the Vera Foundation is one of the most elaborate developments in the use of summons. It operates under a 1932 amendment to the New York City Courts Act which conferred a joint summons power upon the Police Commissioner and the Board of City Magistrates with the necessary discretion to select and to provide for issuance of criminal summons in any and all misdemeanor offenses. There is no state-wide summons authority in New York.

For over 30 years, New York City's summons power was used exclusively for regulatory and other municipal ordinance violations. In 1963, however, summons

[1] Information collected during April and May 1966. It may be supplemented by attached materials from Contra Costa, California, and New York City, New York.

authority was extended to all misdemeanors with the understanding that the initial use by Manhattan Summons Project would be limited to the 14th Precinct in petit larceny and simple assault cases.

The initial experiment involved the assignment of two Vera Foundation representatives to the 14th Precinct to interview all those arrested for petit larceny and assault in the third degree (simple assault). The interview elicited information regarding the subject's family ties, length of time in New York and employment. After independent telephone verification a recommendation based upon verified facts was made to the desk officer of the precinct. If the recommendation was accepted, the subject was released and summoned to reappear in court at a mutually agreeable date.

Since April 1, 1964, only 2.2 percent of those summoned have failed to appear in court as required. The success of the procedure was reported by Leonard E. Reisman, Deputy Commissioner of Police, New York City, before the 72nd Annual Conference of the International Association of Chiefs of Police. He said:

> We think that the Manhattan Summons Project is a key to improved techniques in the field of prearraignment. The offender is brought before the court as before, but at markedly reduced expense to the taxpayer, at a substantial saving of police manpower, and with full safeguard of his rights. Ultimately, we think, the dignity of the law enforcement process will be enhanced.[2]

After the initial experience in the 14th Precinct the summons project was expanded to the 13th and 16th Precincts. The scope of offenses covered was also increased and now includes many other misdemeanors.

The Police Commissioner of New York City has announced plans to further expand use of summons to all precincts. He sees it as part of an overall program to improve police efficiency and minimize the disadvantages of police custody, prior to first court appearance.[3]

California: In 1959, the California legislature enacted a statute authorizing summons release of all misdemeanants electing not to be presented before a magistrate. The State Attorney General's Office has actively encouraged the development of local police procedures to implement the statute. Three areas replied to Commission inquiries.

In *Glendale, California* the summons program is handled by the police and involves issuance of a summons at the scene or at the precinct depending on the nature of the offense. Since July 1964 over 60% of the persons charged with misdemeanors and regulatory violations have been released. Only 6 have failed to appear as required.

The "field release" or on-the-scene summons uses a form similar to the common traffic ticket in license and other regulatory offenses. The precinct release requires a fact sheet with more information including a signed promise to appear. There is no formal investigation of the community ties of the accused, all that is required is a "clear record and a residence within Los Angeles County".[4]

The *Sunnydale California* summons project was developed by the police. It applies to all misdemeanors and regulatory offenses. Release is at the discretion of the captain of the watch, after a recommendation based upon an interview and verification of information taken from the accused.

Since commencement of the summons procedure on November 6, 1963, through August 31, 1965, summons has been used in 1,286 cases or 50% of the total eligible misdemeanors, and of those summoned only 7% failed to appear as required. It has been estimated that summons release in Sunnyvale has resulted in the substantial savings in the cost of detention.[5]

Contra Costa County, California has both precinct and on-the-scene summons. On-the-scene summons has been limited to regulatory and license violations

---

[2] Address by Leonard E. Reisman, The 72nd Annual Conference of the International Association of Chiefs of Police, October 5, 1965.

[3] *New York Times.*

[4] It must be noted that Glendale, California, is an upper middle class residential suburb of Los Angeles with a population of 135,000 and a police force of 141 men. It has few of the problems that would be inherent in summons in a larger metropolitan center, such as the District of Columbia. Telephone interview with Mr. C. R. Eggers, Chief, Glendale, California, Police Department, May 11, 1966; See also, letter from C. R. Eggers to Herbert J. Miller, Jr., April 16, 1966.

[5] Sunnyvale, California, is an upper middle class suburb of San Jose, California, with a population of 85,000 and a combined police and fire department consisting of 171 men. Telephone interview with Jacob A. Jessup, Chief, Department of Public Safety, Sunnyvale, California, May 11, 1966; See also letter and enclosures from Jacob A. Jessup to Mr. Herbert J. Miller, Jr., April 13, 1966.

and utilizes the standard traffic ticket form. In one police district, in a 4 month test period, 174 on-the-scene summons releases were made and in *every* case the person appeared as required in court.

In the more serious misdemeanors, summons is issued at the station house. Release takes place after the booking and identification procedures. There is an interview of the defendant, verification of the facts, and recommendation based upon the subject's community ties. No statistics are available but good compliance rate is reported.[6]

Other Jurisdictions: The majority of jurisdictions responding to the Commission questionaire have not yet implemented programs of summons release, but many are completely designed awaiting only proper authorization. *Chicago, Illinois,* will implement a pilot summons project on June 1, 1966.[7] In *Toledo, Ohio,* the Bar Association's Bail Bond Committee is urging that the Toledo Police be authorized to issue summons on the scene in cases of assault and battery, peace bonds, and disturbances in the family or neighborhood.[8] In *Philadelphia, Pennsylvania,* a summons project is being considered at the suggestion of the Philadelphia Police Department.[9]

Pre-Trial Release Programs, Purposes, and Procedures

(Prepared by District Attorney John A. Nejedly, Contra Costa County, Calif.)

In continuing studies to determine upon means of improving efficiencies of law enforcement procedures I reviewed with some interest the activities of the Vera Foundation and the possibilities that law enforcement might find means of improvement in the development of more effective systems for reduction in custody pending trial. Reports of the activities in New York, Philadelphia, Los Angeles, Sunnyvale and other communities suggested real values in these experiences, and a committee was organized in Contra Costa County under the authority of the Board of Supervisors to recommend specific improvements in law enforcement practices in the area of bail and pre-trial release.

Without intending any reflection upon the pioneering programs suggested by the Vera Foundation and other sponsors of pre-trial release systems, all of whom have contributed immeasurably to the improvement of the administration of justice, I necessarily must make it quite clear that the purposes and direction of the pre-trail release procedures in Contra Costa County did not share the premises upon which these other programs have been predicated. First, the argument has been offered to justify, if not demand, the institution of pre-trial release programs, that those arrested for alleged criminal activity are presumed innocent until conviction after trial and therefore any detention pending trial is the detention of an innocent person. Second, the point is raised that statistics establish that persons released on bail or otherwise have a greater chance of not being convicted than do those who remain in custody and therefore that the establishment of innocence is prevented by incarceration. With neither of these conclusions do I agree, nor were they in any measure taken in support of the work of the Bail Bond and Pre-Trial Release Committee study in our County.

In respect to these arguments, it should be understood that if the presumption of innocence prior to conviction establishes innocence itself, then rather than concern for release from custody our interest should be directed to the prevention of arrests of innocent people. Secondly, if release pending trial reduces the judicial determination of guilt, then again innocent people have been arrested or, on the other hand, a system produced that permits a greater number of guilty persons to escape justice.

---

[6] Contra Costa County, California, is located on the northern edge of San Francisco Bay. It has a varied residential and industrial population of over 590,000 and is divided into 12 separate police districts. Telephone interview with Donald R. Walker, Chief Criminal Deputy, District Attorney, Contra Costa County, California, May 11, 1966; See also, Proceedings of Institute on Operation of Pre-Trial Release Projects, conducted by the Vera Foundation, New York City, October 14–15, 1965. In galley proofs, see proof Nos. 69–71.

[7] Letter and enclosures from Captain Frank Lynch, Acting Director, Planning Division, Chicago Police Department to Herbert J. Miller, Jr., April 13, 1966.

[8] Letter from Dan H. McCullough, Chairman, Toledo Ohio Bar Association's Bail Bond Committee to Herbert J. Miller, Jr., April 13, 1966.

[9] Letter from Harry G. Fox, Chief Inspector, Special Investigation Bureau, Philadelphia Police Department to Herbert J. Miller, Jr., April 11, 1966; See also, letter from E. R. Gomberg, Executive Vice President, Philadelphia Crime Commission to Herbert J. Miller, Jr., April 27, 1966.

This analysis may appear facetious, but, in fact, is offered in all seriousness. I respectfully suggest that reasons for any substantial change in the administration of justice must have the full cooperation of the agents through whom those changes must be effected. While pilot programs in limited areas may point out the desirability of pretrial release procedures in addition to the present systems of bail, there are not enough foundations or grants to finance and staff universal and continuing programs implementing desirable innovations. Ultimately pre-trial arrest procedures must operate within law enforcement agencies and ultimately through law enforcement personnel. Funds available to law enforcement are inadequate enough without imposition of additional responsibilities unless it can be shown to law enforcement itself that appropriate pre-trial release programs effect improvements in police efficiency greater than the time required to administer them, and until such showing is made no broad application of such procedures can be anticipated.

Any long-range pre-trial release program extending over any appreciable area of law enforcement in the United States must have the cooperation of law enforcement itself, and that cooperation will never be secured if the purposes of pre-trial release programs are related to those mentioned. Without disrespect to the Vera Foundation and its founders and sponsor, I suggest with all possible emphasis that *the real purpose of pre-trial release programs be stated as the improvement of law enforcement efficiency while respecting fully the right to freedom of those arrested pending judicial determination of guilt* in all cases in which responsibility for appearance at such determinations can reasonably be anticipated.

It was with the intent to raise the question of improved police efficiency that the subject was studied in Contra Costa County. [After pilot programs were instituted and examined, it was unanimously agreed by the committee and by *all* the police departments that release pending judicial proceeding and release without detention were effective instruments of reduction in costs of police administration and the establishment of improved police efficiency.] All activity in these projects was provided by existing police personnel and in the continuing procedures of all police agencies in Contra Costa County, all personnel involved are regular members of the police departments.

The first interest was directed to enabling legislation. In California this appears in Penal Code Sections 853.6, 853.1 and 849(b)(3), which appear as follows:

"§853.6. Notice to appear; contents; release; bail; warrant.

(a) In any case in which a person is arrested for an offense declared by state law to be a misdemeanor, and does not demand to be taken before a magistrate, the arresting officer may, instead of taking such person before a magistrate, follow the procedure prescribed by this chapter. The arresting officer shall prepare in duplicate a written notice to appear in court, containing the name and address of such person, the offense charged, and the time and place where and when such person shall appear in court.

(b) The time specified in the notice to appear must be at least five (5) days after arrest.

(c) The place specified in the notice shall be the court of the magistrate before whom the person would be taken if the requirement of taking an arrested person before a magistrate were complied with.

(d) The officer shall deliver one copy of the notice to appear to the arrested person, and the arrested person, in order to secure release, must give his written promise so to appear in court by signing the duplicate notice which shall be retained by the officer. Thereupon the arresting officer shall forthwith release the person arrested from custody.

(e) The officer shall, as soon as practicable, file the duplicate notice with the magistrate specified therein. Thereupon the magistrate shall fix the amount of bail which in his judgment, in accordance with the provisions of Section 1275 of the Penal Code, will be reasonable and sufficient for the appearance of the defendant and shall indorse upon the notice a statement signed by him in the form set forth in Section 815a of this code. The defendant may, prior to the date upon which he promised to appear in court, deposit with the magistrate the amount of bail thus set. Thereafter, at the time when the case is called for arraignment before the magistrate, if the defendant shall not appear, either in person or by counsel, the magistrate

may declare the bail forfeited, and may in his discretion order that no further proceedings shall be had in such case.

Upon the making of such order that no further proceedings be had, all sums deposited as bail shall forthwith be paid into the county treasury for distribution pursuant to Section 1463 of this code.

(f) No warrant shall issue on such charge for the arrest of a person who has given such written promise to appear in court, unless and until he has violated such promise or has failed to deposit bail, to appear for arraignment, trial or judgment, or to comply with the terms and provisions of the judgment, as required by law."

"§853.1. Notice to appear; contents; indorsement; bail; warrant.

(a) A county, city, city and county may enact in its ordinances, violations of which are punishable as misdemeanors, clauses which provide that if any person is arrested for a violation of the ordinance, and such person is not immediately taken before a magistrate as is more fully set forth in this code, the arresting officer shall prepare in duplicate a written notice to appear in court, containing the name and address of such person, the offense charged, and the time and place where and when such person shall appear in court.

(b) The time specified in the notice to appear must be at least five (5) days after such arrest.

(c) The place specified in the notice to appear shall be the court of the magistrate before whom the person would be taken if the requirement of taking an arrested person before a magistrate were complied with, or shall be an officer authorized by such court to receive a deposit of bail.

(d) The officer shall deliver one copy of the notice to appear to the arrested person and the arrested person in order to secure release must give his written promise so to appear in court by signing the duplicate notice which shall be retained by the officer. Thereupon the arresting officer shall forthwith release the person arrested from custody.

(e) The officer shall, as soon as practicable, file the duplicate notice with the magistrate specified therein. Thereupon the magistrate shall fix the amount of bail which in his judgment, in accordance with the provisions of Section 1275 of the Penal Code, will be reasonable and sufficient for the appearance of the defendant and shall indorse upon the notice a statement signed by him in the form set forth in Section 815a of this code. The defendant may, prior to the date upon which he promised to appear in court, deposit with the magistrate the amount of bail thus set. Thereafter, at the time when the case is called for arraignment before the magistrate, if the defendant shall not appear, either in person or by counsel, the magistrate may declare the bail forfeited, and may in his discretion order that no further proceedings shall be had in such case.

Upon the making of such order that no further proceedings be had, all sums deposited as bail shall forthwith be paid into the county treasurer for distribution pursuant to Section 1463 of this code.

(f) No warrant shall issue on such charge for the arrest of a person who has given such written promise to appear in court, unless and until he has violated such promise or has failed to deposit bail, to appear for arraignment, trial or judgment, or to comply with the terms and provisions of the judgment, as required by law."

"§849. Arrest without warrant; duty to take prisoner before magistrate and file complaint; release from custody.

(b) Any peace officer may release from custody, instead of taking such person before a magistrate, any person arrested without a warrant whenever:

(3) The person arrested was arrested for a misdemeanor, and has signed an agreement to appear in court or before a magistrate at a place and time designated, as provided in this code."

The first utilization of these authorizations was established in *misdemeanor arrests for violations in which identification and criminal statistics were not thought to be required, and in which other breaches of the peace or security of the individuals were not involved.* These generally related to store thefts by housewives and otherwise responsible members of the community and violations of county ordinances. It immediately became apparent that the extension of the system of release upon promise to appear that had generally been practiced in

vehicle code violations could be made an effective police procedure particularly by police agencies in rural areas. For example, an arrest of a housewife for shoplifting in a remote area of the county previously required detention after investigation at the scene and transportation to the central county jail, as much as twenty miles distance, for booking and detention. If the person involved was accompanied by children, an intermediate stop at the juvenile hall was required to provide custody for the children. The person involved was then fingerprinted, booked and released only upon bail which might not be forthcoming for some time. If the husband or a member of the family did not come to the jail, additional time was required to repeat the transportation process in reverse back to the scene of arrest. Aside from the requirements of police time and custody and transportation expense, one may easily determine the traumatic effect of this procedure on the person already involved in a psychological problem of substantial proportions that exhibits itself in the store theft syndrome, putting aside for the moment the collateral effects upon the children.

Moreover, it must be kept in mind that upon receipt of the call from the store, the central dispatcher must assign an officer fully competent to investigate *any* theft for there is no practical way to differentiate as to the seriousness of the call for police assistance. In addition to the considerations already mentioned, the officer notified may already be involved in one investigation or activity which must then terminate and the officer must travel to the scene of the incident reported. Time and expense of arrests in rural areas has been analyzed and an average incident determined time required to reach the scene after report is seventeen minutes. Investigation time is twenty-two minutes. Transportation time to the County Jail and booking is thirty-seven minutes. Totaling these and excluding the juvenile problem, custody supervision after booking and possible re-delivery to the scene of arrest, the minimum officer's time is seventy-six minutes, fifty-four of which have been entirely unproductive so far as law enforcement is concerned. In addition, the average travel involved of twenty-nine miles and required removal from service of an expensive piece of police equipment must be considered. Furthermore, neither the officer involved nor the equipment can be called into any other service except in absolute emergency while involved in the transportation of a prisoner.

At present, absent the unusual situation of a case aggravated in nature or by previous arrests, the officer conducts the investigation at the scene and issues a citation in lieu of physical custody. The suspect is allowed to return home simply on the promise to appear. After some experimentation, and the development of citation forms substantially similar to those employed in traffic citations, expansion of the use of citations has gradually extended to all misdemeanors not involving intoxication, prostitution, sex crimes and instances in which either the security of the suspect or the community is involved.

The committee on pre-trial release and bail has closely followed practices in Contra Costa County and all Chiefs of Police and the Sheriff of the County are employing this pre-trial release technique.

Problems in full implementation of a citation system have been encountered and should be discussed. First, the officer at the scene of investigation must have some assurance of responsibility of the suspect. Confinement of a system to local residents or obviously "respectable citizens," however, will unnecessarily and seriously limit the effectiveness of any pre-trial release procedure. The officer must have some assurance that the suspect will appear. Various field procedures have been practiced. A call to the station for clearance or direct reference to an information system to determine identity and particularly the presence of "holds." Certainly the embarrassment of releasing on citation an individual wanted for other crimes would preclude expansion of a citation system by the officer involved. Therefore, the officer must be provided with both discretion and information to make any citation system productive.

Contra Costa County shares in a multi-county Police Information Network through which full backgrounds and holds, particularly outstanding traffic warrants, are available to the investigating officer. With this information immediately available, the fullest utilization of the citation system can be expected. In fact, misdemeanor citation expansion can make much more effective the efficiency of traffic citations in that a universal system of arrest scene identification can disclose requirements for arrest and detention not indicated by the significance of the cause of arrest. Police agencies are well aware of the frustra-

tions of the system of traffic citations through which persons wanted, even for serious crimes, parole or probation violation or traffic warrants, are released through a citation system by the arresting officer. If positive steps are taken to expand the citation system, even to misdemeanors, and an immediately available information network provided, the citation system in all its applications will be more successful and, more successful, more widely used.

Another limiting element in the present citation system is the absence of procedures for securing a record of the offense and identification either for local police or state criminal records. It is this deficiency that restricts use of a citation system by many of our police agencies and legislation providing for appropriate record keeping has been prepared for the current session of the Legislature. To eliminate this problem at least temporarily, the alternative of issuance of a citation after booking at a central police facility is being employed.

Statistics developed by the Vera Foundation and all other information available indicates quite clearly that the purpose of a citation system, producing a defendant in court at a time indicated, is effectively served. Appearances will approximate 99% when an intelligent well-administered program is involved and the judiciary cooperates in making it effective. Courts *must* recognize the failure to appear on a citation a separate offense and provide penalties and the strict application of those penalties to obtain continuing respect for the agreement to appear which, too, must be treated independently of the disposition of the offense for which the citation was issued. If it does not become common knowledge that failures to appear will be effectively dealt with, citation promises will be ignored and the consequent administration required to issue and serve warrants will seriously deter law enforcement agencies in expanding a citation or any other pre-trial release system. The judiciary must be prepared to continuously and effectively cooperate with the police, and it may be pertinent here to point out the vital need for endorsement by the judiciary of pre-trial release systems generally. This relationship is pointed out by the second application of a pre-trial release system practiced in Contra Costa County.

As an alternative to issuance of a citation at the scene of investigation, and in the relatively smaller area of a city, Pittsburg, Contra Costa County transports all those to whom a citation would otherwise be issued to the central police station and within five minutes of any part of the city. At the station all persons are booked, holds or warrants investigated and then released by the issuance of a citation. This practice eliminates any question of identity and record, but requires transportation time which, in this city, is minimal. Pittsburgh releases on citations in which the appearance date is the next court day, a practice inconsistent with the five-day requirement of Section 853.6 but considered authorized by Section 849(b)(3). The possible impropriety of this procedure, however, is the concern of one part of legislation proposed in the current session of the California State Legislature.

From May, 1964, to September, 1966, 967 misdemeanants were so released and three (arrested and released for common drunkenness) failed to be brought to justice.

Arrests for drunkenness pose a particular problem for a misdemeanor citation or O.R. release program for the statistics, if the system extends to releases for these offenses, may disclose a large number of failures to appear and thus the ineffectiveness of the programs alleged to exist. Many of these arrests are for transients and pretrial releases for such offenses, whether on bail or some form of O.R., will always produce substantial failures to appear occassioned by the nature of the defendants themselves. Proper administration should develop a separate system for arrest, detention and appearance, if required, for drunkenness; hopefully a system which recognizes the need for protection and care of those arrested for drunkenness and not the involvement of the judicial process except for the provision of treatment. In fact, the filing of a complaint, issuance of a citation or release on O.R. should be limited to the aggravated case requiring judicial review or, as indicated, treatment.

In addition to issuance of citations at the scene of arrest and in lieu of detention and issuance of citations at a central police bureau after the identification process, police may file a complaint and withhold issuance of warrant, Section 849(b)(3), and release on the promise to appear, a procedure identical in effect to the issuance of a citation except that upon failure to appear the warrant may immediately issue, while in the case of a citation, a complaint would first be required to be filed. This process is seldom employed and usually only in the case

of a citizen's complaint arising out of circumstances in which the police wish to fix the position of a citizen who has alleged the commission of a misdemeanor. The requirement of signing a complaint in these circumstances may also be effective in a citation situation as well when it is essential that a complainant not reverse a position after arrest.

In addition to our system of police issuance of citations in lieu of arrest, we have developed a program whereby a complaint is issued through the district attorney's office. This program is particularly applicable to workmen's compensation cases, unemployment insurance, some check cases, many county ordinances, building code violations and other violations of law in this general category. Again, we have developed what we consider to be rather effective arrangements improving upon the previous practice of the court and most of the state.

The old practice was to forward the complaint and the warrant to the court. The court would file the complaint, issue the warrant, and call the police agency involved. The police agency would come to the court, pick up the warrant, serve the warrant—in many cases making more than one trip to effect service—bring the person to the booking agency, book him and release him on bail. The person would then appear at the court at the appropriate time.

Under our present system we forward the complaint and the warrant to the local police agency along with a letter indicating that we feel that under the circumstances a letter should be sent to the potential defendant advising him of the fact that a complaint has been filed instead of serving a warrant.

If the local police agency, after reviewing the particular police problem involved, concurs in our determination, the letter is transmitted with the complaint and warrant to the court. The court holds the warrant, and forwards a letter to the defendant indicating that the complaint has been filed and that the warrant will be issued for his arrest if in fact he fails to appear. The court sets a time for him to appear. The police agency is not involved in effecting the physical arrest, nor is there any requirement of jail custody.

We have found that under this system we have been able to develop a much better rapport with the people involved than we could under the old system of arrest and detention, which the public generally thinks of as always following some substantial criminal activity. We have discovered that the opportunity for a plea has been materially enhanced by this system.

Finally, in those citations in which an arrest and detention at a central booking facility has been effected and the police or appropriate reasons do not determine to release upon citation or O.R., the defendant is given a form application for O.R. release which includes pertinent requests for information which the defendant completes or obtains assistance in completing. This application is transmitted to the Clerk of the Court at which the arraignment is to be held. The Clerk makes pre-appearance verification of the information as indicated as being necessary, and at the time of appearance the Court is advised of the background and recommendation of the Clerk as to bail requirements or application of release on O.R. This process saves a considerable amount of the Court's time which would otherwise be directed to individual interrogation of defendants, and leads to a better relationship with the police and the defendants.

The form indicates that all statements are made under oath and the Court, if it feels it appropriate, may place the defendant under oath and ask confirmation of the facts given. Experience in these proceedings indicates that the information given has been absolutely reliable and verification by the Court is minimal.

With the experiences in Contra Costa County it can be properly reported that pre-trial release programs, properly administerted through existing police and court personnel, can *substantially improve law enforcement* and the judicial process while fully respecting the dignity and liberties of those charged with criminal offenses.

Law enforcement, faced with expanding constitutional concepts, increasing responsibilities and limited portions of the tax dollars, must look to every possibility for improvements in efficiency. *Reduction in custody time and expense, elimination of transportation requirements and improvement in police relationships with the community and all serve to accomplish this purpose.*

Experience in Contra Costa County has indicated that in a proper context pre-trial release programs can serve to accomplish that result. The conditioning scene to effective programs should include:

1. Understanding by police personnel and administration that punishment is the function of the judiciary, not the executive branch of government.

2. That confinement is in fact punishment and that unnecessary confinement represents punishment without conviction.

3. That the time devoted to transportation and confinement of prisoners is not law enforcement per se. That if proper alternatives to such duties can be evolved, that the time so devoted can be more effectively utilized in investigation of crime and the apprehension of those responsible.

4. That the custody, care and feeding of prisoners, their transportation, transportation to and from the courts, management of visitors and attorney interviews and the processing and safeguarding of prisoners properly represents a substantial portion of law enforcement budgets.

5. That appropriate pre-trial release programs can serve to provide the means of release from these responsibilities and the opportunity to establish higher levels of law enforcement.

6. That such programs can only operate effectively with the cooperation of judiciary that will join with law enforcement in finding practical, realistic methods of release. Particularly, the judiciary must be willing to create workable O.R. systems that do not necessarily require court appearances.

7. Pre-trial release programs, properly developed can most practically be established through existing personnel in law enforcement and the judiciary.

8. That such program should include:

a. Citation system for release without detention.

b. Citation or O.R. release after booking.

c. Pre-arraignment preparation of information for the court in determination of bail or other release by the judiciary.

d. Holding of warrants for complaints not involving public security and notification of filing of complaint to allow voluntary appearance.

9. Legislation authorizing such procedures should include:

a. Authority for citation release in misdemeanors and appropriate felonies.

b. Provision for penalties for failure to appear on citation or O.R.

c. Authority for O.R. release by arresting agencies in cooperation with the judiciary.

d. System for securing identification prior to conclusion of judicial proceedings for law enforcement records.

The Manhattan Summons Project

The Manhattan Summons Project, conducted for the past two years by the New York City Police Department with the Vera Institute of Justice of New York, has tested the feasibility of issuing summonses in lieu of arrest for persons charged with minor violations of law, such as petit larceny, simple assault and malicious mischief.

The project is founded on the belief that persons with certain roots in the community may be relied upon to appear in court voluntarily in compliance with a summons thus obviating arrest, detention and transportation of a prisoner to court by an officer.

The summons process tends to ameliorate the negative aspects of the arrest process and serves two purposes—first, it enables the defendant to retain his freedom while awaiting court hearing of charges against him; second, it enables the Police Department to render greater service to the public by increasing the number of man-hours spent by members of the force on preventive patrol. (The number of hours saved by issuing summonses in lieu of arrest whenever proper and possible in thousands of minor cases relieves the police officer of onerous procedure burdens and returns him to patrol for the performance of more productive police services.)

How the project operates

The differences between the summons and arrest processes are best observed by comparing each process as it is carried out in similar cases.

The arrest

In an arrest case, the defendant is brought to the local precinct station house—one of the seventy-nine serving New York City. At the station house the defendant is searched, questioned, and, if the charge warrants, interviewed by the precinct detectives. Necessary records are prepared and the defendant is officially "booked". This process, depending on the nature of the crime charged, the work

load of the precinct, and the availability of detectives, may take from 30 minutes to 3 hours.

After being booked, the defendant is taken to court, if it is in session. When the arrest is too late for process in day court, the defendant must be detained until night court convenes. If arrested after night court has adjourned, the defendant must be held in a detention cell overnight and dispatched to court in the morning. In any case, the arresting officer must accompany the defendant to court and be present for arraignment. Because of heavy court calendars, the arraignment may take from three to eight hours.

The summons

As in arrest cases, the accused is brought to the local precinct station house where he is searched and questioned by the arresting officer. The defendant is then informed of the opportunity of being interviewed to determine if a summons may be substituted for the arrest process.

If the defendant consents, he is interviewed by a field representative of the Vera Institute. The purpose of the interview is to evaluate the defendant's roots in the community. The information sought falls into six general categories:

a. Identification and residence
b. Family ties (amount of contact with other family members)
c. Prior convictions
d. Employment
e. Length of time in New York City
f. Discretionary information (medical record, school attendance, welfare recipient, etc.)

To insure objective evaluation, the information obtained is measured on a point scale system. If the defendant meets the minimum criteria designated for issuance of a summons, the information he gives will be verified.

The verification is made by telephoning persons named by the defendant as references and asking them to supply certain information concerning the defendant. The theory upon which the verification process is based is that if the information received from the defendant is verified by another person with whom the defendant has not had an opportunity to confer since the time of his arrest, the information is most probably true.

One telephone call will often verify all of the information given by a defendant, but, in some instances, several calls may be necessary. The number of verifying calls most usually depends on the amount of the referrals' knowledge of the defendant.

If, after verification, the defendant meets the minimum criteria for the issuance of a summons, the Vera representative makes a recommendation to this effect to the precinct desk officer. The desk officer, with whom the final decision to summons or arrest lies, will consider the recommendation in addition to all other information concerning the case before making a determination. If the desk officer directs the issuance of a summons the arresting officer will issue the summons and make it returnable within ten days. The defendant is now free to leave and the officer can resume patrol. This process of issuing a summons in lieu of arrest is normally completed within 45 to 90 minutes.

RESULTS TO DATE

Of the first 2,676 cases recorded in the experimental phase of M.S.P., 1,489 summons cases were processed. The 1,187 not processed were divided between 1,093 who did not qualify for interview because of narcotics addiction, intoxication or like valid reasons, and 94 who refused to be interviewed.

Of the 1,489 processed, recommendations for summonses were made in 1,014 cases. Of these, the desk officers authorized summons in 987 cases while rejecting the recommendations in 36 cases where circumstances surrounding the commission of the crime charged did not warrant issuance of a summons in lieu of arrest.

As of June 1, 1966, of those persons required to appear in court for arraignment, only 26 persons failed to appear in court to answer summonses. This represents a "jump" rate of 2.6% which compares favorably with the rate for bail jumping. Of the more than 900 persons appearing in court, the trial judges set bail in only 12 cases, the remainder were released to appear on their own recognizance for trial.

EFFECTS OF THE PROGRAMS

The effectiveness of M.S.P. is best measured by considering the results for the persons and agencies involved.

The defendant

The basis for the American legal system is the belief that a person is innocent until proved guilty beyond a reasonable doubt. Studies conducted during the earlier Manhattan Bail Project conclusively demonstrated that defendants detained in custody while awaiting trial were convicted more often than those who posted bail and retained their freedom before trial. There were many factors credited to this result, some tangible, some speculative, but nevertheless the outcome was somewhat predictable. This same finding appeared in the analysis of the M.S.P. Further, the defendants who retain their freedom pending trial usually continue with their employment, provide for their families and retain counsel to prepare a proper defense.

The police

A basic purpose of any police department is to prevent crime. Where crime cannot be prevented, it becomes the duty of the police department to arrest the offender, secure evidence relating to the crime and present both the prisoner and the evidence in court for judicial determination.

Crime prevention is performed by maintaining a strong, well trained, and efficient patrol force. The uniformed police officer on a post is credited by police administrators as being the greatest deterrent to crime. When an administrator is obliged to remove a patrolman from his post so that he can appear in court, preventive patrol correspondingly is weakened. With the absence of police deterrence, more crimes can be committed, more arrests can be made and more officers can be removed from patrol to attend court. A pernicious cycle is thereby created and perpetuated.

Other factors involved in the arrest process also serve to deplete the patrol force. The police must provide custodial personnel and transport services for prisoners—both of which are expensive and strength sapping to a police department.

Under the summons procedure, police officers are away from patrol for a minimum period of time. Upon issuance of a summons, the officer immediately returns to his post. The number of court appearances for police officers are reduced as the defendant, appearing in compliance with a summons, usually has secured counsel and is ready to conduct his defense at the initial appearance. Personnel assigned to the detention and transportation of prisoners, is also reduced and the net gain for the department is reflected in greater preventive patrol without additional cost.

The courts and the Department of Correction

In addition to maintaining the City prison system, the Department of Correction maintains temporary detention pens at the criminal court buildings throughout the City.

With the institution of M.S.P., Correction's workload has been reduced and the overload on their strained-to-capacity detention facilities has been lessened.

Under the arrest procedures, the courts have been unaware of the number of new arraignments presented in any given day. The summons process, however, permits a better scheduling of arraignment calendars and a more efficient flow of cases through the various parts of the arraignment courts.

The community

The community benefits in many ways. The more efficient procedures utilized by the Police, Correction Department and the Courts, result in a more efficient operation of these agencies.

Defendants who retain their freedom pending trial are able to continue their employment and provide for their families, thereby reducing welfare costs to the community.

The quick return of patrolmen to the street reduces opportunities to commit crime and affords greater protection to the citizens of the community.

THE NEXT STEP

The experimental stages of the Manhattan Summons Project have demonstrated the feasibility of the adoption of these procedures on a city-wide basis.

The results have demonstrated the reliability of the concepts involved, so much so, that the New York City Police Department has adopted an official policy that wherever possible summonses will be issued in lieu of arrest.

The first step to making M.S.P. city wide, will come with its introduction into all of the precincts of Manhattan in the fall of this year.

The main difference between the experimental program conducted in the three precincts and the expanded program will be the personnel involved. Under the expanded program, the summons interview and verification will be conducted by members of the force rather than by representatives of the Vera Foundation. Extensive training programs have been initiated at the Police Academy to insure that each member is properly instructed in the mechanics of conducting the interview and verification and that the department M.S.P. procedure is fully understood.

As in the experimental program, the precinct desk officer will make the final determination of whether or not to use the summons procedure. Experience has demonstrated that desk officers in the experimental phase have not been reluctant to authorize the issuance of summonses and have directed issuance in over 96% of the cases in which summonses have been recommended. The soundness of their decisions can be measured by the success of the program and the department plans to make it city wide.

SOME CONSIDERATIONS

During the course of the experimental program comments were elicited and received by the Police Department, and from the comments constructive modifications have been made.

About prisoners

The Police Department exists to carry out the police function and render service to the public. The police function with criminals represents the first step in a total criminal process, the apprehension of criminal suspects. The determination of guilt or innocence is reserved for the courts and juries. Police responsibility ordinarily ends with the apprehension of the defendant, the gathering of evidence, and the presentation of the defendant and the evidence in a court of competent jurisdiction.

However, the main job of the Police Department is to prevent crime. If through the greater use of the summons process the Police Department fulfills its responsibility of presenting the defendant and evidence in court while reducing time spent with cumbersome arrest procedures, then the man hours saved can be used to intensify preventive patrol. Such a procedure is compatible with principles of good police administration and as such is highly desirable.

Relationship of arrest and detention to recidivists

Apparently the use of the summons in lieu of arrest does not encourage the commission of crime. While the criteria for release are based upon the risk of flight, they appear to have validity for prediction of future crime. Out of the first 1,000 defendants who received summonses in lieu of arrest, only a handful have been charged with any new law violations before they went to court.

Police Department concern for the rights of defendants

The Police Department has great concern for all of the community, the guilty as well as the innocent. The rights of an individual, as prescribed by the Constitution and interpreted by the Supreme Court are recognized as the guidelines within which the police must function. Despite this department's dedication to the protection of the many from the depredations of the few, law enforcement calls for equal protection of the law and is not immune to techniques that might proscribe injustice.

The New York City Police Department believes that in many areas there need be no inconsistency between law enforcement goals and concern for individual rights. In most cases the police can further both goals at the same time. The use of the summons for minor violations is another progressive move by the New York City Police Department to provide fair and efficient law enforcement for all citizens.

The CHAIRMAN. You may proceed.

Mr. VINSON. Title VIII has to do with the supervision of offenders and witness fees. We support title VIII.

I believe your committee has already heard the Department of Justice's testimony on these matters, so I will not dwell on the four items that are included.

Now, I come to the titles which are derived from last year's omnibus crime bill.

Title II has to do with criminal responsibility. This title is substantially patterned upon the same title of last year's bill. It rewrites the rules governing the insanity defense in criminal cases in the District. We oppose this title for several reasons.

First, the title replaces the *Durham-McDonald* insanity test with the insanity test proposed by the American Law Institute. We have no objection to the American Law Institute test, but there seems to be no compelling reason to make such a change at this time.

The *Durham* test was troublesome, but since the *McDonald* case in 1962 and the succession of court decisions which followed that, the instant test has been worked out satisfactorily in this jurisdiction and is quite well understood. The change as contemplated in the pending bill, we feel, would result in unnecessary litigation and uncertainty as the courts interpret the new test. There is no real gain.

Secondly, the provision or one provision of this proposal makes insanity an affirmative defense to be established by a preponderance of the evidence. It goes further than last year's bill. We feel that it is entirely proper to require the defendant to place the question of his mental competency in issue, but we feel that the provision requiring that he prevail by a preponderance of the evidence may go too far. The provision in this regard in last year's bill which required only substantial evidence is preferable.

Thirdly, the restriction which prohibits the court or counsel for the Government or the defendant from informing the jury regarding the consequences of a verdict of not guilty on the ground of insanity appears unfair and undesirable. A jury should be made aware of the fact that an acquittal on the grounds of insanity would not mean that the defendant would be turned loose in the community, but instead that he would be placed in an institution for the mentally ill.

As this subcommittee knows, Mr. Chairman, the Department supports a requirement, that the defendant give notice of his intention to rely upon the defense of insanity. The provision is contained in the administration's Crime Reduction Act and it is also contained in S. 1523.

The CHAIRMAN. Before you move on, Mr. Vinson, leaving this title, there are a number of questions that occur to me.

Of course, as you know, we have been over this subject at length on title II and *Durham* as modified by the *McDonald* case. I do not think that we really need a great deal more evidence or testimony inasmuch as we have had many—I do not know how many—pages already developed. Of course, those are going to be made a part of the record by reference. The committee members feel pretty much the same, I think. There are only a few changes in the membership of the District of Columbia Committee as contrasted to those that heard this same problem in the last session. Generally, the Senate supported the position that you are taking on title II, but we encountered many problems in conference, and as a result of the conference we came

out with a somewhat modified compromise bill on title II. There is no doubt about that. And though we have gone into that rather extensively, there are a few questions that I would like to ask you again, to update the situation for the record on this point.

As your third point, you say that the restriction which prohibits the court, or the counsel for the Government or the defendant from informing the jury of the consequences of his not-guilty-by-reason-of-insanity plea appears unfair and undesirable: that a jury, you say, should be made aware of the fact that an acquittal on the grounds of insanity would not mean that the defendant would be turned loose in the community but instead that he would be placed in an institution for the mentally ill.

This was one of the critical points during our many weeks of discussion in conference with the conferees from the House, and they felt very keenly and very strictly and very rigidly on this particular point.

Do we have examples of jury instructions on this ground from other jurisdictions around the United States?

Mr. VINSON. I do not have those available, Senator.

My recollection is that the House report indicated that the majority of the States do not instruct on this point, would not tell the jury the consequences of that insanity plea.

The CHAIRMAN. Could you have someone within your Department research that and furnish us the factual situation as to what other jurisdictions do in this particular area of charging the jury on the consequences of a verdict of not guilty on the grounds of insanity? There must be considerable case law on a nationwide basis, and we would, indeed, welcome your help and that of other people in making this research. This is one of the areas that caused the House conferees a great deal of difficulty. It likewise caused us a great deal of difficulty when we met last year.

Mr. VINSON. We would be glad to do that, Mr. Chairman. I think that we will find case law rather than statutory law.

The CHAIRMAN. I do not know whether there is any statutory law. Whatever the situation might be, we will appreciate having more information.

(The following information was subsequently received from the Department of Justice, Legislative and Legal Section, Office of the Deputy Attorney General:)

REPORT ON STATE CASE LAW OR STATUTES GOVERNING INSTRUCTIONS TO JURY ON CONSEQUENCE OF A VERDICT OF NOT GUILTY BY REASON OF INSANITY

I. Case law requires an instruction that the defendant will be committed to a mental institution in:

1. District of Columbia—*McDonald* v. *United States* (1962) 114 App. D.C. 120, 312 F. 2d 847.[1]
2. Georgia—*Bailey* v. *State* (1953) 210 Ga. 52, 77 SE 2d 511.

II. Case law indicates that an instruction on consequence of verdict of insanity is improper in:

1. United States—*Pope* v. *United States*, (1962, CA 5 Tex.) 298 F. 2d 507.
2. Arkansas—*Campbell* v. *State*, (1950) 216 Ark. 878, 228 SW 2d 470.
3. Maine—*State* v. *Park* (1963) 159 Me. 328, 193 A. 2d 1.
4. Mississippi—*Nelson* v. *State*, (1922) 129 Miss. 228, 92 So. 66. See *Gambrell* v. *State*, (1960) 238 Miss. 892, 120 So. 2d 758.

[1] All case citations were taken from Ann. 11 ALR 3d 737.

5. Missouri—*State* v. *Garrett*, (1965, Mo.) 301 SW 2d 235.
6. North Carolina—*State* v. *Bracy*, (1939) 215 N.C. 248, 1 SE 2d 891.
7. Oregon—*State* v. *Daley*, (1909) 54 Ore. 514, 103 P. 502, reh. den. 54 Or. 423, 104 P. 1.
8. Pennsylvania—*Commonwealth* v. *Gable*, (1936) 323 Pa. 449, 187 A. 393.
9. Vermont—*State* v. *Hood* (1963) 123 Vt. 273, 187 A. 2d 499,, 11 ALR 3d 732.

III. An instruction on consequences is given on request of defense counsel in:
1. New Hampshire—*State* v. *Prevost*, (1963) 105 N. H. 90, 193, A. 2d 22.
2. Nevada—*Bean* v. *State*, (1965, Nev.) 398 P. 2d 251.

IV. Giving an instruction on consequences is within the judges discretion in:
1. Connecticut—*State* v. *Pastel*, (1961) 152 Conn. 81, 203 A. 2d 287.
2. Florida—*McClure* v. *State*, (1958, Fla. App.) 101 So. 2d 601.
3. Washington—*State* v. *White*, (1962) 60 Wash. 2d 551, 374 P. 2d 942, cert. den 375 U.S. 883, 11 L. ed. 2d 113, 84 S. Ct. 154.

V. Jurisdictions where there appears to be no law on the instruction to the jury.

1. Alabama	10. Louisiana	19. North Dakota
2. California	11. Maryland	20. Ohio
3. Colorado	12. Massachusetts	21. Oklahoma
4. Hawaii	13. Minnesota	22. Rhode Island
5. Idaho	14. Montana	23. South Carolina
6. Illinois	15. Nebraska	24. South Dakota
7. Indiana	16. New Jersey	25. Tennessee
8. Iowa	17. New Mexico	26. West Virginia.
9. Kentucky	18. New York	27. Wyoming

VI. Others as gathered from statute law:
1. Texas—If the defendant is found insane at the time of trial the jury determines whether he is to be committed. If the jury finds that defendant was insane only at the time of the crime then there is only an acquittal. Vernon's Ann. C.C.P. art. 46.02.
2. Utah—It is for the judge alone to determine sanity by having defendant examined. Utah Code Ann. 77-48-2.
3. Wisconsin—It is for a six man jury to determine defendant's sanity and if they find him insane they must determine whether custody and treatment is proper. Wisconsin Statute Ann. 51.03.

The CHAIRMAN. On the same title, title II, your position is rather clear that you do not object to the test of the American Law Institute. You feel that there is no particular need for it at this time, however, because of the fact that the *Durham* decision, clarified and modified by the *McDonald* case, is causing no great difficulty in the District of Columbia. Is that generally the position of the Department of Justice?

Mr. VINSON. Substantially, that is correct. We feel that the cases make it clear that it is up to the jury to determine whether behavioral controls were affected by that.

The CHAIRMAN. I do not know that you have had occasion to note an editorial which appeared yesterday in the Washington Star which talked of this particular subject.

Dr. David J. Owens and Dr. Maurice M. Plotkin feel that the standards of the defense of insanity must be changed unless it is to become a justice-defeating racket. And that is a quote from the editorial beginning with the words "must be changed unless it is to become a justice-defeating racket."

That is from the doctors.

One of our most distinguished senior U.S. district judges, Judge David A. Pine, in his minority opinion* in the report of the President's

*Minority Report of David Pine, see p. 185.

Commission on Crime in the District of Columbia, also emphasized that problems continue to exist in this field in insanity pleas. For example, Judge Pine says that the *McDonald* case still holds that the ultimate burden of proving the defendant is sane, beyond a reasonable doubt, is upon the Government.

What happens when the accused refuses to cooperate with the Government's psychiatrists?

Mr. VINSON. I think that was the subject of discussion in the House and on the floor, the amendment by Mr. Dowdy. We feel that it is proper for the facts to be obtained in court. We feel that it is entirely proper to develop the facts on cross-examination or on direct examination of the type involved.

The CHAIRMAN. Suppose that he does not submit to an examination; suppose that he refuses?

Mr. VINSON. We feel that it should be made known to the jury.

The CHAIRMAN. How does the Government carry the burden of proof on a set of facts of that kind; just by an instruction to the jury?

Mr. VINSON. By instruction, by cross-examination of defense witnesses, by lay witnesses. And I think the fact that a defendant refuses to cooprate would certainly have some weight.

The CHAIRMAN. Is not the accused likely to be acquitted if the Government is unable to go forward on its own to meet the issue?

Mr. VINSON. Senator, that is entirely conceivable. I am not sure whether that underlies the statement of the two gentlemen who were the subject of that editorial, because in 1966 we only had 26 persons who were found not guilty by reason of insanity in the District of Columbia courts.

The CHAIRMAN. Let me read into the record this editorial from yesterday's Evening Star.

In 1954 the United States Court of Appeals announced a new doctrine, known as the *Durham* rule, in criminal cases hinging upon the defense of insanity. The essence of the new rule was that an accused person was not criminally responsible if his act was the product of mental disease or mental defect.

This was hailed, and rightly so, as a notable improvement over the District's previously prevailing tests of insanity in a criminal case—namely whether the accused could tell the difference between right and wrong and, if he could, whether he was driven to commit the offense by an "irresistible impulse."

I suppose that is an offshoot, is it not, to the *McDonald* case?

It wasn't long, however, before the seemingly simple, but actually ambiguous, test laid down in *Durham* became something of a nightmare, especially for judges sitting in the trial courts. More than 100 "clarifying" opinions were handed down in an effort to explain what the *Durham* rule really meant. The final result was chaos. Criminals who were not insane were "beating the rap" under one or more of the interpretations of *Durham*. A well-intended rule of law was defeating its own purpose.

This was the point that Judge David A. Pine stressed in the minority opinion by the District Crime Commission. And now he has been joined by two psychiatrists at St. Elizabeths Hospital. In an interview published in The Star a few days ago, these men, Dr. David J. Owens and Dr. Mauris M. Platkin, said they fully agreed with Judge Pine. Between them, these two physicians have had more experience with the practical workings of the *Durham* rule than anyone else. At the outset they were all for it. But now they say that the defense of insanity under the *Durham* rule standards must be changed unless it is to become a justice-defeating racket. And they should know.

The essential changes which they favor are incorporated in the District crime bill recently passed by the House. They were also in the District crime bill which

the President vetoed last year on other grounds. This time, they ought to stick. We hope the Senate (and the President) will heed the urgings of Drs. Owens and Platkin.

And I also want to make a part of the record a news article by Ronald Sarro, a staff writer for the Star, interviewing the doctors on this question.

I know that this pretty much expresses the feelings of the House conferees of last year, and I guess, undoubtedly, the feeling of the House this year or they would not have changed this rule as they have. I would be inclined to think that the case law has worked out to a point where the law is no longer being abused and where it is no longer defeating justice; but there seemed to be two very, very responsible psychiatrists and, certainly, a very fine judge, Judge David Pine, who thinks otherwise. All we are trying to do is close this gap that apparently came about during the *Durham* case. I was of the impression—and I may be mistaken about it—that the *McDonald* case had closed that gap. This seems to indicate that the case law now dealing with insanity should be changed to more nearly agree with the House-passed bill.

Any comments you have would be appreciated.

This is one of the areas where we found great difficulty with the House last year.

(The editorial entitled "Criminal Insanity" reads in full as follows:)

[From the Washington Sunday Star, July 23, 1967]

CRIMINAL INSANITY

In 1954 the United States Court of Appeals announced a new doctrine, known as the *Durham* rule, in criminal cases hinging upon the defense of insanity. The essence of the new rule was that an accused person was not criminally responsible if his act was the product of mental disease or mental defect.

This was hailed, and rightly so, as a notable improvement over the District's previously prevailing tests of insanity in a criminal case—namely whether the accused could tell the difference between right and wrong and, if he could, whether he was driven to commit the offense by an "irresistible impulse."

It wasn't long, however, before the seemingly simple, but actually ambiguous, test laid down in *Durham* became something of a nightmare, especially for the judges sitting in the trial courts. More than 100 "clarifying" opinions were handed down in an effort to explain what the Durham rule really meant. The final result was chaos. Criminals who were not insane were "beating the rap" under one or more of the interpretations of *Durham*. A well-intended rule of law was defeating its own purpose.

This was the point that Judge David A. Pine stressed in the minority opinion by the District crime commission. And now he has been joined by two psychiatrists at St. Elizabeths Hospital. In an interview published in The Star a few days ago, these men, Dr. David J. Owens and Dr. Mauris M. Platkin, said they fully agreed with Judge Pine. Between them, these two physicians have had more experience with the practical workings of the *Durham* rule than anyone else. At the outset they were all for it. But now they say that the defense of insanity under the *Durham* rule standard must be changed unless it is to become a justice-defeating racket. And they should know.

The essential changes which they favor are incorporated in the District crime bill recently passed by the House. They were also in the District crime bill which the President vetoed last year on other grounds. This time, they ought to stick. We hope the Senate (and the President) will heed the urgings of Drs. Owens and Platkin.

(A newspaper article entitled "Durham Rule Being Abused, Two Psychiatrists Assert" by Ronald Sarro (Washington) Star staff writer, is as follows:)

[From the Washington Evening Star, July 17, 1967]

DURHAM RULE BEING ABUSED, TWO PSYCHIATRISTS ASSERT

(By Ronald Sarro)

Two key psychiatrists at St. Elizabeths Hospital believe that the Durham Rule is being abused as a trial defense and should be changed to make defendants provide positive proof of insanity.

They feel defendants can too easily come up with "some evidence" of mental disease or defect required to raise the issue, in some cases making prosecutors helpless to prove beyond doubt that insanity was not a factor.

They feel that defendants can too easily get private psychiatrists, some who feel all criminals are insane, to testify on their behalf, while defendants are not required to cooperate during examinations by government psychiatrists.

The government psychiatrists are Dr. David J. Owens, clinical director, and Dr. Maaris M. Platkin, physician in charge, of the John Howard Pavilion for the criminally insane at the federal hospital.

VIEWS HAVE SHIFTED

The psychiatrists, who in recent years have shifted their views on the issue, said they favor a section of a D.C. crime bill, newly passed by the House, calling for a change in the burden of proof in insanity defense cases.

The measure, now under Senate consideration, provides that "mental disease or defect (which excludes) responsibility is an affirmative defense which the defendant must establish by the preponderance of evidence."

The *Durham* decision found that the traditional "right-wrong" test for judging criminal insanity was "inadequate." The decision provided "simply that an accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect."

This was followed by more than 100 "clarifying" opinions, including the 1962 *McDonald* decision which almost ended debate by more rigorously defining evidence needed to raise an insanity defense, and emphasizing that juries rather than judges, should decide the issue.

Owens and Platkin believe that Congress further should adopt legislation requiring persons referred to their hospital for a mental evaluation to cooperate with the government's examiners.

Unless this is done, they said, St. Elizabeths psychiatrists usually have nothing to offer prosecutors when defendants refuse to be examined, leaving the opinions of defendants' doctors as the only medical testimony before juries.

12 YEARS ON STAFF

The two psychiatrists are veterans of 12 years on the staff of the criminally insane division, and probably have more experience dealing with the criminally insane under the 1954 *Durham* decision of the U.S. Court of Appeals, than any other psychiatrists.

In an interview, Owens and Platkin strongly supported the minority view of the U.S. District Court Judge David A. Pine on insanity defense, contained in the report of the nine-member D.C. Crime Commission earlier this year.

The two said they do not feel Pine is getting the support he deserves. Pine, backed by two other commission members, strongly attacked a majority opinion that there was "no pressing need" for a change in Durham.

The D.C. Crime Commission was "unable to judge whether too many or too few persons" were being found not guilty by reason of insanity. But it said the number of defendants being excused because of insanity was small.

And in view of a statute requiring hospital commitment of those found not guilty by reason of insanity, *Durham* "does not appear to offer a readily available opportunity for criminal offenders to escape the consequences of their acts," the commission said.

Pine said it is significant that the insanity defense "is often interposed in cases of the most serious nature where the government's evidence is such that there appears to be no other defense and no other avenue of escape."

He noted that 5.5 percent of the defendants found not guilty by reason of insanity under *Durham* were classified by St. Elizabeths as being without mental

disorder, and 24.1 percent were diagnosed as suffering "merely" from personality disorders.

This is nearly 30 percent of all not guilty by reason of insanity defendants, a total of 107, who are not insane, but escape punishment, he said. This would change if the burden of proof was shifted, Pine said.

Owens and Platkin said they feel the crime commission was too idealistic in its evaluation of the problems under *Durham* and complained that despite their experience they *were not asked by the commission about the merits of shifting the burden of proof.*

Platkin said that many persons sent to St. Elizabeths "are not being sent out here for valid reasons." He said that "almost with monotonous repetition we hear from 'patients' that they were sent to St. Elizabeths by their lawyers, 'because I thought I could beat my case.'"

Owens and Platkin said they handle 30 to 40 cases a month concerning criminal insanity. They said about three quarters of these are sent to the hospital for mental evaluations by the court.

Mr. VINSON. In response to that, I would say that the thrust of all of the comments appears to be, *Durham* and back in the middle fifties immediately following *Durham* but pre-*McDonald*, that I would be 100 percent in agreement. I do not believe that the present test as evolved in these court decisions varies much from the ALI test, that is, the suggested test: it is a matter of semantics; it is a matter that would certainly require judicial thought, and our basic feeling is that the present test is satisfactory to the prosecution, and rather than engage in another 8 or 10 years of using the different test we would prefer the present test.

The CHAIRMAN. We have both Judge Pine's views and those of the two psychiatrists and they certainly can speak to the point. I am simply seeking clarification. I would be inclined actually to agree with the position you are taking now, if it is true that *McDonald* has kept down the abuses of the defense of insanity. It would seem better to rely upon the established case law rather than try to write statutory definitions which, of course, would still be subjected to future court interpretations—and correctly so. This is the point. I wonder if you have any observation on this, or not?

Mr. VINSON. I should make clear that we have no objections, in the abstract, to the ALI test. We feel, however, that is a practical matter, (1) there is not a great deal of practical difference, and (2) why involve courts in a decade of interpretations?

I might say that the Seventh Circuit Court recently requested us to file a brief in a case where they indicated a desire to reexamine the whole question of mental responsibility. They now have the impulse test. They are thinking about the ALI test, among others. We filed a very exhaustive brief[1] that will be treating all of the tests.

The CHAIRMAN. Could you furnish it for the use of the staff, because it is very, very clear that as you deal in this business of legislative endeavor you will find differences between the House of Representatives and the Senate. I certainly know how firmly the House felt last year, and I have no particular reason to feel that they will have a much different attitude this time. So, we are trying to explore as best we can this entire area to see if we cannot find some possible meeting ground to accommodate what you are saying and, likewise, to accommodate what the House of Representatives feels

[1] *United States* v. *Shapiro*, appeal from the U.S. District Court for the Northern District of Indiana, South Bend Division, may be found in the subcommittee files.

so keenly. It seems to me that, fundamentally, it comes to a factual case, either *Durham*, as modified by *McDonald*, has resulted in abuses—in making the defense of insanity a justice-defeating thing—or not, and I think that we must go into that and determine what is factually correct. I have just one other question on this insanity area.

As I understand it, *McDonald* requires the defendant to produce some evidence of insanity in order to bring his mental condition into issue. Judge Pine indicates that this "some evidence" concept is still a problem and it is for that reason, I am sure that the House felt that insanity should be an affirmative defense, that the accused should establish it by the preponderance of the evidence and that the accused should submit to examination by Government doctors. I think they feel this would settle present uncertainty, and that this is the reasoning behind the bill which we are considering today.

And I think that was the case during our conferences last year, and maybe they are right. Maybe it is necessary to remove these present uncertainties, and if so, maybe we should adopt the House-passed bill.

Do you have any further comments?

Do you object to this other than the fact it is covered by case law?

To me, that seems to be the thrust of what you have said.

Mr. VINSON. Well, that is just part of it, Mr. Chairman.

I think your basic problem here is whether the determination of insanity is a jury function or a function for the psychiatrist and the criticism of *Durham* which was well justified in my opinion, in that it placed the determination in the hands of the doctors on the witness stand and took it away from the jury. I think present case law reestablishes it as the jury's function. The ALI test may do so, too, but I am not sure what uncertainties are referred to in the statement that you read, and my theory is that a new test substituting the ALI statutory test would create uncertainties which would require substantial judicial work.

The CHAIRMAN. There is one new element in the bill that we have before us this year which was not in the bill which came out of conference last year. That is, this new requirement that the accused submit to an examination by the Government doctors. As I previously indicated in my earlier question, it was not in the bill last year. I want to make that clear. This is one of the recommendations of the two doctors referred to in the Evening Star editorial.

What are your views, again, about the accused submitting to an examination by Government doctors?

Mr. VINSON. Well, I suppose you are talking about the amendment on the floor, the so-called Dowdy amendment.

The CHAIRMAN. That is correct.

Mr. VINSON. For failure to cooperate with the psychiatrist evaluation. First, I would state that the ALI model draft has no such provisions.

The CHAIRMAN. It does or does not?

Mr. VINSON. It does not.

The CHAIRMAN. It does not have it as a precondition?

Mr. VINSON. That is right. It merely allows for the fact that noncooperation should be included in the doctor's report. And, as I stated before, the Government can comment on the lack of cooperation to the jury, and I am confident that that is a factor that is weighed by the jurors.

The CHAIRMAN. We went into that exhaustively, and I mean exhaustively, earlier. I am only trying to bring it up to date. We have that new requirement before us of requiring the examination by the Government doctors.

A question has been suggested to me on this question of prohibiting the court or counsel of informing the jury of the consequences of an acquittal on grounds of insanity.

Do you agree that juries are and should be limited to basing their verdict on the facts and the evidence?

Mr. VINSON. Well, obviously, that is their function; but they do not find facts necessarily in a vacuum. I think that knowing the consequences of a verdict is a matter that is within the province of the jury, that it belongs to the jury.

The CHAIRMAN. Well, then, again, if you would furnish either the statutory or the case law you might find on this question of commenting on the consequences of a verdict of insanity, it would be helpful to this committee in trying to compose any differences that may exist between the House and the Senate on the bill. Last year's bill, and more particularly, the bill that came out of conference and was vetoed by the President of the United States presented similar problems. The President in his veto message, as I recall it, did raise specific objections to the insanity provision. Am I right on that?

Mr. VINSON. That is correct.

The CHAIRMAN. Let me see what he said about that.

I had the veto message here before me.

But in reading through it again—I had read it earlier, before the hearing—I do not seem to pick up the specific objections on the insanity provision.

Mr. VINSON. I have that same difficulty.

The CHAIRMAN. Maybe I am in error. Maybe he did not object to that part of it. What we are trying to do now is work out a bill that will meet the approval of the Department of Justice and enact it into law. That is our goal and our responsibility and our function. If the President did not object to the insanity provision in the last session of Congress, I would hope that he would not object to it this time. I think that we can argue it both ways, whether you should adopt the ALI test or whether you should not. I think the best argument can be made against it. As I see it, your position is that existing law is working very well in this jurisdiction at the present time.

Factually, you can prove it, or not; I do not know. It seems to be the difference of whether it is working effectively. I will let the staff look at this and see if they can pinpoint it. I may be in error that that was one of the grounds given on the veto. If it is not a ground, then we can assume possibly that title II as passed by the House does not meet too vigorous an objection*.

Mr. VINSON. We have no objection to the ALI test, as such, as I say. We feel that it will cause problems, however, for a period of years where the law appears now to be well settled.

The CHAIRMAN. But you do not think that it will cause enough problems to cause the President to veto it, just on that ground alone?

---

*Additional information provided the Committee by the Office of the U.S. Attorney, D.C., and Dr. David J. Owens, St. Elizabeths Hospital, Washington, D.C., appears on page 504.

Mr. VINSON. I hardly think so.

The CHAIRMAN. I think that is a fair assumption.

Now, you may proceed.

You are up to title III?

Mr. VINSON. That is correct.

Title III has to do with prearrest detention. This title substantially follows the prearrest detention provisions contained in the same title of last year's bill. It raises several questions.

First, the so-called detention under this title appears, for all legal purposes, to be an arrest; that the detained or arrested person will have all of the rights of any other arrested person, including *Miranda* warnings and the right to presentment without unnecessary delay.

Further, the law presently permits the police to make preliminary inquiries without an arrest. These circumstances may result in extensive and unproductive litigation over the meaning of title III and might result in more harm than help to law enforcement.

It is also noted that title III appears to change old legal distinctions between felony and misdemeanor arrests. It authorizes arrests without a warrant for all misdemeanors, including those not committed in the arresting officer's presence. In this respect it goes beyond, far beyond, present law and really renders meaningless title I which authorizes arrests without a warrant only for a restricted group of misdemeanor offenses.

The CHAIRMAN. I would think that it is obvious that title III causes every one of us the most concern. I think it might be passed for now. If you will just complete your statement, we can return to the questioning as to title III—if you want to proceed in that manner.

Mr. VINSON. Thank you.

Title VI, having to do with crimes of violence, is identical with title V of last year's bill. It adds "robbery" to the list of crimes included in the definition of "crimes of violence" as used in the District of Columbia Code 22-3201.

While "robbery" is logically a crime of violence, the Department of Justice opposes this title because it creates one more incidence in which a mandatory minimum sentence will apply.

Title VI, criminal penalties and obscenity, contains many of the provisions which were included in the same title of last year's bill. Several sections establish or increase mandatory minimum sentences for certain offenses. We oppose these provisions, since they tend to restrict the flexibility which judges should have in sentencing offenders. We feel that this action is a step backward in judicial and correction policy. As the District Crime Commission found—and I quote:

> It has not been demonstrated that the District Court lacks the authority to commit offenders for long terms of imprisonment when appropriate for deterrence or for a meaningful corrective program.

The Commission found that the effective sentences in the District of Columbia—the length of time actually spent in prison—as long or longer than those in State jurisdictions. Accordingly, we believe that the increased mandatory sentences in title VI are neither necessary nor desirable.

We have no objection to the various other provisions of the title, however.

Section 606 is a complete revision of the District of Columbia obscenity law and follows generally the New York statute on this subject. It incorporates the suggestion of the Supreme Court in the recent *Redrup* case that broaded prohibitions may be allowable in respect to minors. The Department of Justice considers this revision of obscenity law much preferable to the injunction provisions which in last year's bill raised very serious constitutional questions.

The CHAIRMAN. Then, this section, the section that was adopted by the House in the area of obscenity law, has the approval of the Department of Justice?

Mr. VINSON. Yes, sir; definitely. This, basically, is a modern up-to-date statute.

The CHAIRMAN. Just for a moment. A question has been suggested to me, on this obscenity provision, that I might just as well ask while we are on this subject: I understand that the Department of Justice had a hand in drafting these provisions, and I notice that last year's conference bill and S. 1522 both contain a provision exempting licensees under the Communication's Act of 1934, as amended, while engaged in regulated activities. This does not appear in the new title VI. Why is it omitted at this time?

Mr. VINSON. Mr. Chairman, I do not know. I suspect it was by inadvertence in the House. I think that the theory of that section is that the regulated industry will be regulated.

The CHAIRMAN. I think that is correct, that they hold a license under the Communications Act, are therefore regulated under the Communications regulatory authority, and that they should probably be exempt. That was the feeling of the Senate last year in putting the exemption into it, and it came out of conference in that form.

It has also been suggested—and my memory has been refreshed—that there was testimony from some of the broadcasters and from those in that particular media that they wanted it absolutely clear that they were governed by the provisions of the Communications Act of 1934, and not by this specific act.

Do I understand that you think it was by reason of inadvertence that it was omitted?

I take it that if you thought it was merely inadvertence, you would have no objection to the exemption?

(The following information was subsequently received from the Department of Justice, Legislative and Legal Section, Office of the Deputy Attorney General:)

CRIMINAL CODE REVISIONS

1. Although the Department of Justice did not include a cost figure in its bill, our Administration Division could cost-out a two year project.

2. Congressman Mathias in H.R. 5454 proposes a two year District of Columbia Code Commission at a cost of $300,000 and this seems reasonable.

3. The Commission on revision of Federal criminal laws was funded for three years at a cost of $500,000.

4. Cost information on code revision in other states is not readily available.

A brief summary on code revision in other jurisdictions is attached.

CRIMINAL CODE REVISION IN OTHER STATES

In recent years, several state legislatures have recognized the inadequacy of their own criminal codes and have provided completely new ones. Louisiana was the first to engage in a modern re-evaluation, enacting a completely revised code

In 1942. Wisconsin's new code was enacted in 1955, Illinois' in 1961, Minnesota's in 1963, New York's in 1965. California is presently working on a new code and the Governor of Pennsylvania had advocated criminal law reform for that state. The American Law Institute spent several years drafting the Model Penal Code, which was completed in 1962.

In Louisiana, the legislature entrusted the project to the Louisiana State Law Institute, which selected professors of criminal law from Loyola, Tulane and Louisiana State University Law School to do the actual work of drafting, with the guidance of judges and lawyers engaged in criminal matters. In Wisconsin, the work was under the general supervision of the legislation council, with the drafting being done by a seven man technical staff, which included an assistant attorney general of the state and two law professors.

The Illinois Code was prepared by a sixteen man committee of lawyers, judges, prosecuting attorneys and law professors, appointed jointly by the presidents of the Illinois State and Chicago Bar Associations. The Minnesota Code was entrusted to a legislative commission which set up a large Advisory Committee of lawyers, professors and practitioners. In New York, a special commission was organized which consisted of twelve specially appointed commissioners plus seven legislators as ex-officio members.

Mr. VINSON. We would have no exception to that, because that is not the area where our trouble lies in the field of obscenity.

The CHAIRMAN. Very fine. You may proceed.

Mr. VINSON. Finally, I would like to mention briefly several items which we feel should be added to this bill.

On the subject of insanity, we recommend that any changes or modifications of the District of Columbia mental responsibility laws include a provision similar to that contained in the administration bill which would facilitate the return of escapees who have been confined by court order. Further, we recommend that S. 1513, or a similar measure, creating a Commission on Revision of Criminal Laws of the District of Columbia be added as an integral part of any bill. We agree completely with the Crime Commission's findings that revision of the District's criminal laws is urgently needed. We believe the subcommittee has received testimony to that effect.

The CHAIRMAN. What was the cost of that? Do you recall?

Mr. VINSON. My recollection is that it was $250,000. I could be wrong on that.

The CHAIRMAN. I have no doubt about the need for updating and revising the criminal laws of the District of Columbia. My only concern would be that in the financial straits in which we find ourselves today—and believe me they are severe—whether or not this is something that might, though very important and very necessary, be deferred.

Mr. VINSON. It is not an inexpensive proposition, because most States, I think about 25 States, have either revised their laws or are in the process of revising or are about to revise. The experience indicates that it takes several years. Of course, you have to have very expert staff people.

The CHAIRMAN. Not only that, Mr. Vinson, but I know that in my own State of Nevada we have had the problem of updating our criminal laws. I know one law which makes it an offense for a woman to wear a hatpin extending from her hat, because that is a dangerous weapon. It had to be properly guarded. That might be correct. I think we had some comments on it and opposition to it. I do not think that the law was ever particularly enforced. That was one example of updating a

criminal law. And to meet that we had a code revision. And then we hired a secretary to do it, and this was about 15 years ago, and he did a fine job of revising it, but then they became a permanent institution in our State governmental setup where they are spending hundreds of thousands of dollars each year. Maybe it is necessary to have a permanent code revision, but they started out, as all good agencies do, with good intentions of having one person, a secretary, with a 3-year term, and expecting to abolish it. But having started it, I think that the three-man commission or the three-person commission probably now has about 30 people and probably costs about $500,000 a year. I do not think it will ever be abolished.

So, I am just wondering where we are headed in this type of adventure. This is my real concern. There should be a way that we could establish limits, human nature being what it is, when we start out with a code revision. I have no doubt that it is necessary for the District of Columbia, but we might end up with an agency that is bigger than the corporation counsel's office. I do not know. I just used them, because they happen to be a handy example, and they interpret law.

Mr. VINSON. This proposed bill is fairly closely modeled on the bill which created the Commission to revise the Federal law. I think that they are self-liquidating. I would see no purpose in a continuing body. I think the legislation makes that fairly clear.

The CHAIRMAN. I should hope so. We have had testimony on that. I should have developed pretty much the same point with the witnesses that appeared at that time. We will consider this as we go along.

Your point is that you feel—and I think it is important—I do not know what priority we would give it—you give it a rather high one. We have had testimony on it, and I would be interested in the overall thing and whether or not this is a one-shot deal or whether this would develop into a permanent commission.

Mr. VINSON. Certainly, it is our intent to have it a one-shot proposition.

The CHAIRMAN. Very well, you may proceed.

Mr. VINSON. As the chairman noted, the matters which I have covered this morning do not include some important legislative proposals relating to crime. We hope that this subcommittee will give early attention to gun control, and to matters relating to alcoholism and narcotics.

In conclusion, I would like to reiterate the desire of the Department of Justice to cooperate in every way with you and your committee in order that the most meaningful and the most useful crime legislation can result. We share with you concern over the crime problems in the District, and we are most anxious to work with you to make our Nation's Capital the model city which it should be.

(The prepared statement submitted by Mr. Vinson reads in full as follows:)

STATEMENT BY ASSISTANT ATTORNEY GENERAL FRED M. VINSON, JR.

Mr. Chairman, I appreciate the opportunity of testifying before you today on H.R. 10783, a bill "relating to crime and criminal procedure in the District of Columbia". As you know, the President is keenly aware of and concerned over the crime situation in the District of Columbia.

The bill before you today contains some crime control measures which the Administration proposed in the "District of Columbia Crime Reduction Act of

1967." It also includes items which were contained in last year's District of Columbia "Omnibus Crime Bill". In fact, of the eight substantive titles of H.R. 10783, four are from the Administration's proposal and four are from the former crime bill. In my testimony today I shall treat first the items from the President's program, then the other substantive items, and finally, I shall mention several items which we recommend be added to the bill, several of which are pending before the Senate as introduced by Senator Bible.

ARREST WITHOUT WARRANT (TITLE I)

Title I follows substantially the Administration bill's Title II which authorizes an officer or member of the Metropolitan Police Department under certain conditions to arrest without a warrant and take into custody persons for specified serious misdemeanors not committed in his presence. The arresting officer must have probable cause to believe that the suspect has committed one of the enumerated misdemeanors and must have probable cause to believe that, unless immediately arrested, the person will not be aprehended or may cause injury to others or to property, or may destroy evidence. We strongly support this provision.

It is noted that H.R. 10783, in incorporating this new authority, rewrites all of D.C. Code Section 4–140, and deletes that language of current law which requires that "such member of the police force shall immediately, and without delay, upon such arrest, convey in person such offender before the proper court, that he may be dealt with according to law". However, because Rule 5(a) of the Federal Rules of Criminal Procedure and a corresponding rule in the General Sessions Court require prompt presentment of arrested persons, there appears to be no need for a specific presentment requirement in the District Code.

OBSTRUCTION OF JUSTICE (TITLE IV)

Title IV is substantially similar to Title III of the Administration bill which makes it a crime to obstruct investigations relating to violation of any criminal statute in effect in the District. The Administration proposal would have gone slightly further by also protecting investigations of violations of "regulations". However H.R. 10783 acceptably covers the primary problem area and we support Title IV.

Today the law relating to obstruction of justice in the District of Columbia applies only to obstructions of on-going judicial proceedings and does not protect the investigative stages preceding the institution of formal judicial criminal proceedings. Title IV of H.R. 10783 will fill the gap.

CITATIONS (TITLE VII)

This title, which in substance follows Title IV of the Administration bill, authorizes Metropolitan Police Department officers, when arresting without a warrant in misdemeanor cases, to issue a citation in lieu of taking the offender into custody. The Administration bill would have authorized citations with the Court of General Sessions prescribing the offenses and circumstances under which such citation could be used. The Department of Justice supports Title VII and concurs in the limitation of this authority to misdemeanor cases.

These citations will function somewhat like traffic tickets and should result in a substantial saving of the police time spent in transporting persons from scene of arrest to station house to headquarters to court in minor cases. Costs of supervising arrested persons should be materially reduced. This citation procedure has been used very successfully in other jurisdictions including the City of New York and various California communities.

SUPERVISION OF OFFENDERS AND WITNESS FEES (TITLE VIII)

We support Title VIII. It contains numerous provisions which were included in the Administration bill and which relate to (1) supervision of persons released on bail, (2) youth offenders, (3) Federal prison industries and (4) witness fees in General Sessions Court. Your committee has already heard Department of Justice testimony on these matters.

I now come to the titles which are derived from last year's omnibus crime bill.

CRIMINAL RESPONSIBILITY (TITLE II)

This title, which is substantially patterned upon the same title of the last year's bill, rewrites the rules governing the insanity defense in criminal cases in the District of Columbia. The Department of Justice opposes this title for several reasons.

(1) This title replaces the *Durham-McDonald* insanity test with the insanity test proposed by the American Law Institute. While the new test itself is not objectionable, there appears to be no compelling reason to make such a change at this time. The *Durham* test was initially troublesome, but since the McDonald case in 1962 and the succession of court decisions which have followed, the insanity test has been satisfactorily worked out and is quite well understood. The change, as is contemplated in the pending bill, would result in unnecessary litigation and uncertainty as the courts interpret the new test.

(2) The provision which makes the insanity defense an affirmative defense to be established by a preponderance of the evidence goes further than last year's bill. It is entirely proper to require the defendant to place the question of his mental competency in issue. Nevertheless, we feel that the requirement that he prevail by a preponderance of the evidence may go too far. The provision in this regard in last year's bill which required only "substantial" evidence is preferable.

(3) The restriction which prohibits the court or counsel for the government or the defendant from informing the jury regarding the consequences of a verdict of not guilty on the ground of insanity appears unfair and undesirable. A jury should be made aware of the fact that an acquittal on the grounds of insanity would not mean that the defendant would be turned loose in the community, but instead that he would be placed in an institution for the mentally ill.

As this subcommittee knows the Department supports a requirement, that the defendant give notice of his intention to reply upon the defense of insanity. This provision is contained in the Administration's Crime Reduction Act and in S. 1523.

PRE-ARREST DETENTION (TITLE III)

This title substantially follows the pre-arrest "detention" provisions contained in the same title of last year's bill. It raises several questions. First, the so-called "detention" under this title, appears, for all legal purposes, to be an arrest. Thus, the detained or arrested person will have all of the rights of any other arrested person, including *Miranda* warnings and the right to presentment without unnecessary delay. Further, the law presently permits the police to make preliminary inquiries without an arrest. These circumstances may result in extensive and unproductive litigation over the meaning of Title III and might result in more harm than help to law enforcement.

It is also noted that Title III appears to change old legal distinctions for felony and misdemeanor arrests. It authorizes arrests without a warrant for all misdemeanors, including those not committed in the arresting officer's presence. In this respect it goes far beyond present law and renders meaningless, Title I which authorizes arrests without a warrant only for a restricted group of misdemeanor offenses.

CRIMES OF VIOLENCE (TITLE VI)

This title is identical with Title V of last year's bill. It adds "robbery" to the list of crimes included in the definition of "crimes of violence" as used n D.C. Code 22-3201.

While "robbery" is logically a "crime of violence," the Department of Justice opposes this title because it creates one more incidence in which a mandatory minimum sentence will apply. A person who is convicted of a crime of violence, which would now include robbery, and who is subsequently convicted of one of the offenses specified in D.C. Code Sec. 24-203(b) is subject to specified mandatory minimum sentences.

CRIMINAL PENALTIES AND OBSCENITY (TITLE VI)

Title VI contains many of the provisions which were included in the same Title of last year's bill. Several sections establish or increase mandatory minimum sentences for certain offenses. We oppose these sentencing provisions since they tend to restrict the flexibility which judges should have in sentencing offenders. We feel that this action is a step backward in judicial and correction policy. As

the District of Columbia Crime Commission found, "(i)t has not been demonstrated that the District Court lacks the authority to commit offenders for long terms of imprisonment when appropriate for deterrence or for a meaningful corrective program." The Commission found that the "effective" sentences in the District of Columbia—the length of time actually spent in prison by an offender—as long or longer than those in State jurisdictions. Accordingly, we believe that the increased mandatory sentences in Title VI are neither necessary nor desirable.

The Department of Justice has no objection to the various other provisions of this title.

Section 606, which is a complete revision of the District of Columbia obscenity law, follows generally the New York statute on this subject. It incorporates the suggestion of the Supreme Court in the recent *Redrup* case that broader prohibitions may be allowable in respect to minors. The Department of Justice considers this revision of obscenity law preferable to the injunction provisions which were in last year's bill which raised substantial constitutional questions.

Finally, I would like to mention briefly several items which we feel should be added to this bill. On the subject of insanity, we recommend that any changes or modifications of the District of Columbia mental responsibility laws include a provision similar to that contained in the Administration bill which would facilitate the return of escapees who have been confined by court order. Further, we recommend that S. 1513, or a similar measure, creating a Commission on Revision of the Criminal Laws of the District of Columbia be added as an integral part of H.R. 10783. We agree completely with the Crime Commission's findings that revision of the District's criminal laws are urgently needed.

As you are aware the matters which I have covered this morning do not include some important legislative proposals relating to crime. We hope that this subcommittee will give early attention to gun control, alcoholism and narcotics.

In conclusion, I would like to reiterate the desire of the Department of Justice to cooperate in every way with you and your committee in order that the most meaningful and useful crime legislation can result. We share with you concern over the crime problems in the District and are anxious to work with you to make our nation's capitol the model city which it should be.

The CHAIRMAN. Now, let us return to title III as agreed. I want to read title III of the bill that came out last year. It is a very short section. The House made a few changes from last year. I think they just changed some specific words.

An officer or member of the Metropolitan Police force of the District of Columbia may detain any person abroad whom he has probable cause to believe is committing or has committed a crime, and may demand of him his name, address, business abroad, and whither he is going.

Any person so questioned who fails to identify himself or explain his action to the satisfaction of the officer or member (as the case may be) may be detained and further interrogated.

The total period of detention provided for by this section shall not exceed four hours. Such detention shall not be recorded as an arrest in any official record. At the end of such detention the person so detained shall be released or be arrested and charged with a crime.

That is almost identical with the comparable title that came out of the conference.

Maybe my construction of it is not correct. I would like to have you clarify as to whether or not there is really any substantial difference between this title III and the conference version which passed last year. This bill would require probable cause as it did last year. It limits the question period to a maximum of 4 hours, as did last year's bill. And both bills require arrest or a charge within the time limit and that the detention not be recordable as an arrest.

And, as I previously indicated to you, it seems to me that this is almost identical with last year's bill.

I do not know whether you have any additional comments, other than those given in your prepared statement or not.

Mr. VINSON. One difference. I do not understand the provision at all, where they add "may arrest or detain any person abroad."

The CHAIRMAN. That is the change that I had reference to.

I do not know why that came about. Last year's bill, I think I know about that. This year, it provides "may arrest or detain any person."

Mr. VINSON. I do not understand the significance of that.

The CHAIRMAN. I notice that much of the debate on the floor of the House revolved around this. A Congressman made the statement, as I understand—a former attorney general of the State—that the laws of the State of New Hampshire include an almost identical statute. He indicated that they had never had any difficulty with it, that it authorizes a peace officer to stop a person he has reason to suspect is committing or has committed or is about to commit a crime. This "about to commit a crime" feature was stricken out in the conference last year, so in that respect the New Hampshire statute is even broader than the proposed title III. And this is the same procedure, with that one change, that is being proposed for Washington. It apparently works in New Hampshire without any problems. That is what the Congressman from that State said. I am sure that Senator McIntyre, who was on our committee last year, indicated the same thing. He was very active in the conference on this phase of the problem. In fact, I think he was a defense lawyer in New Hampshire. He indicated there was no problem in New Hampshire. If that is true, why can it not be used effectively here?

Mr. VINSON. I do not pretent to have any intimate knowledge of the usage of such a statute in New Hampshire, but I would suggest to the committee that the situation in any urban city is far different from what you find in New Hampshire. Also, I think that the New Hampshire statute has an element of stop and search about which the proponents of this bill in debate in the House said was not their intention here. They do not equate this in any way with a stop-and-search law.

The CHAIRMAN. I do not know how you understand that. Of course, you pretty well put your finger on it in the very first section: 301, as I see it, gives to the police officer the authority to arrest and detain a person who he has probable cause to believe is committing or about to commit a crime and may demand of him his name, his address, his business abroad, and whether he is going. That seems to be the limit of the interrogation by the officer as I read it.

Mr. VINSON. Well, as I understand the case law in the District now, an officer may stop and inquire where he has suspicion. This, of course, is a more rigid standard then, in that he may detain any person whom he has probable cause to believe is committing or has committed a crime.

The CHAIRMAN. Well, he has to have probable cause before he does it. The police officer would be authorized to detain a person and to question him. Is there a violation of the Constitution in this?

Mr. VINSON. No, sir. I believe that the District of Columbia police have that authority now, that they can presently stop a person and ask him questions, where there is a reasonable suspicion. There is a substantial body of case law, to that effect, in the District of Columbia.

Of course, the other legislative proposal having to do with a stop law or a stop-and-search law, generally is limited to a period of 20 minutes. I think that the ALI has limited it to 20 minutes. The New York statute, I do not believe is limited as to the time, but as a matter of practice the New York police limit it.

The CHAIRMAN. To 20 minutes?

Mr. VINSON. No. I think that it may be 30 minutes in New York. That escapes me for a moment. The statute in New York does not have a limit.

The CHAIRMAN. Congressman Taft, of Ohio, I believe, has a bill in the House that is the ALI version where you can stop and detain a suspect for 20 minutes, and at the end of that time you have to take him before the nearest available magistrate and have to advise him of his rights under the *Miranda* case. Where I have some difficulty is this: If it is all right for 20 minutes, why is it not for 30 minutes?

Mr. VINSON. That is a very difficult thing, as a matter of fact. The New York statute is up in the supreme court this fall.

The CHAIRMAN. Under whatever title you give it, "stop and search" or "investigative arrest," whatever you care to characterize it as: How does the New York statute compare with the title III that we have before us?

Mr. VINSON. Title III contains the 4-hour provision which is not present in the New York statute.

The CHAIRMAN. There is no time limit in the New York statute?

Mr. VINSON. There is no time limit in the New York law.

The CHAIRMAN. We will ask the staff to furnish us a copy of that.

What other States have anything in this area?

It seems to me there are a couple of other States that have something.

Mr. VINSON. There are several other States which have stop-and-search laws.

The CHAIRMAN. I think that so far there are five States that have them. I would ask the staff to furnish us a copy of the statutes in each of the five States that have this type of law.

I have been handed the New York Criminal Code, and it reads, in part:

> A police officer may stop any person abroad in a public place whom he reasonably suspects is committing, has committed, or is about to commit any felony or any of the crimes specified in certain code sections, with code citations, and may demand of him his name, his address, and an explanation of his actions.

The wording is a little different from the New Hampshire statute or the bill that we have before us.

When a police officer has stopped a person for questioning and has reasonable cause to believe he is in danger of life or limb, he may search that person for a dangerous weapon. If the police officer finds such a weapon, or any other thing, the possession of which may constitute a violation of law he may take and keep it until the completion of the questioning. Upon the completion of the questioning, he must return the weapon, if it is lawfully possessed, or arrest the person.

So, there is some substantial difference right there in the New York Code as compared even to the New Hampshire statute or the proposed title III. It would seem to me there is.

Mr. VINSON. We have done some spade work in this area, and we will furnish the material to the committee.

(The information referred to follows:)

LIST OF STATES WITH STATUTORY PROVISIONS FOR "STOP AND FRISK"

Name of State	*Citation to Statute*
1. New York	N.Y. Code of Criminal Procedure, Section 180-a.
2. New Hampshire	N.H. Laws, Section 594:2-3.
3. Rhode Island	R.I. Gen. Laws Ann., Section 12-7-1.
4. Delaware	Delaware Code Ann., Title 11, Section 1902.
5. Hawaii	D. Rev. Laws of Hawaii, Title 30, Chapter 255, Sections 255-4, 5, 8.
6. Massachusetts	Mass. Gen. Laws, Chapter 41, Section 98.

In addition to these state laws there are some city ordinances which authorize stop and frisk.

McKINNEY'S CONSOLIDATED LAWS OF NEW YORK ANNOTATED, SECTION 180-a (1966 CUMULATIVE ANNUAL POCKET PART)

§ 180-a. Temporary questioning of persons in public places; search for weapons

1. A police officer may stop any person abroad in a public place whom he reasonably suspects is committing, has committed or is about to commit a felony or any of the crimes specified in section five hundred fifty-two of this chapter, and may demand of him his name, address and an explanation of his actions.

2. When a police officer has stopped a person for questioning pursuant to this section and reasonably suspects that he is in danger of life or limb, he may search such person for a dangerous weapon. If the police officer finds such a weapon or any other thing the possession of which may constitute a crime, he may take and keep it until the completion of the questioning, at which time he shall either return it, if lawfully possessed, or arrest such person. Added L.1964, c. 86, § 2, eff. July 1, 1964.

NEW HAMPSHIRE REVISED STATUTES ANNOTATED, 1955, SECTION 594

594:2 Questioning and Detaining Suspects.*—

(a) A peace officer may stop any person abroad whom he has reason to suspect is committing, has committed or is about to commit a crime, and may demand of him his name, address, business abroad and whither he is going.

(b) Any person questioned as provided in subsection (a) who fails to identify himself and explain his actions to the satisfaction of the peace officer stopping him may be detained and further questioned and investigated.

(c) In no case shall the total period of detention provided for by subsections (a) and (b) exceed four hours. Such detention shall not constitute an arrest and shall not be recorded as such in any official record. At the end of any such detention period the person so detained shall be released unless arrested and charged with a crime.

SOURCES: 1941, 163: 2. RL 423:21.

594:3 Searching for Weapons.*—A peace officer may search for a dangerous weapons any person whom he is questioning or about to question as provided in section 2, whenever he reasonably believes that he might be in danger if such person possessed a dangerous weapon. If the officer finds a weapon, he may take and keep it until the completion of the questioning, when he shall either return it or arrest the person.

SOURCES: 1941, 163: 3. RL 423:22.

GENERAL LAWS OF RHODE ISLAND, 1956, SECTION 12-7-1

12-7-1. Temporary detention of suspects.—A peace officer may detain any person abroad whom he has reason to suspect is committing, has committed or is about to commit a crime, and may demand of him his name, address, business

*Subject to separability clause.

abroad and whither he is going; and any such person who fails to identify himself and explain his actions to the satisfaction of such peace officer may be further detained and further questioned and investigated by any peace officer; provided, in no case shall the total period of such detention exceed two (2) hours, and such detention shall not be recorded as an arrest in any official record. At the end of any such detention period the person so detained shall be released unless arrested and charged with a crime.

History of Section.
G. L., ch. 625, § 68, as enacted by P. L. 1941, ch. 982, § 1.
Cross-References.
Fingerprinting, § § 12–1–9 to 12–1–12.
Park police, power of arrest, § 32–2–12.
Railway, steamboat, and bridge police, authority, § § 12–2–3 to 12–2–6.
State police powers, § 42–28–19.
Comparative Legislation.
Arrest, commitment and bail:
Mass. Laws Ann., ch. 276, § § 23–28.

12–7–2. Search of detained person for weapons.—A peace officer may search for a dangerous weapon any person he is questioning or about to question concerning any crime or suspected crime, whenever he reasonably believes that he is in danger from such person carrying such weapon, and if such person is carrying a dangerous weapon, such officer may take and keep it until the completion of such questioning, when he shall either return it or arrest such person.

DELAWARE CODE ANNOTATED, 1953, TITLE 11, SECTION 1902

§ 1902. Questioning and detaining suspects

(a) A peace officer may stop any person abroad who he has reasonable ground to suspect is committing, has committed, or is about to commit a crime, and may demand of him his name, address, business abroad, and where he is going.

(b) Any person so questioned who fails to identify himself or explain his actions to the satisfaction of the officer may be detained and further questioned and investigated.

(c) The total period of detention provided for by this section shall not exceed two hours. The detention is not an arrest and shall not be recorded as an arrest in any official record. At the end of the detention the person so detained shall be released or be arrested and charged with a crime.

REVISED LAWS OF HAWAII, 1955, TITLE 30, CHAPTER 255

§ 255–4. On suspicion

Whenever a crime is committed, and the offenders are unknown, and any person is found near the place where the crime was committed, either endeavoring to conceal himself, or endeavoring to escape, or under such other circumstances as to justify a reasonable suspicion of his being the offender, such person may be arrested without warrant. [P. C. 1869, c. 49, s. 4; R. L. 1925, s. 3970; R. L. 1935, s. 5403; R. L. 1945, s. 10704.]

§ 255–5. By policeman without warrant

Policemen, or other officers of justice, in any seaport or town, even in cases where it is not certain that an offense has been committed, may, without warrant, arrest and detain for examination such persons as may be found under such circumstances as justify a reasonable suspicion that they have committed or intend to commit an offense. [P. C. 1869, c. 49, s. 5; R. L. 1925, s. 3971; R. L. 1935, s. 5404; R. L. 1945, s. 10705.]

§ 255–8. Weapons on person arrested

He who makes an arrest may take from the party arrested all offensive weapons which he may have about his person, and shall deliver them to the magistrate, to be disposed of according to law. [P. C. 1869, c. 49, s. 8; R. L. 1925, s. 3974; R. L. 1935, s. 5407; R. L. 1945, s. 10708.]

MASSACHUSETTS GENERAL LAWS ANNOTATED, 1958, CHAPTER 41, SECTION 98

§ 98. Powers and duties

The chief and other police officers of all cities and towns shall have all the powers and duties of constables except serving and executing civil process. They shall suppress and prevent all disturbances and disorder. They may carry within the commonwealth such weapons as the chief of police or the board or officer

having control of the police in a city or town shall determine; provided, that any law enforcement officer of another state or territory of the United States may, while on official business within the commonwealth, carry such weapons as are authorized by his appointing authority. During the night time they may examine all persons abroad whom they have reason to suspect of unlawful design, and may demand of them their business abroad and whither they are going; may disperse any assembly of three or more persons, and may enter any building to suppress a riot or breach of peace therein. Persons so suspected who do not give a satisfactory account of themselves, persons so assembled and who do not disperse when ordered, and persons making, aiding and abetting in a riot or disturbance may be arrested by the police, and may thereafter be safely kept by imprisonment or otherwise unless released in the manner provided by law, and taken before a district court to be examined and prosecuted. As amended St.1953, c. 310, § 9; St.1954, c. 162, § 1; St.1957, c. 688, § 1.

The CHAIRMAN. Would your impression be that the ALI suggested detention of 20 minutes is constitutional, in your opinion?

Mr. VINSON. I believe that it would be, Mr. Chairman. That is a matter that I believe the Supreme Court will decide this next term.

The CHAIRMAN. I am sure that they will be the court of last resort. I was just interested in the views of the Department of Justice on this question.

Mr. VINSON. The views I am stating are my own views, Mr. Chairman. I do not believe the Justice Department has taken a position on that.

The CHAIRMAN. Are you involved in the U.S. Supreme Court case on the New York statute? Does that involve the Attorney General? I do not know.

Mr. VINSON. I do not know, or recall, that we have been asked to file or to take any part in that.

The CHAIRMAN. Let me ask another question on this title III. In the veto message of last year, and I quote from it, the President said:

This bill provides that a policeman may pick up a person and question him for four hours without making an arrest—six hours, exclusive of interrogation after an arrest—perhaps ten hours of questioning without taking him before a judicial officer.

I presume there he is referring to last year's title I in connection with title III which had different time periods in them. I think it was unfortunate that they were not reconciled in conference. We were unable to do so, but these sentences here, from the President's message, state—and I again quote:

No one doubts the necessity of the police questioning persons on the street with respect to criminal activities. The law has always permitted this. The law properly provides, however, that after a person is deprived of his freedom—after he is arrested—the police must take him before a magistrate who will determine whether his arrest is arbitrary or based on probable cause. This must be done without unnecessary delay.

And then a sentence in his message which interests me:

I am advised that the periods of questioning provided in this bill go far beyond the necessities of interrogation in practically all cases.

The Attorney General and the Department of Justice seem to be saying that they recognize the necessity of interrogation on the part of the police officer and say that no one doubts the necessity of the police questioning a person on the street with respect to criminal activity. The law has always permitted this.

My question of you would be: What has the law specifically always permitted?

Mr. VINSON. Well, the case law in existence in the District of Columbia at the moment gives the police the authority to stop and make inquiry of a person where there is a reasonable suspicion that he has engaged in criminal activity or is engaged in criminal activity.

The CHAIRMAN. Of course, for how long may they do this?

This seems to come back as *Mallory* did and title I and title III did, invariably, to the question of time. How long? How long? That will always be the question that we have had these last few years, brought about by the decisions under the *Mallory* case and the constructions of it, and as the result of their construction of rule 5–A of the Federal Rules of Criminal Procedure.

You say that it is always recognized that a suspect may be questioned by police on the street. My question is: How long does this cover?

Mr. VINSON. That is a question to which I think that the answer would vary, depending upon circumstances, Mr. Chairman.

This title III, however, I would point out, involves not stopping and questioning on the street but involves in-custody interrogation for 4 hours under 301(b). It is our position, and I think it is the position of everyone who seems to be in substantial agreement, that in-custody interrogation in that case brings the *Miranda* decision into play—where a person in detention would have to be given the full *Miranda* warning which includes the right to counsel and would include the right to cease the answering of questions. So, *Miranda* is right in the same ball park with 301(b).

The CHAIRMAN. Then, if the police, in their, as you suggest, in-custody interrogation are within the framework of the *Miranda* case, and if they follow the *Miranda* decision with the proper warning as to the right of counsel, would that not adequately protect us against a constitutional attack?

Mr. VINSON. It certainly would protect us against a constitutional attack under *Miranda*.

The CHAIRMAN. Would you suggest there might be some other constitutional attack?

Mr. VINSON. Well, there are other problems. Let us agree that this is an arrest, or in-custody detention for the purpose of *Miranda*. How about a search, for instance?

Would the police be justified in conducting a search of a person or a search incident to the arrest?

That is a matter that is certainly not clear and one that I would not like to venture an opinion on.

The CHAIRMAN. It is unlike the New York statute. It does not seem to make any provision for search. This seems to be a detention and questioning section. So, if you did make any search, you would have to go to the statute relating to search. This does not seem to cover that.

Mr. VINSON. Unless you take the position, for legal purposes, that this is an arrest, and then, of course, you have certain rights to search incident to an arrest.

The CHAIRMAN. I understand your position to be if, in practice, it is an arrest, then the full force and effect of the *Miranda* case would be in it. Is that the position you take?

Mr. VINSON. Yes.

The CHAIRMAN. Now, then, the Chief of Police, who is in the audience, encounters a suspect on Massachusetts Avenue between 14th and 17th Northwest. What, in your view, can the Chief of Police do when he has probable cause to believe that suspect X has committed a crime? What can he specifically do?

Suspect X is walking down Massachusetts Avenue between those streets.

Mr. VINSON. He can certainly stop him and inquire of him his name, his identity, and whither he is going. He can also certainly arrest, assuming the crime is felony. Title I means that he could arrest in the case of probable cause for those serious misdemeanors included in title I.

The CHAIRMAN. Suspect X does not want to have an arrest against him on his record, and that is an element in the thinking of the proponents of title III. The officer just wants to detain suspect X, and he has probable cause to think he is involved in a felony, and he wants to question him on it. What does he do? He does not say to suspect X: "Stop and give me your name and address; what is your business here; whither are you going?" Is that all that he can ask him? Can he ask for more than that?

Mr. VINSON. He can ask for as much as he wishes, Senator.

The CHAIRMAN. He does not arrest him, but he just detains him.

Mr. VINSON. He is on the streets.

The CHAIRMAN. He is on the streets. How long can he engage him?

Mr. VINSON. Well, that is a question that I do not think is susceptible to a finite answer. The law of arrest is clear that when a person loses his liberty he is detained; he has been arrested for practical purposes.

The CHAIRMAN. I have some personal difficulty in trying to distinguish between arrest and detention as used in title II. It came to us from the House side. I was interested in your viewpoint on it, but you feel that if the police officer picks up suspect X on Massachusetts Avenue he can ask him his name and he can ask him his address, and he can ask him his business there, and he can also ask him where he is going. Beyond that, if he wants to interrogate him, either on the street or in custody, he may do so, but then he must give him the *Miranda* warning. Is that what you are saying?

Mr. VINSON. If he is deprived of his freedom, I think that technically would come into play. The *Miranda* decision needs clarification in regard to precisely what is meant by the "in-custody interrogation."

The CHAIRMAN. I am sure that it does. I think that we will just take a short recess.

We will be in recess until 11:30 o'clock.

(Recess.)

The CHAIRMAN. The hearing will resume.

Thank you for your indulgence.

I have only two other questions of you, Mr. Vinson.

I continue to be a little confused by the House report language in title III which, in part, says—and I am reading from page 25 of the House report—and I quote:

The 4-hour delay in the arraignment of an arrested person or the arraignment of the person detained and arrested shall not constitute unnecessary delay and shall not affect the admissibility of any voluntary statement or confession otherwise admissible under the law.

Now, my question is this: Is this an attempt to lock the *Mallory* rule or modification of the *Mallory* case into title III?

Mr. VINSON. I think that it definitely is the attempt to do that by the paragraph in the committee report. I do not think that the title itself does that in any way. It think it would have to be litigated.

The CHAIRMAN. Well, I admit that it does seem to me that the House report reads title I *Mallory* into title III of the House-passed bill. It seems to get back into almost the same ground that we had in title I of the conference-reported omnibus crime bill of last year, and I was wondering if you shared that thought.

Mr. VINSON. I certainly do, Mr. Chairman. I think that it precisely what that paragraph in the committee report is aimed at.

The CHAIRMAN. Is there a clear-cut legal difference between arrest and detention as used in the House-passed bill title III?

Mr. VINSON. I think that is a matter that would have to litigated, Mr. Chairman. You certainly could make the argument that "detention" under title III was an arrest and, therefore, rule 5, or the rule similar to that in the court of general sessions, would come into play, and at that time I think it would be up to the court to determine the intent of title III.

The CHAIRMAN. Thank you.

I have no further questions of you at this stage, Mr. Vinson.

Pardon me, there is one further question that has been suggested.

We have before us a bill, S. 484, to amend the Bail Reform Act.

The President's Commission on Crime in the District of Columbia expressed grave concern over the number of offenses committed by persons while they are conditionally released in connection with other charges.

It seems to me the papers have reported cases in which convicted persons out on bond or some other form of release have perpetrated additional serious crimes. This is a matter that is causing more and more concern. The Bail Reform Act passed last year was to bring about what some term a "more enlightened handling" of people charged with crime. One wonders if we did right. Have we added to the crime wave?

The Commission recommended a change in the Bail Reform Act so that in the setting of conditions for pretrial release, the courts may consider the potential hazard to the community based on the past record and conduct of the accused. Senator Brewster's bill, S. 484, would do this, and would permit a court to hold certain potentially dangerous persons for up to 30 days instead of releasing them into the community.

Would you care to give us your views on this particular bill?

Mr. VINSON. I am not prepared to comment; that is, to make a comment on behalf of the Department of Justice on that bill.

The CHAIRMAN. You cannot answer the question.

My information is that you have been requested to comment on it. Again, I am not pressing on that, because we will go into that in later hearings.

I wanted today to hold this hearing pretty much to the omnibus crime bill and the related Senate bills.

You can either go into it now, or we can have you come back at a later date when we have that bill before us. S. 484.

We will separate the hearings on this.

Senator Tydings?

Senator TYDINGS. Have you anybody working on this?

Mr. VINSON. Yes, sir.

Senator TYDINGS. Are you familiar with the Chicago program, the 10-percent program?

Mr. VINSON. Generally; yes sir.

Senator TYDINGS. Because I think that when you get your statement ready on this bill, you will find that it has a lot of merit, first of all; and, second, it will not be the intention of the Judiciary Subcommittee to consider the Bail Bond Reform Act, so far as it pertains to the whole country, to find out what is happening. The judges feel that they had to permit the release on personal recognizance, even if they thought that the person was a potential danger to the community, and I thought that we made it clear in the report and in the debate. Evidently, we did not make it clear enough for some judges. Certainly, this whole bail bond business is really a sort, so far as I am concerned, of a blemish on the administration of justice. I know it was when I was a prosecuting attorney in Maryland. Rather than having a bail bond requiring a fearful premium, sometimes 50 to 60 percent in amount, the individual required to appear in court was permitted to post 10 percent of the amount of the bond, and by doing that they made more bonds available to people who are not wealthy enough to pay the bigger premiums of a bond. The whole situation out there, insofar as the bondsmen are concerned, is less serious than in most areas.

I think this whole area is not before us this morning, but I hope that the Department of Justice will consider that when they consider some of the additional bills and make the recommendations.

The CHAIRMAN. I hope to get to that at a very early date. Are there any questions of this witness?

Senator TYDINGS. I was not here in time to go into this. Thank you.

The CHAIRMAN. Thank you very much. We appreciate your appearance here this morning. We shall keep in close contact with you.

Mr. VINSON. Thank you.

The CHAIRMAN. And if you would follow through on S. 484, so that they will be prepared to give us an official position of the Attorney General, we will appreciate it.

Mr. VINSON. Yes.

The CHAIRMAN. Our next witness is the Honorable Walter N. Tobriner, President of the District of Columbia Board of Commissioners, who is accompanied by Chief John B. Layton, of the District of Columbia Metropolitan Police Department, Robert Niles, Director of the District of Columbia Bail Agency, and Robert F. Kneipp, Assistant Corporation Counsel for the District of Columbia.

Mr. TOBRINER. Shall I proceed?

The CHAIRMAN. You may proceed. Your full statement will be incorporated and made a part of the record in full.

STATEMENT OF HON. WALTER N. TOBRINER, PRESIDENT, DISTRICT OF COLUMBIA BOARD OF COMMISSIONERS; ROBERT NILES, DIRECTOR, DISTRICT OF COLUMBIA BAIL AGENCY; AND ROBERT F. KNEIPP, ASSISTANT CORPORATION COUNSEL, DISTRICT OF COLUMBIA

Mr. TOBRINER. Mr. Chairman and Senator Tydings, we want to thank you again for giving the Commissioners an opportunity to appear before you in connection with your consideration of this legislation relating to crime and criminal procedures. You will recall, Mr. Chairman, that I appeared before this subcommittee on April 20, 1967, to testify concerning the merits of bills you have introduced to deal with crime in the District of Columbia. At that time the hearing was on S. 1509 concerning the issuance of citations by the police in connection with minor offenses, and S. 1510 expanding existing law relative to the obstruction of justice. I took the opportunity, however, also to express the view of the Commissioners on the merits of several other bills which are to be the subject of today's hearing. Accordingly, I ask the indulgence of the subcommittee if my testimony today seems to repeat some of my testimony on April 20.

I am prepared, in connection with testifying on H.R. 10783, passed by the House of Representatives on June 23, 1967, to make a comparison between its provisions and those of the other bills on which today's hearing is being held, and I can, to the extent it may be feasible, discuss each of the various titles or sections of the House-passed bill in connection with the comparable Senate bill or portions thereof. If this be the desire of the subcommittee, I will proceed accordingly.

As far as title I of the House bill and S. 1524 are concerned, both amend existing law to authorize arrest by the police without warrants for certain specified misdemeanors. Subsections (b) and (c) of the amendment made by such title I are substantially identical with the amendments made by S. 1524 which is the same as title II of the proposed District of Columbia Crime Reduction Act, sponsored jointly by the administration and the Commissioners and accordingly these provisions meet with our approval. Subsection (a) of the amendment made by title I of the House bill is, however, the restatement of existing law, relating to arrests without a warrant, but omitting that portion of existing law which requires that any person so arrested be taken immediately before a judge. The Commissioners question the desirability of amending existing law in this matter. Accordingly, they object to subsection (a) of the amendment made by title I of the House bill. As I have indicated, however, they favor subsections (b) and (c) of the proposed amendment made by title I of the House bill and they also favor S. 1524, which is substantially identical to those subsections.

The Department of Justice in its testimony through Mr. Vinson indicated that they thought that the provision of rule 5(a) and the procedure in the court of general sessions would take care of that, but we feel that this is subject to change and our best opinion is that there should be written into any Senate amendment of title I the requirement of existing law that a person arrested without a warrant should be taken immediately before a judge. This would set the matter at rest.

It would not be subject to interpretation or court instruction and we feel this accords with the spirit of the prevailing decisions of the higher courts.

Title II of the House bill—no comparable Senate bill—provides a new test of criminal responsibility to replace that which had been developed in the *Durham-McDonald* line of cases. In the belief it is both unnecessary and undesirable to substitute a new test of criminal responsibility for that which has been developed over the past 13 years, the Commissioners recommend against the enactment of title II of the House-passed bill. They also recommend against the enactment of S. 1523, the purview of which contains some of the same language as is contained in title II of the House bill, relating to the establishment of insanity as an affirmative defense and the requirement that notice must be given of the defendant's intention to plead such defense. At the same time, the Commissioners favor the somewhat different provision contained in section 4 of S. 1516, respecting notice of intention to plead the defense of insanity, since this provision, appearing in the proposed District of Columbia Crime Reduction Act as section 904, does not require the establishment of insanity as an affirmative defense by a showing of substantial evidence.

Our feeling is substantially the same as the Department of Justice; namely, that the law over a period of some 13 years has been substantially settled by *Durham* as interpreted by the intervening cases and culminating in *McDonald*. We feel that the notice of insanity required under the House bill is a desirable addition to the bill. Whether or not the defendant pleading insanity is required to prove insanity by a substantial amount of evidence or by a preponderance of the evidence is a matter about which the Commissioners have no strong feeling. However, I might say, although not a part of my statement, I believe that the Commissioners would agree that there be included in the bill a requirement of cooperation on the part of the defendant in submitting himself to Government psychiatrists on the pain of denying the defense of insanity. To that extent we would favor that.

The CHAIRMAN. Are you in a position, Mr. Tobriner, to be able to throw any light as to the effectiveness of the insanity rule in the District of Columbia now that *Durham* has been modified by *McDonald*? Or if there are abuses of it as suggested by the two St. Elizabeths psychiatrists?

Mr. TOBRINER. I heard you read that editorial, but I also have no independent knowledge of this. But the Assistant Attorney General stated that there were only 26 cases involving acquittal by reason of insanity.

The CHAIRMAN. Over what period of time was that, again?

Mr. TOBRINER. I do not recall that he cited the period of time, but if that is the number even for a year it seems that there is no substantial difficulty to the *Durham-McDonald* rule.

The CHAIRMAN. Well, again, as I indicated when I was questioning Mr. Vinson, it is very largely a factual question and it has either been open to abuses or not. I am very frank to say I do not know. I hope that before we finish our hearings on this we can find the answer to that, because as the Senator from Maryland knows, this was one area

as well as in other areas where the House conferees had a very, very determined position. They felt that there should be substitution of the ALI rule for the rule of *Durham* modified by *McDonald*. I know that they felt very keenly on it. But I think that we are going to have to develop in this record exactly how it has worked out in the District of Columbia.

Mr. TOBRINER. I do not have any at hand, but we will supply you with such statistical data as we are able to provide.

The CHAIRMAN. I would hope that the staff would follow through on that and find the proper witness on that subject who is responsible in your jurisdiction.

You may proceed.

(The information follows:)

GOVERNMENT OF THE DISTRICT OF COLUMBIA,
EXECUTIVE OFFICE,
July 26, 1967.

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

DEAR SENATOR BIBLE: On Monday, July 24, 1967, in the course of the hearing held by the Judiciary Subcommittee on H.R. 10783 and a number of related Senate bills, you asked me to furnish the Committee with certain statistical data relative to acquittals of criminal offenses by reason of insanity.

You indicated that you were interested in determining the number of such acquittals before the *Durham* decision (decided July 1, 1954), and the trend of acquittals by reason of insanity since that time. I find that this information has been set out on pages 534 and 535 of the Report of the President's Commission on Crime in the District of Columbia. For your convenience, I enclose a photocopy of those pages of the report.

You will note that these data extend only through fiscal year 1966. I am informed by the Administrative Office of the United States Courts that similar data are being collected for fiscal year 1967, but that the information for that year will not be available until around September 1, 1967.

I think it of interest to note, incidentally, the marked drop in the number of such cases for fiscal year 1963, the year in which *McDonald* was decided (October 8, 1962) and subsequent years, as compared with F.Y. 1961 and F.Y. 1962, when the number of acquittals by reason of insanity was considerably higher.

Sincerely yours,

WALTER N. TOBRINER,
President, Board of Commissioners, D.C.

EXPERIENCE UNDER THE DURHAM RULE—NUMBER OF DEFENDANTS ACQUITTED

In the 13-year period from fiscal 1954 through 1966, 387 defendants were found not guilty by reason of insanity in the United States District Court for the District of Columbia. As shown by Table 1, this represents 2.1 percent of all cases terminated and 6.5 percent of all cases tried. The number of persons acquitted by reason of insanity since *Durham* has ranged from a high of 66 each year in fiscal 1961 and 1962 to a low of 7 in 1957. The number of persons absolved on grounds of insanity has declined since the decision by the Court of Appeals in *McDonald* in fiscal 1963.

Since 1958, the first year for which Saint Elizabeths Hospital records an admission of a patient found not guilty by reason of insanity in the Court of General Sessions, 230 persons have been so acquitted through fiscal 1965. As in the District Court, the Court of General Sessions insanity acquittals fluctuated considerably from year to year. They ranged from 5 acquittals in fiscal 1958 to a high of 51 in 1960. Most of the insanity acquittals in the Court of General Sessions have occurred in the United States Branch (184 defendants), yet in the peak year of fiscal 1960 acquittals constituted only 0.48 percent of the cases filed in that branch. In fiscal 1966 there were 24 defendants found not guilty by reason of insanity in the Court of General Sessions.

TABLE 1.—*Persons found not guilty by reason of insanity*

[U.S. District Court for the District of Columbia, fiscal years 1954-66]

Fiscal year	Defendants in cases terminated [1]	Defendants in cases tried [1]	Defendants NGI [2]	NGI as percent of defendants in cases terminated	NGI as percent of defendants in cases tried
1954 [3]	1,870	673	3	0.2	0.4
1955	1,384	453	8	.6	1.8
1956	1,595	456	16	1.0	3.5
1957	1,454	456	7	.5	1.5
1958	1,666	522	17	1.0	3.3
1959	1,642	528	32	1.9	6.1
1960	1,367	400	35	2.6	8.8
1961	1,337	457	66	4.9	14.4
1962	1,282	480	66	5.1	13.8
1963	1,183	398	53	4.5	13.3
1964	1,142	393	23	2.0	5.9
1965	1,286	372	35	2.7	9.4
1966	1,230	380	26	2.1	6.8
Total	18,438	5,968	387	2.1	6.5

[1] Source: Administrative Office of the U.S. Courts.
[2] NGI—Not guilty by reason of insanity in this and subsequent tables.
[3] The fiscal year preceding the decision in *Durham v. United States*. Prior to this year, insanity patients were not recorded separately from all other prisoner patients at St. Elizabeths Hospital.

Mr. TOBRINER. We have serious difficulty with title III patterned after the so-called Uniform Arrest Act—no comparable Senate bill—which permits an officer or member of the Metropolitan Police Department to arrest or detain any person abroad whom he has probable cause to believe is committing or had committed a crime, and may demand of him his name, address, business abroad, and whither he is going.

And the title also provides that such detention shall not be recorded as an arrest in any official record and that if the person thus stopped and interrogated does supply answers to the satisfaction of the officer, that is, if he does not, to the satisfaction of the officer, he may be interrogated, presumably in custody, for 4 hours.

The chairman read the President's objection to that provision of the law. We feel that whatever you call it, whether you want to call it a detention or whether you want to call it an arrest—it very definitely is an arrest—because it involves interference with that person's locomotion. It involves interference with the liberty of movement of the person involved. There is, to my knowledge, no protection in respect to these 4 hours that is required for the interrogation in custody by the *Miranda* decision. If it is intended that such protection should prevail, then it seems to me that we should leave it to the judicial interpretation where it should be written into the statute.

Additionally, no criteria are set up to determine what is proper or not proper in respect to it, as to the kind of answers to the interrogation.

Then another item of the title that disturbs us is that no record should be made of this arrest or detention or whatever you want to call it. This provision, it seems to me, is contrary to the fundamentals of American jurisprudence where deprivation of liberty is required to be recorded and properly to be recorded and made a matter of public interest. The section further would lend itself, where a police

department is less conscientious than our own police department as presently constituted, to all forms of police harassment, for example, spitting on the street or jaywalking or any one of a number of minor offenses could be made the subject of this 4-hour interrogation. Personally, Mr. Chairman, and members of the committee, I do not think it makes a bit of difference whether the interrogation is 4 hours or 40 hours or 40 minutes—it involves deprivation of liberty and that should be accompanied by constitutional safeguards. Additionally, I would say that if as is required by title III the officer must have reasonable cause to believe that a crime has been committed, then why does he not make an arrest? He is at liberty to make an arrest. If he believes that a crime is being committed and that the person supposed to be detained is the person who has committed that crime, if he makes an arrest, then all of the safeguards that are laid down by the Constitution as interpreted by the *Miranda* decision immediately apply. It is perfectly possible, under an interpretion of title III as presently written that the accused could be held incommunicado for a period of 4 hours without the right of counsel, without the right to be represented by friends, without the right of habeas corpus. So for these reasons, Mr. Chairman and Senator Tydings, we feel that title III is a very objectionable part of the omnibus crime bill and would lead to all sorts of judicial and constitutional difficulties.

I have departed from my prepared statement.

The CHAIRMAN. What, if anything, do you think the police officer should do with reference to the suspect?

Mr. TOBRINER. If he has reasonable cause to believe that a crime is being committed and that the suspect has committed the crime, he can arrest him.

The CHAIRMAN. You would not permit him to detain him for the purpose of asking him his name or address or what he is doing there or where he is going?

Mr. TOBRINER. This is tantamount to an arrest.

The CHAIRMAN. Well, then, what is your observation as to the President's veto message when he says that detention can be made under existing law?

Mr. TOBRINER. I do not think that he says that detention can be made. He says interrogation can be made.

The CHAIRMAN. Maybe he says interrogation. I want to be absolutely correct on that. This is what he does say. He says that no one doubts the necessity of the police questioning a person on the streets with respect to criminal activities.

Mr. TOBRINER. Yes, sir. I have no quarrel with that.

The CHAIRMAN. How can they question a suspect without detaining him?

Mr. TOBRINER. Well, he can ask the question. The question need not be answered. The suspect need not stay in the presence of the police officer, unless the police officer has reasonable cause to believe that he has committed a crime for which he has ample authority under existing law to make an arrest.

The CHAIRMAN. This is in title III?

Mr. TOBRINER. That is correct. He can do so.

The CHAIRMAN. He does not have to say anything?

Mr. TOBRINER. That is right.

The CHAIRMAN. He can stand on his constitutional rights and say, "I demand a lawyer"; is that correct?

Mr. TOBRINER. Yes, that is right.

The CHAIRMAN. I wanted to see if I could clarify your thinking of what the police officer can do when he encounters a suspect on the street.

Mr. TOBRINER. Under the case law cited by Mr. Vinson he can inquire of that suspect on the street as to his whereabouts, as to whether or not the question would be answered is up apparently, to the suspect. But under this law, unless the questions were answered or answered satisfactorily to the police officer, the suspect could be detained and interrogated an additional 4 hours.

The CHAIRMAN. Still he could be detained when you stop him and ask him his name?

Mr. TOBRINER. But it is a voluntary act on his part. It is not interference.

Senator TYDINGS. The difference is, as I understand it, that if the police officer arrives at the scene of a crime and a number of people are there and he asks questions and he gets names and addresses, which the people give him voluntarily, and the answers to the questions, that is neither detention nor arrest?

Mr. TOBRINER. No.

Senator TYDINGS. And as a result of the questions that he has asked, he decides then and there that there should be an arrest—that is, unless he decides that that is it. But on the other hand, if the man refuses to answer, he may decide then and there about that.

Mr. TOBRINER. That there is reasonable cause, that is right, that is right.

Senator TYDINGS. There is quite a difference between "detained" and no record for 4 hours—to detain one for 4 hours for ordinary questioning.

The CHAIRMAN. I recognize the difference. I am trying to find out what the difference is. This is a problem that we spent many hours in conference on this last year with the Members of the House.

Mr. TOBRINER. As a judicial friend of mine, who has now passed away, said, "the State may be in error but never in doubt."

The CHAIRMAN. That is very fine. You may proceed.

Mr. TOBRINER. All right. As to title IV of the act we believe we are in favor of it and we have no objection to it, that is, in respect to intimidating or influencing witnesses, both after trial or during trial, during court proceedings, which is the current law. We would agree that it should be extended to pretrial investigation, precourt investigations.

As to title V, the offense, including the offense of robbery within those crimes of violence, and subjecting them to the penalties for such crimes, we would approve that.

Now, there are various provisions of title VI that deal with different matters. Generally speaking, the Commissioners are opposed to mandatory minimum sentences, and we have made this abundantly clear in our testimony, not only before this committee, but before other committees of the Congress in which this question has arisen. We feel that

minimum sentences should be a matter for the discretion of the individual judge who has heard the witnesses, who has the advantage of the probation reports. And we feel further that, perhaps, mandatory minimum sentences might seriously impair the rehabilitative efforts which is taken over after conviction by the Department of Corrections.

In respect to section 602 of title VI which creates the offense of burglary as distinguished from the current offense of housebreaking, and breaks the crime of burglary into two degrees, the first degree being in respect to occupied dwellings, and the second degree being in respect to unoccupied dwellings, or warehouses, or commercial properties, we feel this is desirable but we also oppose the minimum penalties involved.

The same is true of section 603 which sets forth minimum penalties for robbery.

With respect to section 604 which relates to, principally, persons involved in athletic contests, we have no objections to the inclusion of bonuses for players but we really think it is unnecessary, because by no stretch of the imagination, it seems to me, could a bonus to a player for winning a game be considered as a bribe. It is just good commercial practice.

In respect to section 605, which requires a mandatory additional indeterminate sentence for a crime when armed, our position is the same in respect to all mandatory minimum sentences. The present law, I believe, provides for additional sentences, 5, 10, 15 years on subsequent offenses, which we believe is adequate. We believe that section 606 in relation to the publication and production of lewd materials is acceptable. There are some, if I may depart from the House bill, some distinctions between the House bill and the bill as proposed by Senator Brewster. Senator Brewster's bill raises the age, I believe, to 18 and also provides some additional tests on obscenity which are more consonant with the Supreme Court decisions.

In other words, as I recall it, Senator Brewster's bill provides as one of the tests of obscenity that there should be no redeeming social value in the allegedly obscene material. We believe it stands more of a chance of meeting higher court decisions, but in either case we would approve the bill.

Section 607 of title VI maintains a mandatory minimum sentence for placing explosives. Our objection is to the mandatory minimum sentence.

Section 608 puts into law the current police regulation relating to false police reports and provides increasing the penalty to 30 from 10 days under present police regulations. We feel, however, that there should be written into section 607 a provision that the Commissioners should decide, subject to current Commission regulation, whether or not there is reasonable grounds to believe that the report was knowingly and willfully, with knowledge made falsely. So we would ask that provision be written into the existing proposed law.

In respect to title VII, police citations, we would prefer the crime reduction bill version, but have no substantial objection to the bill as proposed by the House.

We have no substantial objection to title VIII of the proposed bill. And, of course, title IX is the technical provision to which we have no objection.

This, in brief, is my statement. I have hurried my remarks, Mr. Chairman, and Senator Tydings, because I know of the paucity of time. But I stand subject to questioning.

The CHAIRMAN. I appreciate your statement, Mr. Tobriner. I have no specific questions of you at this time. I appreciate your appearance here this morning. I think I understand your position. We will make your prepared statement, as previously stated, a part of the record at this point.

(The prepared statement of the Honorable Walter N. Tobriner follows:)

STATEMENT OF WALTER N. TOBRINER, PRESIDENT, BOARD OF COMMISSIONERS, DISTRICT OF COLUMBIA

Mr. Chairman, thank you very much for again giving the Commissioners of the District of Columbia an opportunity to appear before you in connection with your consideration of proposed legislation relating to crime and criminal procedure in the District of Columbia.

You will recall, Mr. Chairman, that I appeared before this Subcommittee on April 20, 1967, to testify concerning the merits of bills you have introduced to deal with crime in the District of Columbia. At that time, the hearing was on S. 1509, concerning the issuance of citations by the police in connection with minor offenses, and S. 1510, expanding existing law relative to the obstruction of justice. I took the opportunity, however, also to express the view of the Commissioners on the merits of several other bills which are to be the subject of today's hearing. Accordingly, I ask the indulgence of the Subcommittee if my testimony today seems to repeat some of my testimony on April 20.

I am prepared, in connection with testifying on H.R. 10783, passed by the House of Representatives on June 26, 1967, to make a comparison between its provisions and those of the other bills on which today's hearing is being held, and I can, to the extent it may be feasible, discuss each of the various titles or sections of the House-passed bill in conjunction with the comparable Senate bill or portion thereof. If this be the desire of the Subcommittee, I will proceed accordingly.

Title I of the House bill and S. 1524 both amend existing law to authorize arrests by the police without warrants for certain specified misdemeanors. Subsections (b) and (c) of the amendment made by such title I are substantially identical to the amendments made by S. 1524 and title II of the proposed District of Columbia Crime Reduction Act, sponsored jointly by the Administration and the Commissioners, and accordingly these provisions meet with our approval. Subsection (a) of the amendment made by title I of the House bill is, however, a restatement of existing law relating to arrests without a warrant, but omitting that portion of existing law which requires that any person so arrested be taken immediately before a judge. The Commissioners question the desirability of amending existing law in this matter. Accordingly, they object to subsection (a) of the amendment made by title I of the House bill. As I have indicated, however, they favor subsections (b) and (c) of the proposed amendment made by title I of the House bill and they also favor S. 1524, which is substantially identical to those subsections.

Title II of the House bill (no comparable Senate bill) provides a new test of criminal responsibility to replace that which has been developed in the *Durham-McDonald* line of cases. In the belief it is both unnecessary and undesirable to substitute a new test of criminal responsibility for that which has been developed over the past thirteen years, the Commissioners recommend against the enactment of title II of the House-passed bill. They also recommend against the enactment of S. 1523, the purview of which contains some of the same language as is contained in title II of the House bill, relating to the establishment of insanity as an affirmative defense and the requirement that notice must be given of the defendant's intention to plead such defense. At the same time, the Commissioners

favor the somewhat different provision contained in section 4 of S. 1516, respecting notice of intention to plead the defense of insanity, since this provision, appearing in the proposed D.C. Crime Reduction Act as section 904, does not require the establishment of insanity as an affirmative offense by a showing of substantial evidence.

Title III, patterned after the so-called "Uniform Arrest Act" (no comparable Senate bill), permits an officer or member of the Metropolitan Police force "to arrest or detain any person abroad whom he has probable cause to believe is committing or has committed a crime, and may demand of him his name, address, business abroad, and whither he is going." In the case of a person who is so detained, such detention shall not be recorded as an arrest in any official record. While he is so arrested or detained, a person may be interrogated with respect to any matter for a period not to exceed 4 hours. The Commissioners are mindful of the fact that one of the reasons the President gave for his November 13, 1966 veto of H.R. 5688 of the 89th Congress was that, among other things, it provided that "a policeman may pick up a person and question him for four hours without making an arrest * * * [and] without taking him before a judicial officer." The President further stated that "The law properly provides, however, that after a person is deprived of his freedom—after he is arrested—the police must take him before a magistrate who will determine whether his arrest is arbitrary or based on probable cause." Regardless of whether the police action is denominated an "arrest" or a "detention", the person so arrested or detained is deprived of his freedom, without the safeguards of judicial intervention or advice of counsel. The Commissioners consider title III of the House-passed bill highly objectionable, and they strongly recommend against its enactment.

Existing District law relating to the obstruction of justice prohibits any person from influencing, intimidating, or impeding a juror, witness, or officer in any court in the District in the discharge of his duties, or, by threats or force, in any other way to obstruct or impede or endeavor to obstruct or impede the due administration of justice in a court. Present law does not, however, make any provision with respect to the obstruction of an investigation prior to the institution of criminal court proceedings. Title IV of the House-passed bill and S. 1510, both of which are identical to title III of the proposed D.C. Crime Reduction Act, expand existing law so as to prohibit both the obstruction of justice and the obstruction of an investigation. The Commissioners favor the enactment of this provision.

Title V of the House bill and S. 1519 both amend a provision of existing law defining the term "crime of violence" so as to include within such term the offense of "robbery". Since another provision of the amended law provides for additional punishment for the commission of a crime of violence while armed, the effect of the amendment is to provide that anyone committing the offense of robbery while armed will be subject to additional punishment. The Commissioners favor both title V of the House bill and S. 1519.

The several provisions of title VI deal with a variety of matters. The first of these, in section 601 (no comparable Senate bill), inserts a mandatory minimum two-year penalty in existing law establishing the penalty for any person convicted of an assault with intent to kill or to commit rape, or to commit robbery, or mingling poison with food, drink, or medicine with intent to kill, or willfully poisoning any well, spring, or cistern of water. The Commissioners are opposed to mandatory minimum penalties for several reasons. In the view of the Commissioners, mandatory minimum penalties interfere with the exercise of the court's discretion, and a requirement that a minimum penalty shall be imposed may possibly result in a verdict of acquittal in any case in which the jury or a judge considers the minimum penalty excessive. Accordingly, the Commissioners recommend against section 601.

Section 602 of the House bill and S. 1520 substitute the offense of "burglary" for the present offense of "house-breaking", and provide that there shall be two degrees of burglary—first degree for entering an occupied dwelling; second degree for entering any other place, regardless of whether it is occupied. The Commissioners generally favor this proposed change, but for the reasons set forth above they object to the mandatory minimum penalty provided by the amendment. Where the minimum penalty provision eliminated, the Comissioners would favor this proposed amendment of existing law.

Section 603 of the House bill (no comparable Senate bill) amends existing law establishing the penalty for robbery to provide a 4-year mandatory mini-

mum penalty in lieu of the existing 6-month mandatory minimum penalty. The Commissioners have the same view regarding this proposed change as they have with respect to other provisions establishing mandatory minimum penalties.

Existing law prohibits the bribery of persons engaging in athletic contests. Section 604 of the House bill and section 2 of S. 1521 make the sports bribery law inapplicable to bonuses given to players and other persons engaged in athletic activities for the purpose of encouraging any such player "to a higher degree of skill, ability, or diligence in the performance of his duties." The Commissioners are unaware of any need for a provision of this kind, but they have no objection to it.

Section 605 of the House bill (no comparable Senate bill) makes it mandatory (rather than at the discretion of the judge, as under existing law) that when any person commits a crime of violence when armed with or having readily available any pistol or other firearm, he shall, in addition to the punishment provided for the crime, also be punished by imprisonment for an indeterminate number of years up to life, as determined by the court. Further, this section adds to existing law language prohibiting the court from suspending sentence or from giving the defendant a probationary sentence upon conviction of a crime of violence while armed with or having readily available any pistol, other firearm, or some other dangerous or deadly weapon. The Commissioners question the desirability of removing from the judges the discretion they have under existing law, and accordingly they recommend against section 605.

Subsection (a) of the amendment of section 872 made by section 606 of the House bill, and the amendment of existing law made by S. 1522, all relating to indecent publications, have for their purpose the expansion of existing law relating to such publications so as to make it applicable to publishing and communicating techniques developed since the enactment of the 1901 Act, and to extend its provisions to persons engaged in the production or dissemination of obscene materials. In addition, the amendment made by section 606 of the House bill establishes a rule of evidence relating to the possession of certain indecent material and defines the term "knowingly". The proposed amendment of existing law does not, however, contain the objectionable features that were found in its counterpart in H.R. 5688 of the 89th Congress and which in part caused that bill to be vetoed by the President. The proposed amendment appears to be constitutionally unobjectionable, and accordingly the Commissioners favor its enactment.

The second part of the proposed amendment of existing law which would be made both by section 606 of the House bill and by S. 1825 add to existing law provisions which would make it an offense to sell or loan indecent material to any person under the age of 17. The Commissioners recognize that the Supreme Court of the United States in the case of *Redrup* v. *New York*, decided May 8, 1967, impliedly approved legislation designed to prevent the dissemination of indecent material to juveniles. Accordingly, the Commissioners favor the enactment of thsi portion of the House bill and S. 1825.

Section 607 of the House bill (no comparable Senate bill) amends existing law prohibiting placing of explosives with intent to destroy or injure property so as to insert therein a mandatory minimum penalty provision requiring imprisonment for not less than four years. Again, the Commissioners, for the reasons expressed earlier, oppose such a mandatory minimum penalty, and they recommend against section 607 of the House bill.

Section 608 of the House bill and section 1 of S. 1521 both prohibit the making of false reports to the Metropolitan Police Department. Both provisions are a verbatim copy of language which presently appears in the Police Regulations of the District of Columbia, except that the bills provide for imprisonment for not exceeding 30 days in lieu of the 10-day provision of the Police Regulations. The Commissioners know of no need for a statutory provision of the kind contained in section 608 of the House bill, but they have no objection to it, if it be amended as they have suggested in their report.

Title VII of the House bill and S. 1509 both authorize the use of citations by officers and members of the Metropolitan Police force instead of taking into custody a person who has committed an offense. These provisions also authorize the District of Columbia Bail Agency to furnish pertinent data to any such officers or member with respect to an individual for whom a bail or citation determination is to be made. Title VII of the House bill, except that it is limited to mis-

demeanors, is similar to title IV of the proposed D.C. Crime Reduction Act, while S. 1509 is identical to title IV of the proposed D.C. Crime Reduction Act. Accordingly, the Commissioners favor them.

Title VIII of the House bill and S. 1516 (not including section 4) authorize the Commissioners to supervise persons released into their custody under the authority of the Bail Reform Act. These provisions also authorize the District of Columbia Bail Agency to provide reports to the Commissioners with respect to such persons. The title and the bill both also transfer from the United States Bureau of Prisons and the Youth Corrections Division of the United States Board of Parole to the Commissioners authority to provide for the treatment, rehabilitation, and conditional release of Federal youth offenders who are in District institutions. Further, the title and the bill authorize the District to contract with Federal Prison Industries for the reorganization and future operation of the District's industries program. Finally, the title and the bill amend existing law relating to witness fees paid witnesses attending criminal cases in the District of Columbia Court of General Sessions, so that such fees shall be the same as those paid to witnesses who attend before the United States District Court for the District of Columbia. But the title differs from the bill in one respect. Section 4 of the bill is identical to section 904 of the proposed D.C. Crime Reduction Act, requiring the giving of notice of intention to plead the defense of insanity, and provides for the return of persons who escape from confinement in a hospital for the mentally ill after having been acquitted of an offense on the ground of insanity. Title VIII of the House bill omits this section. The Commissioners consider the bill, since is it identical with title IX of the proposed D.C. Crime Reduction Act, preferable to title VIII of the House bill, and accordingly they recommend the enactment of the bill.

Title IX of the House bill contains provisions respecting offenses committed prior to the effective date of the bill, coordinating it with Reorganization Plan No. 5 of 1952, and providing a separability provision.

I have now finished my comparison of some of the Senate bills with their counterpart provisions in the House-passed bill. There remain 5 other bills which have no counterpart provisions in the House bill. The first of these is S. 484, amending the Bail Reform Act to provide for the detention and the expeditious trial of accused persons deemed to constitute a threat to the public safety. Generally, the Commissioners favor S. 484. They have, however, in their report on the bill, which I ask be included in the record, recommended a number of amendments to take care of certain problems which the bill creates. If the bill be amended as the Commissioners have recommended, they would favor its enactment.

S. 1512, relating to material witnesses in the District of Columbia, provides for their being taken into custody and for their detention, subject to specified safeguards. This bill is identical with title V of the proposed D.C. Crime Reduction Act, and accordingly the Commissioners recommend its enactment. S. 1517 also relates to material witnesses. This bill, however, in the view of the Commissioners, does not provide the same safeguards with respect to such witnesses as does S. 1512. Specifically, unlike S. 1512, which requires that any such witness shall be taken immediately before a judicial officer, S. 1517 merely requires that any such witness shall be taken before a judicial officer "within a reasonable time". In the belief that S. 1512 is the better bill, the Commissioners recommend against the enactment of S. 1517.

S. 1513 authorizes the establishment of a Commission on Revision of the Criminal Laws of the District of Columbia. The bill is identical with title VI of the proposed D.C. Crime Reduction Act. Accordingly, the Commissioners recommend its enactment.

Finally, Mr. Chairman, I come to what is perhaps the most controversial of all the legislative proposals dealing with the matter of crime in the District of Columbia. S. 1518, relating to the admissibility of evidence, including statements and confessions, in the courts of the District of Columbia, is designed to overcome the effect of what has come to be known as the "Mallory Rule". While the Commissioners recognize that the bill appears to conform with the warning requirements of the *Miranda* case, nevertheless it would, upon "a valid waiver of his right to have the assistance of an attorney during questioning", authorize the detention of a suspect for up to 4 hours before presentment before a magistrate. Since the bill establishes no standards respecting the manner in which the suspect's rights may validly be waived, and since any such waiver

could be induced in like manner as a confession, the Commissioners believe the bill would give rise to practical problems which could be avoided by observing the requirements of Rule 5(a) of the Federal Rules of Criminal Procedure. For the foregoing reasons, the Commissioners have some reservations concerning the merits of S. 1518.

Thank you again, Mr. Chairman, for allowing the Commissioners to appear before you and to participate in your Committee's consideration of proposed legislation dealing with what is undoubtedly the gravest problem confronting the people of the District of Columbia.

This concludes my statement respecting the bills being considered by the Subcommittee. If you have any questions concerning any aspect of these bills or of the crime problem in the District of Columbia, I will be pleased to answer them.

The CHAIRMAN. Do we have any further witnesses this morning?

Mr. SMITH. It does.

Mr. TOBRINER. I think that we are to hear from the chief of police.

The CHAIRMAN. Is he going to testify?

Mr. TOBRINER. Corporation counsel is not going to testify.

The CHAIRMAN. They are listed as your supporting witnesses. That is, if there were questions that anyone cared to ask of any of these people, they would be here and able to answer them.

Senator Tydings has some questions of the chief. Will you come up here. I have a noon commitment which I must make, but in order to accommodate Senator Tydings I will ask you to come forward at this time. Thank you very much, Mr. Tobriner.

Mr. TOBRINER. Do you want us to return?

The CHAIRMAN. I think there is no question of your returning. I have no further questions.

Senator Tydings says that he has no questions. If Senator Dominick has any questions, because he has spent many hours on this subject, as the rest of us have, we might ask you to come back.

Mr. TOBRINER. We will be notified if Senator Dominick has further questions?

The CHAIRMAN. Yes.

Mr. TOBRINER. Very good. Thank you.

The CHAIRMAN. The same holds true of Mr. Vinson.

Now, Chief Layton, we are very happy to recognize you. Do you have a prepared statement?

STATEMENT OF CHIEF JOHN B. LAYTON, DISTRICT OF COLUMBIA METROPOLITAN POLICE DEPARTMENT

Chief LAYTON. No.

The CHAIRMAN. You are simply here to answer questions?

Chief LAYTON. I have no prepared statement.

Senator TYDINGS. I want to ask him some questions.

The CHAIRMAN. Very well. I know that you have been appearing before many committees attempting to be helpful to us on this crime situation. I know that I always ask you one question, to keep myself up to date and that is, what is your strength now and how much are you below your authorized appropriated strength?

Chief LAYTON. 349, Mr. Chairman, is the latest figure that we have below the authorized strength of 3,100.

The CHAIRMAN. You have the appropriated money to have a total of 3,100?

Chief LAYTON. Yes, that is correct.

The CHAIRMAN. And you are 349 short?

Chief LAYTON. 349 short.

The CHAIRMAN. As of today, of meeting that?

Chief LAYTON. I have not checked that as of today, Mr. Chairman. The last figure is a recent figure just within——

The CHAIRMAN. Within 30 days.

Chief LAYTON. Yes, sir.

The CHAIRMAN. In the last 30 days?

Chief LAYTON. Yes, sir.

The CHAIRMAN. You are short that many men?

Chief LAYTON. The figure as of the first of this month.

The CHAIRMAN. And what is the reason for the shortage?

Chief LAYTON. The reason is, Mr. Chairman, largely, as I have examined the statistics in the area, not being able to recruit sufficient personnel. There has been some reference made to resignations. However, the number of resignations has not increased sharply. We have more retirements occurring in the past year than we have in some previous years, but my recollection is that in the past fiscal year we were able to appoint 71 fewer applicants than we did the previous fiscal year. We have lost ground there to the extent of 71 positions. This is the largest single factor that we see in examining these figures. We just have not been able to recruit sufficient qualified personnel.

The CHAIRMAN. Is that because of salary?

Chief LAYTON. I am sure that salary is a factor, Mr. Chairman. We find some of our policemen who do resign. Again, my recollection is that 56 of those who retired during the past fiscal year went to other police departments, 21, I believe, is the figure, who went to nearby areas, to the counties of Maryland. For awhile Prince Georges County's rated beginning pay was a little bit higher than ours in the District of Columbia. The last pay bill, however, took care of that. There are demands in urban centers that they do not have in suburban areas. The more rural type of assignments, and some of these factors, I am sure, are taken into consideration by the men who do leave the Department, but I am sure that salary is one of the factors.

The CHAIRMAN. Thank you. Do you have any comments on title III, which continues to be our most controversial section, both in this Congress and the last? You are familiar with the provisions of title III. Will that help you in our attempt to be of assistance in your business of fighting crime?

Chief LAYTON. It seems to me, Mr. Chairman, that one of the considerations in this is that there is some compulsion, as I read the section, on the individual who has been asked questions, who has to identify himself by the police on the street. There is some compulsion on having him do that, identifying himself to the officer. Otherwise, the provision here makes possible for the individual to be detained for some period of time for questioning. And as was noted here in the report from the House it would seem also that this was intended to be areas, to the counties of Maryland. For a while Prince Georges County's the District we have had some very tight restriction in the matter of time limits, on confessions or admissions that otherwise appeared to be completely voluntary. But the time during which that was given

has been a matter of question. And here this says that this would provide for some period of questioning if the individual did not on the initial contact with the police officer furnish his name, address, his business abroad and where he was going, so that I think that this would be of some help.

The case law that Mr. Vinson referred to, and I believe the commissioner explained does not provide any compulsion on the individual to respond to questions.

The CHAIRMAN. Chief Layton, I must go because of a prior commitment. I know that Senator Tydings has a very busy schedule, too. He has some questions that he would like to ask of you. I would hope that you could, at least, be on a standby basis. I know you have many important things to do in this city. We will resume our hearings on Wednesday morning at 10 o'clock. So if other questions do occur between now and Wednesday morning, we will let you know. We are going to resume our hearings on the omnibus crime bill and its relationship to comparable Senate bills that have been introduced. In the meantime I am going to turn the gavel over to Senator Tydings. He has indicated to me that he might not be able to be here then and he would like to have the opportunity of asking you some questions while you are here now.

Senator TYDINGS. (presiding). On title III, do you consider that title III is principally a means to make the *Mallory* rule easier?

Chief LAYTON. It appears to me, Senator, that this would be one of the benefits here. In the first instance, it seems to me that the language here, as I read it, would provide some compulsion on the individual who is questioned on the street by the officer—some compulsion on him to respond with minimal information, that is, his identity and address and business, and where he is going. This is one of the factors that I see in it.

The second part of it would be that it would provide a series of questioning that would be limited by the *Mallory* ruling, as I understand it.

Senator TYDINGS. Actually, there is nothing in the law today that would stop the police officer from questioning someone on the street, if it is someone that he thinks would have information about a crime, asking his name and address and so forth and so on.

Chief LAYTON. There is no requirement that that individual answer.

Senator TYDINGS. There is no requirement that he answer under title III.

Chief LAYTON. As I read it, there is some compulsion, however.

Senator TYDINGS. You can detain them physically.

Chief LAYTON. That is correct.

Senator TYDINGS. But you cannot use compulsion to make them answer questions.

Chief LAYTON. No. What I am saying is that unless he gives that minimal information that is required in 301(a) then he does subject himself to further questioning, so that if his business abroad was proper and legitimate and he was not then engaged in some unlawful conduct, then it seems to me that he would be likely to give that kind of information, rather than refusing it to the officer.

Senator TYDINGS. If the arresting officer comes up with someone, a person abroad, as to whom he has probable cause to believe that he

has committed or is committing a crime, and he asks the individual his name and address and business abroad, if the individual fails to identify himself or to explain his action to the satisfaction of the officer, and the officer feels it is his idea then that the man is involved in that crime in some way or another—I mean why does he not just arrest him?

Chief LAYTON. Well, with the development of some of the case law I am aware that members of the department who are investigating criminal acts now are very much aware of the difference between probable cause to justify an arrest and the evidence necessary to have some assurance of getting a proper verdict in court. What I am saying is that there is more time involved in trying to develop evidence beyond that of a fair probable cause justifying an arrest, and in a number of cases you are not able to develop that kind of evidence so that arrests are not always made currently, just on a showing or on a bare justification based on probable cause.

Senator TYDINGS. Did you ask for or request title III?

Chief LAYTON. Did I do what?

Senator TYDINGS. Did you request title III as it has been put into the House bill—did you ask for it?

Chief LAYTON. Did I ask for it?

Senator TYDINGS. Yes.

Chief LAYTON. Do you mean of the House?

Senators TYDINGS. Yes.

Chief LAYTON. No, sir; I did not.

Senator TYDINGS. Is there any magic in this about the 4 hours as opposed to 1 hour, or 2 hours, or 10 hours?

Chief LAYTON. Well, I think that the time limit is one—there have been various time limits suggested at various stages. I heard a time limit of 20 minutes mentioned here. I am aware that a committee of the American Law Institute that studied this same proposition for a period of time—I sat with that committee along with some others——

Senator TYDINGS. What did they come up with?

Chief LAYTON. That has not been finally determined, Senator Tydings, by the ALI. There was a recommendation at one stage, as a result of committee action, that a 20-minute time period be allowed on the street, but then there were other provisions that would extend that time to a longer period. Some of the recommendations that entered into that was that a man could be held overnight, for instance. It was not carried down, that is, reduced to a matter of 4 hours or 6 hours and so forth. The model arrest law, so-called, that is in effect in New Hampshire, and I believe Vermont and maybe one or two other states, carries, I believe, a 4-hour period. The 6-hour period was in the bill last year. So that the time period——

Senator TYDINGS. This is now in the stop and search law in Rhode Island, New York, New Hampshire, is it not—that is a sort of loose colloquialism.

Chief LAYTON. I believe that the New York law was referred to, which is the stop-and-frisk law. The Vermont and New Hampshire laws have been in effect for some years now. My recollection is that it was enacted as the result of some studies back in the early 1930's.

So there is some period of time. That has been referred to as the model arrest statute.

Senator TYDINGS. My recollection is as yours is, that the ALI had not come up with any specific recommendation along this line. Are they still studying it?

Chief LAYTON. My understanding is that they are, Senator Tydings. There have been a number of meetings—a number of committee meetings. And there was one meeting more than a year ago at which it was presented, I believe, to the board of directors.

Then, of course, last year we had the *Miranda* decision. And Mr. Vorenberg, of course, was named Executive Director of the National Crime Commission, but my understanding is that they are still studying the matter and have not come up with a final conclusion on it.

Senator TYDINGS. Have you had a chance to talk with top police officers of any of the five or six States that have this law on the books?

Chief LAYTON. Specifically, Vermont and New Hampshire?

Senator TYDINGS. Yes.

Chief LAYTON. No, sir; I have not talked with any of those officials directly on this matter.

Senator TYDINGS. I was wondering whether they had any, you know, firm facts, or anything to indicate that it would be of material help in actual practice.

Chief LAYTON. There are, as I see it, or there is some distinction between the Vermont and New Hampshire and New York laws. I mean New York stop-and-frisk law I have had some conversations with police officials there. I do not have any statistics, but I know that the reaction, the expression that I have had from the officials in New York has been that it has been helpful to them. And one of the things that they impressed on me in connection with this is that they have engaged in a very detailed preparation of their force for the use of this law once it was on the books.

Senator TYDINGS. What is the stop-and-frisk New York law, 20 or 30 minutes?

Chief LAYTON. Twenty minutes, I think.

Senator TYDINGS. As opposed to 4 hours?

Chief LAYTON. Yes.

Senator TYDINGS. Do we have any figures on the number of confessions that are used, let us say, or were used in the last fiscal year in getting convictions in the District as to the number of confessions that were used, say, in the year prior to the *Mallory* rule?

Chief LAYTON. I do not have the figures with me, Senator Tydings, in that area. I know from general comments that in recent times confessions have not been introduced, generally, even where we had them. I can remember an outstanding case where there was a confession given where it was felt that the confession met the standards that were then in effect on the matter of confessions, but the prosecutor felt that he would not introduced it, and introduce the *Mallory*-type problem into the case. A conviction was had without the confession. So what I am saying is that the attitude of the prosecutor, generally, is not to use confessions even when you have them, so that I would say that very few, if any, confessions have been used in recent times.

Senator TYDINGS. Let me move to another area now.

You testified in favor of a tightening of the pistol regulation laws in the District which I introduced 2 years ago. Do you feel that there is a strong need for such legislation now as you did then?

Chief LAYTON. Our main problem, Senator Tydings, in the area of guns that are used in committing various offenses are those weapons that are in the possession of individuals without having gone through the procedures that we have set up here in the District of Columbia. The weapons that are obtained through legitimate channels, that is, by individuals going to a dealer and making application and that application coming through to the Police Department, these are not the weapons that create problems for us. The weapons that create problems are those weapons that have been obtained in some other manner so that if we can devise legislation that will treat with those weapons that are possessed without having come through legitimate channels, then I think that this would be the most helpful thing that we could hope for.

Senator TYDINGS. Is this a real problem?

Chief LAYTON. Yes, sir; it is a real problem.

Senator TYDINGS. Are you familiar with the statement made by Governor Hughes up in New Jersey after the recent Newark riots about the terrible problem of the guns getting into the hands of certain elements involved in the riots?

Chief LAYTON. I am aware generally of that comment, Senator Tydings; yes.

Senator TYDINGS. Do you feel that would be just as much of a problem or could be as it was in Newark, that it could be here in Washington?

Chief LAYTON. I do not have enough information to compare whether or not it would be as much of a problem—just that the guns that we seize in connection with criminal offenses indicate that we have a problem already in guns that are possessed outside the regulatory channels so that whether this is more or less than the problem in Newark, I am not in a position to say.

Senator TYDINGS. Do you feel that there is a possibility that there could be gun caches in the hands of extremist groups in the District just as there were in Newark?

Chief LAYTON. I do not know of any, Senator Tydings.

Senator TYDINGS. Is that a subject of concern to you?

Chief LAYTON. Sir?

Senator TYDINGS. Is that a subject of concern to you?

Chief LAYTON. Yes; this certainly is a matter of concern. And through all of the channels that we have available to us we try to get a feeling of this, an intelligence, but I do not have any intelligence at this moment that there are any large caches.

Senator TYDINGS. If there were, you would try to do something about it?

Chief LAYTON. We certainly would.

Senator TYDINGS. This particular legislation involved here is of no little assistance to you in that respect?

Chief LAYTON. Yes; I think that a registration law would be of assistance. We do have, I think, as I testified before, the fact that we

maintain a registration file in our Department, and we find that people who appear to have legitimate interests have in fairly large numbers voluntarily registered guns with us. And we accept that. We think this is a proper procedure. But those, of course, who are intending to use guns unlawfully would not be inclined to register them.

Senator TYDINGS. Those are all the questions that I have, Chief Layton.

We will now recess until 10 a.m. on Wednesday morning.

(Whereupon, at 12:30 p.m. the committee adjourned to reconvene at 10 a.m., Wednesday, July 26, 1967.)

DISTRICT OF COLUMBIA ANTICRIME LEGISLATION—1967

(H.R. 10783 and Related Senate Bills)

WEDNESDAY, JULY 26, 1967

U.S. SENATE,
SUBCOMMITTEE ON THE JUDICIARY
OF THE COMMITTEE ON THE DISTRICT OF COLUMBIA,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10 a.m., in room 6226, New Senate Office Building, Senator Alan Bible (chairman) presiding.

Also present: Chester H. Smith, staff director; Owen J. Malone, associate counsel; Howard A. Abrahams, assistant counsel; Arlene Williams, assistant clerk; and Richard E. Judd, professional staff member.

The CHAIRMAN. The subcommittee will come to order.

This is a continuation of our hearings on H.R. 10783, the House-passed omnibus crime bill, and the related Senate bills, insofar as they deal with the same subjects embraced within the nine titles of the House-passed bill.

We will in subsequent hearing go into the other bills in this general area, the bills on the narcotics and the intoxication bill, both of which have been introduced, but on which we have had no hearings. We will likewise go into the problem of adding additional judicial manpower, both in the court of general sessions and the appellate court at a very early date, and I hope within the next week or 10 days that we will get into that particular field.

Our hearing, this morning, as I say, is directly related to H.R. 10783, and is a continuation of the hearings begun this past Monday.

Our first witness is Senator Brewster—though I do not seem to see him in the room at this time.

Our next witness is Mr. De Long Harris, chairman of the Legislative Committee of the Washington Bar Association.

Is Mr. Harris here as yet?

Our next witness is Mrs. Antoinette Friedman, president, District of Columbia Women's Bar Association, accompanied by Miss Margaret Burnet, chairman of the Legislative Committee of the District of Columbia Women's Bar Association.

Mrs. FRIEDMAN. I am sorry Miss Burnet has not been able to come here, but I am willing to go ahead and read our statement.

The CHAIRMAN. Very happy to have you. Good to see you.

STATEMENT OF MRS. ANTOINETTE B. FRIEDMAN, PRESIDENT OF THE WOMEN'S BAR ASSOCIATION OF THE DISTRICT OF COLUMBIA

Mrs. FRIEDMAN. Mr. Chairman, on behalf of the Women's Bar Association of the District of Columbia, I wish to thank you and this committee for giving us an opportunity to present a statement on the very important piece of legislation now under consideration—H.R. 10783—relating to crime and criminal procedure in the District of Columbia.

The women's bar association is not, primarily, an organization of lawyers specializing in the field of criminal law. As an organization of individuals who live and work in the District of Columbia and as concerned citizens who are members of the bar, we feel a responsibility to comment on legislation which may have an extremely important impact on the administration of criminal justice in the city of Washington.

Our organization has been very deeply concerned and disturbed by increasing crime in the District of Columbia and, as have other organizations, considered the desirability of changes in statutes governing the prevention, prosecution, and punishment of crime. We view such legislative action as a possible means, among others, of diminishing the very serious problems the prevalence of crime creates in the city of Washington.

Our organization has made recommendations as to legislative action on several bills introduced in the Senate by the chairman of this committee, Senator Bible, and Senator Dominick, which are related to or the same as provisions of H.R. 10783. It is these specific provisions on which we would comment.

TITLE I

The women's bar association board of governors has endorsed the bill, S. 1524, introduced by Senator Bible, which is related to provisions of title I of H.R. 10783 which would extend the authority of police officers to make arrests without warrant. We note the difference between the House bill and the Senate bill with particular reference to the limitation in the Senate bill to arrest without warrant in the case of certain misdemeanors when the arresting officer has probable cause to believe such person has committed certain enumerated violations. We would recommend this provision in lieu of the section of the House bill which would authorize arrest without warrant for any offense and not only on probable cause of commission, but, also, when the offense is threatened or attempted.

TITLE II

The Women's Bar Association has taken no position as an organization on the extensive changes in the District of Columbia law relating to criminal responsibility and procedures to be followed in the event of assertion of mental disability as a defense which would be made by H.R. 10783. As many questions are raised concerning these provisions of the House bill, we would prefer that title II be considered as sepa-

rate legislation, giving a greater opportunity to analyze this in more detail and allowing time for our membership to develop a position with respect to it.

TITLE III

The Women's Bar Association has endorsed S. 1518, a bill which is related to the provisions which would be enacted by title III of H.R. 10783 relating to detention of persons for questioning. The safeguards and qualifications incident to detention required by the Senate bill would appear to be greatly preferable to the language of the House bill as set forth in title III. The requirements of S. 1518 providing for the protection of rights of those detained would appear to eliminate some questions of constitutionality which could be expected to arise if the House language is adopted. It is possible the language of title III of H.R. 10783 could present the courts and the police with more difficult problems than those now attendant on questions of arrest. Therefore, we do not endorse title III of H.R. 10783.

TITLE IV

The provisions of this title appear to be the same as those embodied in S. 1510, relating to the obstruction of the administration of justice in the District of Columbia which the Women's Bar Association Board of Governors has endorsed. We endorse enactment of title IV.

TITLE V

Title V is also an identical statement of the definition of robbery as a crime of violence as that contained in S. 1519 which we have endorsed. We would endorse enactment of title V.

TITLE VI

Sections 601 through 603, defining burglary as a crime in the first and second degree, are the same as provisions of S. 1520 which the Women's Bar Association's Board of Governors has endorsed. We would endorse sections 601, 602, and 603 of title VI.

Section 604 of title VI is the same as section 2 of S. 1521 which the Board of Governors of the Women's Bar Association has endorsed. We would, therefore, endorse section 604.

Section 608, relating to the making of false or fictitious reports on the commission of criminal offenses appears to be the same as S. 1521 which the Board of Governors of the Women's Bar Association has endorsed. We would, therefore, endorse enactment of section 608.

TITLE VII

Section 701 providing for issuance of citations in case of arrests for misdemeanors is similar to S. 1509 which was endorsed by the Board of Governors of the Women's Bar Association with the caveat that we believe issuance of citations for offenses in lieu of present procedures should be limited to cases of misdemeanors. The House bill appears to contain the limitations we think desirable. Therefore,

we endorse section 701. Section 702 amending the Bail Agency Act to conform with the citation provision has also been endorsed in the form in which it appears in S. 1509, and is, therefore, endorsed as a provision of H.R. 10783.

In conclusion, I would like to say that the Women's Bar Association strongly supports and endorses measures intended to strengthen the Metropolitan Police Department. In our opinion the Department deserves full support and respect of the Congress and the District of Columbia government by appropriation of necessary funds, provision of personnel and facilities and such other requirements as are essential to operation of an effective force. Where amendment of existing statutes is necessary to insure the effectiveness of police protection in the District of Columbia, we will support wise and useful legislation directed toward this objective.

The CHAIRMAN. Thank you very much. That certainly is a well-worked-out statement of position on the part of the Women's Bar Association. I certainly commend you and those responsible for working it out in this fine manner.

What is the membership of the Women's Bar Association?

Mrs. FRIEDMAN. Between 250 and 300 members.

The CHAIRMAN. How are most of the members of the Women's Bar Association employed—do they hold government jobs, work on the Hill, and that sort of thing, or are they actually practicing lawyers?

Mrs. FRIEDMAN. There are a good many of them in private law practice. We do not have any real statistics on it, but I would say that probably half and half—about half work for the government in one capacity or another, and perhaps half of us are in private law practice in the District.

The CHAIRMAN. Well, this is a very fine statement. I note what you say on title II. We have in the past extensively gone into the insanity problem as it is posed in Washington. The record is rather full in the past as to some of the weaknesses as a result of the *Durham* decision. I was rather persuaded that the *Durham* decision as modified into the *McDonald* decision resulted in good case law, and since you had good case law, it made a fine argument not to disturb the case law, because if you were to have a new test—and the House-passed bill is substantially the ALI insanity test—you still would have to develop a lot of case law.

I think there is merit in your position that maybe this should travel alone, and not as a part of the omnibus crime bill.

The problem is one of practical legislative strategy, as to whether or not the House would approve of proceding in that manner, because we have to be realists, and we still have to pass the bill in whatever form we decide on the Senate side, and we still have to go to conference.

The statement was made in the first days of hearings that the insanity situation in the Nation's Capital still was used as an escape route. And I do not know whether that is right or wrong. We are going to attempt, through proper witnesses, and those who are experts in this field, to find exactly, as best we can, what the actual factual situation is.

It does seem to me that if *Durham* modified by *McDonald* and developed by the case law has made a good insanity law in the District, I do not see any particular reason for disturbing it, unless the inferences that some writers have indicated are correct.

But I think the suggestion you have made there is a very good one.

Mrs. FRIEDMAN. We have not studied it very carefully, but I know there is considerable difference of opinion in the organization on this issue. It has never been resolved, really, so that we could take a position now.

The CHAIRMAN. I assume that lawyers, as lawyers, are the hardest people in the world to get to agree among themselves. I do not know what happens when you get 200 women lawyers. I would think that might even be a little more difficult. I have been married enough years that I can say that with some type of immunity, I hope.

But we do appreciate your position. I am very grateful for your appearance here this morning.

Mrs. FRIEDMAN. Thank you very much, Senator.

The CHAIRMAN. I am advised I am badly needed at an Interior Committee meeting to make a quorum. It is in this same building.

So we will have a 5-minute recess while I make a quorum for the Interior Committee. I shall immediately return.

(Short recess.)

The CHAIRMAN. The hearing will resume.

I see the senior Senator from Maryland, the Honorable Daniel Brewster, is here. I would be very delighted to hear from you at this time, Senator Brewster.

STATEMENT OF HON. DANIEL B. BREWSTER, A U.S. SENATOR FROM THE STATE OF MARYLAND

Senator BREWSTER. Thank you very much, Mr. Chairman, members of the committee, for giving me this opportunity to testify before the Senate District Committee.

I would like to testify quite briefly on two propositions. The first is bail reform, and the second is the sale of pornographic material to minors.

Now, with reference to the first, bail reform—crime in the cities of America is perhaps today one, if not the No. 1, issue in the country. We in Maryland have a very peculiar interest in crime in the District of Columbia, because so many Maryland citizens own businesses in Washington, work in Washington, or travel daily in Washington. And quite frankly there are parts of the District of Columbia that our families approach certain hours of the day with fear.

The streets of the Nation's Capital are not safe.

The District of Columbia Crime Commission recently studied this area in depth, and made many recommendations, one of which was a bail reform proposition. And so I have introduced a measure which would give the courts greater latitude in keeping someone in detention if they have reason to believe they are dangerous to society.

For example, during the 1963–65 period, the Crime Commission statistics revealed that 2,776 persons charged with felonies were re-

leased. Over 200 of these individuals committed further felonies while out on bail.

Six murders, two rapes, and two robberies were committed by persons on bail here in the District of Columbia. Twenty-five of these persons were charged with two new offenses while out on bail. Six allegedly committed three new felonies, and three individuals were released on bail and proceeded to commit four more felonies while on bail.

Some of these offenses doubtlessly could not be prevented. It is difficult to predict which offenders are likely to commit another crime if they are freed on bail.

But the Commission report came up with two interesting facts. Some of these so-called repeaters tended to have long prior criminal records, and most of the crimes committed on bail were similar to the original offenses.

It seems that there may be some means of gaging which defendants pose the greater risk to society.

I therefore introduced Senate bill 484, which would implement the proposal of the majority of the District of Columbia Crime Commission. It would provide that at the first hearing of a defendant charged with a felony, the judge would be empowered to consider the safety of the community as well as the likelihood of the defendant's appearance at trial in setting conditions for bail.

If the defendant is considered to pose a high risk to the safety of another person or the community in general, the judicial officer will be allowed to release him into the custody of another person or organization; place restrictions on his travel, associations, or place of abode; require the execution of a money bond; or impose any other condition reasonably necessary to safeguard the community, including return to custody after specified hours. Finally, if (and only if) there is no other means of assuring the safety of the community, the defendant may be held in custody for a period not to exceed 30 days.

I would hope and expect that this last provision would be used only in rare cases, and only when there is a very high risk which other means are insufficient to meet. The provisions of the bill tightly restrict the use of this detention.

This bill has been drafted in such a way that the defendant is virtually assured of a trial within 30 days. If there is no trial within 30 days, the defendant must be released from custody, if proper bail is posted. This period may be extended only by the judge and only in extraordinary circumstances.

Briefly, what my proposal—recommended by the majority of the Crime Commission—provides is that the judge who holds the preliminary hearing will decide how much of a danger the defendant poses to the community.

The CHAIRMAN. Your statement says "recommended by a majority of the Crime Commission." Was there a minority view on this particular problem? I frankly do not know.

Senator BREWSTER. I will have to provide the committee with that information.* I do not know at this time. I know that was the recommendation of the majority of the Commission. There were certain other views filed on certain measures. Now, I do not know about this

*See p. 511.

The CHAIRMAN. I know that. There were minority views filed in a number of other areas of the Crime Commission report. But I read this as meaning that the bail provision which you are directing your testimony to right now was recommended by the majority of the Crime Commission. I do not know whether that is right or wrong. We could have the staff clarify that.

Senator BREWSTER. It was recommended by the majority. If there were minority views on this point, I do not know at this time. If there were, I will provide the committee with them.*

The CHAIRMAN. Very fine. Thank you. Pardon the interruption.

Senator BREWSTER. Now, arguing further: If the defendant poses a sufficient threat, the judge may impose tight restrictions on his freedom, including curfew, daily or even hourly reporting to specified officers, and limitations on companions and travel. If this is not enough, he may be kept off the streets and in custody until trial, which must be held within 30 days.

I am aware that there have been some objections to this proposal on constitutional grounds. I see no real constitutional problem, however, and there are many authorities to support this view.

The argument of unconstitutionality rests on the presumed eighth-amendment guarantee of a right to bail. I do not believe that there is any absolute "right to bail." The Supreme Court has never held that such a right exists.

A majority of the members of the Crime Commission felt that this proposal is constitutional.

The CHAIRMAN. That would seem to clarify my earlier question. I would suppose there was a minority that filed a view it was not constitutional.

Senator BREWSTER. I presume the chairman is, of course, correct.

I would also point out that, in capital cases and certain other situations, courts have always had the right to deny bail before trial. This has never been held to be a violation of the Constitution. I see no reason why similar denial of bail, in very restricted circumstances, for certain highly dangerous defendants, should be unconstitutional.

Mr. Chairman, this measure will not by any means solve the crime problem of this city. However, it will help to prevent certain highly dangerous individuals from being turned loose pending trial. I would respectfully request this distinguished committee give this proposal favorable and I know careful consideration.

The CHAIRMAN. I think you have made a very fine contribution in this area, Senator Brewster. I am very grateful to you for doing so. I think there is great merit in your bill. And you can rest assured that it will get very, very early consideration. There is a title VII, I believe, of the omnibus crime bill that deals with other facets of the bail problem. It seems to me this may very well properly fit in there.

The Commissioners have written an opinion, dated July 21, 1967, on your bill, and they generally concur with what you say. They suggest certain amendments. And I would request of you, since this does involve your bill, and it is your concept of how this should be handled, if you would study this opinion, and I will ask the staff to give you or your staff people a copy of it. I would be delighted

*See p. 511.

to have whatever comments you might have as to the Commissioners' views. They make three suggestions. And I am not going to, of course, ask you to comment on those suggestions now. I am sure they are technical questions and technical suggestions, and it would undoubtedly require some study.

But I would be very happy to have you take a look at this official opinion of the Commissioners. They generally approve the bill that you have, with three suggested changes.

So would you study that and make whatever comments you want to in connection with it, because it does involve your bill.

(The letter referred to above follows:)

JULY 21, 1967.

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

DEAR SENATOR BIBLE: The Commissioners of the District of Columbia have for report S. 484, a bill to authorize the detention of certain persons charged in the District of Columbia with the commission of an offense punishable as a felony, and for other purposes.

The Commissioners note that Senator Brewster, in introducing this bill, stated, in part, as follows:

"I, therefore, send to the desk a bill which would implement the proposal of the majority of the Crime Commission. It would provide that, at the first hearing of a defendant charged with a felony, the judge be empowered to consider the safety of the community as well as the likelihood of the defendant's appearance at trial, in setting conditions for bail.

"If the defendant is considered to pose a high risk to the safety of another person or the community in general, the judicial officer will be allowed to release him into the custody of another person or organization; place restrictions on his travel, associations, or place of abode; require the execution of a money bond; or impose any other conditions reasonably necessary to safeguard the community including return to custody after specified hours. Finally, if—and only if—there is no other means of assuring the safety of the community, the defendant may be held in custody for a period not to exceed 30 days.

"I would hope and expect that this last provision would be used only in rare cases, and only when there is a very high risk which other means are insufficient to meet. The provisions of the bill tightly restrict the use of this detention.

"This bill has been drafted in such a way that the defendant is virtually assured of a trial within 30 days. If there is no trial within 30 days, the defendant must be released from custody. This period may be extended only by the judge and only in extraordinary circumstances.

"Briefly, what my proposal—recommended by the majority of the Crime Commission—provides is that the judge who holds the preliminary hearing will decide how much of a danger the defendant poses to the community. If he poses a sufficient threat, the judge may impose tight restrictions on his freedom, including curfew, daily or even hourly reporting to specified officers, and limitations on companions and travel. If this is not enough, he may be kept off the streets and in custody until trial, which must be held within 30 days." 113 Cong. Rec. S441 and S442 (daily ed. Jan. 18, 1967).

The Commissioners generally concur in the view of Senator Brewster and the majority of the President's Commission on Crime in the District of Columbia, as stated on pages 524 through 529 of the Report of such Commission, that pretrial detention of those defendants who present a truly high risk to the safety of the community should be authorized. However, the Commissioners believe that the following amendments should be made to S. 484, for the reasons indicated.

Section 3146A(b) of chapter 207 of title 18, United States Code, as added by this bill, should be amended to conform its evidence requirements to those of section 3146(f) by amending the first sentence of such section 3146A(b) to strike out "all relevant evidence and testimony which may be offered" and to insert ", without regard to the rules pertaining to the admissibility of evidence in a court of law, evidence and testimony which may be offered".

The proposed section 3146A(d) provides:

"Any person detained pursuant to this section shall, during his detention, be permitted to consult with counsel, friends, and members of his family."

This language appears to grant an unqualified right for prisoners to have unlimited visitors, with no restriction as to visiting hours. Although the Commissioners make every effort to afford detained persons reasonable visiting privileges, the limitations of the District's detention facility preclude unlimited visitation of prisoners. The Director, Department of Corrections, has submitted the following statement in this regard:

"The District of Columbia Jail is, as you know, not a modern facility. The physical plant is old and inadequate. There are shortages of personnel at that institution: which no matter how hard we try, just canot be filled. Also, the Jail is considered to be a maximum security institution providing, at least theoretically, maximum safe-guards against the passage of contraband, escapes, inmate uprisings and the like. For these reasons we have had to establish the rules and regulations for visiting at the Jail. Thus, we do not have unlimited 24 hour per day visiting, but only from 8:30 a.m., to 3:00 p.m., Monday through Saturday and 4:00 p.m., to 8:00 p.m., Tuesday and Thursday evenings.

"Even under this recently expanded schedule, up to 40 people have had to be turned away in one day due to a lack of adequate facilities. Inmates are only allowed up to 1½ hours per week for social visits (not including attorneys) again because of severely cramped quarters.

"Lastly, not everyone is allowed to visit the Jail, for to allow a total open door policy would occasionally and very unfortunately imperil the security of the institution. While lawyers are not quite so limited as to the times they may visit, in that case also we have from time to time experienced uncomfortable situations due to the lack of appropriate consultation rooms.

"Therefore, if at all possible the Department of Corrections would like to see the Bill amended to allow this visiting, but only insofar as reasonable visiting regulations based on physical facilities and institutional security may permit."

The Commissioners concur in this view and recommend that subsection (d) of the proposed section 3146A be amended by inserting immediately before the period at the end of the subsection the following: ", subject to such reasonable visiting regulations as the Commissioners of the District of Columbia may, from time to time, adopt and promulgate".

In conjunction with the adoption of the provisions of this bill, section 3147(b) of title 18, relating to appeal from conditions of release, should be amended to include, as a category of appealable orders, the determination to detain a person prior to trial because of his danger to the community. The Commissioners therefore recommended the addition of a section 3 to S. 484, providing as follows:

"SEC. 3. The first sentence of subsection (b) of section 3147 of title 18, United States Code, is amended by inserting immediately after 'charged' the following: ', or (3) a judicial officer in the District of Columbia determines, pursuant to the provisions of section 3146A, that release of such person will pose a danger to any person or to the community.'"

The Commissioners would favor the enactment of S. 484 if it be amended as they have recommended in this report.

The Commissioners have been advised by the Bureau of the Budget that, from the standpoint of the Administration's program, there is no objection to the submission of this report to the Congress.

Sincerely yours,

WALTER N. TOBRINER,
President, Board of Commissioners, District of Columbia.

Senator BREWSTER. I have Commissioner Tobriner's letter addressed to the chairman, dated July 21, referring to this measure. (Subsequent correspondence concerning S. 484 was received from Senator Sam J. Ervin, Chairman of the Judiciary Subcommittee on Constitutional Rights, See p. 507.)

The CHAIRMAN. Very fine. Thank you very much.

You may proceed on the second part of your statement, Senator Brewster.

Senator BREWSTER. Now, Mr. Chairman, as I mentioned, the people of Maryland do have a very peculiar interest in what transpires in the

District of Columbia. And one of the subjects that concerns us greatly is the sale of smut and filth in the Nation's Capital. It literally floods the newsstands. And the worst kind of material can be purchased by a youngster here very easily, just as easily as they would buy a stick of bubble gum.

The other day I sent an intern from my office, a young man, 20 years old, around the streets of Washington, and he collected for me the most depraved set of publications that I have ever viewed in my life. The books were entitled "Lust Parade," "Sex Unlimited," "Sin Bedmates," "Depraved," and so forth.

Mr. Chairman, I do not speak merely of the so-called nudist colony-type publication, replete with pictures of various portions of the human anatomy. But I speak rather of pornographic literature of the most vicious and depraved type.

There is probably no unpleasant thought that the mind of man can conjure up that I did not see expressed as I thumbed through these so-called books that were collected by a member of my staff, and which I have in my safe should a member of the committee—and I do not suggest this as recommended reading—should a member of the committee wish to review the type of material that is readily available to youngsters here in the Nation's Capital.

The CHAIRMAN. I have seen such books available at practically every airport that I have used in the United States. I have seen them, I think, displayed in windows in Baltimore, and I think I have seen them displayed in Los Angeles and I think I have seen them displayed in San Francisco. I am sure they are not recommended reading. I have not read them. Sometimes I have wondered. But I think it is nationwide. I think something can be done and should be done. I commend you for your efforts in this field. I would like to have your comments on the bill that we have from the House of Representatives which deals with this problem. Possibly I am anticipating your statement, and I don't mean to do so. I know you have taken a very strong and forceful lead in this very important fight, and I commend you for it. I would be interested in whatever observations you have about the bill that is before us. There is a section on this, as you know, in the omnibus crime bill. It is one that was drafted by the Department of Justice, and one that met the approval of the House of Representatives overwhelmingly, and appears to go a long way toward doing the very thing that you are suggesting.

I do not want to be anticipating your comments.

Senator BREWSTER. Mr. Chairman, of course, in arguing that this committee should consider this bill favorably, I recognize the contents of the Bill of Rights of the Constitution, the right of freedom of speech. But the Supreme Court did indicate in the *Redrup* case, where they set aside convictions under similar-type laws in other States, that there were two areas that legislative bodies could direct their attention to. One was the use of mails to send pornographic material to people completely unsuspecting and did not request delivery of the material, and secondly to restrict this type of material to minors. And it is this latter point that both my bill and the House bill do cover.

I believe that within the—I will not say guidelines, but in the wording of the words of the court, it would be constitutional to restrict this

type of material to minors here in the District, with his view in mind —not only cleaning up an extremely unpleasant situation here, but to accomplish the passage of pilot legislation that would act as an example for the entire country, so our other big cities that are faced with the same problem, like my own city of Baltimore, then could perhaps follow the lead of the Congress in enacting this legislation for the District of Columbia.

Now, Mr. Chairman, as you suggested, actually subsection (b)(1), on page 18 of the House-passed District of Columbia crime bill contains the essential points of S. 1825. Therefore, if that portion of H.R. 10783 were left intact, it would attack the pornography problem in the way that I have recommended. And as I did in the bail reform measure, Mr. Chairman, I respectfully request this honorable committee to give this bill its favorable consideration.

(The prepared statement of Senator Brewster follows:)

STATEMENT BY SENATOR DANIEL B. BREWSTER

Mr. Chairman, members of the committee, I am pleased to have the opportunity to testify concerning this very important matter which is of grave concern to us all.

"Crime in the streets" has become a cliche of our society. It is not a cliche to the citizens of the District of Columbia, many of whom are afraid to venture out after dark. It is not a cliche to those residents of Maryland who work, shop, and socialize in Washington—in the realization that they may be the next victim of a mugging, robbery, or rape.

I have stated on numerous occasions that we in Congress must take positive action to fight crime in the District. Getting at the sources of crime—poverty, inadequate education, slum housing—is certainly a major part of the solution. More money to train and equip our police force is another answer.

In addition, there are a number of measures suggested in the brilliant report of the D.C. Crime Commission. One of these proposals concerns bail reform.

At present, under the Bail Reform Act of 1966, any person charged with a non-capital offense—and that means anything other than first degree murder or rape—must be released pending trial unless release on specified terms will not reasonably assure presence at trial.

What this means, in brief, is that—no matter how dangerous such an individual may be to other persons or to the community in general—he must be released, as long as he is likely to appear at his trial.

As a practical matter, during the 1963-1965 period, Crime Commission statistics revealed that 2,776 persons charged with felonies were released. 207 of these individuals committed further felonies while out on bail.

Six murders, two rapes, and two robberies were committed by persons on bail. Twenty-five of these persons were charged with two new offenses while on bail. Six allegedly committed three new felonies, and three individuals were released on bail and proceeded to commit four more felonies while on bail.

Some of these offenses doubtlessly could not be prevented. It is difficult to predict which offenders are likely to commit another crime if they are freed on bail.

But the commission came up with two interesting facts: most of the "repeaters" tended to have long prior criminal records; and most of the crimes committed on bail were similar to the original charges brought. It seems that there may be some means of gauging which defendants pose a high risk to the community.

I therefore introduced a bill, S. 484, which would implement the proposal of the majority of the Crime Commission. It would provide that, at the first hearing of a defendant charged with a felony, the judge be empowered to consider the safety of the community as well as the likelihood of the defendant's appearance at trial, in setting conditions for bail.

If the defendant is considered to pose a high risk to the safety of another person or the community in general, the judicial officer will be allowed to release him into the custody of another person or organization; place restrictions on his travel, associations, or place of abode; require the execution of a money

bond; or impose any other condition reasonably necessary to safeguard the community, including return to custody after specified hours. Finally, if (and only if) there is no other means of assuring the safety of the community, the defendant may be held in custody for a period not to exceed thirty days.

I would hope and expect that this last provision would be used only in rare cases, and only when there is a very high risk which other means are insufficient to meet. The provisions of the bill tightly restrict the use of this detention.

This bill has been drafted in such a way that the defendant is virtually assured of a trial within thirty days. If there is no trial within thirty days, the defendant must be released from custody. This period may be extended only by the judge and only in extraordinary circumstances.

Briefly, what my proposal—recommended by the majority of the Crime Commission—provides is that the judge who holds the preliminary hearing will decide how much of a danger the defendant poses to the community. If he poses a sufficient threat, the judge may impose tight restrictions on his freedom, including curfew, daily or even hourly reporting to specified officers, and limitations on companions and travel. If this is not enough, he may be kept off the streets and in custody until trial, which must be held within 30 days.

I am aware that there have been some objections to this proposal on constitutional grounds. I see no real constitutional problem, however, and there are many authorities to support this view.

The argument of unconstitutionality rests on the presumed eighth amendment guarantee of a right to bail. I do not believe that there is any absolute "right to bail." The Supreme Court has never held that such a right exists.

A majority of the members of the Crime Commission felt that this proposal is constitutional.

I would also point out that, in capital cases and certain other situations, courts have always had the right to deny bail before trial. This has never been held to be a violation of the Constitution. I see no reason why similar denial of bail, in very restricted circumstances, for certain highly dangerous defendants, should be unconstitutional.

Mr. Chairman, this measure will not by any means solve the crime problem of this city. However, it will help to prevent certain highly dangerous individuals from being turned loose pending trial. It is a reform which was proposed by a majority of the highly competent and thoughtful D.C. Crime Commission. I recommend it to the committee.

Mr. Chairman, there is another matter I should like to discuss before the committee.

No doubt many Senators besides myself have become concerned recently about the smut and filth that floods the newsstands of Washington. What is especially appalling to me is not just that such material is available, but that it is available to minors. Sex magazines and smutty books can be bought by children as easily as bubble gum. Until the recent arrest of its proprietor, one particular bookstore on Ninth Street stocked more than 500 magazines police said were obscene.

We have a statute on the books in the District of Columbia which prevents the sale or the possession for sale of "obscene, indecent, or lascivious" publications. But many newsstands in the city are still filled with pornographic books entitled *Lust Parade, Sex Unlimited, Sin Bedmates, Depraved*, and so forth. There remains a distinct need for a stronger anti-pornography law directed especially against sale to minors. We, as legislators for the District, have a responsibility to enact such a law.

It is essential, of course, to take note of the broad freedom of speech and of the press guaranteed in the Constitution. This nation is founded on the assumption that, in the long run, the public welfare will be served better by a free interchange of ideas than it will by a harsh censorship that inhibits literary and political freedom.

And so a book may not be banned because it is merely offensive, even to the majority of the community. In recent years, the Supreme Court has handed down a number of decisions which invalidated censorship laws. We must accept these decisions, in accordance with the First Amendment, and see what can be done about pornography within the Supreme Court guidelines.

These guidelines are not so unreasonable as is often assumed. They do not allow the sale of anything and everything. The 1966 Supreme Court obscenity decisions sent one publisher to jail because the way he advertised and marketed his books was calculated to appeal to the prurient interests of the reader.

It would seem to me, therefore, that the first order of business is not to change the Constitution, but to see what we can do to stop the spread of filthy publications without restricting legitimate freedom of the press.

One thing we can do, as suggested in the language of recent Supreme Court cases, is to prohibit sale to minors. In the *Redrup* cases, the Supreme Court opinion noted especially that none of the state laws in question "reflected a specific and limited state concern for juveniles." And it thereby implied, as it had in earlier decisions, that a properly drawn statute aimed at the sale of pornographic materials to juveniles would be constitutional.

The bill I have introduced, S. 1825, contains three main prohibitions: 1) Sale to minors in the District of Columbia of visual representations of nudity and sex conduct; 2) Sale to minors in the District of books, magazines, or sound recordings describing sex activity and "utterly without redeeming social importance for minors;" and sale to minors in the District of Columbia of admission tickets to dirty movies or shows.

Actually, subsection (b) (1) on Page 18 of the House-passed D.C. Crime Bill contains the essential points of S. 1825. Therefore, if this portion of H.R. 10783 were left intact, it would attack the pornography problem in the way I have recommended.

Mr. Chairman, I thank you for the opportunity to testify this morning.

The CHAIRMAN. Thank you very much for a very effective statement. Again I repeat that I am very well aware of your long interest in this constant fight against crime. I commend you for the contribution which you are making. Thank you, Senator Brewster.

Senator BREWSTER. Thank you, Mr. Chairman.

The CHAIRMAN. Our next witness will be Mr. DeLong Harris, chairman of the legislative committee of the Washington Bar Association.

STATEMENT OF DeLONG HARRIS, CHAIRMAN OF THE LEGISLATIVE COMMITTEE, WASHINGTON BAR ASSOCIATION

Mr. HARRIS. Thank you, Senator Bible.

The Washington Bar Association is happy to have been invited to testify on this important legislation. We appear to testify in opposition to the House-passed bill, H.R. 10783. Certain portions of that bill we do approve of, but in the main we oppose it, and we say that for these reasons.

The CHAIRMAN. Might I ask you a question. I know I have asked you this question before, Mr. Harris, but for the record, what is the membership of the Washington Bar Association?

Mr. HARRIS. 285.

The CHAIRMAN. Thank you.

Mr. HARRIS. Mr. Chairman——

The CHAIRMAN. Is that limited just to the city of Washington?

Mr. HARRIS. Just to the District of Columbia.

The CHAIRMAN. Thank you.

Mr. HARRIS. As far as title I of the House-passed bill is concerned, we say this:

Title I: Historically and traditionally, arrests without a warrant have been confined to situations where the arresting officer by his perceptive senses observed the commission of a misdemeanor and in instances where the officer has probable cause to believe that the accused has committed a felony. Title I of this bill proposes to change existing laws by permitting arrests without a warrant where the

officer has probable cause to believe that one of a certain number of misdemeanors has been committed or that the suspect may tamper with evidence. The bill is not explicit as to the type, kind or character of the evidence attempted to be tampered with or destroyed.

This Nation has progressed all of these years without changing the common law principle that the citizen may not be arrested for a misdemeanor unless committed in the presence of an officer except in certain cases set forth in various codes. To place the power of arrest in an officer merely upon "probable cause" to believe that the citizen "unless immediately arrested, may not be apprehended" is to invite wholesale arrests upon the most whimsical of reasons.

Title II: The proposed change of the so-called *Durham* rule set forth in this bill does not conform to the ideas of the Honorable David L. Bazelon, the chief judge of the U.S. Court of Appeals for the District of Columbia, a position comparable to the chief justice of a State, the Bar Association of the District of Columbia, the Department of Justice of the United States, and the Attorney General of the United States. Moreover, unless the position of the U.S. attorney's office has changed, the office of the prosecutor for the District of Columbia does not favor the proposed legislation. With such an array of formidable opposition to this title, it would not serve any useful purpose for the Washington Bar Association's representative to recall, recount and reiterate the many compelling and convincing arguments against this title heretofore advanced by these aforementioned organizations and individuals and many others. We join in the opposition and adopt the arguments advanced by the Department of Justice against enactment of title II.

Title III: One of the most curious and revealing factors concerning title III of this proposed legislation is that the authors and protagonists of such legislation never believe that they themselves, their wives, their sons, daughters, or friends might be seized upon a public street or highway in the District of Columbia and deprived of their liberty for a period of 4 hours for the purpose of interrogation by members of the Police Department. The safeguards written into the Bill of Rights of the Constitution of the United States of America by the Founding Fathers were not placed there to aid, assist, or give succor or comfort to brutal, violent, vicious or even, for that matter, very petty, criminals. These safeguards were placed in our Bill of Rights for the protection of the vast majority of the citizenry, the law-abiding. If in a futile effort to prevent crime and render life uncomfortable for the criminal element, we rewrite our laws so as to place every single citizen at the tender mercy of the members of the Police Department as to whether or not he may be incarcerated for 4 hours without cause or otherwise deprived of his liberty when he has violated no law, is to place this District of Columbia in the same condition as existed in the colonies prior to the freedom of America and the enactment of the Bill of Rights to our Constitution.

Liberty is a very precious thing, and to take away 4 hours of a man's life to satisfy whims or curiosity of some inexperienced police officer is a very brutal thing.

This title places the impossible burden upon citizens to explain their actions to the satisfaction of the officer. The only judge of the officer's

satisfaction would be the officer himself. Therefore this citizen might be questioned with regard to "any matter."

The Washington Bar Association firmly believes that this type of legislation would render the District of Columbia a place, in this regard, closely akin to the Hitler era in Germany with its Gestapo and secret police. This we believe most firmly to be a price too dear to pay.

The CHAIRMAN. Mr. Harris, what do you think the police actually can do in detaining a suspect, as you see it? You are a lawyer. You are a practicing lawyer in the District.

Mr. HARRIS. I have been practicing in this jurisdiction for twenty-two and a half years. And I practiced before the report to the Commissioners concerning the arrests for investigation. There was once—I think I have been down here, and I recounted some years ago an instance where a marine was murdered on 14th Street—very heinous crime.

The CHAIRMAN. I think you have told us that story. I know what you object to. What I am asking is what do you think that the police officer can legally and constitutionally do as to the suspect that he finds on the street? What can he do? What does, he do--in your opinion?

Mr. HARRIS. Are you asking me what can he do constitutionally, or what does he do?

The CHAIRMAN. I am asking you what he can do constitutionally, and in your opinion.

Mr. HARRIS. In my opinion he can ask the man his name, address and telephone number, because if I am on the street, the police officer has no right to know any of my business.

The CHAIRMAN. In your opinion, then, all he could ask is your name, your address, and your street number?

Mr. HARRIS. That is correct.

The CHAIRMAN. Your address?

Mr. HARRIS. Within the purview of the Constitution.

Now, there have been many cases—

The CHAIRMAN. And that is all he can do. Can he do anything beyond that, the police officer?

Mr. HARRIS. He can make any sort of interrogation that he desires, which is on a voluntary basis. He may ask "What is your business, where have you been, where are you going, what is your business on the street."

We have in the District of Columbia a vagrancy statute which some of the law courts——

The CHAIRMAN. Can he constitutionally ask all those questions?

Mr. HARRIS. I do not believe that he can, and I do not believe that the Supreme Court would uphold the constitutionality of inquiring as to the citizen's business on the street.

The CHAIRMAN. You say he could do it if he does it voluntarily. If the suspect says "Sure, I will tell you everything you want to know. Go ahead and question me."

Mr. HARRIS. I believe that the police officer certainly has a right to ask those questions then.

The CHAIRMAN. The suspect remains mute. He can certainly do that?

Mr. HARRIS. That is correct.

The CHAIRMAN. If the suspect remains mute, how long can the police officer detain him?

Mr. HARRIS. According to the Constitution?

The CHAIRMAN. Yes; constitutionally.

Mr. HARRIS. He has no right to take him into custody.

The CHAIRMAN. Well, I suppose he can take him into custody. But I suppose if he did, the way you see it, he would have to advise him of his right to a lawyer, his rights to remain mute, the warning that anything that he would say would be used against him. If he wanted to say something, fine. If he did not, he can remain mute. He had a right to a lawyer.

Is this what you say—is that the limits of it?

Mr. HARRIS. Well, Senator Bible, I say that the officer has a right to take the citizen into custody only if he has probable cause to believe the commission of a felony or the imminent commission of a felony, or he has observed the commission of a misdemeanor.

Now, all of the advices of the rights, all of the advisement as to his right to remain mute, will not cure the constitutional defect.

We have here in this jurisdiction on our vagrancy statute a decision which I believe Judge Edgerton, the former chief justice of our court of appeals, in the vagrancy statute—we have a section of our code which says in the vagrancy statute whoever is abroad at late and unusual hours of the night, and fails to give a good account of himself to the police officer, or words to that effect, is a vagrant, and may be taken into custody.

Now, in that opinion, the name of which escapes me—but the author was the former chief justice, Judge Edgerton—says that the suspect has a right to say that it is none of the police officer's business, and to remain mute. And that is the law in the District of Columbia.

The CHAIRMAN. Is the Edgerton decision a circuit court of appeals case?

Mr. HARRIS. District of Columbia Circuit Court of Appeals.

The CHAIRMAN. Is the Edgerton decision a circuit court of appeals decision?

Mr. HARRIS. That is correct.

The CHAIRMAN. I am not familiar with it. That is why I ask. I just wanted to get your views on it.

Mr. HARRIS. And I might point out—I have been to the Supreme Court a number of times, and I have done considerable research, and I might say to you, Senator Bible, that no case ever reaching the Supreme Court on the duty of the citizen to give a good account has ever been decided by the Supreme Court. There was once a case in California in which it was sent back because of procedural defects, in which three members of the Supreme Court indicated that they did not believe that was constitutional. And I firmly believe that if a case involving the duty of the citizen under any statute to give a good account of his presence on the street is ever brought to the Supreme Court, it will be ruled down as unconstitutional.

The CHAIRMAN. Fine. I think I have your position. I appreciate it. I wanted to question you a little on it.

Now you may proceed.

Mr. HARRIS. Thank you.

The CHAIRMAN. I think you were down to title IV and V.

Mr. HARRIS. Title IV and V, we have no opposition to and we believe that it might have been written in a better fashion. However, we

have no opposition to title IV and V, which have to do with bribery or intimidation to influence the decision of a Government witness.

I might say that this legislation is very closely akin to the Federal statute on the subject, and the exact need for it I do not know about. However, we have no opposition to it. I think it would very largely duplicate title XVIII, section 1503 of the Federal code, which is applicable to the District of Columbia, except that title IV would extend it to the misdemeanors as well as felonies.

Title V of this act merely defines a crime of violence in the District—and I think robbery certainly is a crime of violence and should be included.

Now, with respect to title VI—we believe that the matters with regard to sentencing of convicted criminals should be left to the discretion of the sentencing judges who will have had the benefit of investigative and presentence reports of probation officers. We do not subscribe to the "Gilbert and Sullivan Mikado" solution of making the punishment fit the crime. We say that the punishment should fit the individual in all instances.

We feel that the division of burglary into two degrees is a very useful and a very necessary matter to be taken up by Congress. However, we feel that the standard of punishment set forth of not less than 5 years and no more than 30 years is not only unduly harsh, but takes away from the sentencing judge the power of using his discretion and reports of probation officers and other investigative agencies in the fixing of penalty. It might be said in passing that the writers of this title deemed first degree burglary at least to be a 100 percent more heinous crime than armed robbery where in section 603 the penalty is fixed at not less than 4 years and not more than 15 years.

Section 605: Section 605 is proposed legislation born of the hysteria of the times. It proposes that if a man slaps his wife in his kitchen where it is "readily available * * * (A) * * * butcher knife" he could be, theoretically at least, imprisoned for life and under no conditions would he be eligible for probation. We believe that if the legislation had confined itself "to the use of weapons" in the perpetration of a crime of violence, the Washington Bar Association would have supported such legislation.

In other words, all of these weapons delineated in this section 605, if it is shown that these weapons were used in a crime of violence, we would strongly urge that such legislation be passed, but to say that if there is a crime of violence, and violence, as I said before, consists, of a slab, is readily available, is to go a bit too far, and I believe that it would perhaps worsen rather than alleviate the situation.

The CHAIRMAN. You might have a very good point there. I will certainly ask the experts in this field to take a look at it. It is hard for me to believe if a man slaps his wife, they could put him away for life.

Mr. HARRIS. That could happen under this law as written in H.R. 10783.

The CHAIRMAN. Thank you.

Mr. HARRIS. Now, section 606—since the Supreme Court has not been able to give a clear and cogent definition of the word "obscene" and since what is "immoral" varies so widely from generation to generation, place to place, and between various sects and religious faiths, we believe that the Congress could very well tailor an obscenity

statute more in keeping with reality. As presently drafted the bill prescribes the sale to a minor of a book which depicts "sexual conduct" or which "* * * contains explicit and detailed verbal description or narrative accounts of sexual conditions * * *" Just how the sale of Shakespeare's "Hamlet" could be approved under this bill in the light of the story of the maiden Ophelia with regard to the loss of her maidenhood is beyond us. Moreover, when you consider the "Holy Bible" is a book and that such passages as the Song of Solomon are allegorical but nevertheless somewhat purely sexual in context, and when it is further considered that such passages as Genesis, chapter XIX, verses 30–38, certainly describes sexual conduct of a lecherous nature by Lot and his daughters, this law would prohibit the sale or distribution of the "Holy Bible" to minors.

We are fully in accord with the need for a law to curb obscene publication. We say that this law is very loosely drawn, and if it is drawn in such a fashion as to prohibit the sale of Shakespeare and the "Holy Bible," then it is not a good law.

Now, with respect to section 607, for reasons aforestated, the Washington Bar Association opposes this section which fixes the minimum of 4 years for the placing of explosives, et cetera. We believe that this is a judicial function.

Section 608: The Washington Bar Association states that the language that defines a "false report" under this section as "false or fictitious report of any other matter or occurrence * * *" should be deleted from this section. If deleted, we believe that the legislation might be useful. As a matter of fact, this procedure is followed under the Commission's regulation at the present time and has been so followed for many years.

Title VII: The Washington Bar Association is wholeheartedly in accord with the use of citations rather than arrests in many cases. When last here before this body, this representative spoke in favor of the Senate bill having many of the same features.

Title VIII: We believe that youth offenders could be tried in institutions designated by or created by the Commissioners of the District of Columbia. We therefore support enactment of title VIII.

Overall position: The Washington Bar Association wishes it to be distinctly understood that while it favors certain sections or titles of H.R. 10783, in the overall picture the bar association urges the Senate to reject the bill as written because of the objectionable features aforementioned.

The CHAIRMAN. Thank you very much, Mr. Harris. I always appreciate your appearance here. Thank you.

Our next witness will be Mr. Michael A. Schuchat, representing the District of Columbia Bar Association.

You may proceed.

STATEMENT OF MICHAEL A. SCHUCHAT, REPRESENTING THE BAR ASSOCIATION OF THE DISTRICT OF COLUMBIA

Mr. SCHUCHAT. My name is Michael A. Schuchat. I am appearing this morning on behalf of the Bar Association of the District of Columbia. We want to thank the committee for giving us an opportunity to testify.

My testimony is directed to bill S. 1513, and the proposal to establish a Commission to revise the Criminal Code in the District of Columbia.

The District of Columbia Bar Association strongly supports the proposal to create a commission to undertake a general revision of the substantive and procedural provisions of the District of Columbia criminal law.

A thorough study of the criminal law and procedure of the District of Columbia is essential at this time as the first step toward enactment of a modernized Criminal Code. A new code would be a very valuable tool for all the District of Columbia law enforcement agencies. It could help speed up and improve the entire law enforcement process. There has been no general codification of the law since 1901. Although Part IV of the District of Columbia Code, the Criminal Code, has been revised by a private company for the House Judiciary Committee, the resulting bill was never introduced in Congress.

The major changes in the nature and extent of crime in Washington call for new and more appropriate legal solutions. A Criminal Code enacted long before World War I in many cases is out of date and is hampering police and prosecutors and is confusing to all who must daily deal with its many provisions. Because of such factors, almost half of the states are now in the process of revising their Criminal Codes in the light of modern problems, experience and knowledge.

Some of the areas warranting close attention, include the definition of crimes; the elimination of unneeded substantive provisions; the rearranging and regrouping of existing provisions; the simplification and the improvement of procedures; the delineation of police authority and responsibility; and the prescription of a rational system of penalties, more flexible and effective probation, and parole procedures.

Solution of the problem needs more than a patchwork approach and this can best be supplied by a Commission. A Commission can devote the necessary time and study required to take an overall view of the criminal law and make thoughtful and considered recommendations.

The Commission should be composed of persons with active interests and experience in dealing with the administration of criminal law and the problem of crime.

Consideration should also be given to the establishment of an advisory committee to the Commission composed of representatives of the numerous groups and agencies which deal with crime in the District of Columbia. The advisory committee would offer suggestions and present the varied experience and viewpoints. Members of this committee could be drawn from the Office of the U.S. Attorney, the Corporation Counsel's Office, Metropolitan Police Department, the Department of Corrections, local law faculties, local bar associations, the neighborhood legal services project and the Legal Aid Agency, among others. Courts in the District of Columbia should be asked to designate representatives to serve on this committee.

The Commission, to fulfill its duties, must have an adequate professional staff to do initial research and to perform drafting services for the Commission. In addition, since the members of the Commission will be required to devote to this work much time which would

otherwise be devoted to their private pursuits, all members of the Commission who are not employed by the Government should receive a reasonable payment, on a per diem basis, for their services. Other members of the Commission and members of the advisory committee should be reimbursed for the reasonable and necessary out-of-pocket expenses incurred in the performance of their duties on behalf of the Commission. We recommend that adequate funds be made available for salaries and expenses and that sufficient time be allowed for the Commission's work.

The work of the Commission will be most fruitful if a close and continuous relationship is maintained with the Congress of the United States and particularly those committees and subcommittees given legislative responsibility for the subjects to be included in the recommendations of the Commission. An effective liaison system must be established between the Commission and the Congress. The Commission should be empowered to make interim reports to the Congress.

We ask this committee give consideration to amending the pending bill before you to include the provisions of S. 1513. This subject is not very exciting, and it is not productive of immediate results, because it takes time to make the study. But we feel that in the long run it could make a very significant contribution, and be very helpful to the problem.

The CHAIRMAN. That is a very fine statement.

What is the membership of the Bar Association of the District of Columbia?

Mr. SCHUCHAT. I think, Senator, it is somewhere in the neighborhood of 4,000.

The CHAIRMAN. And you are taking a position only on the question of the need of a criminal code revision?

Mr. SCHUCHAT. That is correct, sir.

The CHAIRMAN. You have not taken any position on title III, which is the controversial section as to the detection and interrogation of a suspect?

Mr. SCHUCHAT. No, Senator. We have not been able to develop a position for the association at this time. However, I understand that Mr. Powell, the president, intends to communicate with the committee later, and they are going to endeavor to get a position on that.

The CHAIRMAN. Well, I hope if you do have a position on it—and if you have 4,000 lawyers, I suppose you will have 2,000 of them for it and 2,000 against it. But, however it breaks out, I think it might be helpful if you give us the benefit of your views. And I would urge you to suggest that that be done in a rather timely manner, because we are going to attempt to move along in this field without too much delay.

I thoroughly agree that there is need for a code revision. We have already heard testimony on that, and it may very well be a section that should be blended into this bill, because it is a part of the overall crime problem that we have. And revisions could on long range be helpful.

My concern—and I have expressed it—I expresed it on Monday—and I simply suggest it to you—is first the cost. Do you have any idea what the cost of this revision would be?

Mr. SCHUCHAT. No; I do not, Senator.

The CHAIRMAN. We have had figures that suggest that it is in the range of $250,000 to $300,000. I suppose that is realistic. I don't know.

Mr. SCHUCHAT. I would suggest that there is a good deal of groundwork which has been laid. The American Law Institute has done a good deal of work in it. As I said, there was——

The CHAIRMAN. Yes, I caught that that had done some revising, and that was done by a private public house, I assume.

Mr. SCHUCHAT. The company which did the revisions of the other parts of the District of Columbia Code, they revised part 2, 3, and 4; 2 and 3 have been enacted into law, and 4 has never been introduced. But in addition, the work done by other States and other bodies would be available, and it is not completely plowing new ground. It is more a matter of considering what is available to a large extent. So I do not know that it is necessarily that large an expenditure.

The CHAIRMAN. And I do not, either. But it is a very proper question, because as I suggested on Monday, my concern in that area is not the need for the revision—because I think you need it—but my concern is the money that it would cost at a time when we have tremendous demands on the District of Columbia dollar to do so many many things in the field of education and salaries, improved salaries for the police, and more assistance for the police, and more welfare and recreational facilities, and things of that kind—it simply becomes an item of priority, in my mind.

The only additional query that I had on it was; Are we, in creating this Commission, creating a permanent institution?

Mr. SCHUCHAT. No, Senator. It would not be.

The CHAIRMAN. This is a one-shot deal?

Mr. SCHUCHAT. It would be a one-shot deal.

The CHAIRMAN. I would certainly hope that is true—because I have experiences from my own State where we thought we were on a one-shot deal, and we have a very fine man who is heading up the code commission, but it is a lifetime career now, with the implementing staff that goes with it. It started out with one man and a secretary, as I said the other day. I should have checked it out to see exactly how large a staff they have now, but you can take my word for it, it has grown. It is in existence like most agencies and bureaus are. I think there would have to be something definitely nailed down in this law, at least as far as I am personally concerned, to be sure that this is just that—a one-shot deal. That is the way you envision it?

Mr. SCHUCHAT. Yes, sir. And it would have a specific time limit.

We have suggested that the Commission be empowered to make interim reports. The purpose of that was that 95 percent of what the Commission would come up with would be completely noncontroversial, and that should not be weighted with the part that would be controversial.

The CHAIRMAN. We always like the noncontroversial parts, but we always end up in everything we do with a title III, to go along with the other noncontroversial sections of a bill. This is what causes our problem. I guess that is the way life is.

Thank you for a fine statement.

Our next witness is Mr. William Ross, chairman of the National Capital Civil Liberties Union, accompanied by Mr. William Nathan, chairman of the Legislative Committee of the National Capital Civil Liberties Union.

Gentlemen, we are glad to have you here.

I do not see Mr. Nathan.

Mr. Ross. Mr. Nathan had a prior commitment and is not able to be here.

The CHAIRMAN. We are happy to have you here.

Mr. Ross. Mr. Chairman, I have a fairly extensive statement. I can deliver it or summarize it, as you see fit.

The CHAIRMAN. Yes. It is 22 pages long. Suppose we incorporate the statement in full in the record as if read, and then why don't you highlight it—hit the highlights of your position.

Mr. Ross. I will do so, much more briefly than the statement.

The CHAIRMAN. Thank you, sir.

STATEMENT OF WILLIAM ROSS, CHAIRMAN OF THE NATIONAL CAPITAL CIVIL LIBERTIES UNION

Mr. Ross. I represent the National Capital Area Civil Liberties Union which is the affiliate in this area of the American Civil Liberties Union. We have approximately 3,500 members in the National Capital area.

The CHAIRMAN. Is that metropolitan in scope, or is that District of Columbia?

Mr. Ross. Metropolitan in scope, and a couple of the adjacent counties in Maryland and Virginia.

The CHAIRMAN. What we would define generally as the metropolitan area?

Mr. Ross. Yes, sir.

The CHAIRMAN. Very well.

Mr. Ross. The Civil Liberties Union appreciates this opportunity to present its views to the Senate District Committee. Like other community groups, we deplore the existing high level of street crime and other crimes in the District of Columbia. We consider the reduction or prevention of crime as one of the most pressing of this city's needs, and we believe that a maximum effort must be made by all responsible persons to assure that our citizens are safe in their persons and property. Crime can have a highly adverse effect on civil liberties, as well as other important community values.

We also appreciate the spirit in which this committee through the years has approached the many problems of the District of Columbia, and our intention is to try to make a constructive contribution to the committee's work. Unfortunately, I am afraid that most of my comments today are going to be rather negative.

Our detailed views on the various bills are set out in the statement, which we have submitted. In summary, it is our conclusion that H.R. 10783, the bill which has passed the House, would make little or no contribution to crime control in this city. In fact, we believe it would probably increase the incidence of street and other crimes in the District of Columbia, because it would increase the social tensions which are important stimuli to crime and rioting.

The bill would also deny basic civil liberties.

We urge that the Senate reject the bill either in whole or in part.

The most dangerous provisions of the bill from a civil liberties standpoint in our opinion are the following:

Title III, which the chairman has referred to a number of times already this morning.

This would permit individual police officers' uncontrolled discretion to arrest and hold for interrogation anyone for a period of 4 hours exclusive or interruption, and with no public record being made of the detention or judicial supervision over it.

We believe that the effect of this provision, as it would actually be applied by the police in the District of Columbia, would be to reinstitute the practice of dragnet arrest or arrests for investigation which were prevalent here prior to their abolition by the District of Columbia Board of Commissioners in, I believe, 1962. The committee will recall that there was an extended study by the Horsky committee of the practice of arrests for investigation, and the conclusions of that committee were twofold. One, that they were unconstitutional, and second, that they had an adverse and negative effect on crime control. And it was on the basis of that investigation that the District of Columbia Commissioners abolished the practice.

We believe that it is the purpose of this bill, the intention on the part of its drafters in the House, to reestablish this practice. We can conceive of nothing, of no practice which could be instituted in this city which would be more likely to cause major civil disturbances and riots than the reinstitution of this practice.

There was a report—Lou Harris did a survey about a year ago of attitudes of persons living in the inner city toward police practices, and the one thing that was picked up over and over and over again was resentment at the street sweep, the practices of the police in going through and making indiscriminate arrests or detentions. And I think we would be asking for it if we enacted this bill.

We also don't think that it makes any significant contribution to crime control, for the reasons I have set out in my statement.

The CHAIRMAN. Might I just ask you one question. Are you a lawyer?

Mr. Ross. Yes, sir, I am.

The CHAIRMAN. What do you think that the policeman can constitutionally do when he sees a suspect on the street and has probable cause to believe that that suspect has committed a crime, or is about to commit a crime? What do you think he could do? Constitutionally—within the confines of the Constitution?

Mr. Ross. Well, the policeman has a perfect right to go up to anyone in the street and to interrogate him—just as any other person has a right to talk to people in the street. The citizen may or may not respond to the interrogation. We would argue that he has a constitutional right to keep silent. He need not respond to the policeman's interrogation.

The CHAIRMAN. I suppose that is true. As a practical matter, if a man keeps quiet—I do not think you can beat him in this day and age. I do not think you can beat him if he remains silent. I suppose if he remains silent, there is nothing you can do.

Mr. Ross. I would agree with that, Senator.

The CHAIRMAN. Are you saying that if a policeman sees a suspect, and he believes he has probable cause to believe he has committed a crime, or about to commit a crime, he can go up to him and say, "Mr. X, what is your name, what is your address, what are you doing here, where are you going?"

Mr. Ross. I believe he can ask him anything he wants to. There is no restriction on the questioning—as long as it is recognized that the citizen need not respond.

Now, to continue in response to your question, the policeman, if he has probable cause to believe that the person involved, whom he is questioning, or has seen on the street, has committed a felony, he can arrest him. And we believe that any detention by a police officer of a citizen is an arrest. There is a discussion of this at length in the Horsky report, by the way, which summarizes the cases.

The CHAIRMAN. I am familiar with the Horsky report.

Mr. Ross. Obviously also if he sees he is committing a misdemeanor or about to commit a misdemeanor, he can arrest him as well. If he does not have probable cause—and I think this is getting to the heart of the chairman's query—if the police officer does not have probable cause to believe that the man in front of him has committed a felony, and if the man stands silent under interrogation, it would be our position that the police officer must let him alone, that he cannot pursue the interrogation, cannot try to force him to answer, and cannot take him into custody because he has not answered.

Now, this is a very complicated field. It is obviously one in which the law is moving.

We are challenging in the District right now the disorderly conduct statutes and the so-called loitering——

The CHAIRMAN. Is that the one that the previous witness testified to—Mr. Harris? The vagrancy statute?

Mr. Ross. Yes, he mentioned the give-a-good-account-of-yourself law, it is called.

The CHAIRMAN. I think he called it the antiloitering, or vagrancy statute.

Mr. Ross. Vagrancy statute is correct. We are challenging that on constitutional grounds. And of course a number of the highest courts in the various States have declared these laws unconstitutional.

We fully recognize that these restrictions are a handicap to the police in investigating street crime, holdup crimes, often burglaries, assaults, matters of that kind. We simply regard them as essential protections of our freedoms.

The CHAIRMAN. I understand your position, I think, very clearly on this. I just wanted to query you a little bit on it. You may proceed.

I note that you have the same objection to the bill that Senator Dominick and I introduced which was really a reintroduction of title I of last year's omnibus crime bill relating to Rule 5(a) of the Federal Rules of Criminal Procedure as defined in the *Mallory* case. That particular section is not, as you know, in the House-passed bill, and really is not affirmatively before this committee at this time.

Mr. Ross. I see. It is not before this committee.

The CHAIRMAN. Well, it is before it, but not for hearing purposes.

Mr. Ross. I see, sir.

The CHAIRMAN. Because I personally do not consider that as being within the confines of the omnibus crime bill that was passed by the House.

Mr. Ross. I see, sir.

Thank you.

I would like to turn now to the changes in the insanity defense made by H.R. 10783. We believe that just regardless of what is done about the insanity defense, it is clearly going to have little or no effect on crime and law enforcement in the District of Columbia, because statistically that particular aspect of criminal procedure is insignificant—as the District of Columbia Crime Commission report clearly documents.

We believe that for the reasons which are basically set out in the District of Columbia Crime Commission report the changes which H.R. 10783 would make are a step backward to an early and less humane period in treatment of mentally ill persons accused of crimes.

We think since these changes could not possibly significantly affect the law enforcement in the District of Columbia, that they should not be adopted by the Congress, because—simply there are no sound reasons supporting it.

We believe that the provisions of H.R. 10783 which provide mandatory minimum sentences for many crimes——

The CHAIRMAN. Might I ask you just one question on that, on the insanity area.

I have suggested some of my own doubts on title II.

But how about the provision which appears to shift the burden of proof to the defendant to show by, I think the language in the bill is, preponderance of the evidence? The House-passed bill seems to put that burden upon the defendant. Do you have any comment on that?

Mr. Ross. Yes, I do have a specific comment on that.

In a sense I think that the drafters have gotten a little confused there as between civil and criminal law. In civil law there are provisions, as you are aware, Mr. Chairman, of shifting burdens at various times during the trial. In the criminal law it is a fundamental principle, in all common law countries, that the prosecution must prove every element of the offense in order to convict a man of a crime; and that he must prove these elements beyond a reasonable doubt.

Now, a sane mind, sanity, is an element of the offense, in every criminal offense, because an insane man under our law cannot commit a crime, or a man who is so mentally ill that he is not responsible.

I think that this provision, to answer your question, would be held unconstitutional on the ground that it is inconsistent with the basic constitutional principles requiring the State to prove beyond a reasonable doubt every element of the others.

The CHAIRMAN. Pardon my interruption. I think you were just getting into your thoughts and views on the mandatory minimum sentences.

Mr. Ross. Yes, sir.

Here we basically again agree with the District of Columbia Crime Commission, which was reflecting what I would like to call informed opinion by criminologists and experts, law professors, and police specialists in this country—that flexible sentencing is the most effective deterrent, since it promotes rehabilitation, and that the judicial officer is in the best position to determine what sentence would be imposed.

Mandatory minimum sentences we believe for all the reasons that are set out by the District of Columbia Crime Commission, which are

summarized in my statement, simply are going to make it more difficult for judges and for prosecutors to obtain convictions, and they are going to seriously interfere with rehabilitation efforts.

I would like to put it this way: You have a young fellow who has never been in serious trouble before. He is 17 or 18 years old. He may have a juvenile record. And he is arrested of burglary.

Now, this proposed law would put him in prison for 5 years. Under our existing law, if the judge took a good look at him, and had a probation report on him, he might consider him a good possibility for rehabilitation. Let us suppose there were some elements in his background that suggested that. He had a parent who was pretty good.

He would give him a light sentence, because he would recognize that long imprisonment of a boy of that age is not likely to contribute to rehabilitation.

Under this proposal, he would have to sentence him to a very long period in prison.

Now, the problem with—I think the drafters of these mandatory minimum sentences do not recognize that boy is going to get out someday. Unless you are going to impose life imprisonment for all serious crimes, first offenses, you have got the problem that he will return to the streets at some time. And his state of mind and his criminal tendencies at that point are pretty important. And there is a lot of evidence that the best thing you can do to make a hardened criminal is to put him in jail for a very long period of time.

Now, this is a very serious problem. The Civil Liberties Union does not have any solution to it. At most we are picking at the edges of it. But we do think this approach to rehabilitation will not work. Something else has to be figured out which will work a lot better than what we have right now. But this one will not work.

I have just a few more comments, Senator.

The CHAIRMAN. I did not mean to cut you off. I understand you were done with the presentation on the mandatory minimum sentence?

Mr. ROSS. Yes, sir. We get into the very difficult area of obscenity. The Civil Liberties Union for many years has had a position on this. It is not a position which the Supreme Court has seen fit to adopt, and therefore I am not going to present it to this committee. I am going to, however, comment very briefly on the provisions of H.R. 10783 in the context of the existing Supreme Court rulings.

As I read H.R. 10783, in amending the existing law on obscenity, it is apparently attempting to eliminate the requirement of knowledge or scienter on the part of the person who is selling the book or exhibiting a motion picture or any of the other areas touched on by the law which is in the existing law.

Now, I say it is, apparently. It is difficult to understand exactly what the language means. But it seems to suggest that the bookseller is required to affirmatively examine every book he has on sale to determine whether or not there is any material in it which might conceivably be considered obscene or immoral or in some way by some representative group in the community.

We believe that this necessarily is going to restrict the distribution of material, written materials and other materials, in the District of Columbia. The language, in order to be clear—the language I am re-

ferring to, which I have quoted in my full statement, requires that a bookseller could be held guilty of selling an obscene book if he had "general knowledge of or reason to know or a belief or ground for belief which warrants further inspection or inquiry of the character and content of any article, thing, device, performance or representation which is reasonably susceptible of examination."

That is the scienter test in 10783. And that is a substitute for simply "with knowledge of the contents thereof," or "with knowledge of its obscene character," which is the standard scienter requirement in the statutes that now exist in most States and in the District of Columbia.

We believe that it reduces the knowledge requirement to a kind of shadow, and it would permit a bookseller with a very large store conceivably to be convicted of selling an obscene book which he had never seen, which he had no reasonable opportunity to recognize as obscene, because he obviously cannot read all the books he sells. We think on civil libertarian grounds this is a very bad provision.

I just refer to the Supreme Court's decision in *Bantam Books* v. *Sullivan*, where it held this kind of prior restraint of discouragement or censorship can be unconstitutional.

Now, Senator Bible, you have another bill, S. 1522, which was introduced by you and Senator Dominick, which we believe—on obscene material—which we believe is much less objectionable from a civil liberties standpoint. But am I to understand this is not before you at this time?

The CHAIRMAN. No. That will be considered as well. Because that comes within the framework of the House-passed bill. They have passed a section that deals with obscenity, and likewise Senator Dominick and I have introduced a bill on the subject which I think it is almost a complete repetition of the language in last year's omnibus crime bill which we broke out as a separate title. I think any comments you have on that are completely proper. I indicated that I did not think there was much likelihood that we are going to attempt to doctor up the *Mallory* rule in this particular bill, because of the decisions in the *Miranda* case, and the *Escobedo* case.

Any comment you have on our bill is likewise germane, as I see it, to this particular hearing.

Mr. Ross. Well, I would just comment very briefly, Mr. Chairman.

The bill carefully preserves the requirement of knowledge or scienter, which we believe is very preferable to the 10783 provision. It has a part (8) which would be new in the code, however, in which it applies the prohibitions of the law—I might say in general terms—to anybody who is in any way involved, however peripherally, with the production, distribution, creation, selling, holding for sale, of anything that could be considered to be obscene, lewd, et cetera, et cetera.

Now, if you take into account the fact that nobody can really define obscenity—as the Supreme Court has recognized—it is almost an impossible thing to pin down. One man's obscenity is another person's sacred text. And you take into effect the sweep of this bill. Although it is not—does in any significant and fundamental way change the substance of existing law, we are concerned about abuse. And we wanted to raise that question with the committee.

These laws, like white slave laws and breach of promise actions, notoriously have been abused. And we think that this bill perhaps should be looked at from that standpoint.

In conclusion, Mr. Chairman, we are concerned that the House of Representatives has not apparently considered, or at least had not enacted many of the affirmative recommendations of the District of Columbia Crime Commission which provide a promise for current solutions to the city's crime problems. I am not referring here particularly to the District of Columbia Crime Commission's long-range or major social recommendations, such as its recommendations for a Youth Commission. I am talking now about the specific and concrete recommendations of the Crime Commission for the immediate improvement of law enforcement procedures, particularly improvement in the procedures of our basic criminal court, the court of general sessions, which is the heart of law enforcement in the District of Columbia.

The CHAIRMAN. What does that statement indicate—because it is my intention at a very early date to go into, as I indicated at the start of this hearing, if you were here—to go into manpower problems insofar as the court system of the District of Columbia is concerned, and that would embrace the court of general sessions and the court of appeals, and the juvenile court, I should think, as the basic court framework that hears the great bulk of the criminal cases here in the District of Columbia. It is my intention to go into those specifically on another hearing. It is related—I think that is true. But it is a little afield from the four corners of this particular bill as I see it. But that does not mean that I do not have a lot of interest in it.

But your suggestions in that connection are what—more manpower, or what?

Mr. Ross. Mr. Chairman, briefly—and here I am simply following the District of Columbia Crime Commission, and also the results of a major and extended conference that was held in Georgetown University on the Crime Commission's report this past spring—that the court of general sessions needs more manpower, it needs better procedures, it needs a stopping of the practice of the District court of dumping felonies on it. It needs far less plea bargaining, where a man——

The CHAIRMAN. Reduce the plea if you plead guilty?

Mr. Ross. Yes. A man in our city, for example, and who basically is what you might call a habitual criminal, goes to that court time and time again, charged with serious offenses, and gets off with a wrist tapping because his lawyer is able to bargain out a plea for a lesser offense. If we are seeking reasons for why we have our law enforcement activity in this city—why it is not as good as we like it to be—you don't have to look very far beyond the court of general sessions.

The CHAIRMAN. I suppose the practice that you are relating—I suppose that its nationwide, isn't it? As a lawyer, as a former attorney general, I am very well aware, at least in the past, it was used in my State, where they would reduce a plea to save expense and to save a jury trial. I am not saying that justice was best served doing that. But it is certainly pretty widespread. Maybe it is wrong—I do not know. I am not indicating that.

Mr. Ross. Two things can be said about this, Senator. I am relying here in part on what Congressman Brock Adams, who was a prosecutor in the State of Washington, and is on the House District Committee——

The CHAIRMAN. That is right. And he was very active in the consideration of the Omnibus crime bill.

Mr. Ross. He has done a sort of study of the court of general sessions here, and is very knowledgeable about it. He has been down in it. And he says the problem is a matter of degree. You are always going to have some plea bargaining. In fact, some of it is necessary and proper. You want the prosecutor to have some discretion to handle charges. Not everybody who has an information or indictment against him should necessarily inevitably be tried for that offense, because circumstances change and develop.

But the practice in the District of Columbia, according to the District of Columbia Crime Commission, Congressman Adams, and just about everybody who has looked at it, is grossly abused. It becomes—why do we try people and convict them of crimes. One of the reasons is crime prevention. And our conviction process in District of Columbia has broken down, because of the court of general sessions——

The CHAIRMAN. I understand——

Mr. Ross (continuing). Is in great difficulty.

The CHAIRMAN. I understand what you are saying. We certainly do intend getting into it. We lost a very valuable member of this staff to the court of general sessions in Fred McIntyre. I have visited the court of general sessions, I do not think in the same depth as Congressman Brock Adams—but I was also impressed with the need of more adequate quarters, among other things and more staffing.

It seems to me that—and I have long felt this was true of justice courts in our State—that this is where the average citizen has his first impression of the law, and the judicial process. The climate has to be judicial in nature. I am sure in crowded courtrooms, inadequate quarters, understaffed court personnel, bailiffs and clerks and the supporting personnel that it needs, the atmosphere falls far short of instilling into the first offender particularly a little more respect for law. I think this is where the courts first come in contact with the average American citizen. And I could not agree more that we need not only here, but nationwide, I think, lots of work in this field.

Of course, these problems, as all of our problems here in the District and nationwide—they boil down so many many times to money. It takes real money to build the type of facilities that we are talking about, but I think it is needed.

I do intend getting into this later on because I think it is very very important.

Mr. Ross. I am happy to hear that, Senator. And I just hope that perhaps the House of Representatives also can give serious consideration to this.

The CHAIRMAN. I hope so.

Mr. Ross. I would just like to mention in concluding several other areas which I am sure that you are very familiar with, and I do

not mean to imply that your committee and your concerns are not directed in these areas. But the question of firearms control, which is obviously something that the Congress is concerned with. Improvement in handling juvenile delinquents. The very concrete immediate recommendations of the Crime Commission report have not been implemented. These are mostly boys from about 11 or 12 to about 15 or 16—if you can do something with them, they will not go on, many of them, to become adult criminals. Today they are. We have each year a new generation of criminals coming up in District of Columbia people do not talk about it in these terms, but it is true, it is a breeding ground.

Another area is in the improvement in the organization and training of the Metropolitan Police Department. The District of Columbia Crime Commission, based on a report of the International Association of Chiefs of Police, has very concrete, immediate, direct recommendations, based, as I say, on police experts who came in and surveyed this department, as to what should be done about it. They have not been implemented. Some of them need congressional action, because they require funds.

We hope that the Congress including this committee, will give serious consideration to these affirmative recommendations of the District of Columbia Crime Commission.

We appreciate this opportunity to make our views known.

(The prepared statement of Mr. Ross follows:)

STATEMENT OF WM. WARFIELD ROSS, CHAIRMAN NATIONAL CAPITAL AREA CIVIL LIBERTIES UNION

My name is Wm. Warfield Ross and I represent the National Capital Area Civil Liberties Union, which is the local affiliate of the American Civil Liberties Union. I appreciate this opportunity to appear before your Committee and to comment on the bill passed by the House, H.R. 10783, which you are now considering, as well as a number of bills introduced by Senators Bible and Dominick, dealing with the crime problem in the District of Columbia.

The Civil Liberties Union, like other community groups, deplores the existing high level of street crime and other crimes in the District of Columbia. It considers the reduction and prevention of crime as one of the most pressing social needs in this city, and has cooperated with other organizations in an effort to achieve implementation of many of the recommendations of the recent report of the District of Columbia Crime Commission. We are acutely aware that a maximum effort must be made to ensure that our citizens are safe in their persons and property. The Civil Liberties Union, together with many other persons who have studied this problem, believes, however, that the roots of urban crime lie deep in our social structure, and can be eradicated only by major, long-term social changes. We appreciate the attitude with which this Committee has approached the many problems of the District of Columbia, and our hope is to assist the Committee in its efforts.

We will address our comments primarily to H.R. 10783, which has been passed by the House of Representatives, but will also, where appropriate, comment on the provisions of the various bills introduced by Senators Bible and Dominick.

The Civil Liberties Union's general appraisal is that H.R. 10783 is a bad bill, a bill which will not reduce crime in the District of Columbia, but may well increase it, a bill which will violate fundamental constitutional safeguards, and that will result in a basic worsening of the quality of life in the Nation's Capital. The bill in many respects parallels the District of Columbia Crime Bill which was vetoed by the President in November 1966, and the President's statement in his veto message seems fully applicable to this bill:

"I have before me the District of Columbia Crime Bill, passed in the closing hours of the Congress. It deals exclusively with rules for police and the courts.

It does not touch the quality or quantity of law enforcement resources: more, better trained, better equipped and better paid police and correction workers.

"* * * If I thought that this bill would diminish crime in the District of Columbia, I would sign it. I believe, however, that this legislation would add endless complications and confusion to an already complex situation. It would provoke years of litigation. It would make the job of the policeman on the beat and of the public prosecutor much more difficult."

The power of unrestricted arrest

Title III of H.R. 10783 would authorize the police to detain and interrogate anyone for four hours without informing him of his right to counsel and of his right to remain silent. This title is clearly in violation of the Supreme Court's recent decision in the *Miranda* case. While the arresting officer is required to have "probable cause", no record will be made of the detention, and therefore no judicial supervision is possible over the police officer's conduct and judgment. Title III thus will enable the police to reinstitute in the District of Columbia the practice of investigative arrests. Under this procedure, the police are free to arrest numerous persons even though there is not sufficient evidence of their involvement in a crime to meet the probable cause requirement.

The practice of investigative arrests prevailed in the District of Columbia even after it was declared unlawful by the Supreme Court in the *Mallory* case in 1957. It was abolished by the Board of Commissioners of the District of Columbia upon the recommendations contained in the 1962 Report of Arrests for Investigation (the "Horsky Report"). The Report emphasized (a) that such arrests were unconstitutional, (b) that they made little or no contribution to effective law enforcement, and (c) that they are a denial of human dignity which "can be tolerated only in a society which is willing to concede to its government powers which history and experience teach are the inevitable accoutrements of tyranny."

The effect of investigative arrests on the atmosphere and attitudes of the District of Columbia community is described by the Supreme Court in its recent *Miranda* decision. The Court referred to an instance in which 90 innocent persons were arrested in the District of Columbia in 1958, and 63 of them held overnight, simply because they fitted the "description" of three robbers: "stocky young Negroes." This is a dramatic, but not isolated, example. The Horsky Report documents many more.

This type of police activity, which once prevailed in this City, created deep and widespread hostilities to the police. A recent Harris poll in Washington, D.C. showed that a surprising number of Negro citizens in this City have been detained by the police at one time or another. The poll also showed that those arrest and interrogation procedures, which H.R. 10783 seeks to reinstate, are widely resented by Negroes in this City.

The bill will thus tend to increase the problem of crime rather than to assist in solving it.

Title I of H.R. 10783 also permits arrest without warrant for any offense or a threat of an offense committed within the presence of a police officer. This includes expressly a threat of a breach of the peace, and would empower an officer to arrest a member of the public who made threatening gestures or other conduct which the officer considered disrespectful or which in his opinion might lead thereafter to a breach of the peace. Titles III and I are so broad and undefined as to give police officers virtually unlimited authority to take citizens into custody in their sole discretion, a power unknown except in totalitarian societies. Nine members of the House District Committee had serious doubts as to the constitutionality of Title III, and we believe that those doubts are well founded.

S. 2518, introduced by Messrs. Bible and Dominick, relates to the admissibility of evidence including statements and confessions in the courts of the District of Columbia. As we understand it, it eliminates the requirement of a prompt arraignment under Section 5(a) of the Federal Rules of Criminal Procedure and the Supreme Court's *Mallory* decision. While it does not in terms amend Section 5(a), it provides that confessions made during a period of interrogation prior to arraignment shall be admissible where the suspect is advised of his right to silence and his right to be represented by an attorney and, in the case of a person who waives the right to a lawyer, where the interrogation "exclusive of interruptions" prior to arraignment does not exceed four hours.

The Civil Liberties Union believes that S. 1518, if enacted, would be held unconstitutional. The attendant effect of this bill is to repeal in the District

of Columbia only the requirement of Federal Criminal Rule 5(a) that arrested persons be taken before a magistrate "without unnecessary delay"; and to weaken the constitutional prohibition against the admission into evidence of incriminating statements obtained under circumstances casting doubt on whether the accused voluntarily waived his rights. *Miranda* v. *State of Arizona*, 86 S.Ct. 1602. The bill authorizes detention for what amounts to an unlimited period in the absence of an attorney so long as the questioning in aggregate does not exceed four hours. It would be possible under this bill for the police to detain a suspect for a period of four days, interrogating him an hour a day. There would be no judicial supervision over these practices under the bill, since the bill eliminates the requirement of a prompt arraignment of the suspect. While the bill attempts to preserve the rights protected by the Supreme Court's *Miranda* decision, it has long been recognized that it is often impossible for accused persons questioned in isolation to establish that they did not willingly waive their rights. As the Supreme Court pointed out in *Miranda*, 86 S.Ct. 1629, "Whatever the testimony of the police as to the waiver of rights by an accused, the fact of lengthy interrogation or incommunicado incarceration before a statement is made is strong evidence that the accused did not validly waive his rights."

S. 1518 would also deprive a person who is held in isolation during prolonged questioning of the right to make bond and obtain his freedom. Such a right can be preserved only by the prompt arraignment which would be eliminated by S. 1518.

In conclusion, both Title III of H.R. 10783 and S. 1518, while intended to reduce crime, would actually eliminate fundamental constitutional rights which make the District of Columbia an American city. The Crime Commission has recognized in its recent report that the incidence of crime in the District of Columbia is not caused in any significant sense by the failure of the police to arrest, interrogate and charge criminal suspects. Great numbers of suspected criminals are apprehended and charged in the District of Columbia every year.

Arresting, sentencing and imprisoning criminals does not solve the crime problem since (1) experience has shown that these criminals, in the absence of effective rehabilitation, return to the streets following their terms of imprisonment and commit new crimes, and (2) our urban areas including the District of Columbia are breeding grounds for new criminals. So long as these conditions prevail, the supply will always be greater than the capacity of our law enforcement system to absorb. Allowing individual policemen unlimited discretion in arrest and interrogation is an illusory solution to the crime problem and one which would only exacerbate the conditions which, we are convinced, are at the root of urban crime in this area.

Mental illness

Title II of H.R. 10783 would substantially change the District law relating to the insanity defense in criminal cases. The bill overturns a number of the key decisions of our Court of Appeals. Nearly all of the bill's provisions with respect to the insanity defense are inconsistent with recommendatons by the D. C. Crime Commission. In addition, there is serious danger that several of the provisions would in practice result in injustice.

It is clear that the various changes cannot be justified on the grounds that they will substantially reduce the incidence of crime. As the Crime Commission report shows (Table 1, p. 535), only a tiny number of persons are found not guilty by reason of insanity. In 1965, of 1,286 defendants whose cases were terminated in the District Court, only 35 (2.7%) were acquitted on insanity grounds; in 1966, only 26 out of 1,230 persons (2.1%) were found not guilty because of insanity. Moreover, it should be emphasized that, under District law, persons who are absolved of criminal responsibility because of mental illness are not turned loose—such persons are automatically committed to St. Elizabeth's Hospital, and they will not be released until the hospital authorities and the court are satisfied that they have recovered their sanity and will not be dangerous if discharged. (24 D.C. Code § 301(c) (1961); *Overholser* v. *Leach*, 257 F. 2d 667 (D.C. Cir. 1958)).

H.R. 10783 would establish a new standard of criminal responsibility in place of the *Durham* Rule, formulated by our Court of Appeals in 1954, under which a person is not criminally responsible if the unlawful act was a product of mental disease or defect. The Crime Commission specifically recommended against this proposed change. It "conclude[d] that there is no pressing need for change in

the law" and that "even a comparatively minor change in the wording of the legal test might spawn another decade of litigation, without any assurance that it would produce a significant change in the number of persons found not guilty by reason of insanity or would improve the accuracy of those determinations." (Report, pp. 550–51)

Subsection 927(c)(1) of Title II in the bill approved by the House would make a significant change in the evidentiary rules with respect to the insanity defense. At the present time in the District, a defendant is required to introduce "some evidence' that he was suffering from mental disease or defect in order to establish the defense as an issue. If H.R. 10783 becomes law, the burden placed upon the defendant will be increased; the defense of insanity will be made "an affirmative defense which the defendant must establish by the preponderance of the evidence." A majority of the Crime Commission likewise recommended against this change. The Commission found: (1) There is no evidence of widespread injustice under the present rules; (2) The prosecution is not encountering any substantial difficulty at present in meeting its burden of proof; (3) A change in the burden of proof would place an unfair burden on indigent accused persons; and (4) There is a substantial question whether placing this burden upon a defendant would be constitutional in view of the presumption of innocence. (Report, pp. 550–51)

One other change made in this area by H.R. 10783 is also open to serious objection. Subsection (j) provides "the jury shall not be told by the court or counsel for the government or the defendant at any time regarding the consequences of a verdict of not guilty or acquittal on the ground of mental disease or defect excluding responsibility" This provision overturns the decision by the Court of Appeals in *Lyles* v. *United States*, 254 F. 2d 725 (D.C. Cir. 1957). Jurymen know that a defendant who is found guilty will be imprisoned or subjected to some other sanction; they do not know, however, what disposition will be made of a person acquitted on insanity grounds. If they should erroneously believe that an individual found by them to be of unsound mind would be turned loose, they might well reject an otherwise meritorious insanity defense.

Sentencing

That portion of Title VI of H.R. 10783 ("An Act relating to crime and criminal procedure in the District of Columbia") dealing with sentencing provisions consists of four sections: (1) Section 601 changes the penalty for assault with intent to kill, rob, or rape (D.C. Code § 22–501) from "not more than 15 years" to "Not less than 2 nor more than 15 years"; (2) Section 602 reclassifies housebreaking (D.C. Code § 22–1801), which is currently punishable by 15 years imprisonment, into two degrees of burglary, the first of which would be punishable by a term of not less than 5 nor more than 30 years and the second of which would carry a sentence of from 2 to 15 years; (3) Section 603 increases the robbery (D.C. Code § 22–2001) penalty (now 6 months to 15 years) to not less than 4 nor more than 15 years; (4) Section 605 provides for additional penalties for anyone convicted of a crime of violence while armed. For the first such offense the offender could receive, in addition to the prescribed penalty for the offense itself, imprisonment for life. For the second, the court may not suspend sentence or grant probation.

This emphasis on harsh, compulsory prison terms represents a regression to nineteenth-century notions of retribution which have been discredited and rejected by virtually all penologists. The President's Commission on Law Enforcement and Administration of Justice suggested that "a sentence prescribes punishment, but it also should be the foundation of an attempt to rehabilitate the offender, to insure that he does not endanger the community, and to deter others from similar crimes in the future." The goal of rehabilitation is ignored in these amendments. Recognizing this, the House Report simply admits that "your committee has not been presented with convincing evidence that indeterminant (sic) sentences and early release of prisoners has resulted in significant rehabilitation." The Committee has ignored the National Crime Commission's observation that "the conditions under which many offenders are handled, particularly in institutions, are often a positive detriment to rehabilitation." The offender is thus to pay the price for society's failure to deal with him. It is safe to assume that mandatory prison terms will render rehabilitative prospects for many offenders even more remote.

In addition to decreased chances for rehabilitation of offenders, other quite undesirable effects would result from the enactment of Title VI.

(1) Because the Court could no longer be as flexible as before in fashioning sentences, guilty pleas, which now help reduce the Court's backlogged trial docket, would be discouraged.

(2) In many cases some imprisonment would be desirable, but sentencing judges, limited to a choice between harsh sentences or probation, might well select the latter as the least unwise alternative.

(3) Judges and juries, reacting to harsh mandatory penalties, may acquit or convict of lesser included offenses in cases where guilt has been proved.

(4) Grand juries, reacting to these penalties, may fail to indict in cases of obvious prosecutorial merit.

A number of the country's leading prison directors and penologists oppose compulsory sentences. They believe that lengthy sentences do not deter crime. This is demonstrably true in the District of Columbia, inasmuch as FBI statistics show that the average length of prison sentence in this City is far above the national average, while the probation and parole rates are far below the national averages. Whatever the deficiencies of our present penal system, the solution lies in improvement of that system, not in the further aggravation of its problems.

Obscenity

Section 606 of H.R. 10783 contains a complex provision, the first part of which is intended to amend the existing prohibitions against the sale or exhibition or distribution of so-called obscene, lewd or indecent materials already contained in Section 22-2001 of the District of Columbia Code. The District of Columbia law presently requires that a person must have actual knowledge of the obscene character of articles or performance in question, in order to be guilty of the offense prohibited by Section 22-2001 of the D.C. Code. Section 606 reduces this requirement merely to "general knowledge of or reason to know or a belief or ground for belief which warrants further inspection or inquiry of the character and content of any article, thing, device, performance or representation * * * which is reasonably susceptible of examination." While the meaning of this vague language is unclear, it would seem at a minimum to place an affirmative burden on booksellers, magazine and newspaper publishers, and motion picture exhibitors to censor materials which they present to the public at their personal peril. Since the meaning of the terms "obscene, indecent or filthy" is highly uncertain, the inevitable effect of this section will be to discourage the distribution and availability to the public of materials which any member of the public might consider as falling within these definitions, even though they are regarded as decent and desirable by substantial numbers of persons. This amounts to a prior restraint on free expression of doubtful constitutionality. *Bantam Books* v. *Sullivan*, 372 U.S. 58.

Subpart (b) of Section 606 contains elaborate prohibitions against the distribution, sale or provision to minors of material which is "patently offensive because it affronts prevailing standards in the adult community as a whole with respect to what is suitable material for minors." The bill contains elaborate definitions of materials which are considered to fall within this definition, including *e.g.*, any book which contains descriptions of "sexual conduct," or "explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct * * *." This would appear to encompass many modern novels and short stories. Booksellers in the District of Columbia would be guilty of a criminal offense if they sold such books to "minors" defined as any person under the age of 17 years.

This part of the bill would usurp the function and responsibility of parents to determine what is or is not suitable reading material for their minor children. It would also tend to discourage the free availability and sale of material considered acceptable by general adult public standards, because of the difficulty of booksellers and other outlets in determining the age of the purchaser.

S. 1522, introduced by Senators Bible and Dominick, contains a far less drastic amendment of the existing law against obscene publications which appears in 22 D.C. Code 2001. While this bill is less objectionable from a civil liberties standpoint than Section 606 of H.R. 10783 in that it preserves the requirement of knowledge or scienter, the bill's application (in part (b)) to persons in any way remotely connected with obscene things, materials or incidents will raise major questions of construction, and is subject to the real possibility of serious abuse. It is submitted that no real social need has been shown for expanding the coverage of 22 D.C. Code 2001 in the District of Columbia.

In conclusion, we would like to commend the Committee for its consideration of S. 1513 which would establish a commission to revise the archaic criminal laws in the District of Columbia. The D.C. Crime Commission has recommended such revision after a study which revealed that deficiencies in these laws seriously hamper law enforcement. We would like to commend to the Committee many other recommendations of the D.C. Crime Commission which we believe hold promise for both short-range and long-term solutions to the problem of crime in the District of Columbia.

Although the Civil Liberties Union has every wish to make a constructive contribution to the Committee's work, it is constrained to observe that none of the bills now under consideration by the Committee, with the exception of S. 1513, appears to offer any promise of a realistic reduction in the incidence of crimes against persons and property within the District of Columbia.

Thank you.

The CHAIRMAN. You have made an unusually fine statement, Mr. Ross. I commend you for it. You are well versed in this field. Are you a practicing lawyer as well?

Mr. Ross. I practiced in the District for 15 years.

The CHAIRMAN. Tell me a little bit more about the National Capital Civil Liberties Union. I am asking only for information.

You say it has approximately 4,000 members. Do I understand that correctly?

Mr. Ross. About 3,500.

The CHAIRMAN. Is it part of the national organization?

Mr. Ross. That is correct, sir.

The CHAIRMAN. To become a member of the Civil Liberties Union, am I a dues-paying member, do I pay annual dues, monthly dues, weekly dues?

Mr. Ross. Most members pay annual dues. And 60 percent of the dues of—40 percent of the dues of our affiliate goes to support the National American Civil Liberties Union. We are an affiliated organization. The National ACLU has about 40 State affiliates.

The CHAIRMAN. Does your national chapter here have annual or monthly or weekly meetings?

Mr. Ross. We have—our board meets monthly, and we have general membership meetings four or five times a year here.

The CHAIRMAN. The word "union" means what? It is not a corporation. It is not a partnership. Is it just a voluntary organization? Do you hold a charter?

Mr. Ross. We are incorporated, as is the national, and we are a membership corporation. Our board is elected by the votes of our members. We have an annual election which elects a 24-man board.

The CHAIRMAN. Do the boards of directors receive salaries?

Mr. Ross. No, sir. No members of the union or any of its officers are compensated, and none of the lawyers. We have about 150 lawyers who are active as cooperating attorneys in the District of Columbia. None of these lawyers receive any compensation for any of the work they do.

The CHAIRMAN. That is an unusual arrangement for a lawyer, isn't it?

Who does receive salaries within the group? If you are collecting these dues, somebody must be receiving a salary.

Mr. Ross. We have a legal director, who is a fully-paid—full-time paid employee, whose principal work is to work with our cooperating attorneys, coordinate their work, assign them. And we have an executive secretary who is our lady-of-all-work, who runs the organization.

The CHAIRMAN. You run on a two-man organization—a director and a secretary?

Mr. Ross. A director and a secretary—that is all. We have very little overhead.

The CHAIRMAN. I wasn't probing for any purpose, except information, because I have known of the Civil Liberties Union for many many years. I never quite understood its structural makeup. So I appreciate the comments that you have made. I appreciate your statement here this morning, Mr. Ross.

Mr. Ross. Thank you, sir.

The CHAIRMAN. Thank you very much.

Our next witness will be Mr. William McGee, chairman; accompanied by Mr. Thomas Flannery, counsel of the Committee to Reduce Crime Now, Washington Metropolitan Board of Trade.

STATEMENT OF WILLIAM H. McGEE, ACTING CHAIRMAN OF THE COMMITTEE TO REDUCE CRIME NOW; WASHINGTON METROPOLITAN BOARD OF TRADE; ACCOMPANIED BY THOMAS FLANNERY, COMMITTEE COUNSEL

Mr. McGEE. Always an honor to be here, Mr. Chairman.

I am William H. McGee, Chairman of the Committee to Reduce Crime Now of the Metropolitan Washington Board of Trade. I am accompanied by Mr. Thomas A. Flannery our committee counsel, who before going into private practice served a number of years as an assistant attorney general here. He will be available to handle any technical and legal questions that may arise.

We appreciate this opportunity of presenting a statement concerning proposals aimed at reducing crime and making our city a safer place in which to live. This is a subject in which the Washington Metropolitan Board of Trade has long been interested. We strongly supported the crime bill enacted by Congress last session and were one of the groups which urged the President to approve that legislation.

We and 14 other representatives of business testified for approximately two and a half hours before Subcommittee No. 4 of the House District of Columbia Committee and urged prompt and aggressive action to halt and reverse the rising crime statistics for this community and most especially for the District of Columbia.

The crime rate in Washington keeps increasing, 30, 40, and even 60 percent per month over comparable months of 1966, and it is perfectly evident that steps must be taken promptly to halt and reverse this increase and, as far as humanly possible, do it now.

Under the sponsorship of the Board of Trade, the business community set up the Committee to Reduce Crime Now to generate public support for the police, to secure improvements in laws and regulations to permit the police and courts to provide better protection to the public and to reinforce the philosophy that good law enforcement and public order are the basis of a free and open society.

The business community is greatly concerned for the safety of our citizens—their employees, their customers, their homes, and their business properties. The list of business associations which have joined with us in the Committee to Reduce Crime Now indicates the widespread concern in this matter by the Washington business community:

Building Owners & Managers Association.
District of Columbia Association of Insurance Agents.
District of Columbia Bankers Association.
District of Columbia Dental Society.
District of Columbia Pharmaceutical Association.
District of Columbia Savings & Loan League.
Greater Washington Service Station Association.
Home Builders Association.
Hotel Association of Washington, D.C.
Laundry-Dry Cleaning Owners Association.
Medical Society of District of Columbia.
Printing Industry of Washington.
Restaurant Association of Metropolitan Washington.
Restaurant Beverage Association of Washington, D.C.
Retail Liquor Dealers Association of D.C.
Washington Automotive Trade Association.
Washington Board of Realtors.
Washington Building Congress.
Washington, District of Columbia., Area Trucking Association.
Washington Parking Association.

Our objective is to deal with the immediate problem of coping with the hardcore criminal element having no regard for the law. We believe that the best way to deter this criminal element, which is a very small percentage of the generally law-abiding, responsible citizens of this community, is by quick apprehension, speedy trials, and swift, sure and just punishments which fit the crimes. If this is accomplished, we are confident that there will be a significant reduction in the crime rate.

There is no legislation pending which should significantly aid in reducing crime. The omnibus bill, H.R. 10783, passed by such a resounding majority by the House of Representatives has the unequivocal support of the business community of Washington. The bill does not cover everything we would like to see enacted, but it will significantly aid our community in its war on crime. We have no difficulty in accepting the judgment of 355 Members of the House of Representatives that this is a good bill, it is a needed bill and it is a workable compromise arrived at after literally years of debate. We hope the same support will be forthcoming from the Senate. Experience with such a law, as with all other laws, will reveal any need for refinement or change.

H.R. 10783 does not include a provision to alter the *Mallory* rule. We would like to see this rule changed, but not at the expense of any delay in passing H.R. 10783. We strongly endorse S. 1518, which we believe would properly treat the matter of admissibility of evidence, including statements and confessions and recommend that this matter be handled as a separate piece of legislation.

The honorable chairman of this committee has introduced 15 bills in addition to S. 1518, numbered S. 1509 to S. 1524, inclusive. We have reviewed these proposals and endorse all of them with the exception of S. 1514 (dealing with technical amendments to the law regarding the rehabilitation of narcotic addicts) on which we have not taken a position. We also endorse and urge the enactment of S. 1650, a bill to control the possession, sale, transfer, and use of pistols and other dangerous weapons.

Mr. Chairman, the steady deterioration of community life in the Nation's Capital is apparent to all of us. There is no disagreement on that point. The members of the Washington business community urgently petition this committee to endorse the omnibus crime bill and recommend its prompt passage by the Senate.

No stronger argument could be made in behalf of the bill which your committee is considering than the tragic events which have occurred in other major American metropolitan centers in recent days. Inevitably, the erosion of the powers of our law enforcement agencies leads to growing disrespect for laws and institutions. The lawless element in our society is therefore emboldened to greater violations, and the final result is a complete breakdown in community discipline and order.

The overwhelming majority of law-abiding citizens in our National Capital community, white and Negro alike, deserve and demand to be protected against the lawless excesses of the criminal minority.

The omnibus crime bill, as an instrument of better law enforcement, will help afford that increased protection.

Thank you for your close attention to our views.

Mr. Flannery will certainly be able to answer any of the technical questions that I would not be qualified to answer.

The CHAIRMAN. It is always good to see you, Mr. McGee, and I share your concern over the growing crime rate, and as you know, have expressed myself on it many, many times.

I hope we are able to come forth with something that is helpful in fighting this.

I would ask of Mr. Flannery his views as to three real problem areas. Maybe there are more, but there are at least three problem areas that have developed in the course of the hearings on the omnibus crime bill.

The first one, of course, is title II, and that is the section on insanity. The Attorney General of the United States—and I am oversimplifying his views—but in essence he sees no particular need of tampering with the established case law in this field, because case law, mainly *Durham*, as modified by *McDonald*, is working out very well in this district. That is the thrust of what he is saying. I think it is oversimplified.

But do you have any views on title II?

Mr. FLANNERY. Yes. I am not at all sure it is working out very well. Certainly it did not work out very well at all until the *McDonald* case.

The CHAIRMAN. I recognize that. But as modified by *McDonald*, what are your views? I realized until the Court of Appeals handed down the *McDonald* case, it gave us a lot of problems. The testimony and the statistics of the Crime Commission itself seem to be that since *McDonald*, the situation has reversed here in the District of Columbia.

I agree with what you say prior to *McDonald*. What are your observations after *McDonald*?

Mr. FLANNERY. My observations are that the *Durham* rule should be supplanted by title II, which is the American Law Institute rule. And I say it for several reasons.

Looking at title II, under section 927(a)(2), we see that the new law would exclude from the coverage under the insanity defense the

psychopath. In other words, it says here "Mental disease or defect does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct." I think that is good. Under the present *Durham* rule, even as modified by *McDonald*, many psychopaths are able to escape conviction.

It was interesting to note an article in the Star about a week ago wherein two experienced psychiatrists commented on the same subject.

The CHAIRMAN. I put that in the record, and the Evening Star editorial as well (see p. 220). The two psychiatrists came up with the statement that this is a pretty good escape hatch for some people.

Mr. FLANNERY. That is right.

The CHAIRMAN. Of course, we intend pursuing that further, to see what the facts are, because the testimony as we have had it to date before this committee seems to be completely divided. Both sides cannot be right. One side cannot say *Durham* as modified by *McDonald* has worked out very well in the District, and then have another side say that is not true. It is either true or not. And, I think, factually that should be fairly easy to determine from those at St. Elizabeths that should be in the best position to probably supply that information. So I did put that in the record, and I do intend to pursue it further, because I just want to see where the truth lies. Both sides cannot be right.

Mr. FLANNERY. That is right. In that article I believe it was pointed out that almost 25 percent of those winning acquittals by reason of insanity are the psychopaths, or people with personality disorders. As far as I am concerned that is not a healthy situation.

The CHAIRMAN. Of course, the point that the Department of Justice made—which made some impression on me—was the fact that here you have established case law, whereas if you go into writing a new rule, the ALI rule, you are still going to be subjected to many years of litigation in attempting to hammer it out. I would think that was a sound conclusion if the facts are that *Durham* modified by *McDonald* is not an escape hatch in District of Columbia. And this is what I intend to try to find out factually. If you have any avenues—you are a very fine lawyer, have had great experience in the field of law enforcement—if you have any avenues to supply information to this committee it would be helpful, because all we are trying to do is arrive at an end result which is going to be of assistance in reducing crime in the District. That is obviously the objective.

Mr. FLANNERY. I am not at all sure we have established case law. We have some 100 decisions in the court of appeals attempting to define and clarify the *Durham* rule. But I am not at all sure you could describe that as established case law. I find the other confusing.

The CHAIRMAN. Very well.

Mr. FLANNERY. There is another provision in title II which I think would be a very good thing to adopt; namely, that the mental disease or defect excluding responsibility should be an affirmative defense which the defendant must establish by the preponderance of the evidence.

I strongly favor that.

I had occasion during some 10 years in the U.S. Attorney's Office here to try literally dozens of felony cases in the district court in-

volving the defense of insanity, and the burden is indeed a heavy burden on a prosecutor in a criminal case where this defense is involved, because under *Durham* all the defense attorney has to do is to produce some evidence that the defendant has a mental disease or defect.

Now, under *Durham* a mental disease or mental defect can be either that he is a psychopath. I have actually tried a case where the diagnosis was emotional instability. That is a mental disease. And once the defense has introduced some evidence that this defendant is a psychopath, or is emotionally unstable—the psychiatrist has classified that as a mental disease—then the Government must prove beyond a reasonable doubt that the crime was not the product of this mental disease—this personality disorder, or this emotional instability. You can see how difficult it is to prove something like that, beyond a reasonable doubt.

So I say that the burden should be on the defendant to establish by a preponderance of the evidence this affirmative defense.

The CHAIRMAN. At this point—do any jurisdictions in the United States follow the rule that you are pleading for here?

Mr. FLANNERY. I am sure they do——

The CHAIRMAN. A preponderance of evidence rule, putting the burden upon the defendant in an insanity case?

Mr. FLANNERY. Yes. There is a case in the Supreme Court of the United States, *Leland* vs. *Oregon*, right on the point.

The CHAIRMAN. Would you furnish the citation for the staff? I was curious as to whether or not—what I am trying to say is this. Is this a case of first impression here that you are arguing now—you say there is case law. Now, how many States have statutes that are similar to the one we have proposed here?

Mr. FLANNERY. I am unable to answer that, Senator Bible.

The CHAIRMAN. The staff can research that.

I am very happy to have your views on that.

Now, how about the problem raised by the bill regarding instructing the jury?

Mr. FLANNERY. Of the consequences of its verdict?

The CHAIRMAN. That is right.

Mr. FLANNERY. Well, I believe that a jury should never be told of the consequences of its verdict. A jury are fact-finders. They should determine the guilt or innocence of the defendant. It is traditional that a jury should never consider the consequences of its verdict. Therefore I would favor the proposed section of title II which would—which states that a jury shall not be told by the court or counsel the consequences of the verdict of not guilty by reason of insanity.

The CHAIRMAN. Do you have any other observations on title II, as to why you think that is preferable to present case law, whether it is or is not established?

Mr. FLANNERY. No. That covers it, Senator Bible. I think that the American Law Institute test, which is the result of the product of some of the work of some of the finest legal minds in this country is much superior to the present *Durham-McDonald* rule which is in effect in the District of Columbia.

The CHAIRMAN. Very well.

Now, as you know, the second, and probably the most critical problem area, is title III, with which you are familiar. You are very well aware that the President in his message said that this section was completely unacceptable, in that the period of questioning provided in that bill went far beyond the necessities of interrogation in practically all cases.

What would your comment be as to title III, based upon your experience as a longtime U.S. attorney who has handled many many of these cases from the prosecution side. Will this hold up constitutionally?

Mr. FLANNERY. I favor title III.

The CHAIRMAN. Do you think it will hold up constitutionally?

Mr. FLANNERY. I would say that—who can say what the Supreme Court might do. But I would say that in my opinion it is not clearly unconstitutional, as some of the previous witnesses have said, in my mind, for this reason.

The first part of title III requires that before an officer may arrest a person, he must have probable case.

The CHAIRMAN. Of course, they respond to that, Mr. Flannery, by saying, well, if he has probable cause, he ought to arrest him and take him immediately before a committing magistrate. What is the response to that?

Mr. FLANNERY. That is why this law is a good law. Under existing law, it is true—if an officer has probable cause to believe that a defendant has committed a felony, he has a duty to arrest him. And under existing law he then has a duty, under the *Miranda* case, to warn him of his constitutional rights which have been recently enunciated by the Supreme Court.

Then, true, under the *Mallory* rule, he must take him then without unnecessary delay before a committing magistrate.

Section (b) of this law will give an officer 4 hours to interrogate a suspect, assuming he has waived his *Miranda* rights. And I say this is good. This in effect amends the *Mallory* rule. I see nothing——

The CHAIRMAN. You think that does amend the *Mallory* rule?

Mr. FLANNERY. In those cases where a defendant has waived his rights under the *Miranda* rule, it will have the effect of permitting the police to interrogate him for 4 hours, and will obviate the necessity of taking him before a committing magistrate without unnecessary delay. So in effect that does amend the *Mallory* rule.

The CHAIRMAN. Well, of course, the *Mallory* rule goes primarily to the admissibility of a confession, does it not?

Mr. FLANNERY. That is right.

The CHAIRMAN. I do not know that title III goes to that point. It simply sets up a rule or a standard by which you can question the suspect for purposes of finding out his name, his address, where he is going, what is he doing there. And is it your position that any admission that he has secured as a result of that questioning, would be admissible in evidence?

Mr. FLANNERY. It would be admissible, provided he had made a valid waiver of his constitutional rights under the *Miranda* decision, yes.

The CHAIRMAN. Then you read title III as being almost synonymous with the title I of last year's crime bill, do you not?

Mr. FLANNERY. Well, no. Well, it would have the same effect. I would not say it would be almost synonymous. Because the old title I, which is analogous, I think to your S. 1518——

The CHAIRMAN. That is right. It is identical, I believe.

Mr. FLANNERY. In both of those proposed laws, of course it is spelled out that a defendant must be advised of his rights under *Miranda*. And it also spells out that delay standing alone shall not bar the admission of a confession into evidence.

I might say this, parenthetically.

As between title III and your S. 1518, I prefer your bill. That is, insofar as it would——

The CHAIRMAN. Well, I am not quite clear, to be very honest with you, exactly what the architects on the House side were attempting to do with title III, because if you read title III in connection with their report on the bill, starting on page 25, it does seem to indicate that they are trying to straitjacket the oil title I into title III. But it does not say so statutorily. It only says so when you read the report. The report says, and I am quoting from it—just in part—I am taking advantage of your superior skill and knowledge in this field, because this is a controversial section of this bill, and I am reading from page 25 under title III, where it says:

> The four-hour delay in arraignment of an arrested person or arraignment of a person detained and arrested shall not constitute unnecessary delay, and shall not affect the admissibility of any voluntary statement or confession otherwise admissible under law.

Now, that is not in the statute. That is in the accompanying House report.

So if I understand you correctly, you feel that it would be better to meet this head-on, and spell out the safeguards required by the *Miranda* decision specifically in title III. Is this what you are saying?

Mr. FLANNERY. I would think so. However, I think that title III is still acceptable to me. It is just that I prefer S. 1518. I think perhaps it would be better to spell out rights under *Miranda*. But I do not think it is necessary. I do not think it has to be spelled out in this bill that the officer must afford to a suspect his constitutional rights. It does not have to be spelled out. But it would be better.

The CHAIRMAN. Your point is, then, if the arresting officer, under title III, arresting on probable cause that a crime has been committed or may be committed, can stop the suspect, and he can question him, he can interrogate him for 4 hours. But if he does interrogate him for 4 hours, and then attempts to use any of the fruits of that interrogation as an admission or as a confession, he must comply with the constitutional requirements of the *Miranda* case.

Mr. FLANNERY. Exactly. That is what I am saying.

The CHAIRMAN. Well, again, the two are somewhat intermeshed. And, of course, the title III, to which you are directing your attention which is in the bill before us, is identical, with the exception of one word, to the title III that we considered in the last session of the Congress. Title III is very clearly almost verbatim from the New Hampshire law which is almost of a stop-and-frisk nature.

Some of the witnesses have testified that this was not a stop-and-frisk section. Others have testified that it was. And I am just trying

to throw some light on it, to see exactly what it is, and what it does, and whether it needs additional clarification.

Mr. FLANNERY. Yes, sir. I would like to make this comment, too? One of the previous witnesses said this law would lead to reinstitution of arrests for investigation. I disagree with that.

The CHAIRMAN. Why?

Mr. FLANNERY. An arrest for investigation, as I understand the term, is an arrest not based on probable cause. It is an indiscriminate picking up of people from street corners, just on mere suspicion, which does not amount to probable cause. This law in section (a) provides that an officer may arrest when he has probable cause to believe that the person has committed or is committing a crime. And that is not an arrest for investigation.

The CHAIRMAN. You think the police officer can properly interrogate the suspect where he has probable cause, for a period of 4 hours, provided that he gives him the warning?

Mr. FLANNERY. Provided he gives him his constitutional rights under *Miranda*; yes.

The CHAIRMAN. Fine. I am very happy to get the benefit of your views. Because this is a section that is very difficult to read in connection with the accompanying report.

Now, the staff suggests another question: Would you give him *Miranda* warnings on detention as well as arrest, or would you just give it to him on cases where you actually said he was under arrest. I do not know frankly why the House of Representatives added the word "arrest" in this section. It was not in the section we agreed on in conference last year. I do not know why it finds its way back in there. The language we agreed on in conference of last year was "detention"—the arresting police officer may on probable cause "detain" the suspect.

Mr. FLANNERY. I think we are dealing in semantics when we talk about detention and arrest.

The CHAIRMAN. Some say we are and some say we are not. I do not know whether there is any difference in detaining a man and arresting him or not. What do you think?

Mr. FLANNERY. I think this. If a police officer has probable cause to believe that John Doe has committed a felony, and acting on that belief he detains that person, that detention constitutes and arrest, and he must from that point on, under *Miranda*, advise him of his constitutional rights.

Now, however, if he sees John Doe coming down the street and he has a mere suspicion—John Doe does not look right to him for some reason or other, and he is a suspicious-looking person, I would believe that the officer could approach this person and ask him his name, his address, and so forth, and that, I suppose that would be what you would call a detention. That would not be an arrest. He would momentarily stop.

I would think under those circumstances, during that preliminary questioning, the police officer would not have to give any *Miranda* warning.

The CHAIRMAN. You make the distinction, then, really on the words "probable cause," don't you?

Mr. FLANNERY. Exactly.

The CHAIRMAN. Of course, title III does say it must be on probable cause.

Mr. FLANNERY. Right.

The CHAIRMAN. Well, I very much appreciate your views.

The other area that seemed to cause the most concern, from both the Attorney General's Office and the Commissioners' was mandatory minimum sentences. I think the thrust there is that this is retrogressive, that this is not the way to rehabiliate the criminal, by giving him a mandatory minimum sentence; that this ought to be left to the discretion of the sentencing judge, who is better able to judge the convicted person, and that he should not be required to set a minimum on the sentence which he gives.

I think, in general, that is what we are saying.

Now, what do you think about that?

Mr. FLANNERY. Well, I am in favor of severe sentences for severe crimes. I guess I am old fashioned, but I believe the greatest deterrent to crime there is is severe punishment, for severe crimes—punishment that fits the crime.

I would say generally, without referring to any of these statutes, that I favor severe punishment, severe sentences, for these very serious crimes.

The CHAIRMAN. How about the mandatory minimums? Their argument primarily goes to the question of setting a mandatory minimum. I do not think they go as much, though they do in some instances, to the total length of the sentence. I think their primary concern is the mandatory minimum. Because a mandatory minimum sets pretty much the release date for the convicted person. The argument is that that should be left to the parole officers and to the probation authorities, because they can see the individual, know his family background, his possibilities of rehabilitation, and how he reacts to prison life. They will tell you that the convicted person who comes in with a minimum sentence of 10 years feels, "I have nothing to live for, I know I am going to be here"—I suppose it would give him 7 years actual prison time. They say you will never rehabilitate that man under those circumstances; that you have to give more leeway to those in charge of probation if you are going to rehabilitate the man that you find guilty of a crime, and the man that you imprison.

You are a skilled prosecutor. You have handled many of these cases. This is a difficult field.

Mr. FLANNERY. Yes, it is.

I would say as a matter of principle that I would oppose mandatory minimum sentences. I can recall prosecuting narcotic cases in the U.S. Attorney's Office where there were, and I believe still are, mandatory minimum sentences for second offenders, and the judge had no discretion. There were cases where a defendant would have been convicted, say, of selling four or five capsules of heroin, and had been a second offender, and he might have been an addict. I recall these cases. And the judge had no discretion, had to sentence this unfortunate person to a mandatory minimum sentence of 5 years. I have seen them get as much as 10 years.

I felt sorry for some of those addicts. They were not really the big pushers of narcotics who should have been convicted. I disagreed, and still disagree, with such mandatory minimum sentences.

The CHAIRMAN. Well, of course, it is my intention—as I announced at the start of this hearing—that in subsequent hearings I do hope to get into the bills that have been introduced and bills that were recommended by the administration as a result of the Crime Commission study on this whole field of narcotics and drunkenness. And I think there is much in what you say. The drug addict is not cured by incarcerating him behind prison walls for a long, long period of time. It is more of a medicinal problem, I guess, than it is a crime problem.

But we do not intend getting into that at this point.

I did want to get your views on this minimum sentencing, because this is one of the problem areas that we have, frankly, with the House of Representatives in trying to work out a bill.

Now, one other area, and this would be the last one. You have been very patient, and I appreciate your testimony.

It has been indicated to us that in this whole area of mandatory minimum sentences one of the difficulties is if you have a rigid minimum sentence that leads even more to what they call plea bargaining—in other words, reducing the offense from assault with a dangerous weapon to just a simple assault, in order to get a plea. Would you have any comment on that?

Mr. FLANNERY. On plea bargaining?

The CHAIRMAN. On plea bargaining, yes.

Mr. FLANNERY. I think that plea bargaining is essential to running an efficient prosecution system down in the court.

For years it was the practice—when I was in the prosecutor's office—to bargain on cases. Let's say you had a defendant who had been indicted for five housebreakings. Well, he would get 15 years on each count of housebreaking. I would—all of us used to do it in those days—accept a plea to two out of the five counts, dismiss the other three. As a practical matter, that is the only way you can really keep a calendar moving. Otherwise you would have a crushing burden of cases. That may be one of the problems now.

The CHAIRMAN. Of course, the suggestion has been that plea bargaining per se is bad. And I do not know that I share that view of it—as a former prosecutor and attorney general myself. I am sure it it used nationwide, not only here in the District of Columbia. And you know that as well as I know it.

The argument is made that because of a shortage of judicial manpower and a shortage of adequate staff in the U.S. Attorney's Office, and adequate supporting personnel, adequate space, all of which is important—there is more apt to be plea bargaining. But even if you had all of those things—adequate judges, adequate U.S attorneys, and adequate probation officers, and staff—I still think that you would have a certain amount of plea bargaining.

Mr. FLANNERY. You just have to, Senator Bible. You know from your experience Well, the U.S. attorney or the prosecutor must have discretion to reduce a charge under certain circumstances. I think plea bargaining is essential to the effective administration of justice. Of course, it has to be used with discretion.

The CHAIRMAN. I understand that.

Mr. FLANNERY. But I would agree with those who complain because of inadequate facilities that the district attorney cuts charges or allegedly cuts charges which should not be just for pure expediency. I do not think that is a healthy system.

The CHAIRMAN. Just one other question.

How much importance do you attach to the bill which I have introduced—it is the administration bill, and it is embraced within the Crime Commission's recommendations, and is for a Criminal Code revision in the District of Columbia?

Mr. FLANNERY. I think the Criminal Code of the District of Columbia has been in need of revision for years and years. I would certainly favor that.

The CHAIRMAN. I suggest to you there is a price tag—and it has to be kept within reason. It has to be a one-shot deal, and not create a career for some very able lawyers and some staff. That would be my own personal thinking.

Thank you very much, Mr. Flannery, and thank you very much, Mr. McGee, for your help to the committee.

We will keep plowing along, trying to do something about crime.

Our next witness is Mr. Robert A. Niles, director of the District of Columbia Bail Agency.

Mr. NILES. I would like to introduce my assistant, William Robert Cecil.

The CHAIRMAN. Very well.

STATEMENT OF ROBERT A. NILES, DIRECTOR, OF THE DISTRICT OF COLUMBIA BAIL AGENCY; ACCOMPANIED BY WILLIAM ROBERT CECIL, ASSISTANT TO THE DIRECTOR

Mr. NILES. Mr. Chairman, my name is Robert A. Niles, and as director of the District of Columbia Bail Agency I am pleased to have the opportunity to comment upon the proposed legislation H.R. 10783, S. 1516, and S. 484. In addition, I shall comment on the utilization and implementation of the Bail Reform Act of 1966 in our courts here in the District of Columbia.

With regard to the proposed legislation, the specific areas of H.R. 10783 applicable to the District of Columbia Bail Agency are title VII section 702, and title VIII section 801—subsection (a) and (b). I will limit my comments to these points.

Section 702, H.R. 10783 provides that the agency shall furnish to members or officers of the metropolitan Police force, when requested by them, reports concerning the background of persons arrested with respect to a bail determination. These reports are to be the same as those presently furnished by the agency to judicial officers.

The agency strongly endorses section 702. The issuance of summonses and citations is highly desirable as it goes far to alleviate the unfair practice of "stationhouse bail" which was considered by both the Senate and House Judiciary Committee in hearings regarding the passage of the Bail Reform Act. While passage of this section will necessitate an increase in our present staff, the agency will be happy to cooperate fully in its implementation.

Section 801, subsection (a) and (b), authorizes the Commissioners of the District of Columbia, to supervise persons released into their custody prior to trial, pursuant to the provisions of the Bail Reform Act of 1966. There is presently no facility or means to supervise releases and to insure that the conditions imposed are observed. Proper discipline requires that no order be issued that cannot be enforced. The District of Columbia Department of Corrections is the agency best suited to undertake such supervision. The agency totally endorses section 801 and will cooperate fully with its implementation.

Section 1516 is essentially identical to section 801 of title VIII of H.R. 10783.

It is my belief that the pretrial detention provisions of section 484 are unconstitutional. The eighth amendment of the Federal Constitution provides the mandate that "Excessive bail shall not be required."

The CHAIRMAN. Are you referring to section 484 or the bill S. 484?

Mr. NILES. That is 484.

The CHAIRMAN. You are talking about the Brewster bill?

Mr. NILES. That is correct. That is just S. 484.

However, prior to ratification of the eighth amendment, Congress passed the Judiciary Act of 1789 which provided that, "upon all arrests in criminal cases, bail shall be admitted . . . ".

The act goes on to make an exception "where the punishment may be death." Because of the chronological order for passage, I contend that the eighth amendment incorporates by reference the provisions regarding bail in the Judiciary Act of 1789. It thus follows that all persons arrested for crimes not punishable by death are by our Constitution guaranteed a reasonable bail and by the Bail Reform Act an enlargement of the definition of "reasonable."

I drew your attention to the wordage of the exception in the Judiciary Act, "except where the punishment may be death." The word "punishment" is used rather than "sentence." As a practical matter there is no crime in the District of Columbia punishable by death. Thus, it follows that under a literal interpretation of the law, all persons arrested for a crime in the District of Columbia must be admitted to reasonable bail. Reasonable bail has been defined in *Stack* v. *Boyle*, 342, U.S. 1, 4 (1951), as that giving adequate assurance of the presence of the accused at trial.

Since passage of the Judiciary Act of 1789 and ratification of the Bill of Rights no judicial officer has been authorized to impose preventive detention in lieu of bail, on a defendant in a criminal case not punishable by death. If and when a judicial officer imposes any bail or condition of release greater than the minimum required to assure the presence of the accused at trial, that bail is in contravention to the spirit of the Constitution as has been developed by case law.

Blame for the rising incidence of crime in the District of Columbia has been placed on the Bail Reform Act. Various responsible officials have labeled the act as the cause of their troubles. Such accusations are grossly deceptive. The impression given is that prior to the act, criminals were not released on bail to be free to commit other crimes. The sophisticated and successful criminal has almost always been able to secure his release.

Continuing recidivism among those defendants released on multiple bonds is for the most part the result of the extraordinarily long lapse of time between arrest and trial for felony charges in the District of Columbia.

The defendant is given the right to a speedy trial by law, and conversely, the public has a right to a speedy trial. Once guilt is established, detention is lawful. Justice dealt swiftly still remains the most effective deterrent to a rising rate of crime.

It has been stated that the Bail Reform Act deprives the judicial officer of discretion. If anything, the discretion of the judicial officer may impose the condition that the defendant return to custody after specified hours. The above condition cannot be imposed until after he has considered and rejected the execution of a financial bond with sufficient solvent sureties.

The conditions of release outlined in the act go beyond those considered available prior to its passage. Under the act the judicial officer is specifically enjoined to use his discretion in setting the condition or conditions of release.

In conclusion, these present problems which are now being experienced and which appear to be faults inherent in the law, can be more easily resolved if correctly labeled as faults with the administration and implementation of the act.

The CHAIRMAN. Thank you very much, Mr. Niles. The only question would be—and as you know, the District of Columbia Commissioners have filed an official report on S. 484, in which they generally approve the bill with three suggested amendments. First, that the results as to the admissibility of evidence in court would not be applicable at predetention hearings. Secondly, that visitations be subject to reasonable regulation by the Commissioners. And third, that the Bail Reform Act be further amended to specifically allow for appeal of detention orders. As so amended the Commissioners support the bill.

Would you have any comment on the bill if it were amended as suggested by the District of Columbia Commissioners?

Mr. NILES. Mr. Chairman, of course I am speaking for myself.

The CHAIRMAN. I understand.

Mr. NILES. I maintain this bill is unconstitutional, even with those additional amendments.

In the first place, Senator Brewster has stated—in the bill it says the trial shall be had within 30 days. I presume that means 30 days from arrest. Now, I presume that it would be possible—I am digressing now—it would be possible to bring a felon, an accused felon, to trial within 30 days. At the present time the average time between arrest and indictment in the District of Columbia for a felony is 4 months. After the Grand Jury hands down an indictment, it is a minimum of 10 days, according to the rule of court, before the appellant is arraigned.

Now, that means that the time between an arrest and trial would have to be reduced down to one-quarter of the time—the average time now between arrest and arraignment.

Now, after arraignment, the average time between arraignment and trial in the District of Columbia is now 11 months. So the time between arrest and arraignment of any man accused of a felony is 15 months.

That is a long time to spend in jail. I contend that the administrative procedures of the judiciary in District of Columbia cannot be encapsuled to bring a felon to trial within 30 days. And if such is true, and I contend it is, what are you going to do with this man when you have to release him after 30 days, because S. 484 gives a mandate to release the man after he has spent 30 days in detention if he has not been tried.

The CHAIRMAN. What if you enlarge the 30 days to 6 months?

Mr. NILES. If you do that, you have even more trial detention. Pretrial detention without having bail be set, reasonable bail, which gives the opportunity to a man to make it, is unconstitutional on its face.

The CHAIRMAN. I think the Commissioners attempted to meet the problem, the constitutional problem you are raising, by giving a right to appeal from the predetention order, if I understand it correctly.

Mr. NILES. Well, Mr. Chairman, what does the right to appeal give a man who is detained. I am sorry. I do not mean to ask you a question.

The CHAIRMAN. I just want to get your viewpoints.

Mr. NILES. The right to appeal does not change the fact that this man is being unconstitutionally detained. Every citizen of the United States has a right to bail. Aliens do not. But a citizen of the United States, anyone born in the United States, has an absolute right to bail from the moment he is born, be it a juvenile or be he 80 years old. There is nothing in the Constitution that says the Bill of Rights applies only to adults. I am digressing there. But I think the Bill of Rights must be extended to juveniles, because there is nothing to say it does not.

Any pretrail detention is unconstitutional.

The CHAIRMAN. Well, I have not gone into the subject in depth. I have not gone into it at all, really, because this is a matter of first impressions before this committee on this particular phase. We will ask the staff to check that out. Because yours is a real broad statement—that any predetention is unconstitutional and the right of bail is a constitutional right.

Mr. NILES. I have to make the exception—except in cases of those felons accused of crimes punishable by death.

The CHAIRMAN. I understand. You made the exception very clear in your statement.

Mr. NILES. One of the greatest if not the greatest constitutional lawyers in the United States is a member of this body, and I think he has stated pretrial detention is not constitutional. It has never been allowed anywhere in the United States legally up to the present time.

The CHAIRMAN. We have to operate as best we can within the four corners of the Constitution, or else whatever we do here might be rendered for nought by another tribunal. I am very happy to have your views, Mr. Niles. Thank you for being here.

With that, we stand adjourned.

As an appendix to the hearing record I would like to add the following:

Statement from the Honorable Sam J. Ervin, Jr., U.S. Senator from the State of North Carolina.

Statement from the Honorable Robert Taft, Jr., Representative in Congress from the State of Ohio.

A listing of business organizations who have corresponded with the Senate Committee on the District of Columbia in support of pending anticrime legislation for the District of Columbia.

Statement of President's disapproval of the District of Columbia crime bill, 89th Congress.

Copy of the Conference Report Relating to Crime and Criminal Procedure, 89th Congress.

Copy of the Senate Report on Crime and Criminal Procedure in the District of Columbia, 89th Congress.

Copy of the Senate Report "District of Columbia Crime," 88th Congress.

Letters from civic and professional organizations concerning anticrime legislation for the District of Columbia, 1967.

(Whereupon, at 12:35 p.m., the Committee was adjourned, to reconvene subject to the call of the Chair.)

APPENDIX

STATEMENT OF SENATOR SAM J. ERVIN, JR. ON H.R. 10783, RELATING TO CRIME AND CRIMINAL PROCEDURE IN THE DISTRICT OF COLUMBIA

Mr. Chairman, I appreciate the opportunity to present my views on H.R. 10783, a bill designed to reduce crime and revise criminal procedure in the District of Columbia. The bill under consideration is a response of the House of Representatives to the increasingly serious problem of crime in the District of Columbia and the artificial rules by which courts have allowed criminals to go unpunished. I shall confine my detailed remarks to those portions of the bill which deal with the *Mallory* rule, investigative arrests, and the *Durham* rule. The Subcommittee on Constitutional Rights has considered each of these subjects as part of its continuing investigation of the administration of criminal justice. The District Committee may find especially useful our hearings on "Confessions and Police Detention" and on "Constitutional Rights of the Mentally Ill: Criminal Aspects."

At the outset, let me make it clear that I support the bill and that I believe action by Congress is imperative if we are to provide the police with the tools required to do their job. There are, however, several problems in the measure as it came from the House which the Committee should consider.

TITLE I

I believe this provision is a reasonable expansion of police authority to make arrests without a warrant, and I support the title.

TITLE II

The standard for determining criminal responsibility in the District of Columbia was established in *Durham* v. *U.S.* (94 U.S. App. D.C. 228; 214 F. 2d 862) in 1954. Since its adoption, there have been more than 100 cases decided by the U.S. Court of Appeals for the District of Columbia Circuit involving interpretations of the rule and interpretations of the interpretations. There has been continuous discussion and disagreement among judges, lawyers, psychiatrists, and law enforcement officials concerning its meaning, validity and utility. It has been rejected by all other jurisdictions, State and Federal, which have considered adopting it.

The rule for criminal responsibility proposed by Title II has been developed by the American Law Institute after prolonged consideration, and it represents a substantial improvement over the *Durham* rule. The ALI standard establishes a specific test on which a judge can instruct a jury and which a jury can understand. My objections to *Durham* rule arise out of my experiences as a trial judge in North Carolina. The *Durham* rule is inadequate because it establishes no definite and understandable legal test to ascertain responsibility for crime, and the jury is forced to try one of the crucial issues of the case, legal accountability, without adequate guidance.

I do not agree, as the Department of Justice and others have asserted, that the case of *McDonald* v. *U.S.*, 312 F. 2d 847 (1962), handed down by the Court of Appeals for the District of Columbia sitting *en banc* remedies the difficulties with the *Durham* rule. *McDonald* states "that a mental disease or defect includes any abnormal condition of the mind which substantially affects mental or emotional processes and substantially impairs behavior controls." (p. 851). While shedding some light on the problem of what constitutes a mental disease or defect, this standard still leaves the jury in the dark as to how that mental disease or defect must affect a defendant's conduct in order to exclude criminal responsibility. The test prescribed in Title II is far superior.

80-853 O—67——21

I believe, however, that the stipulation in Section 201,027 (a)(2) is too restrictive and should be deleted or amended. A person could be a "raving maniac" who repeatedly or continuously conducts himself in an "antisocial" way and yet under this provision he would be precluded from asserting the defense of insanity. This, even though all psychiatrists might testify that he is ill and that he has no knowledge of right or wrong and has a definite mental "disease or defect."

I strongly endorse Section 261,927(c)(2) which requires that mental disease or defect be asserted as an affirmative defense. Under North Carolina law, the person who relies upon the plea of insanity is required to establish to the satisfaction of the jury that he is insane, subject to exception in cases which require a specific intent. In those cases the burden is on the State to establish beyond a reasonable doubt the existence of all the elements of the crime including the necessary specific intent. This formula is adopted in the present bill by Section 201(b) which makes admissible evidence of mental disease or defect whenever it is relevant to prove that the defendant did or did not have a requisite state of mind.

A rule which gives the prosecution the burden of establishing sanity beyond a reasonable doubt, as does *Durham*, puts too great a burden on the prosecution. *McDonald* does not change this rule; it modifies only the amount of evidence which must be presented to raise the issue of insanity.

Our purpose should be to create a standard not to determine whether a person has one of the varities of mental diseases or defects, but to determine whether the nature of his mental disease or defect is such that it would be unjust to punish him for an act which would otherwise be criminal. Title II satisfies that purpose.

Subsection (c)(2), however, goes too far. It would provide that "mental disease or defect shall not be a defense unless * * * the accused submits himself to examination * * * by psychiatrists selected by the prosecuting attorney and *answers questions asked by such psychiatrists* in such examination * * *." (Emphasis added). This, in my judgment, violates the privilege against self-incrimination and is unconstitutional.

The provision of subsection (f) requiring the court to order a person acquitted on the ground of mental disease or defect to be confined in a mental hospital "whether or not such person relied" at the trial on the defense of insanity also raises serious constitutional problems. Further, as a matter of policy—as well as one of constitutional law—it would be neither just nor humane to commit a defendant who may have been insane at the time of the crime and later cured. This is especially true when applied to a defendant who has had the issue of insanity thrust upon him over his objection. In *Lynch* v. *Overholser*, 369 U.S. 705, the Supreme Court in construing the mandatory commitment provision for those acquitted on the ground of insanity in the District of Columbia stated:

"We find it unnecessary to consider this and other constitutional claims concerning the fairness of the Municipal Court proceedings, since we read § 24–301 (d) as applicable only to a defendant acquitted on the ground of insanity who has affirmatively relied upon a defense of insanity, and not to one, like the petitioner, who has maintained that he was mentally responsible when the alleged offense was committed." (pp. 709, 710).

* * * * * * *

"That construction finds further support in the rule that a statute should be interpreted, if fairly possible, in such a way as to free it from not insubstantial constitutional doubts. [Omitting cases] Such doubts might arise in this case were the Government's construction of § 24–301(d) to be accepted." (pp. 710, 711).

Commitment on grounds of insanity without a judicial determination of present mental illness clearly violates due process.

TITLE III

The provisions of Section 301 are similar in substance to Titles I and III of last year's bill. Its purpose is to provide an opportunity for interrogation of persons whom police have probable cause to believe have committed or are committing a crime.

This year's bill has deleted authority for policemen to arrest anyone who "is about to commit" a crime. Thus, Title III does not involve investigative arrest in violation of the Constitution as did last year's bill.

Any person arrested pursuant to this Title would have all the traditional rights of any arrested person. As the House report states, "If an officer shall have effected an arrest or whenever any detention shall constitute an arrest, the person shall be warned and advised of his rights under applicable law as to any statements or admissions he may make."

The effect of this title would be a Congressional decision that four hours is a reasonable time for keeping a person in custody before bringing him before a magistrate. To that extent Title III would modify the *Mallory* rule, which has been a major obstacle to effective law enforcement.

Title III would also change legal distinctions between the authority to make arrests in felony and misdemeanor cases. It would allow arrests without a warrant for misdemeanors not committed in the arresting officers' presence. This goes far beyond present law. It would also make Title I of this bill meaningless because that title authorizes arrest without a warrant only for an enumerated group of serious misdemeanor offenses not committed in the presence of the arresting officer. Title III is perhaps the most urgently needed section of the bill, and I hope this one problem can be cured.

TITLE IV

This title raises no substantial problems. It is a reasonable expansion of the law relating to the obstruction of justice in the District of Columbia. It would be useful and I support it.

TITLE V

Title V properly adds the crime of robbery to the crimes of violence which are enumerated in 22–3201 of the District of Columbia Code.

TITLE VI

Several sections of this title establish or increase mandatory minimum sentences for various offenses. While I feel that on many occasions the courts have failed to protect society by coddling criminals, it is my judgment that generally it is wiser to leave to the discretion of the trial judge the determination of the length and the conditions of sentence.

For this reason, I question the wisdom of sections 601–605.

Section 606 is a complete revision of the District of Columbia Code relative to obscenity. I am happy to note that the provisions for prior restraint to which I objected in the past have been deleted from this year's bill.

Subsections (A), (B), and (C) of Section 872 (a)(1) use the undefined terms "obscene," "indecent," or "filthy." It would seem that the standards for applying criminal sanctions are so vague that no one could determine what conduct is to be forbidden. Therefore, these sections may not stand a constitutional test.

TITLES VII AND VIII

These titles appear to pose no substantial problems and should be enacted.

CONCLUSION

H.R. 10783 is a generally well-conceived and well-drafted statute which (if if enacted, will go far in reducing the tragic crime rate in the District of Columbia. I strongly endorse the bill. It is my fervent hope, however, that the Committee will cure the problems I have outlined above. Otherwise, there is a real possibility that, by way either of Presidential veto or judicial interpretation, we will lose the whole loaf of bread because of a few constitutionally defective slices.

STATEMENT OF HON. ROBERT TAFT, JR., MEMBER OF CONGRESS, FIRST DISTRICT, OHIO, ON LEGISLATION RELATING TO CRIME AND CRIMINAL PROCEDURE IN THE DISTRICT OF COLUMBIA

Mr. Chairman, Members of the Committee, first, may I express my appreciation for the opportunity to present my testimony relating to the establishment

of workable and understandable procedural rules in connection with interrogation and law enforcement.

I have introduced two bills in this area. One, "The Federal Interrogation Act of 1967" and the other, "The District of Columbia Federal Interrogation Act of 1967". The bills are similar in many respects. However, today I wish to present the provisions of the second proposal.

My concern with the need for a comprehensive interrogation law stems from the conviction that the rules or lack of them set out in *Miranda* vs. *Arizona*, 384 U.S. 436 (1966), are inadequate to protect either society or the criminally accused. It is a matter of common belief that police investigations are presently hampered by the vague rules of *Miranda*, and there are those who believe that, out of frustration, they might eventually have the effect of outlawing the use of all confessions unless Congress and the States act to rectify the situation.

I might say that in proposing a legislative approach to the problem it is not my intention to throw down any gauntlet to the Supreme Court, instead I propose that we establish clearer standards than the rules laid down by the Supreme Court in *Miranda* and other cases and yet ones which I believe will better protect the rights of the criminally accused, while reducing the possible deleterious effects that some interpretations of *Miranda* are having on effective law enforcement and the morale of our law enforcement officers.

Now what was *Miranda* aimed at? Well as we read the *Miranda* opinion I think we find that primarily that within the fifth amendment and the privilege against self-incrimination that the *Miranda* case was aimed at a situation in which an accused is brought into custody alone and mental coercion is used upon him, and the examination takes place in a police dominated atmosphere of compulsion.

It is also true that *Miranda* does not even accomplish its major goal which is to assure that the ordinary criminally accused (not the professional) is interrogated in an atmosphere free from coercion. *Miranda*, in practice, does not help these people, because it continues to permit the waiver of all rights, both as to the initial stop in questioning as well as to an interrogation that takes place in custody and in private, without the assistance of any neutral or third person.

My proposal is directed to two different situations. First, to the stop and interrogation that takes place in the street when a crime has been committed or there is reason or cause to believe that a crime has been or is about to be committed. The second phase deals with the interrogation that takes place after the individual is in custody and being interrogated at more lengths.

In the first phase of criminal investigation, the District of Columbia law enforcement officers is granted express authority to request information from any person in connection with the prevention or investigation of a crime. This request need not be preceded by the explanation or warning of *Mirando* but any refusal to cooperate on the part of the person requested may not later be used against him in evidence. If an officer has reasonable cause to believe there has been a crime committed and that the person has knowledge which may be of material aid, he may direct the person under the provisions of this proposal to remain in his presence for a period of not more than 20 minutes. I might say this 20-minute period is not original with any thinking on my part or the attorneys with whom I have consulted in trying to draw up this proposal, rather it has been studied and is included in a draft of the American Law Institute studies on this subject.

I might say also that the *Miranda* case, I believe, does not really apply and it is not intended to apply to this initial questioning, the stop and interrogation on the street at the scene of the crime. I think the language of the case is pretty clear in that effect and I quote from the *Miranda* case—

"generally on the scene questioning as the facts surrounding a crime or other questioning of citizens in the fact finding process is not effected by our holding. It is an act of responsible citizenship, to give whatever information they may have to aid law enforcement. In such situations the compelling atmosphere inherent in the process of in-custody interrogation is not necessarily present."

I think the same would be true in any situation where the officer observed a person in circumstances which suggest that the person has committed or is about to commit a crime. While the officer is given the power to impose the temporary minimal restraint without the mechanical warning provided in *Miranda*, there are strict limits as to the purposes for which the stop and inter-

rogation on the street may take place. It can only be used for these purposes: to identify the person by readily available information; to request his cooperation in the investigation of a crime; or to ascertain his explanation for his presence or conduct by readily available information. Thus, if an officer observes a man running down a dark alley behind a series of stores, he can be stopped and asked to explain his presence without going through the warnings set up by *Miranda*. If any voluntary, but incriminating, statements are elicited during this period they would be admissable in evidence.

In carving out this specific area for on-the-street police investigation, I have proposed to limit it to a 20-minute period to minimize possibilities of abuse. In most cases this period should be sufficient to enable the officer to find out quickly what is needed so that he may respond to the situation.

Thereafter, the officer must decide if he is going to make an arrest. If not, the individual must be informed he is free to go. If arrested, the officer must give the arrested person a statement of his rights, including the right to remain silent, the fact that the accused has a right to communicate with counsel, relatives or friends, and that anything he says can be used against him at a trial. The arrested person must then be transported immediately and directly to the police station if any further interrogation is desired. I might say that an immediate arraignment under the present Federal rules is required as a matter of evidence, during the trip, however, the interrogation may continue without the presence of counsel, but any statement, to be admissible later, must be wholly voluntary.

Now the second phase of my proposal comes into effect upon reaching the police station or place of custody. Thereafter, any further interrogation that takes place must take place before a court-appointed official known as a master of examination.

This official is an officer of the court and not a part of the law enforcement agency involved. He is charged with recording or transcribing the interrogation, with supervising and limiting the questions and the manner in which the interrogation continues, and with carrying out the responsibility for securing counsel for the arrested person and seeing to it that his family is put into communication with him.

However, because of the sweeping powers and rights given the master of examination, powers which insure that a person's privilege against self-incrimination will not be dispelled by the compelling atmosphere, referred to in the *Miranda* case, before the master can continue—the interrogation for the master can continue for only about 3 hours without the presence or specific waiver of an attorney. If the attorney, or any friend or relation is available, and asks to be present during the investigation or if the person being interrogated asks for them to be made available, they may be present during the interrogation. Furthermore, if the arrested person desires to assert his right to remain silent pending the arrival of the attorney or a relative or a friend, the master of examination will insure the free exercise of such a right. However, a mere indication that the accused desires not to be questioned will not terminate interrogation as it would be required under the dictum, at least, in the *Miranda* case. And, if the arrested person is willing to talk, his statements would be admissible even though previously or simultaneously he has asked for, and will receive, the services of an attorney at the earliest availability.

The final provision of my proposal is a very explicit provision making it a misdemeanor for a police officer to use coercion, threats, or promises of leniency to elicit a confession. This provides a safeguard and sanction against police abuse that does not exist today where the remedies are by and large in the false arrest area.

I firmly believe that my proposal satisfies the fifth amendment and the command found therein that has been found by the courts that no person shall be compelled in any criminal case to be a witness against himself, and it will also meet the sixth amendment guarantee of effective assistance of counsel, which incidentally the *Miranda* case did not rely upon. They relied upon the fifth amendment there.

We have taken a comprehensive approach to the problems of out-of-court statements and attempted to provide for appropriate safegaurds for each of these situations.

I would like to say at this point why I believe this will come within the *Miranda* case and the language of the *Miranda* case. I believe that it is proper

for the Congress, as a coordinate equal of the Supreme Court, to make rational distinctions in determining the requirements of the fifth amendment; and the *Miranda* decision itself, and its language, is replete with recognition of this fact. For example, the *Miranda* decision held that for purposes of preventing a compulsive atmosphere, the safeguards must apply when one is deprived of his freedom of action in any significant way. I can foresee that the application of this test creates many problems and have thus attempted to provide some specificity of some degree about the situation. But my proposal provides that the 20-minute stop for preliminary exploratory questioning is not custody, nor such a significant restriction of liberty as to require a warning or the presence of neutral observers or attorneys. The language I have already quoted from the *Miranda* case, seems to me to imply that. However, once the investigation shifts from a general exploration of what has happened, to a focusing in on a particular individual, the interrogation changes from noncustodial to custodial and the accused is guaranteed his warning rights and the supervision of the master of examination. This point is reached when questioning goes beyond the limited objects permitted during a stop. On the other hand, once a person is arrested and taken into police custody, substantial safeguards—which include the introduction of elements of neutrality—must be provided. This removes the need for the absolute right to an attorney. As is pointed out in the recent Harvard Law Review, November 1966, and I quote:

"If appraisal of right to counsel and the right itself are necessary only to insure that the subject fully understands his right to remain silent, they may be replaced by some equally effective way of delivering the admonition—perhaps by a magistrate. Even if the right to counsel during interrogation is granted to protect against abuses not easily proven, it would be unnecessary if the accused could be protected by a sound recording or a neutral observer".

This is provided for in my proposal.

The Supreme Court in *Miranda* stated clearly that the Constitution did not require adherence to any particular solution; and the decision was not intended to create a constitutional straitjacket, as the Supreme Court calls it, to handicap efforts at reform in the interrogation process.

There are, naturally, some minimal technical differences in the proposals that I have made from the literal rules laid down in *Miranda;* but I think that in general we do follow the rules of the Court. The most significant difference is that under my proposal the mere indication by an accused that he does not wish to answer, or that he wishes to have an attorney, does not necessarily require a halt to further interrogation if the master believes it proper to proceed with the interrogation.

While the *Miranda* case did expound exact conditions for calling a halt to interrogation where an accused so indicates, I do not think that my proposed legislative reversal of such rules would be thrown out by the Court.

For one thing, these particular requirements of cessation of questioning were not necessary to reach the decisions on the facts in *Miranda* and its related cases, as I mentioned before this was dictum only by the Court.

I think that the Court would recognize that while it fashioned rules to prohibit prolonged questioning in a police dominated atmosphere, under my proposal such questioning would be limited to a specified period (of which the accused would be informed before it commenced) in a judicially controlled atmosphere of neutrality. The Court would be faced with a situation where the accused would be guaranteed the right immediately to contact family, friends or an attorney and such persons would have immediate access to the accused. The Court would see that instead of the so-called manipulated coercive atmosphere with which it was concerned, there would be a controlled atmosphere, under the master's supervision guaranteed to prevent psychological coercion, that the Court concerned with. The Court would also find a new criminal sanction in adding to the exclusionary rule to enforce the voluntariness of all proceedings.

In other words, the very premises and assumptions upon which the Court acted when it enunciated its *Miranda* would be removed. I think the Court might then recognize society's interest in being able to continue questioning without the fear that a request by the accused to stop the questioning or for the presence of counsel might throw out an otherwise voluntary confession, or information that might be obtained.

In making this proposal, I am relying upon the Court itself when it said in *Miranda:*

"It is impossible for us to foresee the potential alternatives for protecting the privilege which might be devised by Congress or the States in the exercise of their creative rule making capacities. Therefore, we cannot say that the Constitution necessarily requires adherence to any particular solution for the inherent compulsions of the interrogation process as it is presently conducted. Our decision in no way creates a constitutional straitjacket which will handicap sound efforts at reform, nor it is intended to have this effect."

"We encourage Congress and the States to continue their laudable search for increasingly effective ways of protecting the rights of the individual while promoting efficient enforcement of our criminal laws. However, unless we are shown other procedures which are at least as effective in apprising accused persons of their right of silence and in assuring a continuous opportunity to exercise it, the following safeguards must be observed".

And then they set out the safeguards.

This legislation that I propose in an attempt to provide effective safeguards for our people without unduly diminishing the effectiveness of our law enforcement agencies. It involves the traditional American approach of balancing important interests to advance the public good. I think it would be a landmark type of proposal, setting out new rules in a whole new direction for interrogation of the accused and the protection of the accused in crime. And I think it would do much to restore the support and the interest of the police in trying to do something about this problem.

CORRESPONDENCE RECEIVED FROM THE FOLLOWING BUSINESS ORGANIZATIONS IN SUPPORT OF PROPOSED ANTICRIME LEGISLATION FOR THE DISTRICT OF COLUMBIA

Peoples Drug Stores, Inc.
The S. Kahn Sons & Co.
Castelberg's Jewelers
S. Klein
Julius Lansburgh Furniture Co.
Stoutenburgh's
The HUB
Security Bank
Marriot-Hot Shoppes
Central Melart
The National Furniture Co.
Drug Fair
Safeway Stores, Inc.
Woodward & Lothrop Inc.
7-Eleven
Tobey Jewelers
Giant Sales Corp.
Gaghan & Shaw Services Inc.
William HAHN & Company
Lansburgh's
Gude's
Ida's Inc.
Goozh
Capitol Furs
Sears, Roebuck and Co.
National Brick and Supply Co.
Lormack Corp.
John S. MacBryde Co.
Chapman & Miller, architects
R.E. Anderson Co., Inc.
Hechinger Co.
Kitt Music Co.

[White House press release, Nov. 13, 1966]

STATEMENT OF DISAPPROVAL OF H.R. 5688, THE DISTRICT OF COLUMBIA CRIME BILL

Crime in the nation's capital affects every man, woman, and child who lives or visits here. Wealthy and poor, Negro and white, slum and suburban dweller—all suffer when our streets are not safe. For the sake of the whole community, we must do everything in our power to protect innocent people from those who seek to harm them.

I am acutely conscious of my responsibility as President to do all in my power to prevent crime. I mean to take any and all actions, within my power, which will help relieve today's unsatisfactory conditions.

I have before me the District of Columbia Crime Bill, passed in the closing hours of the Congress. It deals exclusively with rules for police and the courts. It does not touch the quality or quantity of law enforcement resources: more, better trained, better equipped and better paid police and corrections workers.

In my opinion, the present bill would create problems instead of solving them.

If I thought that this bill would diminish crime in the District of Columbia, I would sign it. I believe, however, that this legislation would add endless complications and confusion to an already complex situation. It would provoke years

of litigation. It would make the job of the policeman on the beat and of the public prosecutor much more difficult.

I cannot approve it.

This bill provides that a policeman may pick up a person and question him for four hours without making an arrest—six hours, exclusive of interrogation, after an arrest—perhaps ten hours of questioning—without taking him before a judicial officer. No one doubts the necessity of the police questioning persons on the street with respect to criminal activities. The law has always permitted this. The law properly provides, however, that after a person is deprived of his freedom—after he is arrested—the police must take him before a magistrate who will determine whether his arrest is arbitrary or based on probable cause. This must be done without unnecessary delay.

I am advised that the periods of questioning provided in this bill go far beyond the necessities of interrogation in practically all cases.

In the case of a material witness, the bill contains provisions even more extreme than those applicable to suspects themselves.

Any citizen at the scene of a crime—including the victim—can be taken into custody as a material witness. It is not necessary either to obtain a subpoena, or to take the witness before a magistrate, until six hours after he is picked up. In effect, the person can disappear from sight merely on an individual policeman's judgment that he is a material witness. And that there is a reasonable probability that he will not be available to testify at the trial.

When the citizen is finally taken before a magistrate, he can be released only by posting bond or collateral as security. He cannot be released on his own recognizance. If he were under arrest as a suspected criminal, however, the Bail Reform Act, passed by Congress this year, would permit his release on his own responsibility. These provisions are much more severe than existing law. The U.S. Attorney informs me that he can recall no case in which inability to detain material witnesses has resulted from the inadequacy of existing law.

The bill contains a provision intended to stop the traffic in obscene pictures and literature. No one can have sympathy for those who pander to degraded instincts in man. But this provision is phrased so broadly that it clearly threatens freedom of the press. It authorizes an official in the District of Columbia—the United States Attorney—to seek the prior restraint of publications. If he thinks that a newspaper, magazine or book is indecent, he may go to court and obtain, without a full hearing on the merits, a preliminary injunction authorizing him to restrain its publication or sale.

This section also provides for a permanent injunction, prohibiting the future use of any real or personal property involved in the publications or sale of obscene material.

This language is imprecise and confusing but at the very least, it would empower a court, using its contempt authority, to imprison or fine a previously convicted publisher of a book, magazine or newspaper, if the court concluded that one of his new publications was also offensive—even though it had never been judicially found obscene in a full trial on the merits.

The Acting Attorney General informs me that this sort of prior restraint has been condemned by the courts as unconstitutional—in violation of the first amendment upon which our freedom to spread, to publish, to read and to exchange ideas is dependent.

The bill also would establish mandatory minimum sentences on conviction of certain crimes. This is a step backward in judicial and correction policy. Indeed it is directly contrary to previous action taken by the Congress. Under the indeterminate sentencing laws, the Congress has recognized that the potential for rehabilitation is increased when courts and correction systems are given flexibility to determine sentences on case-by-case basis. Moreover, there is no need for such mandatory minimum sentences in the District of Columbia. Sentences now being imposed in the District are among the highest in the United States.

I have given long and careful thought to this legislation.

I recognize that its sponsors believed it would arm the police and the courts with more effective tools in combatting crime. Yet all agencies of government asked to comment on the bill—as well as the two civilian District Commissioners who live in Washington, and a majority of the District of Columbia Bar Association—have urged me to veto it.

They are convinced that it does not strengthen law enforcement in the District and does not meet the needs of the fight against crime, but rather introduces confusion and uncertainties into police and judicial practices.

The Acting Attorney General advies me that fundamental constitutional questions pervade the bill—four of its six titles raise the most serious doubts.

We are engaged in a great national effort to lift the blight of bad housing, poor education, and unemployment from our cities. This effort is attacking the conditions that nourish high crime rates. But, in addition, state and local officials, and the federal government in its limited sphere, must devise more effective ways of preventing crime and bringing criminals to account.

Better-trained and better-paid policemen are part of the answer to crime. Last year Congress enacted the Law Enforcement Assistance Act, to finance pilot projects in the most modern police techniques. Today, I am signing into law a substantial—and well deserved—pay increase for District policemen.

Better police organization is part of the answer. Last year I appointed a District of Columbia Crime Commission and asked its members to recommend better ways of reducing crime in Washington. Many of the Commission's recommendations are designed to make the organization of the District Police Department a model for the nation. Most are already being carried out. And the District of Columbia Commissioners have informed me that they have signed and are putting into effect the Reorganization Plan for the Police Department recommended by the D.C. Crime Commission.

Better-staffed courts are part of the answer. This year, five new judgeships were added to the court of General Sessions. They will help eliminate the delays which have impeded swift and effective Justice.

Each of these steps has the same goal: more effective prevention, detection, and punishment of crime in the District of Columbia.

The problem of crime outside of the District of Columbia must primarily be dealt with by local officials. I have promised them the complete cooperation of the federal government within its proper sphere. We have already begun that cooperation with the Law Enforcement Assistance Act. We are prepared to expand our cooperative efforts. I will act promptly on the recommendations of the National Crime Commission, which I appointed in July of 1965, when they are received.

We know that criminal behavior, and the conditions out of which it springs, will not yield easily to our efforts. But we have given the highest priority to an intelligent, relentless fight to make the streets of the District of Columbia safe for law-abiding people—and we shall make them so.

I renew my pledge to pursue every avenue, use every tool, support any law that holds promise of advancing us in our drive against crime. In doing so I will need the cooperation of every man and woman whose commitment—as is mine—is to a capital where civic order and social justice prevail.

Calendar No. 1109

88TH CONGRESS, 2d Session } SENATE { REPORT No. 1172

DISTRICT OF COLUMBIA CRIME

JULY 8, 1964.—Ordered to be printed

Mr. BIBLE, from the Committee on the District of Columbia, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany H.R. 7525]

The Committee on the District of Columbia, to whom was referred the bill (H.R. 7525) relating to crime and criminal procedure in the District of Columbia, after full consideration, report favorably thereon with an amendment and recommend that the bill, as amended, do pass.

The amendment as indicated in the bill, as reported, by linetype and italic, is as follows:

Strike out all after the enacting clause and insert new language as a substitute.

PURPOSE OF THE BILL

The purpose of this bill is to make certain changes and amendments to the District of Columbia Criminal Code, including criminal procedures, so as to provide for more effective law enforcement in the Nation's Capital within constitutional bounds.

The bill is divided into six separate titles which are set forth herein generally as follows:

(1) Title I relates to the admissibility in evidence of confessions, admissions, and statements of persons in criminal trials in the District of Columbia and provides certain safeguards relating thereto.

(2) Title II amends existing law so as to require an accused to give the government written notice of an intention to enter a plea of insanity as a defense in a criminal proceeding in the District of Columbia.

(3) Title III amends existing law relating to the detention of material witnesses in criminal cases in the District of Columbia.

(4) Title IV amends existing law so as to include robbery as a crime of violence in the District of Columbia.

(5) Title V amends certain existing criminal laws in the District of Columbia by providing for minimum sentences in certain crimes of violence; increases certain penal provisions; and makes changes in existing law relating to indecent publications.

(6) Title VI is a saving provision with respect to criminal offenses committed prior to enactment of this bill.

The Crime Problem in the District of Columbia

The upsurge of crime has been Washington, D.C.'s foremost local problem in recent years. Even more alarming is the fact that criminal activity has climbed year by year since 1957. The present crime rate trend for 1964 will make this year an alltime record high for the Nation's Capital City.

Your committee has become increasingly concerned over this trend which has resulted in national publications picturing the capital city as a danger spot where men, women, and children are fearful of walking or riding the streets in the nighttime hours. No single subject has received greater attention from your committee in more than 10 years.

When referred to your committee, the pending bill contained 12 proposed changes of law in 5 separate titles, and dealt with 2 of the most complex and controversial subjects in the criminal law field—the *Mallory* and *Durham* rules.

An in-depth examination of the need for strengthening the District of Columbia Criminal Justice Code was made by your committee. Joint fact-finding hearings were conducted with the District Committee in the other body for some days early in 1963. The broad spectrum of the causes of crime, centering around economic and social patterns and their interplay, was reviewed. Washington's problems in some of these areas are magnified to greater proportions than in other American cities of comparable size. It is appreciated that crime cannot be curtailed by a singular or piecemeal approach since crime has many tentacles as causes.

Individual citizens, police officials, members of the judiciary, health and welfare leaders, school executives, and the governing heads of the city have cooperated in pressing for an attack upon the problems. Special attention has been paid to the high rate of crimes of violence to the person in the District, and their anguished results.

The committee has had consultation with and advice from the District of Columbia Council on Law Enforcement, a congressionally established body charged with a continuing study and appraisal of crime and law enforcement generally in the District.

Shortly after the joint hearings concluded early in 1963, your committee itself conducted separate hearings on several pending crime bills. When the House-passed omnibus crime bill was sent to your committee, 11 days of hearings were conducted in 1963, followed by more hearings in 1964.

The committee listened to more than 50 witnesses including outstanding legal scholars from prominent law schools around the country, practicing defense attorneys dealing closely with the crime picture, nationally recognized medical-psychiatric experts, top Federal prosecutors, local law enforcement officers, police chiefs from several of the country's major cities, penology officials, representatives

of radio, television, and motion picture industries, and concerned individual Washington residents and community leaders.

The city of Washington is not alone in the upward crime trend since all major cities in the country have similar problems in varying degrees. The fact that Washington compares favorably with other cities of comparable size is of slight consolation because any crime is too much crime.

Your committee believes that every reasonable step to strengthen the arm of law enforcement agencies must be taken so long as constitutional guarantees are protected. Conversely, those same constitutional guarantees should not deprive law-abiding men, women, and children of another important right—the right to walk the streets without fear of bodily harm and the right to the safety of their homes and places of business.

Criminal justice has two very definite and generally opposing sides. One is to bring the criminal to swift and sure justice. Such action is designed to serve as a deterrent to the perpetrator and to others so inclined.

The other side is that the civil rights granted to every American by his Constitution should not be trampled upon in the name of justice.

Between those viewpoints lie the gray area where the great bulk of Americans must live day and night, and where legislators must make choices.

Congress has the legislative responsibility over the Nation's Capital City and to discharge that responsibility, it must concern itself with this increasingly acute problem, to assist its residents to have a more law-abiding community, and to assure the safety of the thousands of visitors who come to view their Capitol and its city every year from the 50 States and from the nations of the world.

District of Columbia Crime Statistics

Violent crime in Washington, D.C., will reach an all-time, record high in 1964 if this year's present trend continues, adding to the fact that crime in the District has increased every year since 1957.

The increasingly acute problem is pointed up by Federal Bureau of Investigation statistics showing that for the first quarter of 1964 Washington, D.C., had a 38-percent increase in crime compared to an 18-percent average increase for 18 other cities of comparable size. Nationally, crime in the same period increased 19 percent.

By another comparison, FBI statistics show that crime in the District in 1963 increased 22 percent over 1962, while the increase for 18 other cities of comparable size in the same period was only 10.7 percent and the national average up 10.2 percent.

Statistical tables showing the individual crime increases for the periods follow:

Crime trend, January to March 1964 versus 1963

	Index total	Murder	Forcible rape	Robbery	Aggravated assault	Burglary	Larceny, $50 and over	Auto theft
National	+19	+17	+22	+13	+14	+18	+21	+22
Average, 18 cities, 500,000 to 1,000,000 population	+18	+3	+40	+18	+12	+15	+16	+24
Washington, D.C.	+38	+24	+17	+11	−2	+43	+29	+95

Source: Federal Bureau of Investigation, Washington, D.C., July 1964.

Crime trend, 1963 over 1962

	Index total	Murder	Forcible rape	Robbery	Aggravated assault	Burglary	Larceny, $50 and over	Auto theft
National	+10.2	+1.2	+0.6	+5.1	+5.8	+9.3	+13.2	+11.3
Average, 18 cities, 500,000 to 1,000,000 population	+10.7	+8.8	−1.5	+7.6	+3.8	+10.8	+8.5	+15.8
Washington, D.C.	+22.0	+4.4	+6.1	+8.6	−5.1	+39.1	+17.8	+31.3

Source: Federal Bureau of Investigation, Washington, D.C., July 1964.

As a further example, District of Columbia Metropolitan Police Department statistics show that for May 1964, 2,418 major offenses were reported, an increase of 527 or 27.9 percent from May 1963.

May 1964 marked the 24th consecutive month with an increase in crime in Washington. During that month increases occurred in the classifications of rape, up 5 offenses or 45.5 percent; robbery, up 8 offenses or 5.4 percent; housebreaking, up 271 offenses or 58.7 percent; grand larceny, up 21 offenses or 19.4 percent; petit larceny, up 28 offenses or 4.5 percent; auto theft, up 204 offenses or 81 percent. Decreases occurred in criminal homicide, down two offenses or 20 percent; and aggravated assault, down eight offenses or 2.9 percent.

The increase for May 1964 brought the trend of serious offenses to 28,870 in Washington, D.C., an increase of 27.4 percent from calendar year 1963, an increase of 82.8 percent from the low point of June 1957, and making the trend period (the 12 months ending with May) a record high for crime in Washington, D.C.

Statistically, the May 1963 and May 1964 comparisons are:

Part 1 offenses reported, May 1963 and May 1964

Classification	May 1963	May 1964	Change		Total 12 months ending May 1964
			Amount	Percent	
Criminal homicide	10	8	−2	20.0	132
Rape	11	16	+5	45.5	160
Robbery	147	155	+8	5.4	2,686
Aggravated assault	275	267	−8	2.9	2,890
Housebreaking	462	733	+271	58.7	8,193
Grand larceny	108	129	+21	19.4	1,492
Petit larceny	626	654	+28	4.5	8,617
Auto theft	252	456	+204	80.9	4,761
Total	1,891	2,418	+527	27.9	28,870

Source: Metropolitan Police Department, Washington, D.C., June 1964.

Following are statistics showing the areas of violent crimes committed over the years for comparative purposes.

Crime in the District of Columbia, high, low, and present

Classification	Calendar 1952 [1]	Fiscal 1957 [2]	12 Months ending May 1964	Change to 12 months ending May 1964 from—			
				Calendar year 1952		Fiscal year 1957	
				Amount	Percent	Amount	Percent
Criminal homicide	89	88	132	+43	+48	+44	+50
Rape	197	199	160	−37	−19	−39	−20
Robbery	1,396	944	2,686	+1,290	+92	+1,742	+184
Aggravated assault	4,608	2,555	2,809	−1,799	−39	+254	+10
Housebreaking	5,388	3,023	8,193	+2,805	+52	+5,170	+171
Larceny and theft	11,149	7,141	10,129	−1,020	−9	+2,988	+42
Auto theft	1,778	1,843	4,761	+2,983	+168	+2,918	+158
Total, pt. 1	24,605	15,793	28,870	+4,265	+17	+13,077	+83

[1] Calendar year 1952 was alltime high for crime in the District of Columbia.
[2] Fiscal year 1957 was alltime low for crime in the District of Columbia. Under reporting system established in 1948.

Source: Issued by Metropolitan Police Department, Washington, D.C., June 1964.

District of Columbia High in National Comparison

Nationally, Washington, D.C., as compared with other cities of similar size, ranks in the highest quarter in the amount of crime. Federal Bureau of Investigation statistics show that Washington ranks fifth in the rate of crime index offenses per 1,000 population of the 16 cities in the 500,000 to 1 million population class, and fourth in total offenses.

For 1963 the District in the various classifications of crimes ranked as follows among the 16 cities:

First in aggravated assault (assault with a dangerous weapon).
Second in robbery.
Fourth in housebreaking.
Fifth in murder.
Sixth in rape.
Seventh in auto theft.
Ninth in larceny ($50 and over).

Statistics showing the number of offenses in the 16 comparable cities of the country, including Washington, D.C., for 1963 follows:

Crime index offenses, calendar year 1963

[Cities 500,000 to 1,000,000 population]

City	Population, 1960 census	Total offenses	Murder	Rape	Robbery	Aggravated assault	Housebreaking	Larceny, $50 and over	Auto theft
Baltimore	939,024	16,990	142	122	1,257	1,893	4,833	4,948	3,795
Boston	697,197	16,123	44	85	745	780	4,050	2,498	7,921
Buffalo	532,759	9,305	24	26	291	311	4,166	2,172	2,315
Cincinnati	502,550	5,933	33	96	291	661	2,358	1,409	1,025
Cleveland	876,050	10,584	94	56	1,504	548	3,683	1,331	3,368
Dallas	679,684	11,053	113	58	488	921	5,151	1,219	3,103
Houston	938,219	24,147	101	264	1,115	2,515	12,602	4,127	3,423
Milwaukee	741,324	8,796	24	41	235	422	2,233	3,353	2,488
New Orleans	627,525	14,983	60	45	948	778	5,535	2,967	4,650
Pittsburgh	604,332	14,725	23	75	1,011	540	4,996	3,359	4,721
St. Louis	750,026	24,792	100	249	2,098	2,087	11,865	3,407	4,986
San Antonio	587,718	12,785	44	70	303	896	6,270	3,536	1,066
San Diego	573,224	8,385	15	56	299	310	3,009	3,447	1,249
San Francisco	740,316	21,956	43	120	1,554	1,569	8,461	3,087	7,122
Seattle	557,087	11,206	21	66	502	269	5,228	3,147	1,973
Washington	763,956	18,329	95	87	1,707	2,851	6,984	3,140	3,465
Rank order, Washington, in actual number		4th	5th	6th	2d	1st	4th	9th	7th

Source: Federal Bureau of Investigation, 1964.

Conclusion

Your committee has sought to be attentive to the needs for combating crime over recent years. Specifically, a juvenile court of sufficient size went into full operation 2 years ago, with the enlarged court now moving to reduce the tragic backlog of cases to assure that juvenile offenders are dealt with speedily. Congress has authorized an increase in the Metropolitan Police force to 3,000 men.

The Federal payment to the District has been increased to provide for school, health, and welfare needs to help combat other causes where crime may be born. The alarming fact is that crime has continued to climb.

The objective of your committee in its consideration of this omnibus crime bill, a major undertaking to strengthen the Criminal Justice Code in the Nation's Capital City, is to provide law enforcement agencies, the courts, and the citizenry as a whole with more effective tools to deal with the criminal. Crime has deep roots and must also be attacked on broad fronts not approached in this bill. However, your committee views its recommendations as a step in the right direction to return to the people of Washington, D.C., a feeling of security on the streets, sidewalks, their homes, and places of business during both the day and the night.

TITLE I—ADMISSIBILITY OF STATEMENTS MADE BETWEEN ARREST AND APPEARANCE BEFORE A COMMISSIONER

The purpose of title I is to provide a rule of evidence for the courts of the District of Columbia governing the admissibility of statements obtained from an accused after a lawful arrest and prior to an appearance before a U.S. commissioner. The title provides standards and safeguards for in-custody interrogation of persons arrested on probable

cause and makes clear and certain the maximum period of time after arrest and prior to arraignment before a U.S. commissioner, during which such in-custody interrogation may take place.

The U.S. Supreme Court's interpretation of rule 5 of the Federal Rules of Criminal Procedure in the case of *Mallory* v. *U.S.*, 354 U.S. 449 (1957) has created special problems for law enforcement in the District of Columbia because only in the District do Federal courts have broad jurisdiction over crimes of violence which usually lack eyewitnesses and because the courts of the District of Columbia have made extreme applications of the *Mallory* decision. The result of this special local situation has been to allow guilty and dangerous criminals to escape punishment altogether or receive lesser punishment by pleading guilty to lesser offsenses even though they may have voluntarily confessed to their crimes. This committee is of the opinion that the right of the law-abiding citizen to be secure in his person and property suffers when the guilty go unconvicted and that a reasonable concern for the right of the law-abiding citizen to be free from fear in his home and in the streets requires that this special local problem must be met by legislative action.

Background of rule 5 of the Federal Rules of Criminal Procedure

The complete text of the rule is as follows:

Proceedings Before the Commissioner

(*a*) *Appearance before the commissioner.*—An officer making an arrest under a warrant issued upon a complaint or any person making an arrest without a warrant shall take the arrested person without unnecessary delay before the nearest available commissioner or before any other nearby officer empowered to commit persons charged with offenses against the laws of the United States. When a person arrested without a warrant is brought before a commissioner or other officer, a complaint shall be filed forthwith.

(*b*) *Statement by the commissioner.*—The commissioner shall inform the defendant of the complaint against him, of his right to retain counsel, and of his right to have a preliminary examination. He shall also inform the defendant that he is not required to make a statement and that any statement made by him may be used against him. The commissioner shall allow the defendant reasonable time and opportunity to consult counsel and shall admit the defendant to bail as provided in these rules.

(*c*) *Preliminary examination.*—The defendant shall not be called upon to plead. If the defendant waives preliminary examination, the commissioner shall forthwith hold him to answer in the district court. If the defendant does not waive examination, the commissioner shall hear the evidence within a reasonable time. The defendant may cross-examine witnesses against him and may introduce evidence in his own behalf. If from the evidence it appears to the commissioner that there is probable cause to believe that an offense has been committed and that the defendant has committed it, the commissioner shall forthwith hold him to answer in the district court; otherwise the commissioner shall discharge

him. The commissioner shall admit the defendant to bail as provided in these rules. After concluding the proceeding the commissioner shall transmit forthwith to the clerk of the district court all papers in the proceeding and any bail taken by him.

On June 29, 1940, Public Law 76-675, 54 Stat. 688, was approved which gave the Supreme Court of the United States authority to prescribe rules of procedure for criminal proceedings in the courts of the United States and provided that such rules "shall not take effect until they shall have been reported to Congress by the Attorney General at the beginning of a regular session thereof and until after the close of such session * * *."

The Supreme Court thereafter appointed an Advisory Committee whose function it was to draft new rules of Federal criminal procedure. In the early drafts of this Committee, rule 5 excluded from evidence any statement made by a defendant while the defendant was held in custody in violation of the rule. However, during the deliberations of the Advisory Committee, the Supreme Court decided *McNabb* v. *United States*, 318 U.S. 332 (1943). The ruling of this case excluded a confession obtained from an accused unlawfully detained in custody. Also decided during this period was *United States* v. *Mitchell*, 322 U. S. 65 (1944).

The *Mitchell* case qualified the *McNabb* case by holding that a voluntarily given confession would not be excluded from evidence because of the illegal detention of the accused, unless the confession resulted from such illegal detention.

With the law relating to admissibility of statements obtained during illegal detention in this posture, the Supreme Court promulgated the Federal Rules of Criminal Procedure on December 26, 1944, without any mention of any sanction against noncompliance with rule 5. Subsequently, the rules were duly reported to Congress, no objection was raised, and the rules became effective on March 21, 1946. It must be noted that following the *McNabb* case, there was a flurry of unproductive legislative activity aimed at altering the effect of the case.

"Mallory v. *United States" and related cases*

In 1957 the Supreme Court of the United States decided the case of *Mallory* v. *United States*, 354 U.S. 449 (1957) Andrew Mallory was convicted of rape in the U.S. District Court for the District of Columbia. The Court of Appeals for the District of Columbia affirmed the conviction (98 U.S. App. D.C. 406, 236 F. 2d 701). The Supreme Court reversed the conviction and held that if an arrested person is not brought before a U.S. Commissioner without unnecessary delay but is held and interrogated by officers for the purpose of obtaining incriminating statements, then any statement so obtained may not be received in evidence at a subsequent trial.

In so doing, the Supreme Court restated the sanction of the *McNabb* and *Mitchell* cases but extended the ruling of those cases to cover situations where there was no showing of any causal relationship between "unnecessary delay" and the incriminating statement.

Mallory had the further effect of creating confusion within the legal ranks of the bench and bar about what constituted an "unnecessary delay." In the *Mallory* case, the accused was arrested on a rape charge between 2 and 2:30 p.m. His first statement of admission

was made about 9 p.m., and he dictated his confession between 11:30 p.m. and 12 midnight. He was brought before the U.S. commissioner on the following morning.

Recent cases in the District of Columbia have demonstrated that there is great uncertainty among the judges on the appellate and district courts about how much delay is permissible between arrest and arraignment before a commissioner.

In *Elsie V. Jones* v. *United States*, 113 U.S. App. D.C. 256, 307 F. 2d 397 (1962), the defendant was arrested at 4:25 of a Sunday morning, confessed 3½ hours later, and was brought before a committing magistrate at 9 Monday morning. A divided court held her confessions inadmissible.

In *Charles S. Coleman* v. *United States*, 114 U.S. App. D.C. 185, 313 F. 2d 576 (1962), a delay of 2 hours and 5 minutes was, again by a divided court, held fatal to the admissibility of the conviction.

In *Tony A. Coleman* v. *United States*, 317 F. 2d 891 (1963), a divided court permitted the conviction on one count to stand although based upon a confession given 1 hour after the arrest, but reversed the conviction on other counts based upon confessions given 2 or 3 hours after arrest.

Most recently, in a dissenting opinion in *Robert A. Muschette* v. *United States*, D.C. Cir. No. 17410 (July 25, 1963), it was contended that a confession obtained 25 minutes after arrest and 1 hour and 50 minutes before the arrested person was presented to the committing magistrate should be excluded.

In *United States* v. *James J. Jones*, Criminal No. 366–63, the trial judge excluded a confession which occurred within 15 minutes after arrest and prior to presentment of the arrested person to the committing magistrate. The dissent in the former case and the ruling in the latter case were based on the ground that no interrogation of any length is permissible and, indeed, an arrested person is not to be taken to the precinct or to headquarters for booking and fingerprinting, but is to be taken before a magistrate forthwith. Thus, "without unnecessary delay" was considered to mean "without any delay."

Testimony before the committee indicated that in each of these cases, the confession was clearly voluntary and admissible under all of the usual legal and constitutional criteria. The exclusion of these confessions was based solely on the lapse of time after arrest and prior to appearance before the U.S. commissioner and the finding of the courts that such lapse of time constituted an unnecessary delay within the meaning of rule 5(a) of the Federal Rules of Criminal Procedure.

Underlying reasons for rule 5 and the decisions of Mallory and related cases

The courts have long been plagued by the troubling situation where an accused who has been interrogated in the privacy of the police station alleges that his confession was coerced from him by unfair physical or mental pressures. In almost every instance, of course, his allegations are denied by the officers whose word is usually accepted by the court and jury. To end these insoluble conflicts over the nature of such interrogations and to minimize the opportunity for the use of improper methods in obtaining such confessions, are two basic underlying reasons for rule 5(a) and the *Mallory* v. *United*

States decision. There are, of course, other underlying reasons, such as the implementation of the constitutional rights of the accused, such as his right to counsel, and his right against self-incrimination.

The difficulty of the *Mallory* rule and its interpretation of rule 5 is that even where it can be demonstrated that there was no coercive conduct on the part of the police, and where all of the constitutional rights of the accused were protected, the *Mallory* ruling, as it has been interpreted in the District of Columbia, still requires the exclusion of a voluntarily given statement on the basis of very minimal delay alone.

The purpose of title I, as amended, is to fill in this gap in the protection which is afforded to the life and property of the law-abiding citizen by the criminal laws of the District of Columbia.

Rule 5(a) and Mallory v. *United States—A special problem for the District of Columbia*

Testifying before the Senate Committee on the District of Columbia on title 1, Nicholas deB. Katzenbach, Deputy Attorney General of the United States, summed up the special significance of the *Mallory* rule for the District of Columbia in the following language:

> The *Mallory* rule is not frequently invoked in Federal criminal cases in jurisdictions other than the District of Columbia. The reason is twofold. First, only in the District of Columbia do the Federal courts have broad jurisdiction over crimes of violence which characteristically lack eye witnesses and independent evidence.
>
> It is quite common in cases of homicide, yoke robberies, rape, and certain other crimes that there is no third eyewitness, and it is often difficult for the complaining witness to make an identification. Of course, in homicides there is no complaining witness. Thus, in such cases, confessions assume far greater significance as evidence of guilt, and it becomes important to defendants to have their confessions excluded in the courts of the District of Columbia. Second, by contrast, most Federal criminal cases in other jurisdictions involve frauds, mail thefts, narcotic violations, and the like, where there is substantial evidence apart from a confession; i.e., contraband property, financial records, tax returns, et cetera.
>
> Therefore, it is reasonable to consider the problems in the District of Columbia as being rather unique with respect to the *Mallory* rule and deserving of congressional consideration in legislation limited in its application to the District of Columbia.
>
> In my opinion, the *Mallory* rule is a good one. Through it, the Supreme Court made clear its intention to prevent law enforcement officers from delaying preliminary hearings for the purpose of eliciting confessions. This is as it should be.
>
> The problem which gives rise to the legislative proposal before the committee lies not with the *Mallory* rule but with its application in the District of Columbia.
>
> In a number of cases in the District of Columbia "unnecessary delay" has been interpreted and applied to make it virtually impossible, I am informed, for investigating officers

to speak with arrested persons with any assurance that resultant confessions will be acceptable in the courtroom.

Title I, as amended, recognizes the validity of the argument that the *Mallory* case does have special impact in the District of Columbia by denying to law-enforcement officers the essential investigative tool of in-custody interrogation but it further recognizes that any legislation which has as its purpose the preservation of this valuable police tool must provide safeguards and standards which will prevent abuse of the accused.

It protects the rights of the accused by providing that a statement resulting from an in-custody questioning of the accused may be admitted into evidence if:

(1) immediately prior to any such questioning the defendant was plainly advised by the officers having custody of him, in addition to any previous warning, that he is not required to make any statement at any time and that any statement made by him may be used against him; and

(2) prior to any such questioning the arrested person was advised by the officers having custody of him that he would be afforded reasonable opportunity to notify a relative or friend and consult with counsel of his choosing, and was in fact afforded such opportunity; and

(3) not more than 6 hours elapsed between the arrest and the completion of the confession, statement, or admission; and

(4) such questioning and the warning and advice required by paragraphs (1) and (2) of this section were, whenever reasonably possible, witnessed by a responsible person who was not a law-enforcement officer, or transcribed verbatim, or recorded by a wire, tape, or other sound recording, or conducted subject to other comparable means of verification.

In addition to protecting the rights of the accused, the amendments made by the committee aid the police by making clear exactly what they must do when interrogating a defendant and the maximum period of time they have within which to conduct such interrogation.

Congressional background

Problems associated with rule 5 and the *Mallory* decision are not new to Congress. Language substantially the same as that contained in this bill, when it was passed by the House of Representatives, has been before Congress before. The first legislative attempts to meet this problem took the form of proposed amendments to rule 5(a) and would have had application to all Federal jurisdictions.

In the 85th Congress, H.R. 11477 was passed by the House and amended and approved by the Senate.

As a result of the Senate amendment, the bill went to conference where the conferees accepted the Senate amendment but added certain new language. The House adopted the conference report but adjournment prevented final action by the Senate after a point of order was raised concerning the new language added by the conferees.

In the 86th Congress, the House Committee on the Judiciary again reported similar legislation, H.R. 4957, but it was not enacted.

In the 87th Congress, the House Committee on the District of Columbia reported H.R. 7053, a similar bill limited in its application to the District of Columbia, which was passed by the House. The Senate did not act on this bill.

The case for a legislative change in Mallory

In essence, the committee recommendations would legislate into a statutory rule of evidence for the District of Columbia only desirable and proper guidelines for the courts that would provide:

(1) Safeguards for accused individuals from improper police interrogation.

(2) Protection for the public in keeping law and order by permitting the police to carry on necessary questioning of arrested individuals under clearly defined criteria.

The committee rejected title I of the House-approved bill on the grounds that such provision would not withstand constitutional attack because protective devices were not written into it to safeguard the rights of accused individuals from improper interrogation and delay from the time of arrest until arraignment before a magistrate. The committee has approved recommended safeguards that it believes will meet constitutional requirements and will provide better law enforcement tools for the police to protect the public.

Title I as contained in this report was proposed by the U.S. attorney for the District of Columbia and has the support of the Department of Justice and the District of Columbia Commissioners.

The committee's recommendations represent a legislative effort to retain for persons charged with crime those essential individual rights that the *Mallory* rule and its subsequent case law refinements have made. At the same time the recommendation strikes a balance point in permitting police to carry on proper and necessary questioning under clearly defined limitations. It is the committee's judgment that the *Mallory* rule and subsequent court decisions, which have tightened the noose around effective law enforcement, must be changed.

This recommendation is limited to apply only to the District of Columbia where violent crimes fall within the trial and appeal jurisdiction of the Federal judiciary and limitations of the Federal Rules of Criminal Procedure. Since the District is unique in many ways, the committee believes law enforcement must be dealt with uniquely in providing the District courts and the police with clear-cut procedural guidelines so as not to do harm to persons accused of crimes and at the same time provide protection not now being given to the law-abiding general public.

What Congress approved by the language of rule 5 of the Federal Rules of Criminal Procedure, Congress can now disapprove by statutory enactment for the District where the court interpretations of *Mallory* are felt more keenly than in any other Federal jursidiction.

It is not contended that legislative enactment to alter the severe application of the *Mallory* rule alone will curb the crime rate which has risen steadily since that Supreme Court decision in 1957. The Department of Justice, the U.S. attorney, the District Commissioners, police officials, a respected member of the U.S. district court, the District of Columbia Council on Law Enforcement, and members of the bar testified that a change in the *Mallory* doctrine should provide assistance in combating crime.

Certainly, proper interrogation free of abuse and with the guidelines this title contains, provides a valuable law enforcement investigative tool.

The Honorable Sam J. Ervin, senior U.S. Senator from North Carolina and chairman of the Constitutional Rights Subcommittee of the U.S. Senate Committee on the Judiciary, testified before this committee: [1]

> * * * Although I realize this is not the only factor influencing the crime rate, the *Mallory* rule certainly is a major factor, for due to it self-confessed criminals are let free by the courts and the police are hampered in their crime detection * * *.
>
> * * * I submit that when Congress approved the promulgation of the Federal Rules of Criminal Procedure, it did not intend to throw on the scrapheap the time-honored test of voluntariness concerning the admissibility of a confession. I submit that Congress had no intention of making convictions impossible simply because a police officer failed to take a prisoner before a committing magistrate until 7½ hours had elapsed.
>
> As chairman of the Subcommittee on Constitutional Rights, I am, of course, not unmindful of the many protections which the Constitution of the United States bestows upon the persons accused of crimes within our society. But, in the words of Judge Alexander Holtzoff, U.S. district judge for the District of Columbia, who testified at subcommittee hearings on the subject of confessions and police detention, in 1958:
>
> "We must bear in mind that the purpose of the criminal law is to protect the public. On the one hand, it is essential that no innocent person be convicted of a crime and that oppressive methods be not used against the guilty. On the other hand, it is equally indispensable that victims of a crime and potential victims of possible future crimes receive protection. The victim must not become a forgotten man. As was said by Mr. Justice Cardozo in *Snyder* v. *Massachusetts* (291 U.S. 97, 122), 'Justice, though due the accused, is due to the accuser also. The concept of fairness must not be strained till it is narrowed to a filament. We are to keep the balance true.' "

Particular explanation must be given section 103(1), title I, providing a maximum 6-hour period between arrest and the completion of a confession, statement, or admission. It cannot be supported that this provision is a back-door method of reinstituting investigative arrest in the District of Columbia. (See explanation under title II, "Investigative Arrest," of this report.)

Arrests under title I to stand up must be made on probable cause, while investigative or detention arrests are made only with reason to suspect. Thus, detention or investigative arrest, in the judgment of this committee, are clearly unconstitutional; however, arrests on probable cause do meet the constitutional test. The committee recommendations do no violence to this precept.

As has been previously pointed out in this report, the *Mallory* decision's interpretation of rule 5(*a*) has presented special problems to law enforcement in the District of Columbia which are not common

[1] Senate hearings, pp. 360-361.

in other Federal jurisdictions. Indeed, the *Mallory* case itself was a District of Columbia criminal prosecution for rape. This committee has therefore attempted to meet this special local situation. In any criminal procedural statute the challenge is to strike a balance between protecting the rights of the accused and protecting the law-abiding citizen from criminal molestation. In the judgment of the committee, title I, as amended, meets that test.

Section-by-section analysis of title I

Section 101 is a brief restatement of existing law with respect to the admissibility of incriminating statements made by an accused. The committee wishes to make clear that nothing in this title is intended to prevent the trial courts of the District of Columbia from determining the voluntariness of any incriminating statement made by an accused in accordance with established principles of law.

Section 102 restates existing law and excludes statements made by an accused after a period of unnecessary delay and prior to an appearance before a U.S. commissioner.

Section 103 provides that under section 102 of this title delay alone shall not cause the exclusion of any statement obtained by interrogation of the accused if (1) the accused was warned that he need not make a statement and was told that any statement made could be used against him; and (2) the accused was told of his right to notify a relative or friend and consult with any attorney and he in fact was given an opportunity to contact a relative or friend and talk with a lawyer of his choice; and (3) the statement was completed within not more than 6 hours after his arrest; and (4) all of these warnings and any questioning of the accused were witnessed by a third party or transcribed or recorded verbatim.

The 6-hour time limitation in this section is a maximum limit and not intended to indicate to District of Columbia law enforcement officers that every accused should be held for 6 hours in every case. On the contrary, the shortest time consistent with thorough and orderly police work should elapse between arrest and completion of any statement which an accused may volunteer.

Section 104 requires the trial judge who admits any statement in evidence pursuant to section 103 of this title to make findings of fact concerning the existence of the conditions set out in section 103. This will establish the necessary record for any subsequent appeal taken by the accused from the decision of the judge to admit any statement under this section.

Section 105 authorizes and directs the Commissioners of the District of Columbia to promulgate regulations including necessary disciplinary measures to assure that police officers comply with requirements of law set out in this title and with the regulations made pursuant to it.

This title, as amended, has the support of the Department of Justice, the U.S. attorney for the District of Columbia, and the Board of Commissioners of the District of Columbia.

TITLE II—DURHAM RULE

The purpose of title II of this bill, as amended, is to amend section 927 of the act of March 3, 1901 (24 D.C. Code, sec. 301), so as to require an accused to provide notice to the court of jurisdiction of an intention to plead an insanity defense at the time of entering his plea

of not guilty, or within 15 days thereafter, or at such time thereafter as the court may for good cause permit.

During the committee hearings on title II of H.R. 7525, the witnesses, without exception, were of the view that a defendant in a criminal proceeding in the District of Columbia should be required to provide the government with notice of a proposed insanity defense.

It was the view of those who supported the provision that the requirement of giving notice of an insanity defense may serve to improve the administration of justice in the District of Columbia, as this orderly procedure may assist in limiting an accused from using the insanity defense where the plea is frivolous and without merit. Also, the requirement of notice may prevent a miscarriage of justice in a criminal case, particularly where a defendant succeeds unjustifiably in his insanity defense for the reason that the government is taken by surprise at trial and is unable to prepare for the insanity defense.

The committee, in considering the other provisions of title II of H.R. 7525, as it passed the House, was of the view that now was not the appropriate time to legislate a new insanity test for the District of Columbia. The committee recognized that the insanity cases of *Durham* v. *United States*, 239 F. 2d 52 (1956), caused an extensive change in the insanity law for the District of Columbia. The *Durham* and *Douglas* cases greatly increased in the District of Columbia the number of acquittals by reason of insanity in criminal felony cases.

Background of "Durham" rule

Your committee gave intensive review, both at public hearings and in executive sessions, to the need for a better test for criminal responsibility for the courts of the District of Columbia.

As background, in 1954 the Circuit Court of Appeals for the District of Columbia decided the *Durham* case, and in so doing rejected the right and wrong insanity test for the District and, in its place, enunciated the *Durham* insanity rule which simply states: "An accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect."

Once the *Durham* case was decided, it became apparent to many interested persons that the term "product," as used in *Durham*, was too vague a term. The question evolved as to how the trial judge should explain "product" to the jury in his instructions and also what causal mechanisms should the medical witness describe to the jury.

Without answering these questions, the court next turned its attention to the burden of proof in insanity cases and proceeded to decide the cases of *Douglas* v. *United States*, 239 F. 2d 52 (1956), and *Wright* v. *United States*, 250 F. 2d 4 (1957). The effect of these insanity decisions was to remove the insanity issue from the jury, and to require the trial judge to direct a judgment of acquittal by reason of insanity where the Government is unable to show, through expert psychiatric testimony, the sanity of the accused at the time of the crime.

These changes in the substantive law resulted in a steady increase in the number of defendants acquitted by reason of insanity in the District of Columbia courts.

In an effort to modify *Durham* and the follow-on cases of *Wright* and *Douglas*, the U.S. Court of Appeals for the District of Columbia, on October 8, 1962 decided the case of *McDonald* v. *United States*, 312 F. 2d 847 (1962). In this decision the court recognized the need

for a precise judicial definition being given the terms "disease," "defect," and "product," as they were used in *Durham*. In *McDonald*, the court formulated the following supplemental instruction to be given the jury in connection with the *Durham* insanity charge: "A mental disease or defect includes any abnormal condition of the mind which substantially affects mental or emotional process and substantially impairs behavior control."

In addition to providing a definition of the terms in the *Durham* decision, your committee believes the *McDonald* case also restored to the jury, in some measure, the function of resolving the issue of criminal responsibility even though the testimony of experts weighs heavily in favor of the defendant and his plea of insanity. In this connection, the court in *McDonald* specifically stated "whether uncontradicted expert testimony overcomes the presumption [of sanity] depends upon its weight and credibility, and weight and credibility are for the jury."

As further background, in 1953 before the *Durham* decision, three defendants were acquitted by reason of insanity in the District of Columbia. Statistics were presented to the committee that showed in fiscal year 1962, of 516 defendants tried in the U.S. District Court for the District of Columbia, 67 were acquitted by reason of insanity. This represented 13 percent of the persons tried. However, the committee has been informed that there has been a sharp reversal of this trend in fiscal year 1964, and the reason for it stems directly from the *McDonald* insanity decision, cited above. The statistics submitted to the committee for 11 months of fiscal year 1964 disclose that 320 defendants were tried in the U.S. district court and that 20 were acquitted by reason of insanity. This represents 6 2 percent of the defendants tried.

The U.S. attorney for the District of Columbia, the Department of Justice, the District of Columbia Council on Law Enforcement, the Commissioners of the District of Columbia, and various other witnesses who testified at the committee hearing, recommended that the courts of the District of Columbia be allowed to gain further experience with the *McDonald* insanity instruction, as it modified the *Durham* rule, without the Congress making any amendments to the insanity test at this time. They viewed the test of criminal responsibility in the *McDonald* case as being very close to that formulated in title II of H.R. 7525 which passed the House, and which test is based upon the American Law Institute model penal code.

The U.S. attorney for the District of Columbia pointed out that in his office's experience since the *McDonald* case, the principles of such decision appear to be workable, sensible, and intelligible to juries. It was also his view that *McDonald* and the insanity test formulated in title II of H.R. 7525, as it passed the House, require that the exoneration from responsibility rests upon impairment of controls by mental disease or defect. In accordance with this, it was also his view that *McDonald* had accomplished the main objective of subsection (a) of title II of H.R. 7525, as it passed the House. Therefore, your committee believes that a legislative pronouncement in this nebulous area of criminal responsibility at this particular time might well add more confusion to a difficult legal field which *Durham*, ad modified by *McDonald*, has presently given substantive guidelines.

Pretrial examination

Title II of the House bill also contains a lengthy procedure relating to pretrial mental examination to determine mental competency for trial, as well as posttrial commitment in a mental hospital where an acquittal results by reason of insanity. The great weight of the testimony of the witnesses who appeared before the committee and testified in connection with this matter, leaned to the conclusion that these procedures are already adequately taken care of in the District Code (24 D.C. Code, sec. 301) and for that reason there is no real need to enact the House provisions contained in H.R. 7525.

It was also pointed out that the Judicial Conference for the District of Columbia Circuit for the past 3 years has been studying the District of Columbia procedures relating to competency to stand trial and posttrial commitment. Since the report on this study will be made available to the Congress sometime in the very near future, it was recommended to the committee that action be delayed until the report, with its views and recommendations, has been completed and is available for study by the Congress.

The committee concluded, therefore, that no change in this area appears desirable or necessary at this time and that any proposed legislative action in this particular matter be held in abeyance.

TITLE III—DETENTION OF MATERIAL WITNESSES

The purpose of section 301 of title III is to amend section 401, the Revised Statutes of the United States, relating to the District of Columbia (4 D.C. Code, sec. 144).

Under the provisions of this title, as it amends existing law, members of the Metropolitan Police force and the Federal law enforcement officers are authorized, without unnecessary delay, to take before a judge, or U.S. commissioner of the District of Columbia, any person whom the officer has reasonable grounds to believe is a material and necessary witness to the commission of a crime punishable by imprisonment for 1 year or more, and when there is a reasonable probability that such person will not be available to testify at the trial of the person charged with the offense.

The existing law on detention of material witnesses (4 D.C. Code, sec. 144) is very sketchy and raises many unanswered questions as to the procedure for securing the appearance of witnesses as well as problems of administration in arranging for their custody. As a result, the provisions of existing law are very rarely used, and are of almost negligible value to the prosecutor or the court. The U.S. attorney for the District of Columbia stated that, since being in office, he can recall only one case in more than 3 years in which the existing statute was invoked, and that was to secure the continuing appearance of a witness who had already appeared initially and was before the court during the progress of a trial.

It was pointed out at the hearings held by the committee on this title that an amended material witness statute would provide a useful, though not complete, protection against numerous continuances of criminal trials (and against a small number of voluntary dismissals) which are necessitated by the failure of essential witnesses to respond to subpenas. Such continuances (and dismissals) involve a costly waste of time and energy on the part of witnesses, judges, and counsel.

If a criminal case in the U.S. district court does not go to trial on the day it is called, all of the witnessses who are subpenaed to attend often must be sent away at a financial cost to the Government of $4 per witness per day, and a still greater cost in the loss of their good will, because of the inconvenience of reappearing later. Moreover, the time of both Government and defense counsel is wasted by such continuances and their work schedules are inconvenienced and dislocated.

This material witness proposal provides that a law enforcement officer in a criminal case may take a witness without unnecessary delay before a judge or U.S. commissioner when he believes the witness to be a material and necessary witness, and a reasonable possibility exists that such witness will not be available to testify at trial. Once before a judge or U.S. commissioner a hearing is required to determine if the witness, in fact, is a material and necessary one, and also whether there is a reasonable opportunity that he will not be available to testify.

If the judicial officer determines that such standards are satisfied, the title then provides that the judicial officer shall require such witness to post bond or collateral as security that he will appear and testify and upon his failure to do so, shall order his further detention until such time as he does appear and testify. In those instances where the witness is financially unable to make bond, and thereby necessarily remains in detention, the court is provided the right on motion of the witness, and upon notice to the parties, to order the taking of a deposition of the witness. After the deposition has been subscribed the court may discharge the witness. This procedure, as it relates to the taking of a deposition, is quite important and desirable for the reason that it tends to avoid the unreasonably long detention of a witness, awaiting trial, and who is without funds to post bond. Where detention of a material witness does occur under the provisions of this title, suitable accommodations will be used separate and apart from quarters used in the confinement of persons charged with crime.

The committee also provided that a witness being brought before the judge or commissioner should be offered a reasonable time and opportunity to obtain counsel for purposes of the hearing.

Also, the committee deemed it advisable for a provision to be added granting the court authority to release a witness after he has been detained for an unreasonable period of time.

The committee at the public hearings on this title of the bill, heard numerous witnesses and, almost without exception, they testified of the need for a material witness statute with adequate guidelines and procedures. Their recommendations in connection with a material witness statute have, for the most part, been incorporated in this title of the bill.

The U.S. attorney for the District of Columbia, the Commissioners of the District of Columbia, and the Department of Justice all voiced approval of the material witness provisions included in this title.

Investigative arrest

The committee rejected section 301 of title III, H.R. 7525, as passed by the other body, on the grounds that a 6-hour investigative or detention arrest, and made without probable cause, would not meet the constitutional test.

Under that section, an officer or member of the Metropolitan Police Department is authorized to detain, for a period of 6 hours, any person found abroad whom such officer has reason to suspect is committing, has committed, or is about to commit a crime, and who, upon inquiry, fails to identify himself or give a satisfactory explanation of his action.

The great majority of witnesses who appeared at hearings were of the opinion that this section would be unconstitutional. These included the Department of Justice, the office of the U.S. attorney for the District of Columbia, the Commissioners of the District of Columbia and the District of Columbia Council on Law Enforcement.

The Department of Justice report to the committee, signed by Deputy Attorney General Nicholas deB. Katzenbach, dated September 13, 1963,[2] stated:

> Section 301 of title III permits an officer or member of the Metropolitan Police Department to detain, for a period of 6 hours, any person found abroad whom such officer has reason to suspect is committing, has committed, or is about to commit a crime, and who, upon inquiry, fails to identify himself or give a satisfactory explanation of his action.
>
> Such detentions are arrests. Legislative statements to the contrary cannot avoid the fact that title III provides for seizure without probable cause. This is a violation of the fourth amendment to the Constitution. Further, title III provides for 6 hours of detention without any provision for the assistance of counsel. This procedure may well be violative of sixth amendment rights. See *In re Groban*, 352 U.S. 330 (1956), and *Anonymous* v. *Baker*, 360 U.S. 287 (1958). In addition, the detention proposed by title III deprives a person of his opportunity to seek bail immediately, keeps him incommunicado, suspends his right of habeas corpus, and tends to impair his privilege against self-incrimination under the fifth amendment. Essentially, section 301 is a legislative effort to reinstitute investigative arrests, a practice long criticized by the bar of the District of Columbia, condemned by a special committee appointed by the District of Columbia Commissioners to study the problem, and ended by order of the Commissioners in March of this year.

The Honorable Sam J. Ervin, senior U.S. Senator from the State of North Carolina and chairman of the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, cited his belief [3] of the provision's unconstitutionality, as:

> Title III of H.R. 7525 accords legislative sanction to the former police practice in the District of Columbia of arresting for investigation; that is, it provides for detention of persons when an officer has "reasonable grounds to suspect" he is committing, has committed, or is about to commit, crime. The second half would add to the law new procedures for the detention of material witnesses.
>
> While I endorse the principle of the provision regarding material witnesses, I cannot, in good conscience, endorse the section relating to investigative arrests.

[2] Senate hearings, p. 11.
[3] Senate hearings, p. 363.

There are constitutional as well as policy considerations that sometimes prevent lawmakers from legislating upon the theory that, in law as well as in geometry, a straight line is the shortest distance between two points.

In the matter of investigative arrests—and I do believe such detention amounts to arrest, regardless of stipulations that it does not—our legislative road toward decreasing the crime rate in the District of Columbia is neither clear nor straight. Rather, it is marked by those constitutional guarantees which the Founding Fathers saw fit to incorporate in the Bill of Rights. The fourth amendment assuring the hard-won guarantee, deeply rooted in Anglo-American experiences, that there will be no seizure of persons without probable cause, the fifth amendment providing for due process of law, with all that has been held to include; the sixth amendment assuring the right to counsel—these are obstacles in the path of Congress which are not to be ignored. Incorporating some of the fundamental principles on which our society rests, these amendments were meant to guide lawmakers in the centuries ahead, and are so basic that they should not be overlooked in our effort to meet the exigencies of the moment.

This measure appears to establish a subjective test for apprehending suspects, a rule of thumb to be interpreted by every policeman patrolling his beat. In effect, by permitting the detention for 6 hours of a suspect when his replies to questions are not satisfactory to a policeman, this bill would, for the convenience of law enforcement officers, postpone that point at which all the procedural guarantees of the Constitution become operative for the individual arrested. As was stated by the Department of Justice report on the bills, this proposal provides "for a seizure of the person without probable cause, in violation of the fourth amendment, and accompanied by the consequences of a conventional arrest."

It would permit "a 6-hour police interrogation of a person suspected of committing a felony, without the assistance of counsel." Such a procedure, in the Justice Department view, "would be violative of the sixth amendment's guarantee that an accused shall have the assistance of counsel for his defense."

The constitutionality of this section, in my view, could not withstand judicial review.

I tend, furthermore, to agree with the opinion expressed by the U.S. attorney for the District of Columbia that enactment of a workable bill dealing with the *Mallory* problem may obviate some of the need police feel for the provisions of title III.

TITLE IV

Section 401 of this title amends existing law (22 D.C. Code, sec. 3201).

During a prior amendment to the District of Columbia Criminal Code, the crime of robbery was inadvertently omitted as a crime of violence. This proposed amendment will rectify this omission and

enumerate robbery as a crime of violence within the meaning of section 3201 of the Criminal Code for the District of Columbia.

TITLE V

Title V of this bill is composed of seven sections, all of which amend existing sections of the District of Columbia Code, with the exception of section 507 which codifies a police regulation. In general, these amendments increase, in cases of crimes of violence, penalties applicable to such crimes. In connection with section 505 relating to indecent publications, there is a change in substantive law and also a provision for the use of civil injunctive powers.

During the past several years there has been intense and growing concern at the number of crimes of violence occurring in the District of Columbia. Among the more numerous and serious of these crimes of violence are the yoke street robberies and housebreakings that occur at night in the sanctity of the home.

The 1963 statistics reveal that among the 16 cities in the same class, the District of Columbia ranked second in robberies and fourth in housebreaking.

Pursuant to the long and conscientious hearings that the Senate District Committee held in connection with crime in the District of Columbia, it was the committee's view that some forceful and affirmative action was needed to combat the rising trend in this serious crime area.

In seeking to resolve the problem, the committee gave careful study and consideration to the various statutes and procedures of the various State governments. In examining such statutes it was determined that many of the States provide for mandatory minimum sentences for crimes of violence, particularly where robbery, burglary, and aggraved assault are concerned. Many States impose minimum sentences of from 5 to 10 years in duration. There are more than 28 States that now impose a sentence in excess of 2 years minimum for the crime of robbery.

Also in lieu of the crime of housebreaking, many of the States have a criminal statute providing for burglary in the first and second degree. Here again, the States provide a minimum sentence for not only first degree burglary but also in some instances for second degree.

After giving careful consideration to the testimony that was adduced at the hearings, and after studying the statutes used by other State governments, the committee decided to amend certain of the existing criminal statutes of the District of Columbia as follows:

Section 501. Assault with intent to kill, rob, rape, or poison

Present law in the District of Columbia (D.C. Code, sec. 22–501) does not provide minimum penalties for a person convicted of an assault with intent to commit violent crimes or to poison another. The amendment to existing law recommended by the committee establishes a minimum sentence of 2 years on conviction.

Section 502. Burglary

Presently the District of Columbia Code (D.C. Code, sec. 22–1801) defines housebreaking as the breaking and entering, or entering without breaking, with the intent to carry away any property or commit

any criminal offense. The penalty provided is imprisonment for not more than 15 years.

The amendment recommended by the committee changes this crime to burglary in two degrees.

Burglary in the first degree is defined as the breaking and entering, or entering without breaking, of any dwelling or room used as a sleeping apartment with the intent to take property or commit a criminal offense. The punishment for such crime shall be not less than 2 years nor more than 20 years.

Burglary in the second degree is defined as the breaking and entering, or entering without breaking, into other premises. The penalty is imprisonment for not less than one nor more than 15 years.

Section 503. Robbery

Present law (D.C. Code, sec. 22–2901) permits a minimum penalty for robbery of 6 months. The amendment approved by the committee provides an increase in the minimum penalty to 2 years.

Section 504. Additional punishment for committing crimes while armed

Additional penalties are provided in present law (D.C. Code sec. 22–3202) when a crime of violence is committed by a person when armed with firearms in the District of Columbia. In addition to the penalty for the crime, additional imprisonment for a term of 5 years may be imposed for a crime of violence committed with firearms on the first conviction. For a second conviction, the additional penalty may be 10 years. For the third conviction, the added punishment may be 15 years. On the fourth or any subsequent convictions, the added punishment may be imprisonment for 30 years. Additional penalties in each case are discretionary with the court.

The amendment to this section approved by the committee adds certain other dangerous or deadly weapons, other than a firearm, for which a person may be given an additional penalty if he commits a crime of violence while armed with any such weapon.

Section 505. Indecent publications

The purpose of section 505 of title V, as amended, is to amend existing law (22 D.C. Code, sec. 2001), relating to indecent publications in the District of Columbia. The amendatory language accomplishes the following:

(1) Makes it a criminal offense for whoever produces or participates in the production of indecent publications and other materials with knowledge that the same is to be sold, exhibited, or given away; and

(2) Provides the U.S. attorney for the District of Columbia with civil injunctive powers to petition the U.S. District Court for the District of Columbia for a preliminary and permanent injunction to restrain the sale, gift, exhibition, distribution, and production of obscene publications and materials.

The existing indecent publication law for the District of Columbia (22 D.C. Code, sec. 2001) was enacted in 1901 and has never been amended. It provides generally that whoever sells, offers to sell or give away, or whoever has in his possession any such obscene publications and materials with intention to do these acts, or advertises the same for sale, or prints any letter, pamphlet of any kind, stating by

what means any of such articles may be obtained, shall be criminally liable.[4]

Subsection (a) of this amendment, without making any substantive change, amends the existing publication law by specifically naming in the statutory definition of indecent publications, such items as magazine, story, paper, writing, card, print, motion picture film, image, case, slide, figure, statue, phonograph record, wire, tape, or other sound recording.

Subsection (b) of this amendment provides for a substantive change in existing law. Under this subsection the indecent publication law will be extended to cover persons who produce indecent publications with knowledge that they will be sold or given away. The committee, in approving this amendment, was of the view that the existing law will be materially strengthened as the result of bringing within the purview of the statute those persons who knowingly and actively engage in the production of obscene materials.

The existing term of imprisonment of not more than 1 year now provided for in the present indecent publications statute, was retained under both subsections (a) and (b). However, the fine attaching to these subsections was increased from an amount of not less than $50 nor more than $500 to an amount of not more than $5,000.

The committee was also of the view that in addition to enlarging the criminal scope of existing law, that there should also be made available to the U.S. attorney certain injunctive procedures to assist his office in controlling the sale and dissemination of obscene matters.

Under existing law, the U.S. attorney is powerless to control the distribution of obscene publications unless his office proceeds with the arrest of the offender on a criminal charge. This creates a problem for the effective law enforcement for the reason that in some instances the question is unclear initially as to whether a publication is obscene. On this point, the U.S. attorney in his testimony before the committee stated:

> * * * the limitation on prosecution is not the absence of effective statutory law, it is the very difficult and changing tests, judicial tests, of what is obscene under the statute. It is that which is the effective limitation on prosecution, rather than the absence of statutory authority.

It is for this reason, the difficulty of knowing for sure what is obscene, that some reluctance has been shown by the prosecuting office to proceed with effective enforcement in all alleged obscenity cases.

In order to correct this weakness and aid the U.S. attorney's office in proceeding against obscene publications, the committee added subsection (c) of this amendment. Under this subsection, civil injunctive procedures are provided to the U.S. attorney which will permit his office to petition the U.S. district court for a preliminary

[4] The text of the indecent publication law is as follows:
§ 22-2001 [6: 174]. Definition and penalty.
Whoever sells, or offers to sell, or give away, in the District, or has in his possession with intent to sell or give away or to exhibit to another, any obscene, lewd, or indecent book, pamphlet, drawing, engraving, picture, photograph, instrument, or article of indecent or immoral use, or advertises the same for sale, or writes or prints any letter, circular, handbill, book, pamphlet, or notice of any kind stating by what means any of such articles may be obtained, or advertises any drug, nostrum, or instrument intended to produce abortion, or gives or participates in, or by bill, poster, or otherwise advertises, any public exhibition, show, performance, or play containing obscene, indecent, or lascivious language, postures, or suggestions, or otherwise offending public decency, shall be fined not less than fifty dollars nor more than five hundred dollars, or imprisoned not more than one year, or both. (Mar. 3, 1901, 31 Stat. 1332, ch. 854, § 872.)

injunction and permanent injunction for the purpose of restraining the sale of and dissemination of obscene publications and materials, and also their production.

During the public hearings in connection with amending the existing indecent publication law, the committee was made cognizant of the various radio and television stations located in the District of Columbia that transmit their programs to the entire metropolitan area. It was brought to the attention of the committee that these stations, in some measure, are already subject to the provisions of the Federal criminal statute contained in 18 U.S.C. 1464. This particular section of the code reads as follows:

> Whoever utters any obscene, indecent, or profane language by means of radio communication shall be fined not more than $10,000 or imprisoned not more than 2 years, or both (June 25, 1948, c. 645, 62 Stat. 769).

The above statute appears to bring clearly within its jurisdiction all instances of obscenity violation by means of radio and television communications. This being the case, the committee was reluctant to impose a criminal sanction where one already exists. Accordingly, with a view to alleviating any dual criminal responsibility in connection with radio and television stations and other activities regulated by the Federal Communications Commission, the committee added subsection (f) of this amendment which provides that the section relating to indecent publications shall not apply to a licensee under the Communications Act of 1934 while engaged in activities regulated pursuant to such act.

H.R. 4670—An indecent-publication bill approved by both Houses in the 87th Congress

During the 2d session of the 87th Congress, an obscene-publication bill, H.R. 4670, passed the Congress but was subsequently vetoed by the President. The essential reason for the veto was the broad authority extended to law-enforcement officers to seize all types of personal property that might be used in violation of the statute. The indecent-publication section of this bill, as reported by this committee, does not contain this objectionable authority with regard to seizures of property.

In this connection, subsection (d) of this amendment makes it clear that the seizure of property shall be limited to obscene, lewd, and indecent matters and not extend to personal property of a nonobscene nature. In providing for this limited-seizure authority, this committee rejected the broader language of H.R. 7525, as it passed the House, which would have provided for the seizure and subsequent forfeiture of printing presses and other production equipment which might be used only insubstantially in the production of obscene publications. It was the view of this committee in making this amendment to the House bill that such broad seizure authority might well violate the provisions of the first amendment to the Constitution.

Section 506—Placing explosives with intent to destroy or injure property

Present law in the District of Columbia (22 District of Columbia Code 3105) relates to the use of explosives with an intent to destroy or damage property. The penalties under existing law provide for a fine not exceeding $1,000 or imprisonment not exceeding 10 years.

The amendment to existing law recommended by the committee establishes a minimum sentence of 3 years on conviction.

Section 507—False and fictitious reports to the Metropolitan Police Department

The purpose of this new section is to codify the provisions in the regulations of the Metropolitan Police Department relating to the offense of making, or causing to be made, false or fictitious reports regarding criminal offenses or other matters within the purview of the Metropolitan Police Department, with knowledge that such report is false or fictitious. The penalties provided are a fine not exceeding $300 or imprisonment not exceeding 30 days.

Already in the District of Columbia Code is a provision similar to this section that makes it a criminal offense to make a false report to the District of Columbia Fire Department.

TITLE VI

Provides the provision of law in effect at the time of the commission of an offense shall remain in full force and effect with respect to any person who, prior to the date of the enactment of this act, committed any act or engaged in any conduct which constituted an offense under a provision of law amended by this act.

Section-by-Section Analysis

TITLE I

Section 101 is a brief restatement of existing law with respect to the admissibility of voluntary confessions and statements made by an accused.

Section 102 restates existing law and excludes statements made by an accused after a period of unnecessary delay and prior to an appearance before a U.S. commissioner.

Section 103 provides that under section 102 of this title, delay alone shall not cause the exclusion of any statement obtained by interrogation of the accused, if (1) the accused was warned that he need not make a statement and was told that any statement made could be used against him; and (2) the accused was told of his right to notify a relative or friend and consult with any attorney and he, in fact, was given an opportunity to contact a relative or friend and talk with a lawyer of his choice; and (3) the statement was completed within not more than 6 hours after his arrest; and (4) all of these warnings whenever reasonably possible and any questioning of the accused were witnessed by a third party or transcribed or recorded verbatim.

Section 104 requires the trial judge who admits any statement in evidence pursuant to section 103 of this title to make findings of fact concerning the existence of the conditions set out in section 103.

Section 105 authorizes and directs the Commissioners of the District of Columbia to promulgate regulations including necessary disciplinary measures to assure that police officers comply with requirements of law set out in this title and with the regulations made pursuant to it.

TITLE II

Section 201 of the bill amends section 24–301 of the District of Columbia Code relating to insane criminals by adding a new subsection (i). This subsection provides that insanity shall not be a

defense in any criminal proceeding in the U.S. District Court or District of Columbia court of general sessions, unless the accused or his attorney in such proceeding files with the court and serves upon the prosecuting attorney, written notice of his intention to rely on such defense.

The notice is required to be filed at the time of entering a plea of not guilty, or within 15 days thereafter, or at such time thereafter as the court may for good cause permit.

TITLE III

Section 301 amends section 4–144 of the District of Columbia Code relating to detention of material witnesses.

The section provides that members of the Metropolitan Police Force and the Federal law enforcement officers are authorized, without unnecessary delay, to take before a judge, or U.S. commissioner of the District of Columbia, any person whom the officer has reasonable grounds to believe is a material and necessary witness to the commission of a crime punishable by imprisonment for 1 year or more, and when there is a reasonable probability that such person will not be available to testify at the trial of the person charged with the offense.

Immediately upon being taken before a judge or commissioner, such person shall be advised of his constitutional rights and shall be allowed reasonable opportunity to consult counsel. After a hearing is afforded, and pursuant thereto, a person is determined to be a material and necessary witness, such person will be required to post bond or collateral as security that he will appear and testify at such trial. Upon his failure to post bond or collateral, the judge or commissioner may order his further detention in suitable quarters that are separate and apart from those used for the confinement of persons charged with crime. Under the section, the judge or commissioner retains authority to release any person detained for an unreasonable period of time whether or not he has discharged his duties as a material witness.

Also the section affords the prosecution the same right with respect to the taking of a deposition of a material witness as is afforded to the defendant. In those instances of where a person, through financial inability, cannot post bond or collateral, the court may discharge such person where the deposition of the person has been taken.

TITLE IV

Section 401 of this title amends section 22–3201 of the District of Columbia Code which defines crimes of violence. This section adds the crime of robbery to the above-mentioned section of the District of Columbia Code.

TITLE V

Section 501

Section 501 of this title amends District of Columbia Code, section 22–501, to provide a minimum sentence of not less than 2 years for assault with intent to commit crimes of violence.

Section 502

Section 502 of this title amends the District of Columbia Code, section 22–1801, which defines and provides penalties for the crime of

housebreaking. This section establishes or defines the crime of burglary, in two degrees, and the punishment to be applied.

Subsection (a) of this amendment defines burglary in the first degree as a breaking and entering, or entering without breaking, any actually occupied dwelling or room used as a sleeping apartment in any building with the intent to take property or commit any criminal offense. Burglary in the first degree shall be punished by imprisonment for not less than 2 years nor more than 20 years.

Burglary in the second degree is defined in subsection (b) as breaking and entering or entering without breaking into other enumerated premises with the intent to take property or commit any other crime. The penalty for burglary in the second degree shall be imprisonment for not less than 1 year nor more than 15 years.

Section 503

Section 503 of this title amends the provisions of District of Columbia Code, section 22-2901, by increasing the minimum penalty for crimes of robbery from a minimum of 6 months to a minimum of 2 years.

Section 504

Section 504 of this title amends District of Columbia Code, section 22-3202.

Under existing law, permissive additional penalties are provided for where an accused is armed with a firearm when committing a crime of violence. Thus a person armed when committing a crime of violence would be subject on conviction, to an additional sentence for a term of not more than 5 years; for second convictions an additional sentence of not more than 10 years; for a third conviction an additional sentence of not more than 15 years; and for a fourth and subsequent conviction an additional sentence of not more than 30 years.

The amendment to this section adds certain other dangerous or deadly weapons, other than a firearm, for which a person may be given an additional penalty if he commits a crime of violence while armed with any such weapon.

Section 505

Section 505 of this title amends District of Columbia Code, section 22-2001, relating to indecent materials.

Subsection (a) of the amendment provides that whoever sells, offers to sell, or gives away or has possession with intent to sell, give away, or exhibit indecent materials, or who advertises such materials or drugs or instruments intended to produce abortion or gives or participates in or advertises any indecent public exhibition, shall be fined not more than $5,000 or imprisoned not more than 1 year, or both.

Subsection (b) of this amendment provides that whoever with knowledge engages in the production of obscene materials which are to be disseminated shall be fined not more than $5,000, or imprisoned not more than 1 year, or both.

Subsection (c) of this amendment provides that the U.S. attorney for the District of Columbia may petition the U.S. district court for a preliminary injunction and a permanent injunction to restrain the sale, dissemination, distribution, and production of obscene matter prohibited in this section. A hearing will be provided prior to the issuance of any preliminary injunction which will remain in effect for no more than 30 days.

Subsection (d) of this amendment provides that after trial of the issues the court may issue a permanent injunction and that such injunction shall include a provision for the immediate seizure and impounding of the obscene matter. There is provision for final disposition of such obscene matter in such way as the court may determine. However, in no event shall the matter be destroyed until after finality of appeal.

Subsection (e) provides that proceedings shall be governed by Federal Rules of Civil Procedure, except as they may be inconsistent with the provisions of this section.

Subsection (f) provides an exemption to the provisions of section 505 to those licensed under the provisions of the Federal Communications Act while engaged in activities regulated pursuant to such act.

Section 506

This section of title V amends District of Columbia Code, section 22–3105, which provides penalties for the use of explosives with intent to destroy or damage property. The amendment to this section provides a minimum sentence of not less than 3 years and leaves the existing maximum sentence at 10 years.

Section 507

This section of title V adds a new section to the District of Columbia Code relating to the making of false or fictitious reports to the police department. This section codifies the substance of existing regulations of the Metropolitan Police Department relating to such offenses and provides that the penalty shall be a fine not exceeding $300 or imprisonment not exceeding 30 days.

TITLE VI

The purpose of this title is to make clear that the bill has no retroactive effect.

Offenses committed prior to its enactment are not intended to be affected in any way by any amendment to existing law made by the bill.

MINORITY VIEWS OF SENATORS WAYNE MORSE AND VANCE HARTKE

We dissent from the majority report recommending passage of H.R. 7525. The reason for this dissent is the inclusion in that bill of title I, section 103 of which permits under certain defined circumstances the interrogation of a defendant during the 6-hour period immediately following his arrest. If title I of H.R. 7525 were eliminated from the bill, we would have no objection to the passage of H.R. 7525. However, as long as title I remains in the bill, we will oppose its passage and will urge the Senate to reject the bill.

THE MALLORY RULE

The purpose of title I of the bill is to destroy the application of the *Mallory* rule [1] to the District of Columbia. Rule 5(a) of the Federal Rules of Criminal Procedure requires that an arrested person must be brought before a committing magistrate "without unnecessary delay." The *Mallory* rule simply provides that no statement obtained during a period of unlawful detention in violation of rule 5 shall be admissible in a Federal court. In short, the *Mallory* rule tells the police that they, like all citizens in a free society, must obey the law, and that if they break the law, they shall not profit from their wrongdoing because unlawfully obtained evidence may not be admitted against the defendant.

The *Mallory* rule does not exclude a spontaneous confession after arrest; it excludes only those statements obtained as a result of an "unnecessary delay." The Supreme Court made this much clear in the *Mallory* decision:

> The duty enjoined upon arresting officers to arraign without unnecessary delay [2] indicates that the command does not call for mechanical or automatic obedience. Circumstances may justify a brief delay between arrest and arraignment, as for instance, where the story volunteered by the accused is susceptible of quick verification through third parties. But the delay must not be of a nature to give opportunity for the extraction of a confession.

What constitutes "unnecessary delay" has been the subject of numerous opinions in the District of Columbia [3] and the other Federal

---

[1] *Mallory* v. *United States*, 354 U.S. 449 (1957).

[2] See *Watson* v. *United States*, 249 F. 2d 106 (D.C. Cir., 1957); *Trilling* v. *United States*, 260 F. 2d 677 (D.C. Cir., 1958); *Naples* v. *United States*, 307 F. 2d 618 (D.C. Cir., 1962); *Jones* v. *United States*, 307 F. 2d 397 (D.C. Cir., 1962); *Tatum* v. *United States*, 313 F. 2d 579 (D.C. Cir., 1962); *Coleman* v. *United States*, 313 F. 2d 576 (D.C. Cir., 1962); *Metoyer* v. *United States*, 250 F. 2d 30 (D.C. Cir., 1957); *Perry* v. *United States*, 253 F. 2d 337 (D.C. Cir., 1957); *Porter* v. *United States*, 258 F. 2d 685 (D.C. Cir., 1958); *Heideman* v. *United States*, 259 F. 2d 943 (D.C. Cir., 1958); *Lockley* v. *United States*, 270 F. 2d 915 (D.C. Cir., 1959); *Goldsmith* v. *United States*, 277 F. 2d 335 (D.C. Cir., 1959); *Day* v. *United States*, 281 F. 2d 33 (D.C. Cir., 1960); *Turberville* v. *United States*, 303 F. 2d 411 (D.C. Cir., 1962); *Hughes* v. *United States*, 306 F. 2d 287 (D.C. Cir., 1962); *Jackson* v. *United States*, 313 F. 2d 573 (D.C. Cir., 1962); *Muschette* v. *United States*, 322 F. 2d 989 (D.C. Cir., 1963); *Pailly* v. *United States*, 328 F. 2d 542 (D.C. Cir., 1964); *Spriggs* v. *United States*, No. 17962, decided June 19, 1964; *Seals* v. *United States*, 325 F. 2d 1006 (D.C. Cir., 1963).

[3] See *United States* v. *Ladson*, 294 F. 2d 535 (2d. Cir., 1961); *United States* v. *Vita*, 294 F. 2d 524 (2d. Cir., 1961); *Holt* v. *United States*, 280 F. 2d 273 (8th Cir., 1960); *Tegner* v. *United States*, 302 F. 2d 214 (8th Cir., 1962); *Evans* v. *United States*, 325 F. 2d 596 (8th Cir., 1963); *Williams* v. *United States*, 273 F. 2d 781 (9th Cir., 1959); *Inoza* v. *United States*, 279 F. 2d 616 (9th Cir., 1960); *Muldrow* v. *United States*, 281 F. 2d 903 (9th Cir., 1960).

circuits. The opinions have not always been harmonious. It is clear, however, that differences of opinion on the question among learned judges are not confined to the judges of the District of Columbia.

The purpose of rule 5 and the *Mallory* rule are several:

(1) To prevent conflicts over the nature of secret interrogations and to minimize the temptation and opportunity to obtain confessions as a result of coercion, threats, or unlawful inducements;

(2) To effectuate and implement the citizen's constitutional rights by insuring that a person arrested is informed by a judicial officer of his privilege against self-incrimination, his right to counsel, and his right to be admitted to bail and given an opportunity to exercise these rights;

(3) To protect the citizen from a deprivation of liberty as a result of an unlawful arrest by requiring that the Government establish probable cause to the satisfaction of a judicial officer before a citizen can be detained by the police.

We are at a loss to understand why this rule excites so much criticism. We agree with the Department of Justice when it says that "the *Mallory* rule is a good one." And we believe that if the rule is a "good one" for this Nation, then it is a "good one" for its Capital City.

WHY THE MALLORY RULE SHOULD NOT BE CHANGED

Title I of H.R. 7525 would destroy the vitality of rule 5 and the *Mallory* rule in the District of Columbia. Citizens of the District of Columbia would be deprived of substantial rights guaranteed to other citizens throughout the Federal system. The objectives of rule 5 and the *Mallory* rule would be discarded in favor of a procedure designed to permit the police to extract confessions from citizens who waive important constitutional rights through ignorance or failure to appreciate the significance of these rights.

Our reasons for opposing title I of H.R. 7525 can be summarized as follows:

(1) The postponement of the presentation of a defendant to a magistrate for any period of time for the sole purpose of interrogating that defendant is an unconstitutional erosion of several of the rights guaranteed to an accused by the fourth, fifth, sixth, and eighth amendments to the Constitution of the United States.

(2) The clear purpose of title I is the circumvention and subversion of the defendant's constitutional right not to be convicted out of his own mouth.

(3) The philosophy of title I is foreign to our accusatorial system of criminal justice.

(4) Congressional action with respect to the *Mallory* rule is not appropriate at this time because important studies of the rule are still in progress, and because the attitude of law-enforcement officials toward the rule has not yet crystallized, but rather is in the process of evolution.

(5) As title I is now drafted, it will not even achieve the purpose its sponsors have in mind.

(6) Section 103 of title I, as it is presently worded, raises serious problems of interpretation, is bound to provoke a heavy volume of litigation, and erects safeguards meaningful only to the wealthy.

(7) Since the bill allows a 6-hour delay between arrest and arraignment, it is bound to become in practice a device for arresting any person for investigation and interrogation for 6 hours.

THE 6-HOUR RULE

By title I of H.R. 7525, as approved by the majority of this committee, the Congress is requested to legislate into existence a 6-hour interval between the arrest of any individual in the District of Columbia, and his presentment before the U.S. commissioner or one of the judges of the District of Columbia court of general sessions. The Congress is asked to do this by a statute defining the words "unnecessary delay" in rule 5(a) of the Federal Rules of Criminal Procedure to exclude the 6-hour interval after an accused is arrested. In order to evaluate both the constitutionality and the desirability of isolating an arrested person from a representative of the judiciary branch of the Government for a 6-hour period, it is essential for the Senate to understand fully the procedure that occurs when an accused is presented to the magistrate. For all must agree that one who is asked to postpone a procedure for 6 hours should at least know what it is that he is postponing.

The procedure that occurs before the magistrate is spelled out in rule 5(b) of the Federal Rules of Criminal Procedure:

> The commissioner shall inform the defendant of the complaint against him, of his right to retain counsel, and of his right to have a preliminary examination. He shall also inform the defendant that he is not required to make a statement and that any statement made by him may be used against him. The commissioner shall allow the defendant reasonable time and opportunity to consult counsel and shall admit the defendant to bail as provided in these rules.

Rule 5(b) should be read in conjunction with the following provisions from the Bill of Rights:

> The right of the people to be secure in their persons * * * against unreasonable * * * seizures shall not be violated, and no Warrants shall issue, but upon probable cause * * * (fourth amendment).
>
> No person * * * shall be compelled in any criminal case to be a witness against himself * * * (fifth amendment).
>
> In all criminal prosecutions, the accused shall enjoy the right * * * to be informed of the nature and cause of the accusation * * * (sixth amendment).
>
> Excessive bail shall not be required * * * (eighth amendment).

CONSTITUTIONAL ISSUES

Can any person read rule 5(b) and these provisions of the Bill of Rights (with the interpretation put upon them by over 170 years of judicial decisions), and yet say that there are no constitutional implications to title I of this bill? Can any person read rule 5(b) and the fourth, fifth, sixth, and eighth amendments, and reach any conclusion other than that the proceeding before the magistrate is the method for activating these provisions of the Bill of Rights for use in each particular criminal case? Can any person read rule 5(b) together with

those amendments and not conclude that by title I of this bill the Congress is asked to hold those constitutional rights in a state of suspended animation for the first 6 hours after a person is arrested? And, if the Congress has the power to suspend the application of these rights to the individual defendant for 6 hours, can anyone explain why it would not also have the power to suspend the application of those rights for 12 hours, or 24 hours, or a week, or a month?

If any Senator were bold enough to introduce a bill to the effect that an accused person shall have no right to be free on bail during the first 6 hours after his arrest, the vast majority of the Senate would immediately recognize it as an unconstitutional narrowing of the right to bail conferred by the eighth amendment. Yet, is this not exactly what we are asked to do by title I of this bill?

Suppose the Senate were asked to enact a statute to the effect that until a defendant has been in custody for at least 6 hours, there shall be no judicial inquiry into the question of whether there was probable cause to arrest him at all. Does any Senator seriously doubt that such a statute would quickly and correctly be branded unconstitutional by the U.S. Supreme Court? Yet this is precisely what the Senate is asked to do through the provisions of title I of this bill.

Suppose the Senate were asked to pass a bill to the effect that unless a defendant is able on short notice and while in police custody to contact a criminal lawyer and unless he has enough funds to retain that lawyer, the accused shall have no right to an attorney and no right to his freedom to seek an attorney until at least 6 hours have passed after his arrest. Can any person read the recent decisions of the U.S. Supreme Court and conclude that such a statute would be constitutional? Yet, by indirection, we are asked to enact the substance of such a plainly unconstitutional provision when we are asked to enact into law title I of this bill.

INQUISITION IS FOREIGN TO OUR SYSTEM OF JUSTICE

Even if one can force himself for the moment to overlook the formidable constitutional problems that are presented by title I of H.R. 7525, it is plain that legislation of this sort runs against the grain of the Anglo-American system of administering criminal justice. This legislation would inject into our accusatorial system of criminal law enforcement the seeds of the inquisitorial system. This legislation could signal the beginning of the end of the privilege against self-incrimination, which in many ways is the hallmark of our systems of criminal justice. We do not wish to burden this minority report with lengthy quotations, but the following observations by Justice Felix Frankfurter, the author of the McNabb-Mallory rule, are so pertinent to the issue presented by title I that we do believe they justify quotation here.

> To turn the detention of an accused into a process of wrenching from him evidence which could not be extorted in open court with all its safeguards, is so grave an abuse of the power of arrest as to offend the procedural standards of due process.
>
> This is so because it violates the underlying principle in our enforcement of criminal law. Ours is the accusatorial as opposed to the inquisitorial system. Such has been the

> characteristic of Anglo-American criminal justice since it freed itself from practices borrowed by the star chamber from the continent whereby an accused was interrogated in secret for hours on end. [Citation omitted.] Under our system society carries the burden of proving its charge against the accused not out of his own mouth. It must establish its case, not by interrogation of the accused even under judicial safeguards, but by evidence independently secured through skillful investigation. * * * The requirement of specific charges, their proof beyond a reasonable doubt, the protection of the accused from confessions extorted through whatever form of police pressures, *the right to a prompt hearing before a magistrate*, the right to assistance of counsel, to be supplied by Government when circumstances make it necessary, *the duty to advise an accused of his constitutional rights*—these are all characteristics of the accusatorial system and manifestations of its demands. Protracted, systematic, and uncontrolled subjection of an accused to interrogation by the police for the purpose of eliciting disclosures or confessions is subversive of the accusatorial system. It is the inquisitorial system without its safeguards. For a while under that system the accused is subjected to judicial interrogation, he is protected by the disinterestedness of the judge in the presence of counsel (*Watts* v. *Indiana*, 338 U.S. 49 (1949)). [Emphasis added.]

No one who testified during the hearings on this bill did, or could, contest the proposition that one who is arrested has an absolute constitutional right to refuse to make any statement whatsoever to the police. Since this is so, it is difficult to see the justification for a statute which would have the effect of delaying his right to go free on bail for any period of time, be it 1 hour or 6 hours, so that the police can ask him questions which he has a constitutional right not to answer. Moreover, although in some respects a period of 6 hours can seem a relatively short space of time, 6 hours or even 1 hour, of questioning of any sort is certainly an unpleasant experience and one which most people would find an ordeal.

PROPOSED MODIFICATIONS OF MALLORY RULE ERODE PROCEDURAL RIGHTS OF ACCUSED

Even if we assume that the time is propitious for tampering with the judicially determined meaning of rule 5(a); and even if we believe that such tampering is permissible under the Constitution and desirable in view of the special problems that are alleged to exist with respect to law enforcement in the District of Columbia, we are still brought to the question of whether title I is a good way to go about the matter. Certainly, no one could have any objection to section 101 of title I, other than that it is surplusage, since the due process clause of the Constitution would prohibit the use of a confession obtained under the circumstances described in section 101. We would have no quarrel with section 102 of title I, for it simply is a legislative enactment of the rule announced by the Supreme Court in *McNabb* v. *United States* (318 U.S. 332 (1943)).

It is against section 103 of title I that the thrust of our objections is directed. Paragraph (1) of that section requires that any inter-

rogation be preceded by advice from the police to the defendant that he is not required to make any statement and that any statement made by him may be used against him. This provision is an open invitation to litigation. What do the words "plainly advise" mean?

Moreover, how are we to be certain that this plain advice was given in situations where the defendant denies it and the police officers affirm it? It is difficult to overlook a natural tendency of trial judges to accept the word of an officer rather than the word of a defendant. In any event, this section is bound to raise the contention in many criminal trials in the District of Columbia that such plain advice was not given to the accused in fact.

In addition, there is indication that this advice to the defendant is an overrated safeguard. How many defendants really understand the significance of what they are told? Since so many give statements after receiving this advice from the police, and since it is obviously not in their interest to do so, we are justified in concluding that most defendants do not fully appreciate and comprehend what they are told. Indeed, the U.S. attorney for the District of Columbia, David Acheson, who is the author of title I, virtually acknowledged this. When Senator Dominick asked whether defendants would not simply postpone any confession for 6 hours, he replied:

> Senator, I think that is attributing a degree of sophistication to even a hardened criminal that very few of them seem to possess. At the present time for all practical purposes if he can hold out for 2 hours or 2½ hours, he is pretty well in the clear, but very few of them do (hearings, p. 443).

When a defendant gives any statement to the police, he is, ipso facto, waiving his constitutional right to remain silent. The waiver of such a vital constitutional right should always be preceded by legal advice as to the wisdom of doing so. This brings us logically to section 103(2) of title I, which is obviously contrived to meet these objections.

Section 103(2), which provides that a defendant shall be afforded a reasonable opportunity to notify a friend or relative and to consult with counsel of his own choosing, creates the illusion of fairness, but as a practical matter this safeguard will evaporate in the police station. First of all, how does the defendant select counsel with whom to consult? The classified pages of the telephone directory contain a formidable list of attorneys with no indication of their specialty. One can just imagine the kind of "consulting" which would go on if a patent attorney were roused from his sleep at 4:30 a.m. on a Sunday morning by an unknown defendant arrested on a charge of robbery.

Mr. Acheson all but conceded that this safeguard was an empty one:

> Usually, Senator, these people don't know a lawyer. * * * They are offered the telephone. I think a classic situation here is the famous defendant Killough in a murder case, who was offered the telephone. He did not make use of it. He didn't know a lawyer to call * * *. The police with some reason, feel that it would be quite improper for them to select counsel for defendants, and I believe that the Legal Aid Agency at the present time is not authorized to accept the call of the police to represent defendants in the custody of the police (hearings, p. 444).

Moreover, an attorney, asked to render such time-consuming service on such short notice and in what is essentially an emergency situation, has a right to demand a fee for his services. Since approximately two-thirds of the defendants who are tried on felony charges in the U.S. District Court for the District of Columbia are represented by court-appointed counsel, it follows a fortiori that an even larger percentage of those arrested will be indigent and couldn't offer a lawyer any guarantee of a fee for his earned services.

Concededly, section 103(2) could be very meaningful for the habitual criminal, for the rich defendant, for the gangster, and for the member of an organized crime syndicate. However, for those who are indigent, for those who are charged with their first offense, for those who are not linked with organized crime, it is a practically worthless provision.

The Justice Department appreciates that the interrogation would be unconstitutional unless preceded by the opportunity to obtain counsel (hearings, p. 433).

Nevertheless, the bill contains no provision for appointment of counsel for the indigent. The Legal Aid Agency Act (D.C. Code 2-2201) June 27, 1960, 74 Stat. 220, Public Law 86-531) does not authorize staff attorneys of the Legal Aid Agency to appear in criminal cases before preliminary hearing. Neither the proposed changes in the Federal Rules of Criminal Procedure (rule 44(b), second preliminary draft (1964)) nor the Criminal Justice Act of 1964 (S. 1057) provide for the appointment of counsel before the preliminary hearing.

In *Massiah* v. *United States*, No. 199, October term, 1963, decided May 19, 1964, the Supreme Court held that a statement obtained from an indicted defendant at a time when the defendant was not represented by counsel violated the sixth amendment and was inadmissible. The Court observed that—

> A Constitution which guarantees a defendant the aid of counsel at * * * trial could surely vouchsafe no less to an indicted defendant under interrogation by the police in a completely extrajudicial proceeding. Anything less * * * might deny a defendant effective representation by counsel at the only stage when legal aid and advice would help him.

On June 22, 1964, the Supreme Court in *Escobedo* v. *Illinois*, No. 615, October term, 1963, held that the failure of the police to warn a defendant taken into custody of his right to remain silent and the refusal by the police to permit the defendant to consult his counsel upon request constituted a violation of the 6th and 14th amendments and rendered statements elicited from the defendant inadmissible in a criminal proceeding. In his dissenting opinion in the *Escobedo* case, Justice White pointed out the broad effect of the decision:

> * * * Although the opinion purports to be limited to the facts of this case it would be naive to think that the new constitutional right announced will depend upon whether the accused has retained his own counsel * * * or has asked to consult with counsel in the course of interrogation.

It seems clear that Mr. Justice White is correct in foreseeing that the Supreme Court will not tolerate a system which permits the rich defendant to consult with counsel while providing no counsel to advise the majority of defendants who cannot afford legal assistance. In a

series of decisions, the Court has reiterated the theme that equal justice under law means that no defendant may be deprived of an important procedural right because of poverty. *Griffin* v. *Illinois*, 351 U.S. 12, 17–18 (1956); *Smith* v. *Bennett*, 365 U.S. 708 (1961); *Coppedge* v. *United States*, 369 U.S. 438, 446–447 (1962); *Gideon* v. *Wainwright*, 372 U.S. 335 (1963); *Douglas* v. *California*, 372 U.S. 353 (1963); *Lane* v. *Brown*, 372 U.S. 477, 483–84 (1963); *Hardy* v. *United States*, 375 U.S. 277, 280 (1964).

The provisions of the bill must be regarded as unconstitutional if they are interpreted in such a way as to deny counsel to an indigent during the police interrogation.

There remains the possibility that the bill could be interpreted in such a way as to require the appointment of counsel for an indigent, upon the theory that a defendant has not "in fact" been afforded the opportunity to consult with counsel if he is unaware of his right to have counsel appointed for him, or if no provision exists for the appointment of counsel. If such is the intention of the Senate, the provision should be rewritten to conform with the language of proposed rule 5(b) (second preliminary draft, proposed revision of Federal Rules of Criminal Procedure) and should expressly state that—

> (b) prior to any such questioning the arrested person was advised by the officers having custody of him that he would be afforded reasonable opportunity * * * to consult counsel of his choosing and of his right to request the assignment of counsel if he is unable to obtain counsel.

The bill should also contain a section providing that counsel may be provided for the indigent by the Legal Aid Agency for the District of Columbia. Anything less will render the bill unconstitutional in its application to indigent defendants.

Finally, if section 103(2) should happen to function as it should in the ideal situation, the whole purpose of title I, namely, to allow interrogation of a defendant during the 6-hour period after his arrest, would be frustrated, for no attorney who has any competence in the criminal law is going to advise a defendant who is under arrest to make a statement to the police, and especially not during the 6 hours after his arrest, when, presumably, the attorney could not possibly have had enough time to make an intelligent investigation of the facts surrounding the police charges. Any competent lawyer would advise his client to remain silent until the lawyer has investigated the case and a committing magistrate has had an opportunity to pass judicially on the question of probable cause justifying the arrest by the police in the first instance.

That there is force in this observation concerning section 103(2) is borne out by the fact that two persons testifying before the committee with quite different viewpoints on the question of interrogation of arrested individuals raised similar objections. Chief Robert V. Murray, of the Metropolitan Police Department, who favored legislation nullifying the *Mallory* rule, and Dean Kenneth A. Pye, of Georgetown University Law Center, who opposed such legislation, each agreed that the practical problems created by section 103(2) would

be so great as to render the statute more trouble than it was worth. (See hearings, pps. 578–580; 555–558.) Dean Pye testified:

> That bill results in no interrogation, either. If you give him the right to counsel and if you give him counsel, then counsel is going to tell him that he does not have to have interrogation. So while I have no objection to that proposal, I do not think you will accomplish his (Mr. Acheson's) objective (hearings, p. 394).

Chief Murray took substantially the same position, although for altogether different reasons:

> As I have testified to your committee, the current policy and practice of this Department is to permit an arrested person to communicate with an attorney upon his request, and I would not oppose writing this policy and practice into the law. On the other hand, I believe that the additional requirement that the police specifically advise an arrested person of this opportunity must certainly incur a new handicap on police investigations. I believe that the testimony of witnesses before your committee has been unanimous that any attorney will immediately advise his client to make no statement whatever to the police, and to require the police to actively solicit this probability would operate to effectively preclude any in-custody questioning of the defendant (hearings, pp. 578–579).

The proponents of title I have argued that the necessities of law enforcement require that the police be able to interrogate suspects in order to elicit damaging statements from them. However persuasive such an argment may be, it is not longer permissible. The desirability of obtaining incriminatory admissions from uninformed or unappreciative defendants is no longer debatable. The practice has been prohibited by the Supreme Court. The Court specifically dealt with the issue in the *Escobedo* case:

> It is argued that if the right to counsel is afforded prior to indictment, the number of confessions obtained by the police will diminish significantly because most confessions are obtained during the period between arrest and indictment, and and "any lawyer worth his salt will tell the suspect in no uncertain terms to make no statement to police under any circumstances" (*Watts* v. *Indiana*, 338 U.S. 49, 59 (Jackson, J., concurring in part and dissenting in part)). This argument, of course, cuts two ways. The fact that many confessions are obtained during this period points up its critical nature as a "stage when legal aid and advice" are surely needed (*Massiah* v. *United States*, *supra*, at —; *Hamilton* v. *Alabama*, *supra*; *White* ——— v. *Maryland*, *supra*. The right to counsel would indeed be hollow if it began at a period when few confessions were obtained. There is necessarily a direct relationship between the importance of a stage to the police in their quest for a confession and the criticalness of that stage to the accused in his need for legal advice. Our Constitution, unlike some others strikes the balance in favor of the right of the accused to be advised by his lawyer of his privilege against self-incrimination.

We have learned the lesson of history, ancient and modern, that a system of criminal law enforcement which comes to depend on the confession will in the long run be less reliable and more subject to abuses than a system which depends on extrinsic evidence independently secured through skillful investigation. As Dean Wigmore so wisely said:

"(*A*)*ny system of administration which permits the prosecution to trust habitually to compulsory self-disclosure as a source of proof must itself suffer morally thereby.* The inclination develops to rely mainly upon such evidence and to be satisfied with an incomplete investigation of the other sources. The exercise of the power to extract answers begets a forgetfulness of the just limitations of that power. The simple and peaceful process of questioning breeds a readiness to resort to bullying and to physical force and torture. If there is a right to an answer, there soon seems to be a right to the expected answer—that is, to a confession of guilt. Thus the legitimate use grows into the unjust abuse: ultimately, the innocent are jeopardized by the encroachments of a bad system. Such seems to have been the course of experience in those legal systems where the privilege was not recognized," (8 Wigmore, Evidence (third edition, 1940) 309). [Emphasis in original.]

This Court also has recognized that "history amply shows that confessions have often been extorted to save law enforcement officials the trouble and effort of obtaining valid and independent evidence * * *" (*Haynes* v. *Washington*, 373 U.S. 503, 519).

We have also learned the companion lesson of history that no system of criminal justice can, or should, survive if it comes to depend for its continued effectiveness on the citizens' abdication through unawareness of their constitutional rights. No system worth preserving should have to fear that if an accused is permitted to consult with a lawyer, he will become aware of, and exercise, these rights. If the exercise of constitutional rights will thwart the effectiveness of a system of law enforcement then there is something very wrong with that system.

In the *Escobedo* case the right to remain silent has been reinforced by the right to counsel. The inquisitorial system prior to indictment has been rejected. This is a matter of constitutional law. It is beyond the power of Congress to change. We do not see how a Senator can read the *Escobedo* decision and still support title I of the bill.

The sum and substance of this is that this committee has recommended to the Senate that it enact into law section 103 of title I on the basis of a record before the committee which demonstrated that if section 103(2) is effective, the legislation would be useless, and if section 103(2) is ineffective, the legislation would be unconstitutional. The action of the majority of the committee just does not make sense.

Section 103(3) purports to create for the first time in the Federal system a right of interrogation for 6 hours. We believe that in practice this will be considered by the police as a license to resurrect the investigative arrest provided the person so arrested is released at the

end of 6 hours. We must remember that the clearly unconstitutional practice of making an arrest on suspicion or for investigation grew up in the District of Columbia despite a clear constitutional provision that all arrests must be based upon probable cause; despite a rule of procedure which required that all arrested persons must be immediately presented before a magistrate; despite the absence of any statutory authorization for the interrogation of the arrested person. Now if the arrest for investigation could flourish despite such a constitutional, procedural, and statutory climate there is every reason to believe that it will reappear if the Senate authorizes 6 hours of interrogation of all arrested persons.

It is significant that the bill provides no protection against unlawful arrests. What will prevent the police from arresting a defendant for investigation, interrogating him until a damaging statement is obtained, and then using the statement to establish probable cause at the subsequent hearing before the commissioner?

This is no theoretical problem. The report of the Commissioners' Committee on Police Arrests for Investigation (1962), the Horsky report, establishes that during 1961, 5,524 persons were arrested for suspicion, and 3,743 of these were listed as arrests for investigation. A higher number of arrests on suspicion or investigation were made in previous years. During 1960 and 1961, 17 out of each 18 persons arrested were ultimately released. A substantial percentage, perhaps as many as 45 percent of these arrests were unlawful because there was no probable cause at the time of the arrest.

That Committee recommended that arrests for investigation should be stopped. The Chief of Police replied to the report in a memorandum to the Board of Commissioners. In this memorandum Chief Murray attempted to justify the existing practices.

Chief Murray concluded his memorandum by urging the Commissioners not to implement the recommendations of their Committee "until satisfactory alternatives are established to provide the police force with tools to continue an effective war on crime." The Commissioners disregarded his advice and ordered that the practice of police arrests for investigation should cease. The testimony of police officials before committees of the Congress during the last year provides ample proof that the police do not regard the decision to be wise and that they are exploring all avenues to find "satisfactory alternatives."

The procedure permitted by the present bill would provide such an alternative. Ultimately these efforts will be thwarted by court decisions suppressing all statements obtained as a result of unlawful arrests. (See *Wong Sun* v. *United States*, 371 U.S. 471 (1963).) During the interval, title I of the bill will provide justification for their conduct. It is difficult to estimate how many citizens will be arrested unlawfully during the interval.

THE WITNESSING AND RECORDING PROVISION

Section 103(4) of the bill requires that the questioning and the warning and advice be witnessed by a "responsible person" who is not a "law enforcement officer" or recorded "whenever reasonably possible." The section raises many problems of interpretation and administration. What is meant by "reasonably possible"? Where are "responsible persons" who are not law enforcement officers to be

obtained? In any case the protection of this section is relevant only to the issue of involuntary confessions. The "protection" of the section bears no relation to the problems arising under the fifth, sixth, and fourth amendments.

MORE STUDY IS NECESSARY

Quite aside from the merits of title I of this bill, the hearings in this case clearly demonstrate that this is not an appropriate time for the Congress to legislate in the area covered by the so-called *Mallory* rule. These hearings demonstrate that the attitude of law enforcement officials toward rules of criminal law undergo in a relatively short space of time a process of evolution. We can see this in the attitude of the U.S. Attorney for the District of Columbia toward the *Durham* rule with respect to criminal insanity. No sooner was the *Durham* decision handed down in 1956 than this committee was besieged with concerted efforts to overrule it by legislation. Those efforts continued through the years, and they reached their high water mark in 1963 when the House District Committee included in its omnibus crime bill legislation which would substantially modify the *Durham* rule. However, during the hearings before our committee, the U.S. Attorney for the District of Columbia, whose predecessor had been in the vanguard of those seeking to overturn the *Durham* rule, took the position that no change in the *Durham* rule should be made because the rule had developed in such a manner in subsequent appellate decisions, notably, *McDonald* v. *United States* (312 F. 2d 847 (1962)), that most of the objections to the rule had proved unfounded. (See hearings, pp. 85–105.)

Now, if the attitude of law-enforcement officials toward the rule underwent a complete change in the 10-year period following that decision, can it not be argued that the Congress should wait at least 10 years before it undertakes to overturn the unanimous decision of the U.S. Supreme Court in the *Mallory* case?

Testimony given before this committee already indicates that the attitude of those officials charged with the ultimate responsibility of law enforcement toward the *Mallory* rule is at the present time in the process of evolution from disapproval to approval. During the course of these hearings, I believe it is fair to say that the members of the committee were surprised, some of them even pleasantly surprised, to hear Nicholas deB. Katzenbach, Deputy Attorney General of the United States, state:

> In my opinion, *the Mallory rule is a good one.* Through it, the Supreme Court made clear its intention to prevent law-enforcement officers from delaying preliminary hearings for the purpose of eliciting confessions. *This is as it should be.* (Hearings, p. 432.) [Emphasis added.]

Mr. Katzenbach went on to say that the Department of Justice felt that the *Mallory* rule should continue in its present form in all of the Federal districts in the United States, with the exception of the District of Columbia. He made an exception for the District of Columbia (whose bar association opposes changing the *Mallory* rule) on the ground that in this jurisdiction what might be called the common law crimes are prosecuted under the Federal rules, a condition which does not prevail in the other Federal districts where such crimes

are prosecuted under applicable State law; and because the decisions in the Court of Appeals for the District of Columbia Circuit have tended to narrow the period of time which will be classed as a "necessary delay."

In view of our experience with the *Durham* rule, and in view of the present position of the Department of Justice that the *Mallory* rule is "a good one," it seems reasonable to me that the Senate should bide its time a little longer so that the opinions of law-enforcement officials, which are obviously now in process of development, can crystallize. It does not seem at all unlikely that in 1967, which will be the 10th anniversary of the *Mallory* decision, law-enforcement officials will have decided that they can live with this rule even in the District of Columbia.

By that time we should have available for study the findings and recommendations of the American Law Institute, which has appointed Prof. Arthur E. Sutherland, of Harvard Law School, to head a distinguished group in the study of the interval between suspicion that a person has committed a crime and his presentment before a magistrate.

The need for more time and study becomes all the more important when we realize that the Senate is asked to approve a bill embodying a philosophy which has been rejected by the Judicial Conference of the United States. In response to a letter from the chairman of the committee, Judge Albert B. Maris informs us that abrogation of the *Mallory* rule has been rejected by that Conference. The correspondence referred to follows:

ADMINISTRATIVE OFFICE OF THE U.S. COURTS,
Washington, D.C., November 21, 1963.

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

DEAR SENATOR BIBLE: I am replying to your letter of November 15, concerning the report of the Advisory Committee on Criminal Rules on its study of the provisions of rule 5(a), Federal Rules of Criminal Procedure, dated July 2, 1963, and the report of the Committee on Rules of Practice and Procedure to the Judicial Conference of the United States, dated August 26, 1963, copies of which were enclosed with your letter.

We have examined these reports and find them to be identical with the reports submitted to the Judicial Conference at its recent session in September 1963. I should like to inform you further that at that time the recommendations contained in these reports were approved by the Judicial Conference. The copies of the reports which you enclosed with your letter are returned herewith for such use as you may wish to make of them.

Sincerely yours,

WARREN OLNEY III, *Director.*

REPORT OF THE COMMITTEE ON RULES OF PRACTICE AND PROCEDURE TO THE JUDICIAL CONFERENCE OF THE UNITED STATES

Your Committee on Rules of Practice and Procedure has received from the Advisory Committee on Criminal Rules a report of its study of the provisions of rule 5(a) of the Federal Rules of Criminal Procedure. That report, a copy of which is annexed hereto, recommends that the Judicial Conference disapprove S. 1012, 88th Congress, and similar bills which seek to abrogate the *McNabb-Mallory* rule. Your committee approves the report of the Advisory Committee on Criminal Rules and recommends that it be approved and adopted by the Judicial Conference and that the Bureau of the Budget, which has requested the views of the Conference on S. 1012, 88th Congress, be informed of the action of the Conference.

Our committee has no definitive proposals to present to the Judicial Conference at this time for changes in the rules of practice and procedure. Tentative proposals for the amendment of certain of the Federal rules of criminal procedure have been widely circulated and are now being considered by the bench and bar. All five of the advisory committees now under appointment are actively engaged in the work to which they have been assigned. Progress reports from each of them are annexed hereto for the information of the Conference.

Respectfully submitted.

ALBERT B. MARIS, *Chairman.*

REPORT OF THE ADVISORY COMMITTEE ON CRIMINAL RULES OF ITS STUDY OF THE PROVISIONS OF RULE 5(a)

The Advisory Committee on Criminal Rules has spent a considerable amount of time studying and discussing the problems raised by the provisions of rule 5(a) which requires that a person arrested be brought before a commissioner "without unnecessary delay."

The present status of the deliberations of the committee on these problems is as follows:

(1) The committee is agreed that there should be no change in the doctrine enunciated by the Supreme Court in such cases as *McNabb* v. *United States*, 318 U.S. 332 (1943) and *Mallory* v. *United States*, 354 U.S. 449 (1957) under which confessions obtained during a period of delay longer than that permitted by rule 5(a) are excluded from evidence.

(2) The committee has so far been unable to articulate any better standard than "without unnecessary delay" which will fit the wide variety of situations and circumstances which exist in the various Federal districts.

(3) The committee recognizes that special problems may exist in the District of Columbia because of the fact that the police in the District have general law-enforcement jurisdiction. However, the committee has felt that special rules for the District should not be incorporated in the rules of criminal procedure. The committee,

therefore, has not given special attention to the problems which are peculiar to the District.

However, the committee does recommend to the Judicial Conference that it oppose S. 1012 and similar bills which merely seek to abrogate the *McNabb-Mallory* rule in the District of Columbia. Such proposals avoid, but do not solve, the fundamental problems of what procedures are appropriate to govern the police in the District. Instead, their thrust appears to be to permit the police to avoid the present procedure in the course of securing confessions subject only to the controls imposed where the violations are so grave as to result in determinations that confessions are involuntary.

Respectfully submitted.

JOHN C. PICKETT, *Chairman.*

ADMINISTRATIVE OFFICE OF THE U.S. COURTS,
Washington, D.C., January 10, 1964.

Mr. RICHARD JUDD,
Professional Staff Member,
District of Columbia Committee,
New Senate Office Building,
Washington, D.C.

DEAR MR. JUDD: In accordance with our telephone conversation of this afternoon, I am enclosing a copy of the Report of the Proceedings of the Judicial Conference of the United States at its September 17–18, 1963, meeting. The record of the position taken by the Judicial Conference with respect to the case of *Mallory* v. *United States* and to S. 1012, 88th Congress, you will find beginning at the top of page 80.

Sincerely yours,

WARREN OLNEY III, *Director.*

REPORT OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES, WASHINGTON, D.C., SEPTEMBER 17–18, 1963

ADMINISTRATIVE OFFICE OF THE U.S. COURTS

Warren Olney III, Director

* * * * *

RULES OF PRACTICE AND PROCEDURE

Senior Judge Albert B. Maris, Chairman of the Standing Committee on Rules of Practice and Procedure, presented to the Conference a report of the activities of the Standing Committee and the Advisory Committee on Rules of Practice and Procedure.

Judge Maris reported that the Advisory Committee on the Criminal Rules in connection with its study of the provisions of rule 5(a), Federal Rules of Criminal Procedure, which requires that a person arrested be brought before a commissioner without unnecessary delay, had considered the proposal contained in S. 1012, 88th Congress. The bill

seeks to overcome the effect of the decision in the case of *Mallory* v. *United States*, 354 U.S. 449, under which confessions obtained during a period of delay longer than that permitted by rule 5(a) are excluded from evidence. Upon the recommendation of the Standing Committee, the Conference voted to disapprove S. 1012 and similar bills which seek to abrogate the *McNabb-Mallory* doctrine.

The Conference was informed that the Committee had no definitive proposals to present to the Conference at this time for changes in the rules of practice and procedure. Tentative proposals for the amendment of certain of the Federal Rules of Criminal Procedure have been widely circulated and are now being considered by the bench and bar. All five advisory committees now under appointment are actively engaged in the work to which they have been assigned.

THE EQUAL PROTECTION OF THE LAW

Rule 5(a) of the Federal Rules of Criminal Procedure governs all criminal prosecutions in the Federal system in the United States. This is so now, and it will be so even if title I is enacted. Title I does not change the wording of rule 5(a). What it does do is to define the words "unnecessary delay," which appear in that rule, in one way for the District of Columbia, while leaving unchanged a quite different definition of those identical words which was made by the Supreme Court in the *Mallory* case. Is not the concept of equal protection of the laws inherent in the due process clause of the fifth amendment substantially invaded if the Congress says that the same rule of criminal procedure means one thing in the District of Columbia and another thing in the 50 States of the Union? We should not lose sight of the fact that the only thing that separates the District of Columbia from the eastern district of Virginia (and the Federal district court which sits in Alexandria, Va.) is the Potomac River. Does Congress have the power to say by legislation that the same rule of criminal procedure means one thing on one side of the river and another on the other side? It would seem obvious that a person arrested for a violation of the Harrison narcotics law in the District of Columbia cannot be legislatively subjected to an interrogation which would be impermissible if he were arrested in Alexandria, Va., or Baltimore, Md., for the same charge.

Nor should the Senate allow itself to be stampeded into the enactment of title I of the bill by those who seek to blame any increase in the District of Columbia crime rate on the U.S. Supreme Court's *Mallory* rule. The statistics which are offered to support this position cannot carry the burden which they seek to place upon them.

The Department of Justice has acknowledged during the hearings before this committee that it is impossible to establish a cause and effect relationship between the District of Columbia crime rate and the *Mallory* rule. The following colloquy bears this out:

> Senator McINTYRE. One final question. Taking into account all the crimes that are committed in this District, do both of you feel that a substantial number of criminals evade punishment because of this?

Mr. KATZENBACH. I don't know of any facts that could be cited that would lead to that conclusion.

Senator MCINTYRE. I take it your answer means that you do not believe there are a substantial number of criminals that evade punishment because of the *Mallory* rule?

Mr. KATZENBACH. I phrased it as I did, Senator, because people whose judgment I respect do take the view that there are. I simply don't know of any way of establishing that by——

Senator MCINTYRE. There are no statistics on it?

Mr. KATZENBACH (continuing). By factual evidence that would lead anybody to that conclusion (hearings, p. 446).

The Senate should recall that in 1957 when the Supreme Court rendered its *Mallory* decision, Chief Robert Murray predicted that it would result in a complete breakdown in law enforcement in the District of Columbia, and further stated that "most of the murders, rapes, and robberies would have gone unsolved and unpunished under the *Mallory* decision."

Yet, 3 years after the *Mallory* decision, Oliver Gasch, the U.S. attorney for the District of Columbia, reported "*Mallory* questions, that is to say, confessions or admission, are of controlling importance in probably less than 5 percent of our criminal prosecutions."

Chief Murray so misled the Congress in 1957 in predicting the complete breakdown in law enforcement in the District of Columbia, why should Congress pay much attention to what he asserts to be the case in 1964?

We are convinced that title I is an unconstitutional piece of legislation. By recommending passage of any bill containing this title, the committee is asking the Congress to buck the current of present-day constitutional thinking.

Moreover, interrogation of the accused is alien to the traditions of our system of criminal justice, which is and should be accusatorial.

Finally, during the short life that title I would have until the Supreme Court declared it unconstitutional—which we think in all probability will happen eventually—it would create a volume of litigation that would clog the administration of criminal justice in the District of Columbia.

WAYNE MORSE.
VANCE HARTKE.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law in the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

ACT APPROVED MARCH 3, 1901, AS AMENDED

* * * * * * *

SEC. 803. ASSAULT WITH INTENT TO KILL, AND SO FORTH.—Every person convicted of any assault with intent to kill or to commit rape, or to commit robbery, or mingling poison with food, drink, or medicine with intent to kill, or willfully poisoning any well, spring, or cistern of water, shall be sentenced to imprisonment for not *less than two years or* more than fifteen years.

* * * * * * *

SEC. 810. ROBBERY.—Whoever by force or violence, whether against resistance or by sudden or stealthy seizure or snatching, or by putting in fear, shall take from the person or immediate actual possession of another anything of value, is guilty of robbery, and any person convicted thereof shall suffer imprisonment for not less than [six months] *two years* nor more than fifteen years.

* * * * * * *

[SEC. 823. HOUSEBREAKING.—Whoever shall, either in the night or in the daytime, break and enter, or enter without breaking, any dwelling, bank, store, warehouse, shop, stable, or other building or, any apartment or room, whether at the time occupied or not, or any steamboat, canal boat, vessel, or other water craft, or railroad car, or any yard where any lumber, coal, or other goods or chattels are deposited and kept for the purpose of trade, with intent to break and carry away any part thereof or any fixture or other thing attached to or connected with the same, or to commit any criminal offense, shall be imprisoned for not more than fifteen years.]

SEC. 823. BURGLARY.—(a) Whoever shall, either in the nighttime or in the daytime, break and enter, or enter without breaking, any dwelling, or room used as a sleeping apartment in any building, with intent to break or carry away any part thereof, or any fixture or other thing attached to or connected thereto or to commit any criminal offense, shall, if any person is in the actual occupation of any part of such dwelling or sleeping apartment at the time of such breaking and entering, or entering without breaking, be guilty of burglary in the first degree. Burglary in the first degree shall be punished by imprisonment for not less than two years nor more than twenty years.

(b) Except as provided in subsection (a) of this section, whoever shall, either in the night or in the daytime, break and enter, or enter without breaking, any dwelling, bank, store, warehouse, shop, stable, or other

building, or any apartment or room, whether at the time occupied or not, or any steamboat, canal boat, vessel, or other watercraft, or railroad car, or any yard where any lumber, coal, or other goods or chattels are deposited and kept for the purpose of trade, with intent to break and carry away any part thereof or any fixture or other thing attached to or connected with the same, or to commit any criminal offense, shall be guilty of burglary in the second degree. Burglary in the second degree shall be punished by imprisonment for not less than one year nor more than fifteen years.

SEC. 825a. PLACING EXPLOSIVES NEAR BUILDINGS, AND SO FORTH.—Whoever places, or causes to be placed, in, upon, under, against, or near to any building, car, vessel, monument, statue, or structure, gunpowder or any explosive substance of any kind whatsoever, with intent to destroy, throw down, or injure the whole or any part thereof, although no damage is done, shall be punished by a fine not exceeding one thousand dollars [or by imprisonment not exceeding ten years] *and by imprisonment for not less than three years or more than ten years.*

* * * * * * *

SEC. 872. INDECENT PUBLICATIONS.—(*a*) Whoever sells, or offers to sell, or give away, in the District, or has in his possession with intent to sell or give away or to exhibit to another, any obscene, lewd, or indecent book, pamplet, drawing, engraving, picture, photograph, instrument, *magazine, story, paper, writing, card, print, motion picture film, image, case, slide, figure, statue, phonograph record, wire, tape, or other sound recording or other presentation,* or article of indecent or immoral use, or advertises the same for sale, or writes or prints any letter, cricular, handbill, book, pamphlet, or notice of any kind stating by what means any of such articles may be obtained, or advertises any drug, nostrum, or instrument intended to produce abortion, or gives or participates in, or by bill, poster, or otherwise advertises, any public exhibition, show, performance, or play containing obscene, indecent, or lascivious language, postures, or suggestions, or otherwise offending public decency, shall be fined not [less than fifty dollars nor more than five hundred dollars,] *more than five thousand dollars* or imprisoned not more than one year, or both.

(*b*) *Whoever in the District produces, or participates in the production of, any obscene, lewd, or indecent book, pamphlet, drawing, engraving, picture, photograph, instrument, magazine, story, paper, writing, card, print, motion picture film, image, cast, slide, figure, statue, phonograph record, wire, tape, or other sound recording, or other presentation or article of indecent or immoral use, with knowledge that the same is to be sold, given away, or exhibited to another, shall be fined not more than $5,000, or imprisoned not more than one year, or both.*

(*c*) *The U.S. attorney for the District of Columbia is also authorized to apply to the U.S. District Court for the District of Columbia for a preliminary injunction and a permanent injunction to restrain the sale, gift, exhibition, distribution, production, disposition, or removal of any obscene, lewd, or indecent matter described in subsection (a) of this section. A hearing on the preliminary injunction shall be had not more than five days, excluding Sundays and holidays, after service upon the defendant of a copy of such application. After such hearing the said court may issue a preliminary injunction which shall remain in effect until final determination of the application for the permanent injunction,*

but in no case for more than thirty calendar days from issuance of the preliminary injunction.

(d) If, after a trial of the issues, the court shall order a permanent injunction, such injunction shall include a provision for the immediate seizure and impoundment of the obscene, lewd, or indecent matter, and forbidding its reproduction or duplication. Such injunction shall also include a provision providing for the disposition of such matter so impounded in such way as the court may determine desirable (including the destruction of such matter), but in no event shall such matter be destroyed until after the expiration of the period during which an appeal may be taken or, if an appeal is taken, during the pendency of such appeal.

(e) Proceedings pursuant to this section shall be governed by the Federal Rules of Civil Procedure, except as they may be inconsistent with the provisions of this section.

(f) This section shall not be applicable with respect to any act punishable under section 1464 of title 18 of the United States Code.

* * * * * * *

SECTION 401 OF THE REVISED STATUTES OF THE UNITED STATES RELATING TO THE DISTRICT OF COLUMBIA (D.C. CODE, SEC. 4-144)

[SEC. 401. The board of police shall provide suitable accommodations within the District for the detention of witnesses who are unable to furnish security for their appearance in criminal proceedings, and such accommodations shall be in premises other than those employed for the confinement of persons charged with crime, fraud, or disorderly conduct; and it shall be the duty of all magistrates in committing witnesses to have regard to the rules and regulations of the board of police in reference to their detention.]

"SEC. 401. (a) Whenever, in a criminal case in the District of Columbia, there is reasonable ground to believe that any person is a material and necessary witness to the commission of any crime or attempt to commit any crime punishable by imprisonment for one year or more, and there is a reasonable probability that such person will not be available to testify at the trial of the person charged with such offense, such person so believed to be a material and necessary witness may be taken, pursuant to a subpoena, by an officer or member of the Metropolitan Police Force, or by a Federal law enforcement officer, without unnecessary delay, before a judge of the United States District Court for the District of Columbia or a judge of the District of Columbia Court of General Sessions or a United States commissioner; except that no such subpoena shall be required if such person is taken into custody at the scene of the crime. Such person shall, immediately upon being taken before such judge or commissioner, be advised of his constitutional rights by such judge or commissioner and shall be allowed reasonable time and opportunity to consult counsel. Such judge or commissioner shall, after a hearing is afforded to such person and such judge or commissioner is satisfied by testimony given under oath that such person is a material and necessary witness and that there is reasonable probability that such person will not be available at the trial as provided in this subsection, require such witness to post bond or collateral as security that he will appear and testify at such trial or upon his failure to post such bond or collateral after a reasonable opportunity to do so, to order his further detention until such time as he appears and gives testimony in such criminal

case or until such criminal case has been finally disposed of otherwise. Notwithstanding any other provision of this subsection, upon the motion of any witness detained under this section and a showing that he has been detained for an unreasonable length of time, such judge or commissioner may order the release of such witness. The detention, as herein provided, of any such witness shall not constitute an arrest within the meaning of that term as used in any other law or in any rule or regulation. No statement made by such witness in the course of his detention as authorized by this section shall be used in a prosecution against him for the commission of any crime. Any witness detained under this subsection shall receive compensation during such detention in an amount equal to that paid to witnesses in cases in the court in which such trial is to be held.

(b) The Board of Commissioners shall provide suitable accommodations within the District of Columbia for the detention of persons who are unable to furnish security for their appearance as witnesses, as provided in subsection (a). Such accommodations shall be separate and apart from quarters used for the confinement of persons charged with crime. The said Commissioners may, in their discretion, enter into agreements with any Federal agency, including the United States courts, for the use of suitable space in a building under the jurisdiction of any such agency, and such agency is hereby authorized to allow the use of such space for the purpose of providing the accommodations required by this subsection. In carrying out the purposes of this Act, the said Commissioners may utilize any appropriate space in any building which is owned privately or which is owned or leased by the government of the District of Columbia. In the case of any witness detained by an officer other than an officer or member of the Metropolitan Police force, the District of Columbia shall be reimbursed for the accommodations furnished such witness at rates to be determined by the Commissioners.

(c) In any criminal proceeding in the United States District Court for the District of Columbia or in the District of Columbia Court of General Sessions, the prosecution shall have the same right with respect to the taking of a deposition of a material witness as is afforded to the defendant in any such court in which such proceeding is pending.

(d) In any case in which a witness is detained under subsection (a) of this section because of his financial inability to post bond or collateral, the court, on written motion of the witness and upon notice to the parties, may direct that his deposition be taken. After the deposition has been subscribed the court may discharge the witness.

SECTIONS 1 AND 2 OF THE ACT APPROVED JULY 8, 1932 (D.C. CODE, SEC. 22-3201)

DEFINITIONS

SECTION 1. "Pistol," as used in this Act, means any firearm with a barrel less than twelve inches in length.

"Sawed-off shotgun," as used in this Act, means any shotgun with a barrel less than twenty inches in length.

"Machine gun," as used in this Act, means any firearm which shoots automatically or semiautomatically more than twelve shots without reloading.

"Person," as used in this Act, includes, individual firm, association, or corporation.

"Sell" and "purchase" and the various derivatives of such words, as used in this Act, shall be construed to include letting on hire, giving, lending, borrowing, and otherwise transferring.

"Crime of violence" as used in this Act, means any of the following crimes, or an attempt to commit any of the same, namely: Murder, manslaughter, rape, mayhem, maliciously disfiguring another, abduction, kidnaping, burglary, *robbery*, [housebreaking,] larceny, any assault with intent to kill, commit rape, or robbery, assault with a dangerous weapon, or assault with intent to commit any offense punishable by imprisonment in the penitentiary.

COMMITTING CRIME WHEN ARMED

SEC. 2. If any person shall commit a crime of violence in the District of Columbia when armed with or having readily available any pistol or other firearm, *or other dangerous or deadly weapon, including but not limited to, sawed-off shot gun, shot gun, machine gun, rifle, dirk, bowie knife, butcher knife, switch blade knife, razor, blackjack, billy, metallic or other false knuckles*, he may, in addition to the punishment provided for the crime, be punished by imprisonment for a term of not more than five years; upon a second conviction for a crime of violence so committed he may, in addition to the punishment provided for the crime, be punished by imprisonment for a term of not more than ten years; upon a third conviction for a crime of violence so committed he may, in addition to the punishment provided for the crime, be punished by imprisonment for a term of not more than fifteen years; upon a fourth or subsequent conviction for a crime of violence so committed he may, in addition to the punishment provided for the crime, be punished by imprisonment for an additional period of not more than thirty years.

Calendar No. 583

89TH CONGRESS
1st Session

SENATE

REPORT
No. 600

CRIME AND CRIMINAL PROCEDURE IN THE DISTRICT OF COLUMBIA

AUGUST 13 (legislative day, AUGUST 12), 1965.—Ordered to be printed
Filed under authority of the order of the Senate of August 13 (legislative day, AUGUST 12), 1965

Mr. BIBLE, from the Committee on the District of Columbia, submitted the following

REPORT

together with

MINORITY AND SUPPLEMENTAL VIEWS

[To accompany H.R. 5688]

The Committee on the District of Columbia, to which was referred the bill (H.R. 5688) relating to crime and criminal procedure in the District of Columbia, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment, as indicated in the bill, as reported, by linotype and italic, is as follows:

Strike out all after the enacting clause and insert new language as a substitute.

PURPOSE OF THE BILL

The purpose of this bill is to make certain changes and amendments to the District of Columbia Criminal Code, including criminal procedures, so as to provide for more effective law enforcement in the Nation's Capital within constitutional bounds.

The bill is divided into six separate titles which are set forth herein generally as follows:

(1) Title I relates to the admissibility in evidence of confessions, admissions, and statements of persons in criminal trials in the District of Columbia and provides certain safeguards relating thereto.

(2) Title II amends existing law so as to require an accused to give the government written notice of an intention to enter a plea of

insanity as a defense in a criminal proceeding in the District of Columbia.

(3) Title III amends existing law relating to the detention of material witnesses in criminal cases in the District of Columbia.

(4) Title IV amends existing law so as to include robbery as a crime of violence in the District of Columbia.

(5) Title V amends certain existing criminal laws in the District of Columbia by providing for minimum sentences in certain crimes of violence; increases certain penal provisions; and makes changes in existing law relating to indecent publications.

(6) Title VI is a saving provision with respect to criminal offenses committed prior to enactment of this bill.

The Crime Problem in the District of Columbia

The upsurge of crime has been Washington, D.C.'s, foremost local problem in recent years. Even more alarming is the fact that criminal activity has climbed year by year since 1957. The present crime rate trend for 1965 will make this year an alltime record high for the Nation's Capital City.

Your committee has become increasingly concerned over this trend which has resulted in national publications picturing the Capital City as a danger spot where men, women, and children are fearful of walking or riding the streets in the nighttime hours. No single subject has received greater attention from your committee in more than 10 years.

When referred to your committee, the pending bill contained 12 proposed changes of law in 5 separate titles, and dealt with 2 of the most complex and controversial subjects in the criminal law field—the *Mallory* and *Durham* rules.

An in-depth examination of the need for strengthening the District of Columbia Criminal Justice Code was made by your committee commencing in the 87th and 88th Congresses, and extending into the 89th Congress. Joint factfinding hearings were conducted with the District Committee in the other body for some days early in 1963. The broad spectrum of the causes of crime, centering around economic and social patterns and their interplay, was reviewed. Washington's problems in some of these areas are magnified to greater proportions than in other American cities of comparable size. It is appreciated that crime cannot be curtailed by a singular or piecemeal approach since crime has many tentacles as causes.

Individual citizens, police officials, members of the judiciary, health and welfare leaders, school executives, and the governing heads of the city have cooperated in pressing for an attack upon the problems. Special attention has been paid to the high rate of crimes of violence to the person in the District, and their anguished results.

The committee has had consultation with and advice from the District of Columbia Council on Law Enforcement, a congressionally established body charged with a continuing study and appraisal of crime and law enforcement generally in the District.

Shortly after the joint hearings concluded early in 1963, your committee itself conducted separate hearings on several pending crime bills. When the House-passed omnibus crime bill (H.R. 7525) was sent to your committee in the 88th Congress, 11 days of hearings were conducted in 1963, followed by more hearings in 1964.

During the 88th Congress the committee received testimony from more than 50 witnesses including outstanding legal scholars from prominent law schools around the country, practicing defense attorneys dealing closely with the crime picture, nationally recognized medical-psychiatric experts, top Federal prosecutors, local law enforcement officers, police chiefs from several of the country's major cities, penology officials, representatives of radio, television, and motion picture industries, and concerned individual Washington residents and community leaders.

A crime bill, substantially amending the House-passed bill and almost identical with your committee's present recommendations, was reported by this committee to the Senate on July 8, 1964. No action was taken by the Senate before adjournment in the 88th Congress.

Again, in the 89th Congress, your committee held extensive crime hearings from April 27, 1965 through August 5, 1965, on H.R. 5688 and S. 1526, the latter bill introduced by Senator Dominick, of Colorado. S. 1526 is identical with H.R. 7525, which this committee favorably reported in the last Congress. At these hearings the committee updated its information on the crime problem in the District of Columbia with the view to favorably reporting an effective crime bill to the Senate, as well as ascertaining what other immediate and short-term measures could be implemented by the responsible District officials to curb the rising crime rate in the Nation's Capital.

In the course of these hearings, the committee heard from more than 32 witnesses. Among those testifying were the District Commissioners; the Chief of Police, and other police officials; the Deputy Attorney General of the United States and other representatives of the Department of Justice; the U.S. Attorney for the District of Columbia; and officials from Federal, and District of Columbia correctional institutions.

Short-Range Program To Combat Crime

At the hearings held on May 6, 1965, the District Commissioners, and the Chief of Police of the Metropolitan Police Department were directed to develop, for presentation to the committee, a program of anticrime measures which could be implemented immediately as a short-range deterrent to crime.

Pursuant to this directive, a program was submitted to the committee on May 13, 1965, and it is now in the process of being fully implemented insofar as appropriated funds permit.

Anticrime program

	Appropriation		
	1965	1966	Later
1. Implementing of saturation patrol techniques	.....	X	
2. Overtime legislation for police and firemen [1]	.....	X	
3. Additional scout cars, additional automobiles for investigators, and establishment of 1-man scout cars	X	X	
4. Increase in school crossing guards and review of all assignments of police officers to administrative, clerical, and technical duties	.....	X	
5. Establishment of Planning and Development Bureau and applications of computers to police work	.....	X	
6. Immediate expansion of 2-way radio system for footmen	.....	X	
7. Early construction of police training facilities	.....	.....	X
8. Development of plans for installation of a Police Department television network	.....	.....	X

[1] Requires legislative as well as appropriation action for 1966 financing.

The nucleus of the proposed anticrime measure program was the formulation of tactical squads consisting of 235 positions and which are manned by police officers who volunteer to work on their off-duty days and receive monetary compensation for this police overtime.[1]

The tactical squads are now fully operational and are being deployed to areas of the city during the hours when such areas have the highest incidence of crime. Although the tactical force has been in operation only since July 20, 1965, the results have been encouraging due to the decline in crime where the force has been deployed. As an example of the squads' effectiveness, the crime of robbery for the last half of July 1965 declined 30 percent over the robbery crime rate for the first half when the squads were not operational.

This committee has long been of the view that police officers walking the beat serve as a strong deterrent to crime.

This committee in the 87th Congress, in order to provide coverage of the city with more police officers, favorably reported legislation that increased the minimum authorized strength of the Metropolitan Police force from 2,500 members to 3,000. This legislation was enacted into law by the Congress on June 14, 1961.

District of Columbia Ranks First in Police

The committee is advised that on the basis of the present authorized strength of the Police Department that the District of Columbia ranks first among all the cities of the United States on the basis of the percentage of police officers per 1,000 population.

The committee considers this highly appropriate so long as crime remains at the unacceptable rate it is at present. Although the legislation to increase the police force to a minimum number of 3,000 members was enacted in 1961, the Police Department has been hampered in attaining a 3,000-member force due to recruitment problems.

The actual strength of the police force as of August 5, 1965, is 2,905 members. This is 95 members short of the authorized strength.

Accordingly, the implementation of the tactical squads consisting of 235 positions and manned by regular members of the force on an overtime-paid basis, is clearly justified not only as a measure to curb

[1] F. 399 committee hearings, H.R. 5688 (89th Cong.).

crime, but also as a practical method to bring the police force up to its manned strength of 3,000 members.

In addition to providing for a tactical squad as part of the anti-crime program, the Commissioners and the Police Chief also recommended to the committee the following:

(1) The acquisition of 36 scout cars and other investigation vehicles, including establishment of one-man scout cars in the outlying precincts.

(2) Immediate expansion of the use of two-way radios for foot patrolmen in order that they can remain in instant communication with headquarters.

(3) The reassignment to police enforcement duties, of police officers, who are now performing administrative, clerical, and other duties such as school-crossing guards.

(4) The establishment of a Planning and Development Bureau of the Police Department and the application of computers in various areas of police work.

(5) Legislative authority to permit police officers assigned to special events that require overtime work in excess of the 40-hour workweek, to be compensated with overtime pay in lieu of compensatory time off. (This police overtime pay compensation will have the effect of permitting police to work a full 40-hour week on matters relating essentially to crime detection and law enforcement.)

(6) Construction of adequate police training facilities.

(7) Development of plans for the implementation of a Police Department television network.

The committee understands that money has been appropriated to implement items 1, 2, and 3 of the above. Appropriations for item No. 4 will be sought in the 1966 fiscal year supplemental budget request. Special authorizing legislation to implement item No. 5 is presently pending before this committee and should be reported very shortly to the Senate for consideration. It is the understanding of the committee that appropriations to proceed with items No. 6 and No. 7 will be requested of the Congress in the 1967 District of Columbia budget.

District of Columbia Crime at Record High

Violent crime in Washington, D.C., will reach an all-time, record high in 1965 if this year's present trend continues, adding to the fact that crime in the District has increased every year since 1957.

The increasingly acute problem is pointed up by the Federal Bureau of Investigation's statistics showing that for the first quarter of 1965, Washington, D.C., had a 10-percent increase in crime compared to a 2-percent average increase for 18 other cities of comparable size. Nationally, crime in the same period increased 2 percent.

By another comparison, FBI statistics show that crime in the District in 1964 increased 25.1 percent over 1963, while the increase for 18 other cities of comparable size in the same period, was only 13 percent; and the national average up 13 percent.

80-853 O - 67 - 25

Statistical tables showing the individual crime increases for the period follow:

Crime trend, January to March 1965 versus 1964

	Index total	Murder	Forcible rape	Robbery	Aggravated assault	Burglary	Larceny, $50 and over	Auto theft
National	+2	+2	+3	+1	+2	+2	+4	+1
Average, 18 cities, 500,000 to 1,000,000 population	+2	+17	−8	+5	+1	+3	+3	.....
Washington, D.C.	+10	+114	+22	+28	−21	+16	−7	+15

Source: Federal Bureau of Investigation, Washington, D.C., Aug. 9, 1965.

Crime trend, 1964 over 1963

	Index total	Murder	Forcible rape	Robbery	Aggravated assault	Burglary	Larceny, $50 and over	Auto theft
National	+13.0	+9.0	+19.0	+12.0	+18.0	+12.0	+13	+16.0
Average of 18 cities, 500,000 to 1,000,000 population	+13.0	+15.0	+18.0	+15.0	+16.0	+11.0	+12	+14.0
Washington, D.C.	+25.1	+38.9	+10.3	+33.5	−8.6	+27.6	+12	+55.6

Sources: 1964 Preliminary Annual Release, Federal Bureau of Investigation, Washington, D.C., Mar. 10, 1965. Crime statistics supplied by the Metropolitan Police Department of the District of Columbia.

As a further example, District of Columbia Metropolitan Police Department statistics show that for June 1965, 2,707 major offenses were reported—an increase of 563 or 26.3 percent from June 1964.

June 1965 marked the 37th consecutive month with an increase in crime in Washington. During that month, increases incurred in the classifications of: rape, up 4 offenses or 36.4 percent; robbery, up 136 offenses or 97.8 percent; housebreaking, up 82 offenses or 14.6 percent; grand larceny, up 38 offenses or 34.9 percent; petit larceny, up 165 offenses or 23.3 percent; aggravated assault, up 1 offense or 0.4 percent; auto theft, up 139 offenses or 38.9 percent.

A decrease occurred in the classification of criminal homicide, down two offenses or 15.4 percent.

The increase for June 1965 brought the trend of serious offenses to 32,545 in Washington, D.C.—an increase of 12.4 percent from June 1964, and an increase of 106.1 percent from the low point of June 1957; and making the trend period (the 12 months ending with June) a record high for crime in Washington, D.C.

Metropolitan Police Department—Pt. 1. Offenses reported June 1964 and June 1965

Classification	June 1964	June 1965	Change		Total 12 months ending June 1965
			Amount	Percent	
Criminal homicide	13	11	−2	15.3	179
Rape	11	15	+4	36.3	155
Robbery	139	275	+136	97.8	3,909
Aggravated assault	245	246	+1	.4	2,498
Housebreaking	562	644	+82	14.5	9,361
Grand larceny	109	147	+38	34.8	1,610
Petit larceny	708	873	+165	23.3	8,716
Auto theft	357	496	+139	38.9	6,057
Total	2,144	2,707	+563	26.2	32,545

Following are statistics showing the areas of violent crimes committed over the years for comparative purposes.

Crime in the District of Columbia: High, low, and present

Classification	Calendar year 1952 [1]	Fiscal year 1957 [2]	12 months ending June 1965	Change to 12 months ending June 1965 from—			
				Calendar year 1952		Fiscal year 1957	
				Amount	Percent	Amount	Percent
Criminal homicide	89	88	179	+90	+101	+91	+103
Rape	197	199	155	−42	−21	−44	−22
Robbery	1,396	944	3,969	+2,573	+184	+3,025	+320
Aggravated assault	4,608	2,555	2,498	−2,110	−46	−57	−2
Housebreaking	5,388	3,023	9,361	+3,973	+74	+6,338	+210
Larceny and theft	11,149	7,141	10,326	−823	−7	+3,185	+45
Auto theft	1,778	1,843	6,057	+4,279	+241	+4,214	+229
Total, pt. 1	24,605	15,793	32,545	+7,940	+32	+16,752	+106

[1] Calendar year 1952 was alltime high for crime in the District of Columbia.
[2] Fiscal year 1957 was alltime low for crime in the District of Columbia. Under reporting system established in 1948.

Source: Issued by Metropolitan Police Department, Washington, D.C., Aug. 11, 1965.

District of Columbia Crime Rate High

Nationally, Washington, D.C., as compared with other cities of similar size, ranks very high in the amount of crime. Federal Bureau of Investigation statistics show that Washington ranks fourth in the rate of crime index offenses per 1,000 population of the 16 cities in the 500,000 to 1 million population class, and fourth in total offenses.

For 1964, the District in the various classifications of crimes ranked as follows among the 16 cities:

First in aggravated assault (assault with a dangerous weapon).
First in robbery.
Fourth in housebreaking.
Fourth in murder.
Fifth in auto theft.
Ninth in rape.
Ninth in larceny ($50 and over).

During 1964 in the District of Columbia, murder increased 38.9 percent, more than twice that of cities of comparable size; robbery increased 34 percent, more than twice that of cities of comparable size; burglary increased 28 percent, more than twice the average of cities of comparable size; auto theft increased almost 56 percent, more than four times as great as the national average for cities of comparable size.

Statistics showing the number of offenses in the 16 comparable cities of the country, including Washington, D.C., for 1964 follows:

Crime index offenses, calendar year 1964

[Cities 500,000 to 1,000,000 population]

City	Population, 1960 census	Total offenses	Murder	Rape	Robbery	Aggravated assault	House-breaking	Larceny, $50 and over	Auto theft
Baltimore	939,024	18,245	144	147	1,385	2,805	4,703	5,107	4,174
Boston	697,197	19,011	82	84	859	884	4,582	2,349	10,202
Buffalo	532,759	9,708	21	42	370	317	4,050	2,208	2,705
Cincinnati	502,550	9,871	38	113	457	702	2,764	1,709	1,088
Cleveland	876,050	17,284	116	101	1,691	1,188	8,739	1,042	4,472
Dallas	679,684	12,852	149	114	664	930	5,634	1,873	3,788
Houston	938,219	27,787	137	230	1,437	2,499	13,606	4,973	4,510
Milwaukee	741,324	9,985	29	81	245	442	2,324	3,038	2,998
New Orleans	627,525	19,020	82	152	1,289	1,074	6,970	4,455	5,604
Pittsburgh	604,332	10,836	41	139	1,132	799	5,777	3,427	5,281
St. Louis	750,026	26,602	120	249	2,202	2,054	13,463	2,767	5,837
San Antonio	587,718	14,697	87	78	339	1,096	6,843	4,329	2,024
San Diego	573,224	9,850	17	52	419	447	3,073	4,069	1,762
San Francisco	740,316	24,303	81	93	1,708	1,653	9,974	3,653	7,161
Seattle	557,087	11,718	23	72	491	328	4,932	3,963	1,869
Washington, D.C	763,956	22,932	132	98	2,279	2,606	8,910	3,618	5,292
Rank order, Washington:									
Actual number		4th	4th	9th	1st	1st	4th	9th	5th
Rate per 1,000 population		4th	2d	10th	1st	1st	6th	10th	6th

CONCLUSION

The committee recognizes that the city of Washington is not alone in the upward crime trend since all major cities in the country have similar problems in varying degrees. The fact that Washington compares favorably with other cities of comparable size is of slight consolation because any crime is too much crime.

Your committee believes that every reasonable step to strengthen the arm of law enforcement agencies must be taken so long as constitutional guarantees are protected. Conversely, those same constitutional guarantees should not deprive law-abiding men, women, and children of another important right—the right to walk the streets without fear of bodily harm and the right to the safety of their homes and places of business.

Criminal justice has two very definite and generally opposing sides. One is to bring the criminal to swift and sure justice. Such action is designed to serve as a deterrent to the perpetrator and to others so inclined.

The other side is that the civil rights granted to every American by his Constitution should not be trampled upon in the name of justice.

Between those viewpoints lie the gray area where the great bulk of Americans must live day and night, and where legislators must make choices.

Congress has the legislative responsibility over the Nation's Capital City and to discharge that responsibility, it must concern itself with this increasingly acute problem, to assist its residents to have a more law-abiding community, and to assure the safety of the thousands of visitors who come to view their Capitol and its city every year from the 50 States and from the nations of the world.

Your committee has sought to be attentive to the needs for combating crime over recent years. Specifically, a juvenile court of

sufficient size went into full operation 3 years ago, with the enlarged court now moving to reduce the tragic backlog of cases to assure that juvenile offenders are dealt with speedily. Congress has authorized an increase in the Metropolitan Police force to 3,000 members.

The Federal payment to the District has been increased to provide for school, health, and welfare needs to help combat other causes where crime may be born. The alarming fact is that crime has continued to climb.

The objective of your committee in its consideration of this omnibus crime bill, a major undertaking to strengthen the Criminal Justice Code in the Nation's Capital City, is to provide law enforcement agencies, the courts, and the citizenry as a whole with more effective tools to deal with the criminal. Crime has deep roots and must also be attacked on broad fronts not approached in this bill. However, your committee views its recommendations as a step in the right direction to return to the people of Washington, D.C., a feeling of security on the streets, sidewalks, their homes, and places of business during both the day and the night.

TITLE I—ADMISSIBILITY OF STATEMENTS MADE BETWEEN ARREST AND APPEARANCE BEFORE A COMMISSIONER

The purpose of title I is to provide a rule of evidence for the courts of the District of Columbia governing the admissibility of statements obtained from an accused after a lawful arrest and prior to an appearance before a U.S. commissioner. The title provides standards and safeguards for in-custody interrogation of persons arrested on probable cause and makes clear and certain the maximum period of time after arrest and prior to arraignment before a U.S. commissioner, during which such in-custody interrogation may take place.

The U.S. Supreme Court's interpretation of rule 5 of the Federal Rules of Criminal Procedure in the case of *Mallory* v. *U.S.*, 354 U.S. 449 (1957) has created special problems for law enforcement in the District of Columbia because only in the District do Federal courts have broad jurisdiction over crimes of violence which usually lack eyewitnesses, and because the courts of the District of Columbia have made extreme applications of the *Mallory* decision. The result of this special local situation has been to allow guilty and dangerous criminals to escape punishment altogether or receive lesser punishment by pleading guilty to lesser offenses even though they may have voluntarily confessed to their crimes. This committee is of the opinion that the right of the law-abiding citizen to be secure in his person and property suffers when the guilty go unconvicted and that a reasonable concern for the right of the law-abiding citizen to be free from fear in his home and in the streets requires that this special local problem must be met by legislative action.

Background of rule 5 of the Federal Rules of Criminal Procedure

The complete text of the rule is as follows:

Proceedings Before the Commissioner

(a) *Appearance before the commissioner.*—An officer making an arrest under a warrant issued upon a complaint or any person making an arrest without a warrant shall take the

arrested person without unnecessary delay before the nearest available commissioner or before any other nearby officer empowered to commit persons charged with offenses against the laws of the United States. When a person arrested without a warrant is brought before a commissioner or other officer, a complaint shall be filed forthwith.

(*b*) *Statement by the commissioner.*—The commissioner shall inform the defendant of the complaint against him, of his right to retain counsel, and of his right to have a preliminary examination. He shall also inform the defendant that he is not required to make a statement and that any statement made by him may be used against him. The commissioner shall allow the defendant reasonable time and opportunity to consult counsel and shall admit the defendant to bail as provided in these rules.

(*c*) *Preliminary examination.*—The defendant shall not be called upon to plead. If the defendant waives preliminary examination, the commissioner shall forthwith hold him to answer in the district court. If the defendant does not waive examination, the commissioner shall hear the evidence within a reasonable time. The defendant may cross-examine witnesses against him and may introduce evidence in his own behalf. If from the evidence it appears to the commissioner that there is probable cause to believe that an offense has been committed and that the defendant has committed it, the commissioner shall forthwith hold him to answer in the district court; otherwise the commissioner shall discharge him. The commissioner shall admit the defendant to bail as provided in these rules. After concluding the proceeding the commissioner shall transmit forthwith to the clerk of the district court all papers in the proceeding and any bail taken by him.

On June 29, 1940, Public Law 76-675, 54 Stat. 688, was approved which gave the Supreme Court of the United States authority to prescribe rules of procedure for criminal proceedings in the courts of the United States and provided that such rules "shall not take effect until they shall have been reported to Congress by the Attorney General at the beginning of a regular session thereof and until after the close of such session * * *."

The Supreme Court thereafter appointed an Advisory Committee whose function it was to draft new rules of Federal criminal procedure. In the early drafts of this Committee, rule 5 excluded from evidence any statement made by a defendant while the defendant was held in custody in violation of the rule. However, during the deliberations of the Advisory Committee, the Supreme Court decided *McNabb* v. *United States*, 318 U.S. 332 (1943). The ruling of his case excluded a confession obtained from an accused unlawfully detained in custody. Also decided during this period was *United States* v. *Mitchell*, 322 U.S. 65 (1944).

The *Mitchell* case qualified the *McNabb* case by holding that a voluntarily given confession would not be excluded from evidence because of the illegal detention of the accused, unless the confession resulted from such illegal detention.

With the law relating to admissibility of statements obtained during illegal detention in this posture, the Supreme Court promulgated the Federal Rules of Criminal Procedure on December 26, 1944, without any mention of any sanction against noncompliance with rule 5. Subsequently, the rules were duly reported to Congress, no objection was raised, and the rules became effective on March 21, 1946. It must be noted that following the *McNabb* case, there was a flurry of unproductive legislative activity aimed at altering the effect of the case.

"Mallory v. *United States" and related cases*

In 1957 the Supreme Court of the United States decided the case of *Mallory* v. *United States*, 354 U.S. 449 (1957). Andrew Mallory was convicted of rape in the U.S. District Court for the District of Columbia. The Court of Appeals for the District of Columbia affirmed the conviction (98 U.S. App. D.C. 406, 236 F. 2d 701). The Supreme Court reversed the conviction and held that if an arrested person is not brought before a U.S. Commissioner without unnecessary delay but is held and interrogated by officers for the purpose of obtaining incriminating statements, then any statement so obtained may not be received in evidence at a subsequent trial.

In so doing, the Supreme Court restated the sanction of the *McNabb* and *Mitchell* cases but extended the ruling of those cases to cover situations where there was no showing of any causal relationship between "unnecessary delay" and the incriminating statement.

Mallory had the further effect of creating confusion within the legal ranks of the bench and bar about what constituted an "unnecessary delay." In the *Mallory* case, the accused was arrested on a rape charge between 2 and 2:30 p.m. His first statement of admission was made about 9 p.m.. and he dictated his confession between 11:30 p.m. and 12 midnight. He was brought before the U.S. Commissioner on the following morning.

Recent cases in the District of Columbia have demonstrated that there is great uncertainty among the judges on the appellate and district courts about how much delay is permissible between arrest and arraignment before a commissioner.

For instance in *Spriggs* v. *United States* (335 F. 2d 283 (D.C. Cir. 1964), a conviction was reversed because of the admission in evidence of a confession made during booking some 30 minutes after arrest when the officer told the suspect three witness had seen him shoot another person.

In *United States* v. *James J. Jones*, Criminal No. 366-63 (U.S. District Court for the District of Columbia, 1963), the trial judge excluded a confession which occurred within 15 minutes after arrest and prior to presentment of the arrested person to the committing magistrate. The dissent in the former case and the ruling in the latter case were based on the ground that no interrogation of any length is permissible and, indeed, an arrested person is not to be taken to the precinct or headquarters for booking and fingerprinting, but is to be taken before a magistrate forthwith. Thus "without unnecessary delay" was considered to mean "without any delay."

In *Alston* v. *United States* (District of Columbia Cir. No. 18750 (May 6, 1965)), appellant was arrested at 5:51 a.m., on February 22, 1964, and arrived at police headquarters, with his wife at 5:30 a.m.

Appellant's wife then sat in the homicide squad office while appellant was taken into an adjoining room where police questioned him "for at least 5 minutes." During this questioning, appellant "stated he didn't know anything about [the offense] or words to that effect." Appellant was then permitted to speak briefly to his wife, after which he returned to the police and confessed the crime.

The U.S. Court of Appeals for the District of Columbia Circuit reversed the case for a new trial on two grounds, (1) that the questioning violated rule 5(a) because the arresting officers failed to take appellant before a committing magistrate "as quickly as possible," and (2) that appellant was not informed of his right to remain silent prior to his being interrogated.

In *Elsie V. Jones* v. *United States* (113 U.S. App. D.C. 256, 307 F. 2d 307 (1962)), the defendant was arrested at 4:25 of a Sunday morning, confessed 3½ hours later, and was brought before a committing magistrate at 9 Monday morning. A divided court held her confessions inadmissible.

In *Charles S. Coleman* v. *United States* (114 U.S. App. D.C. 185, 313 F. 2d 576 (1962)), a delay of 2 hours and 5 minutes was, again by a divided court, held fatal to the admissibility of the conviction.

In *Tony A. Coleman* v. *United States* (317 F. 2d 891 (1963)), a divided court permitted the conviction on one count to stand although based upon a confession given 1 hour after the arrest, but reversed the conviction on other counts based upon confessions given 2 or 3 hours after arrest.

In a dissenting opinion in *Robert A. Muschette* v. *United States* (D.C. Cir. No. 17410 (July 25, 1963)), it was contended that a confession obtained 25 minutes after arrest and 1 hour and 50 minutes before the arrested person was presented to the committing magistrate should be excluded.

Testimony before the committee indicated that in each of these cases, the confession was clearly voluntary and admissible under all of the usual legal and constitutional criteria. The exclusion of these confessions except for *Alston* case was based solely on the lapse of time after arrest and prior to appearance before the U.S. Commissioner and the finding of the courts that such lapse of time constituted an unnecessary delay within the meaning of rule 5(a) of the Federal Rules of Criminal Procedure.

Underlying reasons for Rule 5 and the decisions of "Mallory" and related cases

The courts have long been plagued by the troubling situation where an accused who has been interrogated in the privacy of the police station alleges that his confession was coerced from him by unfair physical or mental pressures. In almost every instance, of course, his allegations are denied by the officers whose word is usually accepted by the court and jury. To end these insoluble conflicts over the nature of such interrogations and to minimize the opportunity for the use of improper methods in obtaining such confessions, are two basic underlying reasons for rule 5(a) and the *Mallory* v. *United States* decision. There are, of course, other underlying reasons, such as the implementation of the constitutional rights of the accused, such as his right to counsel, and his right against self-incrimination.

The difficulty of the *Mallory* rule and its interpretation of rule 5 is that even where it can be demonstrated that there was no coercive

conduct on the part of the police, and where all of the constitutional rights of the accused were protected, the *Mallory* ruling, as it has been interpreted in the District of Columbia, still requires the exclusion of a voluntarily given statement on the basis of very minimal delay alone.

The purpose of title I, as amended, is to fill in this gap in the protection which is afforded to the life and property of the law-abiding citizen by the criminal laws of the District of Columbia.

CONGRESSIONAL BACKGROUND

Problems associated with rule 5(a) and the *Mallory* decision are not new to Congress. Language substantially the same as that contained in this bill, when it was passed by the House of Representatives, has been before Congress before. The first legislative attempts to meet this problem took the form of proposed amendments to rule 5(a) and would have had application to all Federal jurisdictions.

In the 85th Congress, H.R. 11477 was passed by the House and amended and approved by the Senate.

As a result of the Senate amendment, the bill went to conference where the conferees accepted the Senate amendment byt added certain new language. The House adopted the conference report but adjournment prevented final action by the Senate after a point of order was raised concerning the new language added by the conferees.

In the 86th Congress, the House Committee on the Judiciary again reported similar legislation, H.R. 4957, but it was not enacted.

In the 87th Congress, the House Committee on the District of Columbia reported H.R. 7053, a similar bill limited in its application to the District of Columbia, which was passed by the House. The Senate did not act on this bill.

In the 88th Congress, the House Committee on the District of Columbia reported and the House passed H.R. 7525, the so-called omnibus crime bill. The Senate Committee on the District of Columbia considered that bill during lengthy hearings and 1 year ago reported an amended version, recommending substantial changes including those in title I (the so-called *Mallory* section). No action was taken by the Senate on the bill.

Early in the 89th Congress, the House Committee on the District of Columbia reported and the House passed H.R. 5688, whose title I is identical with that of H.R. 7525, as the latter bill passed the House in the last Congress.

Presently, this committee's recommendations to amend title I are substantially the same as those contained in its report to the Senate in the 88th Congress. The differences are set forth in detail hereafter under the subtitle "Action Recommended by Committee."

THE CASE FOR A LEGISLATIVE CHANGE IN MALLORY

In essence, the committee recommendations would legislate into a statutory rule of evidence for the District of Columbia only desirable and proper guidelines for the courts that would provide:

(1) Safeguards for accused individuals from improper police interrogation.

(2) Protection for the public in keeping law and order by permitting the police to carry on necessary questioning of arrested individuals under clearly defined criteria.

The committee rejected title I of the House-approved bill, (H.R. 5688) on the grounds that such provision would not withstand constitutional attack because protective devices were not written into it to safeguard the rights of accused individuals from improper interrogation and delay from the time of arrest until arraignment before a magistrate. The committee has approved recommended safeguards that it believes will meet constitutional requirements and will provide better law enforcement tools for the police to protect the public.

Rule 5(a) and Mallory v. *United States—A special problem for the District of Columbia*

On November 5, 1963, while testifying before the Senate District Committee in the 88th Congress, the Honorable Nicholas deB. Katzenbach, presently Attorney General of the United States, and then Deputy Attorney General of the United States, summed up the special significance of the *Mallory* rule for the District of Columbia in the following language: [2]

> The *Mallory* rule is not frequently invoked in Federal criminal cases in jursidictions other than the District of Columbia. The reason is twofold: First, only in the District of Columbia do the Federal courts have broad jurisdiction over crimes of violence which characteristically lack eyewitnesses and independent evidence.
>
> It is quite common in cases of homicide, yoke, robberies, rape, and certain other crimes that there is no third eyewitness, and it is often difficult for the complaining witness to make an identification. Of course, in homicides there is no complaining witness. Thus, in such cases, confessions assume far greater significance as evidence of guilt, and it becomes important to defendants to have their confessions excluded in the courts of the District of Columbia. Second, by contrast, most Federal criminal cases in other jurisdictions involve frauds, mail thefts, narcotic violations, and the like, where there is substantial evidence apart from a confession; i.e., contraband property, financial records, tax returns, et cetera.
>
> Therefore, it is reasonable to consider the problems in the District of Columbia as being rather unique with respect to the *Mallory* rule and deserving of congressional consideration in legislation limited to its application to the District of Columbia.
>
> In my opinion, the *Mallory* rule is a good one. Through it, the Supreme Court made clear its intention to prevent law enforcement officers from delaying preliminary hearings for the purpose of eliciting confessions. This is as it should be.
>
> The problem which gives rise to the legislative proposal before the committee lies not with the *Mallory* rule but with its application in the District of Columbia.
>
> In a number of cases in the District of Columbia "unnecessary delay" has been interpreted and applied to make it virtually impossible, I am informed, for investigating officers to speak with arrested persons with any assurance that resultant confessions will be acceptable in the courtroom.

[2] P. 432, committee hearings, H.R. 7525 (88th Cong.);

ACTION RECOMMENDED BY COMMITTEE

Title I of H.R. 5688, as amended, recognizes the validity of the argument that the *Mallory* case does have special impact in the District of Columbia by denying to law enforcement officers the essential investigative tool of in-custody interrogation, but it further recognizes that any legislation which has as its purpose the preservation of this valuable police tool must provide safeguards and standards which will prevent abuse of the accused.

It protects the rights of the accused by providing that a statement resulting from an in-custody questioning of the accused may be admitted into evidence if—

(1) Immediately prior to any such questioning the defendant was plainly advised by the officers having custody of him, in addition to any previous warning, that he is not required to make any statement at any time and that any statement made by him may be used against him; and

(2) Prior to such questioning, the arrested person was advised by the officers having custody of him that, upon request, he would be afforded reasonable opportunity to notify a relative or friend and consult with counsel of his choosing, and if such request were made, he was, in fact, afforded such opportunity; and

(3) The aggregate period of questioning, exclusive of interruptions, does not exceed 3 hours between the arrest and the completion of the confession, admission, or statement; and

(4) Such questioning and the warning and advice required by paragraphs (1) and (2) of this section were whenever reasonably possible, witnessed by a responsible person who was not a law enforcement officer, or transcribed verbatim, or recorded by a wire, tape, or other sound recording, or conducted subject to other comparable means of verification.

In addition to protecting the rights of the accused, the amendments to title I of H.R. 5688, made by the committee aid the police by making clear exactly what they must do when interrogating a defendant and the maximum aggregate period of time they have within which to conduct such interrogation.

DETAILED ANALYSIS

Section 103(3) of title I of the committee's bill places a 3-hour aggregate time period as the limit for questioning an arrested person during an investigation following arrest and before appearance of the accused before a magistrate. The committee's purpose in placing a 3-hour limit on questioning, in title I, is designed to give law enforcement officers and judges a workable rule of thumb by which oppressive practices can be avoided, both as a matter of policy and within proper constitutional limits. The committee does not envision the questioning of an accused, in the practical sense, would be consecutive and continuous. Instead, it would be intermittent as necessitated by the requirements of an investigation being carried out by police officers. Accordingly, a 3-hour time period for questioning has been provided in section 103(3) instead of an inflexible and fixed maximum time period between arrest and appearance before a magistrate.

This subsection purposely does not set forth a specific amount of time for police investigation but leaves that period flexible within

the "unnecessary delay" limitation contained in the bill. The committee recognizes that "unnecessary delay," in some cases, has been interpreted by the courts as a period of time so short that, in this committee's judgment, a fair and reasonable investigation by the police and any questioning of an accused are altogether impossible.

It is the intention of this committee to clarify by title I of this bill the meaning of the statutory term, "unnecessary delay," as contained in rule 5(a) of the Federal Rules of Criminal Procedure and the subject for widely varying court interpretations that too often preclude reasonable and fair investigations by the police in the public interest. Likewise, safeguards have been set out specifically to rule out improper, oppressive, or abusive police practices against an accused.

Particular explanation must be given section 103(3), title I, providing an aggregate 3-hour period (without including interruptions) between arrest and the completion of a confession, statement, or admission. It cannot be supported that this provision is a back-door method of reinstituting investigative arrest in the District of Columbia. (See explanation under title II, "Investigative Arrest," of this report.)

Arrests under title I to stand up must be made on probable cause, while investigative or detention arrests are made only with reason to suspect. Thus, detention or investigative arrests, in the judgment of this committee, are clearly unconstitutional; however, arrests on probable cause do meet the constitutional test. The committee recommendations do no violence to this precept.

As has been previously pointed out in this report, the *Mallory* decision's interpretation of rule 5(a) has presented special problems to law enforcement in the District of Columbia which are not common to other Federal jurisdictions. Indeed, the *Mallory* case itself was a District of Columbia criminal prosecution for rape. This committee has therefore attempted to meet this special local situation. In any criminal procedural statute the challenge is to strike a balance between protecting the rights of the accused and protecting the law-abiding citizen from criminal molestation. In the judgment of the committee, title I, as amended, meets that test.

LANGUAGE CHANGES

Title I as contained in the instant bill is similar to title I of H.R. 7525 which bill this committee reported to the Senate during the 2d session of the 88th Congress. The language of such title as contained in H.R. 7525 was proposed to this committee in the 88th Congress by the Department of Justice and the Office of the U.S. Attorney for the District of Columbia as an appropriate legislative measure to effectively modify the *Mallory* rule in the District of Columbia.

The differences between title I of H.R. 7525, as amended, and title I of H.R. 5688, as reported by this committee are essentially two and relate—

(1) To the period of time that police officers can hold a defendant for questioning following arrest; and

(2) The insertion in the instant bill of an affirmative duty on the defendant to ask for the opportunity of consulting with counsel and also of notifying a friend or relative once he has been advised of these rights by police officers.

JUSTICE DEPARTMENT'S VIEWS

On April 27, 1965, the Honorable Ramsey Clark, Deputy Attorney General of the United States, appeared before this committee and presented the Department of Justice views on title I of both the House and Senate crime bills (H.R. 5688, and S. 1526) the latter identical with H.R. 7525, as reported to the Senate 1 year ago by this committee.

At the committee hearing the Deputy Attorney General sought additional time for the Justice Department to pursue current work on the *Mallory* problem as it affects law enforcement in the District of Columbia before making specific recommendations to the committee.

The Deputy Attorney General in his testimony before the committee stated in pertinent part:[3]

> I am convinced that our system of government can devise procedures which will at once permit reasonable police interrogation of suspects while fully protecting their constitutional rights. Moreover, if this committee develops rules which meet the practicalities of modern-day, big city law enforcement, and which are clear and understandable, the police can fairly be expected to assume responsibility for their observance. Where they fail the courts will review.
>
> For our part, we believe that our own work in this area during the past few months has already provided important additional insights. In addition to our factual inquiry, this has included an analysis of developments in the law since the earlier hearings of this committee, and we would also want to be sure that any proposals that we make reflect what information can be obtained from the recently published results of the American Bar Foundation study and the current work of the American Law Institute whose advisory committee will meet early in June. However, I should make it clear that we are not urging this committee to wait for the final results of the American Law Institute. Thus, we would like some additional time to press our current work in this area further before making specific recommendations. We believe this will enable us to make a more constructive contribution. In the interim, we will continue to work in close collaboration then with the committee staff.

After the Deputy Attorney General appeared before the committee and presented the Department of Justice's recommendation, the committee proceeded to hold in abeyance any immediate further action on title I of the crime bills until the American Law Institute Advisory Committee could meet at Atlantic City in early June of 1965 to discuss rule 5(a) and other related provisions of criminal procedure. It was the committee's belief that something beneficial to the committee consideration of the matter might be developed at this session.

Staff members of the committee attended the American Law Institute advisory sessions in Atlantic City as observers of the proceedings.

However, following the conclusion of the advisory sessions in Atlantic City, it became readily apparent to the committee that the

[3] P. 34, committee hearings, H.R. 5688 (89th Cong.).

American Law Institute was in the preliminary stages of devising remedial legislation for rule 5(a), and that nothing definitely affirmative could be expected to evolve from the American Law Institute with reagrd to the proposed modification of rule 5(a) until June of 1966, the date set for the annual session of the institute in Washington, D.C., at which time the full matter is expected to come before its full membership for a conclusion.

On July 15, 1965, and following the conclusion of the advisory sessions in Atlantic City, the committee proceeded to obtain further testimony on title I of the crime bills from the Deputy Attorney General as well as from the U.S. attorney for the District of Columbia.

In his testimony at this proceeding, the Deputy Attorney General proposed as the recommendation of the Justice Department that changes in rule 5(a) be implemented through administrative procedures rather than through a statute enacted by the Congress. In his statement before the committee, the Deputy Attorney General stated: [4]

> As for the problems raised by the *Mallory* rule in the District, our further study since your hearing of April 27 has led us to a plan which affords an immediate opportunity for a fairer and more effective police investigation and adequate protection of the rights of the suspects, while permitting the police to develop facts and avoid a premature test of the constitutionality of proposed procedures. The plan has been implemented by a letter of July 14, 1965, from U.S. Attorney Acheson to Chief Layton. Copies of this letter have been provided the committee.
>
> Under this plan, after an arrest based upon probable cause and prior to the filing of a charge, a suspect may be questioned concerning his knowledge of a crime. As a prerequisite to questioning he must be clearly advised that he need not answer any question; that any statement given may be used against him; that he may consult counsel, a relative, or a friend; and that if he is charged and cannot afford a lawyer the court will appoint one for him. Police officers are instructed to keep records of the time, duration, and circumstances of all questioning. Questioning will be sound recorded or otherwise preserved where possible, and steps will be taken to improve technology in this area. Any questioning will be of limited duration and should not exceed 3 hours in total. It will not, of course, be coercive or oppressive in manner, and will be avoided where it does not advance the investigation of crime.
>
> The arraignment of suspects who are charged after arrest will not be delayed except in unusual circumstances. Committing magistrates have arraigned at 10 a.m. on weekdays in the District for decades. This is typical of most jurisdictions. Any questioning of a suspect will be done, and the decision whether and what to charge will be made, between the time of arrest and the time next available for arraignment except when the time and circumstances make this unfair or inadequate.

[4] Committee hearings, July 15, 1965, H.R. 5688 (89th Cong.).

In no event will questioning cause "an unreasonable delay" in presentment to a committing magistrate.

While we cannot be certain that statements made in compliance with this procedure will be admitted in evidence by every judge in every case, the courts will be given the opportunity to pass upon statements made under such conditions and may well find that *Mallory* does not require their exclusion. Careful police implementation and sound prosecutorial discretion will assure the development of a solid basis for legislation.

COMMITTEE FAVORS STATUTE

The committee concurs completely with the position that the Department of Justice—through the Deputy Attorney General—has taken with regard to the detention of an accused and the appropriate postarrest questioning under adequate safeguards.

However, the committee believes that to meet its proper responsibilities the procedures as proposed by the Department of Justice, and concurred in by the U.S. attorney for the District of Columbia, should be placed in statutory form and enacted into positive law by the Congress. Therefore, the committee in favorably reporting H.R. 5688, as amended, to the Senate, has in effect, placed the recommended procedures advanced by the Justice Department and concurred in by the U.S. attorney for the District of Columbia in statutory form for appropriate consideration by the Congress.

The committee's belief is that its legislative responsibility can only be properly discharged by recommending a positive statutory law rather than concur in lieu thereof with administrative orders from the U.S. attorney for the District of Columbia to the Metropolitan Police Department on the methods to deal with arrest and investigation.

The committee's recommendations as contained in title I of the instant bill represents a legislative effort to retain for persons charged with crime those essential individual rights that the *Mallory* rule and its subsequent case law refinements have made. At the same time the recommendation strikes a balance point in permitting police to carry on proper and necessary questioning under clearly defined limitations. It is the committee's judgment that the *Mallory* rule and subsequent court decisions, which have tightened the noose around effective law enforcement, must be changed.

This recommendation is limited to apply only to the District of Columbia where violent crimes fall within the trial and appeal jurisdiction of the Federal judiciary and limitations of the Federal Rules of Criminal Procedure. Since the District is unique in many ways, the committee believes law enforcement must be dealt with uniquely in providing the District courts and the police with clear-cut procedural guidelines so as not to do harm to persons accused of crimes and at the same time provide protection not now being given to the law-abiding general public.

What Congress approved by the language of rule 5 of the Federal Rules of Criminal Procedure, Congress can now disapprove by statutory enactment for the District where the court interpretations of *Mallory* are felt more keenly than in any other Federal jurisdiction.

It is not contended that legislative enactment to alter the severe application of the *Mallory* rule alone will curb the crime rate which

has risen steadily since that Supreme Court decision in 1957. The Department of Justice, the U.S. Attorney, police officials, a respected member of the U.S. district court, the District of Columbia Council on Law Enforcement, and members of the bar have testified at various times before this committee that a change in the *Mallory* doctrine should provide assistance in combating crime.

Certainly, proper interrogation free of abuse and with the guidelines this title contains, would provide a valuable law enforcement investigative tool.

In a statement filed with the committee at hearings on May 13, 1965, the Honorable Sam J. Ervin, senior U.S. Senator from North Carolina and chairman of the Constitutional Rights Subcommittee of the U.S. Senate Committee on the Judiciary, stated:

> The *Mallory* rule and rule 5(a) of the Federal Rules of Criminal Procedure are subjects which have long been of great concern to me. It is my feeling that the crime rate in the District will continue to mushroom and effective law enforcement here will continue to be frustrated until legislation such as that contained in title I is enacted. For this reason, I have in previous Congresses introduced legislation to clarify rule 5. The *Mallory* rule certainly is a factor influencing the crime rate for due to it, self-confessed criminals are let free by the courts, and the police are hampered in their crime detection.

Further, when Senator Ervin testified before this committee on October 23, 1963, he said: [5]

* * * * *

> Although I realize this is not the only factor influencing the crime rate, the *Mallory* rule certainly is a major factor, for due to it self-confessed criminals are let free by the courts and the police are hampered in their crime detection * * *.

* * * * *

> I submit that when Congress approved the promulgation of the Federal Rules of Criminal Procedure, it did not intend to throw on the scrapheap the time-honored test of voluntariness concerning the admissibility of a confession. I submit that Congress had no intention of making convictions impossible simply because a police officer failed to take a prisoner before a committing magistrate until 7½ hours had elapsed.
>
> As chairman of the Subcommittee on Constitutional Rights, I am, of course, not unmindful of the many protections which the Constitution of the United States bestows upon the persons accused of crimes within our society. But, in the words of Judge Alexander Holtzoff, U.S. district judge for the District of Columbia, who testified at subcommittee hearings on the subject of confessions and police detention, in 1958:
>
> "We must bear in mind that the purpose of the criminal law is to protect the public. On the one hand, it is essential that no innocent person be convicted of a crime and that

[5] P. 353, hearings, H.R. 5688 (89th Cong.).

oppressive methods be not used against the guilty. On the other hand, it is equally indispensable that victims of a crime and potential victims of possible future crimes receive protection. The victim must not become a forgotten man. As was said by Justice Cardozo in *Snyder* v. *Massachusetts*, (291 U.S. 97, 122), 'Justice, though due the accused, is due to the accuser also. The concept of fairness must not be strained till it is narrowed to a filament. We are to keep the balance true.' " [6]

SECTION-BY-SECTION ANALYSIS OF TITLE I

Section 101 is a brief restatement of existing law with respect to the admissibility of incriminating statements made by an accused. The committee wishes to make clear that nothing in this title is intended to prevent the trial courts of the District of Columbia from determining the voluntariness of any incriminating statement made by an accused in accordance with established principles of law.

Section 102 restates existing law and excludes statements made by an accused after a period of unnecessary delay and prior to an appearance before a U.S. commissioner.

Section 103 provides that under section 102 of this title delay alone shall not cause the exclusion of any statement obtained by interrogation of the accused if (1) the accused was warned that he need not make a statement and was told that any statement made could be used against him; and (2) prior to any questioning, the arrested person was advised by the officers having custody of him that upon request he would be afforded reasonable opportunity to notify a relative or friend and consult with counsel of his choosing and if such request were made, he was, in fact, afforded such opportunity; and (3) the aggregate period of questioning, exclusive of interruptions, does not exceed 3 hours between the arrest and the completion of the confession, admission, or statement; and (4) all of these warnings and any questioning of the accused were witnessed by a third party or transcribed or recorded verbatim.

The aggregate 3-hour time limitation in this bill, rather than a fixed time period, was included in the bill in order to provide police officers flexibility in their questioning during the course of the investigation.

Section 103(1) is intended to require a warning at the station house even though a warning had been initially given on the scene of arrest. It should be clear that this provision does not make it necessary for the police to reassert this warning after every interruption of their course of investigation at the station house.

The intention of section 103(2) is to require the police to advise the accused that he may request of them the opportunity to advise a friend or relative of his arrest and that he may request the opportunity to consult with counsel. However, this section shall not be construed as a requirement that this advice be given the accused at the place of arrest or en route to the station house.

Section 103(4) is not meant to require that good investigative practice be changed to conform to the present technology of sound recording. The intention of the committee is rather to encourage

[6] P. 355, hearings, H.R. 7525 (88th Cong.).

experimentation with reliable means of verification and to require use of verification means during investigations where present technology and the circumstances of the case permit.

Section 104 requires the trial judge who admits any statement in evidence pursuant to section 103 of this title to make findings of fact concerning the existence of the conditions set out in section 103. This will establish the necessary record for any subsequent appeal taken by the accused from the decision of the judge to admit any statement under this section.

Section 105 authorizes and directs the Commissioners of the District of Columbia to promulgate regulations including necessary disciplinary measures to assure that police officers comply with requirements of law set out in this title and with the regulations made pursuant to it.

TITLE II—"DURHAM" RULE

The purpose of title II of this bill, as amended, is to amend section 927 of the act of March 3, 1901 (24 D.C. Code sec. 301), so as to require an accused to provide notice to the court of jurisdiction of an intention to plead an insanity defense at the time of entering his plea of not guilty, or within 15 days thereafter, or at such time thereafter as the court may for good cause permit.

During the committee hearings on title II of H.R. 5688 the witnesses, without exception, were of the view that a defendant in a criminal proceeding in the District of Columbia should be required to provide the Government with notice of a proposed insanity defense.

It was the view of those who supported the provision that the requirement of giving notice of an insanity defense may serve to improve the administration of justice in the District of Columbia, as this orderly procedure may assist in limiting an accused from using the insanity defense where the plea is frivolous and without merit. Also, the requirement of notice may prevent a miscarriage of justice in a criminal case, particularly where a defendant succeeds unjustifiably in his insanity defense for the reason that the Government is taken by surprise at trial and is unable to prepare for the insanity defense.

The committee, in considering the other provisions of title II of H.R. 5688 as it passed the House, was of the view that now was not the appropriate time to legislate a new insanity test for the District of Columbia. The committee recognized that the insanity cases of *Durham* v. *United States*, 239 F. 2d 52 (1956), caused an extensive change in the insanity law for the District of Columbia. The *Durham* and *Douglas* cases greatly increased in the District of Columbia the number of acquittals by reason of insanity in criminal felony cases.

Background of "Durham" rule

Your committee gave intensive review, both at public hearings and in executive sessions, to the need for a better test for criminal responsibility for the courts of the District of Columbia.

As background, in 1954 the Circuit Court of Appeals for the District of Columbia decided the *Durham* case, and in so doing rejected the right and wrong insanity test for the District and, in its place, enunciated the *Durham* insanity rule which simply states: "An accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect."

Once the *Durham* case was decided, it became apparent to many interested persons that the term "product," as used in *Durham*, was too vague a term. The question evolved as to how the trial judge should explain "product" to the jury in his instructions and also what causal mechanisms should the medical witness describe to the jury.

Without answering these questions, the court next turned its attention to the burden of proof in insanity cases and proceeded to decide the cases of *Douglas* v. *United States*, 239 F. 2d 52 (1956), and *Wright* v. *United States*, 250 F. 2d 4 (1957). The effect of these insanity decisions was to remove the insanity issue from the jury, and to require the trial judge to direct a judgment of acquittal by reason of insanity where the Government is unable to show, through expert psychiatric testimony, the sanity of the accused at the time of the crime.

These changes in the substantive law resulted in a steady increase in the number of defendants acquitted by reason of insanity in the District of Columbia courts.

In an effort to modify *Durham* and the follow-on cases of *Wright* and *Douglas*, the U.S. Court of Appeals for the District of Columbia, on October 8, 1962, decided the case of *McDonald* v. *United States*, 312 F. 2d 847 (1962). In this decision the court recognized the need for a precise judicial definition being given the terms "disease," "defect," and "product," as they were used in *Durham*. In *McDonald*, the court formulated the following supplemental instruction to be given the jury in connection with the *Durham* insanity charge: "A mental disease or defect includes any abnormal condition of the mind which substantially affects mental or emotional process and substantially impairs behavior control."

In addition to providing a definition of the terms in the *Durham* decision, your committee believes the *McDonald* case also restored to the jury, in some measure, the function of resolving the issue of criminal responsibility even though the testimony of experts weighs heavily in favor of the defendant and his plea of insanity. In this connection, the court in *McDonald* specifically stated "whether uncontradicted expert testimony overcomes the presumption [of sanity] depends upon its weight and credibility, and weight and credibility are for the jury."

As further background, in 1953 before the *Durham* decision, three defendants were acquitted by reason of insanity in the District of Columbia. Statistics were presented to the committee that showed in fiscal year 1962, of 516 defendants tried in the U.S. District Court for the District of Columbia, 67 were acquitted by reason of insanity. This represented 13 percent of the persons tried. However, the committee has been informed that there has been a sharp reversal of this trend in fiscal year 1964, and the reason for it stems directly from the *McDonald* insanity decision, cited above. The statistics submitted to the committee for 11 months of fiscal year 1964 disclose that 320 defendants were tried in the U.S. district court and that 20 were acquitted by reason of insanity. This represents 6.2 percent of the defendants tried.

The U.S. attorney for the District of Columbia, the Department of Justice, the District of Columbia Council on Law Enforcement, the Commissioners of the District of Columbia, and various other witnesses who testified at the committee hearing, recommended that the courts of the District of Columbia be allowed to gain further experience with the *McDonald* insanity instruction, as it modified the

Durham rule, without the Congress making any amendments to the insanity test at this time. They viewed the test of criminal responsibility in the *McDonald* case as being very close to that formulated in title II of H.R. 5688 which passed the House, and which test is based upon the American Law Institute model penal code.[7]

The U.S. attorney for the District of Columbia pointed out that in his office's experience since the *McDonald* case, the principles of such decision appear to be workable, sensible, and intelligible to juries. It was also his view that *McDonald* and the insanity test formulated in title II of H.R. 5688 as it passed the House, require that the exoneration from responsibility rests upon impairment of controls by mental disease or defect. In accordance with this, it was also his view that *McDonald* had accomplished the main objective of subsection (a) of title II of H.R. 5688 as it passed the House. Therefore, your committee believes that a legislative pronouncement in this nebulous area of criminal responsibility at this particular time might well add more confusion to a difficult legal field which *Durham*, and modified by *McDonald*, has presently given substantive guidelines.

Pretrial examination

Title II of the House bill also contains a lengthy procedure relating to pretrial mental examination to determine mental competency for trial, as well as posttrial commitment in a mental hospital where an acquittal results by reason of insanity. The great weight of the testimony of the witnesses who appeared before the committee and testified in connection with this matter, leaned to the conclusion that these procedures are already adequately taken care of in the District Code (24 D.C. Code, sec. 301) and for that reason there is no real need to enact the House provisions contained in H.R. 5688.

It was also pointed out that the Judicial Conference for the District of Columbia Circuit for the past 3 years has been studying the District of Columbia procedures relating to competency to stand trial and posttrial commitment. Since the report on this study will be made available to the Congress sometime in the very near future, it was recommended to the committee that action be delayed until the report, with its views and recommendations, has been completed and is available for study by the Congress.

The committee concluded, therefore, that no change in this area appears desirable or necessary at this time and that any proposed legislative action in this particular matter be held in abeyance.

TITLE III—DETENTION OF MATERIAL WITNESSES

The purpose of section 301 of title III is to amend section 401, the Revised Statutes of the United States, relating to the District of Columbia (4 D.C. Code, sec. 144).

Under the provisions of this title, as it amends existing law, members of the Metropolitan Police force and the Federal law enforcement officers are authorized, without unnecessary delay, to take before a judge, or U.S. commissioner of the District of Columbia, any person whom the officer has reasonable grounds to believe is a material and necessary witness to the commission of a crime punishable by imprisonment for 1 year or more, and when there is a reasonable prob-

[7] p. 94, committee hearings, H.R. 7525 (88th Cong.).

ability that such person will not be available to testify at the trial of the person charged with the offense.

The existing law on detention of material witnesses (4 D.C. Code, sec. 144) is very sketchy and raises many unanswered questions as to the procedure for securing the appearance of witnesses as well as problems of administration in arranging for their custody. As a result, the provisions of existing law are very rarely used, and are of almost negligible value to the prosecutor or the court. The U.S. attorney for the District of Columbia stated that, since being in office, he can recall only one case in more than 3 years in which the existing statute was invoked, and that was to secure the continuing appearance of a witness who had already appeared initially and was before the court during the progress of a trial.

It was pointed out at the hearings held by the committee on this title that an amended material witness statute would provide a useful, though not complete, protection against numerous continuances of criminal trials (and against a small number of voluntary dismissals) which are necessitated by the failure of essential witnesses to respond to subpenas.[8] Such continuances (and dismissals) involve a costly waste of time and energy on the part of witnesses, judges, and counsel. If a criminal case in the U.S. district court does not go to trial on the day it is called, all of the witnesses who are subpenaed to attend often must be sent away at a financial cost to the Government of $4 per witness per day, and a still greater cost in the loss of their good will, because of the inconvenience of reappearing later. Moreover, the time of both Government and defense counsel is wasted by such continuances and their work schedules are inconvenienced and dislocated.

This material witness proposal provides that a law enforcement officer in a criminal case may take a witness without unnecessary delay before a judge or U.S. commissioner when he believes the witness to be a material and necessary witness, and a reasonable possibility exists that such witness will not be available to testify at trial. Once before a judge or U.S. commissioner, a hearing is required to determine if the witness, in fact, is a material and necessary one, and also whether there is a reasonable opportunity that he will not be available to testify.

If the judicial officer determines that such standards are satisfied, the title then provides that the judicial officer shall require such witness to post bond or collateral as security that he will appear and testify and upon his failure to do so, shall order his further detention until such time as he does appear and testify. In those instances where the witness is financially unable to make bond, and thereby necessarily remains in detention, the court is provided the right on motion of the witness, and upon notice to the parties, to order the taking of a deposition of the witness. After the deposition has been subscribed the court may discharge the witness. This procedure, as it relates to the taking of a deposition, is quite important and desirable for the reason that it tends to avoid the unreasonably long detention of a witness, awaiting trial, and who is without funds to post bond. Where detention of a material witness does occur under the provisions of this title, suitable accommodations with be used separate

[8] Committee hearings, H.R. 7525 (88th Cong.).

and apart from quarters used in the confinement of persons charged with crime.

The committee also provided that a witness being brought before the judge or commissioner should be offered a reasonable time and opportunity to obtain counsel for purposes of the hearing.

Also, the committee deemed it advisable for a provision to be added granting the court authority to release a witness after he has been detained for an unreasonable period of time.

The committee at the public hearings on this title of the bill, heard numerous witnesses and, almost without exception, they testified of the need for a material witness statute with adequate guidelines and procedures. Their recommendations in connection with a material witness statute have, for the most part, been incorporated in this title of the bill.

The U.S. attorney for the District of Columbia, the Commissioners of the District of Columbia and the Department of Justice, all voiced approval of the material witness provisions included in this title.

Investigative arrest

The committee rejected section 301 of title III, H.R. 5688 as passed by the other body, on the grounds that a 6-hour investigative or detention period, and made without probable cause, would not meet the constitutional test.

Under that section, an officer or member of the Metropolitan Police Department is authorized to detain, for a period of 6 hours, any person found abroad whom such officer has reason to suspect is committing, has committed, or is about to commit a crime, and who, upon inquiry, fails to identify himself or give a satisfactory explanation of his action.

The great majority of witnesses who appeared at hearings were of the opinion that this section would be unconstitutional.[9] These included the Department of Justice, the office of the U.S. attorney for the District of Columbia, the Commissioners of the District of Columbia, and the District of Columbia Council on Law Enforcement.

The Department of Justice report to the committee, signed by the then Deputy Attorney General Nicholas deB. Katzenbach, dated September 13, 1963, stated:

> Section 301 of title III permits an officer or member of the Metropolitan Police Department to detain, for a period of 6 hours, any person found abroad whom such officer has reason to suspect is committing, has committed, or is about to commit a crime, and who, upon inquiry, fails to identify himself or give a satisfactory explanation of his action.
>
> Such detentions are arrests. Legislative statements to the contrary cannot avoid the fact that title III provides for seizure without probable cause. This is a violation of the fourth amendment to the Constitution. Further, title III provides for 6 hours of detention without any provision for the assistance of counsel. This procedure may well be violative of sixth amendment rights. See *In re Groban*, 352 U.S. 330 (1956), and *Anonymous* v. *Baker*, 360 U.S. 287 (1958). In addition, the detention proposed by title III deprives a person of his opportunity to seek bail immediately, keeps him incommunicado, suspends his right of habeas corpus, and

[9] P 358, committee hearings, H.R. 7525 (88th Cong.).

tends to impair his privilege against self-incrimination under the fifth amendment. Essentially, section 301 is a legislative effort to reinstitute investigative arrests, a practice long criticized by the bar of the District of Columbia, condemned by a special committee appointed by the District of Columbia Commissioners to study the problem, and ended by order of the Commissioners in March of this year.

The Honorable Sam J. Ervin, senior U.S. Senator from the State of North Carolina and chairman of the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, cited his belief of the provision's unconstitutionality, as: [10]

Title III of H.R. 7525 accords legislative sanction to this former police practice in the District of Columbia of arresting for investigation; that is, it provides for detention of persons when an officer has "reasonable grounds to suspect" he is committing, has committed, or is about to commit, crime. The second half would add to the law new procedures for the detention of material witnesses.

While I endorse the principle of the provision regarding material witnesses, I cannot, in good conscience, endorse the section relating to investigative arrests.

There are constitutional as well as policy considerations that sometimes prevent lawmakers from legislating upon the theory that, in law as well as in geometry, a straight line is the shortest distance between two points.

In the matter of investigative arrests—and I do believe such detention amounts to arrest, regardless of stipulations that it does not—our legislative road toward decreasing the crime rate in the District of Columbia is neither clear nor straight. Rather, it is marked by those constitutional guarantees which the Founding Fathers saw fit to incorporate in the Bill of Rights. The fourth amendment, assuring the hard-won guarantee, deeply rooted in Anglo-American experiences, that there will be no seizure of persons without probable cause; the fifth amendment, providing for due process of law, with all that has been held to include; the sixth amendment, assuring the right to counsel—these are obstacles in the path of Congress which are not to be ignored. Incorporating some of the fundamental principles on which our society rests, these amendments were meant to guide lawmakers in the centuries ahead, and are so basic that they should not be overlooked in our effort to meet the exigencies of the moment.

This measure appears to establish a subjective test for apprehending suspects, a rule of thumb to be intrepreted by every policeman patrolling his beat. In effect, by permitting the detention for 6 hours of a suspect when his replies to questions are not satisfactory to a policeman, this bill would, for the convenience of law enforcement officers, postpone that point at which all the procedural guarantees of the Constitution become operative for the individual arrested. As was stated by the Department of Justice report on the bills, this proposal provides "for a seizure of the person

[10] Essentially the same as title III of H.R. 5688, as the latter passed the House.

without probable cause, in violation of the fourth amendment, and accompanied by the consequences of a conventional arrest."

It would permit "a 6-hour police interrogation of a person suspected of committing a felony, without the assistance of counsel." Such a procedure, in the Justice Department view, "would be violative of the sixth amendment's guarantee that an accused shall have the assistance of counsel for his defense."

The constitutionality of this section, in my view, could not withstand judicial review.

I tend, furthermore, to agree with the opinion expressed by the U.S. attorney for the District of Columbia that enactment of a workable bill dealing with the *Mallory* problem may obviate some of the need police feel for the provision of title III.

TITLE IV

Section 401 of this title amends existing law (22 D.C. Code, sec. 3201).

During a prior amendment to the District of Columbia Criminal Code, the crime of robbery was inadvertently omitted as a crime of violence. This proposed amendment will rectify this omission and enumerate robbery as a crime of violence within the meaning of section 3201 of the Criminal Code for the District of Columbia.

TITLE V

Title V of this bill is composed of seven sections, all of which amend existing sections of the District of Columbia Code, with the exception of section 507 which codifies a police regulation. In general, these amendments increase, in cases of crimes of violence, penalties applicable to such crimes. In connection with section 505 relating to indecent publications, there is a change in substantive law and also a provision for the use of civil injunctive powers.

During the past several years there has been intense and growing concern at the number of crimes of violence occurring in the District of Columbia. Among the more numerous and serious of these crimes of violence are the yoke street robberies and housebreakings that occur at night in the sanctity of the home.

The 1963 statistics reveal that among the 16 cities in the same class, the District of Columbia ranked second in robberies and fourth in housebreaking.

Pursuant to the long and conscientious hearings that the Senate District Committee held in connection with crime in the District of Columbia, it was the committee's view that some forceful and affirmative action was needed to combat the rising trend in this serious crime area.

In seeking to resolve the problem, the committee gave careful study and consideration to the various statutes and procedures of the various State governments. In examining such statutes it was determined that many of the States provide for mandatory minimum sentences for crimes of violence, particularly where robbery, burglary, and aggravated assault are concerned. Many States impose minimum sentences of from 5 to 10 years in duration. There are more than

28 States that now impose a sentence in excess of 2 years' minimum for the crime of robbery.

Also in lieu of the crime of housebreaking, many of the States have a criminal statute providing for burglary in the first and second degree. Here again, the States provide a minimum sentence for not only first degree burglary but also in some instances for second degree.

After giving careful consideration to the testimony that was adduced at the hearings, and after studying the statutes used by other State governments, the committee decided to amend certain of the existing criminal statutes of the District of Columbia as follows:

Section 501. Assault with intent to kill, rob, rape, or poison

Present law in the District of Columbia (D.C. Code, sec. 22–501) does not provide minimum penalties for a person convicted of an assault with intent to commit violent crimes or to poison another. The amendment to existing law recommended by the committee establishes a minimum sentence of 2 years on conviction.

Section 502. Burglary

Presently the District of Columbia Code (D.C. Code, sec. 22–1801) defines housebreaking as the breaking and entering, or entering without breaking, with the intent to carry away any property or commit any criminal offense. The penalty provided is imprisonment for not more than 15 years.

The amendment recommended by the committee changes this crime to burglary in two degrees.

Burglary in the first degree is defined as the breaking and entering, or entering without breaking, of any dwelling or room used as a sleeping apartment with the intent to take property or commit a criminal offense. The punishment for such crime shall be not less than 2 years nor more than 20 years.

Burglary in the second degree is defined as the breaking and entering, or entering without breaking, into other premises. The penalty is imprisonment for not less than 1 nor more than 15 years.

Section 503. Robbery

Present law (D.C. Code, sec. 22–2901) permits a minimum penalty for robbery of 6 months. The amendment approved by the committee provides an increase in the minimum penalty to 2 years.

Section 504. Additional punishment for committing crimes while armed

Additional penalties are provided in present law (D.C. Code sec. 22–3202) when a crime of violence is committed by a person when armed with firearms in the District of Columbia. In addition to the penalty for the crime, additional imprisonment for a term of 5 years may be imposed for a crime of violence committed with firearms on the first conviction. For a second conviction, the additional penalty may be 10 years. For the third conviction, the added punishment may be 15 years. On the fourth or any subsequent convictions, the added punishment may be imprisonment for 30 years. Additional penalties in each case are discretionary with the court.

The amendment to this section approved by the committee adds certain other dangerous or deadly weapons, other than a firearm, for which a person may be given an additional penalty if he commits a crime of violence while armed with any such weapon.

Section 505. Indecent publications

The purpose of section 505 of title V, as amended, is to amend existing law (22 D.C. Code, sec. 2001), relating to indecent publications in the District of Columbia. The amendatory language accomplishes the following:

(1) Makes it a criminal offense for whoever produces or participates in the production of indecent publications and other materials with knowledge that the same is to be sold, exhibited, or given away; and

(2) Provides the U.S. attorney for the District of Columbia with civil injunctive powers to petition the U.S. District Court for the District of Columbia for a preliminary and permanent injunction to restrain the sale, gift, exhibition, distribution, and production of obscene publications and materials.

The existing indecent publication law for the District of Columbia (22 D.C. Code, sec. 2001) was enacted in 1901 and has never been amended. It provides generally that whoever sells, offers to sell or give away, or whoever has in his possession any such obscene publications and materials with intention to do these acts, or advertises the same for sale, or prints any letter, pamphlet of any kind, stating by what means any of such articles may be obtained, shall be criminally liable.[11]

Subsection (*a*) of this amendment, without making any substantive change, amends the existing publication law by specifically naming in the statutory definition of indecent publications, such items as magazine, story, paper, writing, card, print, motion picture film, image, case, slide, figure, statute, phonograph record, wire, tape, or other sound recording.

Subsection (*b*) of this amendment provides for a substantive change in existing law. Under this subsection the indecent publication law will be extended to cover persons who produce indecent publications with knowledge that they will be sold or given away. The committee, in approving this amendment, was of the view that the existing law will be materially strengthened as the result of bringing within the purview of the statute those persons who knowingly and actively engage in the production of obscene materials.

The existing term of imprisonment of not more than 1 year now provided for in the present indecent publications statute, was retained under both subsections (*a*) and (*b*). However, the fine attaching to these subsections was increased from an amount of not less than $50 nor more than $500 to an amount of not more than $5,000.

The committee was also of the view that in addition to enlarging the criminal scope of existing law, that there should also be made available to the U.S. attorney certain injunctive procedures to assist his office in controlling the sale and dissemination of obscene matters.

Under existing law, the U.S. attorney is powerless to control the distribution of obscene publications unless his office proceeds with the arrest of the offender on a criminal charge. This creates a problem

[11] The text of the indecent publication law is as follows:

§ 22-2001 [6: 174]. Definition and penalty.

Whoever sells, or offers to sell, or give away, in the District, or has in his possession with intent to sell or give away or to exhibit to another, any obscene, lewd, or indecent book, pamphlet, drawing, engraving, picture, photograph, instrument, or article of indecent or immoral use, or advertises the same for sale, or writes or prints any letter, circular, handbill, book, pamphlet, or notice of any kind stating by what means any of such articles may be obtained, or advertises any drug, nostrum, or instrument intended to produce abortion, or gives or participates in, or by bill, poster, or otherwise advertises, any public exhibition, show, performance, or play containing obscene, indecent, or lascivious language, postures, or suggestions, or otherwise offending public decency, shall be fined not less than fifty dollars nor more than five hundred dollars, or imprisoned not more than one year, or both. (Mar. 3, 1901, 31 Stat. 1332, ch. 854, § 872.)

for the effective law enforcement for the reason that in some instances the question is unclear initially as to whether a publication is obscene. On this point, the U.S. attorney in his testimony before the committee stated:

> * * * the limitation on prosecution is not the absence of effective statutory law, it is the very difficult and changing tests, judicial tests, of what is obscene under the statute. It is that which is the effective limitation on prosecution, rather than the absence of statutory authority.

It is for this reason, the difficulty of knowing for sure what is obscene, that some reluctance has been shown by the prosecuting office to proceed with effective enforcement in all alleged obscenity cases.

In order to correct this weakness and aid the U.S. attorney's office in proceeding against obscene publications, the committee added subsection (c) of this amendment. Under this subsection, civil injunctive procedures are provided to the U.S. attorney which will permit his office to petition the U.S. district court for a preliminary injunction and permanent injunction for the purpose of restraining the sale of and dissemination of obscene publications and materials, and also their production.

During the public hearings in connection with amending the existing indecent publication law,[11] the committee was made cognizant of the various radio and television stations located in the District of Columbia that transmit their programs to the entire metropolitan area. It was brought to the attention of the committee that these stations, in some measure, are already subject to the provisions of the Federal criminal statute contained in 18 U.S.C. 1464. This particular section of the code reads as follows:

> Whoever utters any obscene, indecent, or profane language by means of radio communication shall be fined not more than $10,000 or imprisoned not more than 2 years, or both (June 25, 1948, c. 645, 62 Stat. 769).

The above statute appears to bring clearly within its jurisdiction all instances of obscenity violation by means of radio and television communications. This being the case, the committee was reluctant to impose a criminal sanction where one already exists. Accordingly, with a view to alleviating any dual criminal responsibility in connection with radio and television stations and other activities regulated by the Federal Communications Commission, the committee added subsection (f) of this amendment which provides that the section relating to indecent publications shall not apply to a licensee under the Communications Act of 1934 while engaged in activities regulated pursuant to such act.

H.R. 4670—An indecent publication bill approved by both Houses in the 87th Congress

During the 2d session of the 87th Congress, an obscene publication bill, H.R. 4670, passed the Congress but was subsequently vetoed by the President. The essential reason for the veto was the broad authority extended to law enforcement officers to seize all types of personal property that might be used in violation of the statute. The indecent

[11] P. 775, committee hearings, H.R. 7525 (88th Cong.).

publication section of this bill, as reported by this committee, does not contain this objectionable authority with regard to seizures of property.

In this connection, subsection (d) of this amendment makes it clear that the seizure of property shall be limited to obscene, lewd, and indecent matters and not extend to personal property of a nonobscene nature.

Section 506 Placing explosives with intent to destroy or injure property

Present law in the District of Columbia (22 District of Columbia Code 3105) relates to the use of explosives with an intent to destroy or damage property. The penalties under existing law provide for a fine not exceeding $1,000 or imprisonment not exceeding 10 years.

The amendment to existing law recommended by the committee establishes a minimum sentence of 3 years on conviction.

Section 507—False and fictitious reports to the Metropolitan Police Department

The purpose of this new section is to codify the provisions in the regulations of the Metropolitan Police Department relating to the offense of making, or causing to be made, false or fictitious reports regarding criminal offenses or other matters within the purview of the Metropolitan Police Department, with knowledge that such report is false or fictitious. The penalties provided are a fine not exceeding $300 or imprisonment not exceeding 30 days.

Already in the District of Columbia Code is a provision similar to this section that makes it a criminal offense to make a false report to the District of Columbia Fire Department.

TITLE VI

Provides the provision of law in effect at the time of the commission of an offense shall remain in full force and effect with respect to any person who, prior to the date of the enactment of this act, committed any act or engaged in any conduct which constituted an offense under a provision of law amended by this act.

SECTION-BY-SECTION ANALYSIS

TITLE I

Section 101 is a brief restatement of existing law with respect to the admissibility of voluntary confessions and statements made by an accused.

Section 102 restates existing law and excludes statements made by an accused after a period of unnecessary delay and prior to an appearance before a U.S. commissioner.

Section 103 provides that under section 102 of this title, delay alone shall not cause the exclusion of any statement obtained by interrogation of the accused, if—

(1) immediately prior to any such questioning the defendant was plainly advised by the officers having custody of him, in addition to any previous warning, that he is not required to make any statement at any time and that any statement made by him may be used against him;

(2) prior to such questioning, the arrested person was advised by the officers having custody of him that, upon request, he would

be afforded reasonable opportunity to notify a relative or friend and consult with counsel of his choosing, and if such request were made, he was, in fact, afforded such opportunity:

(3) the aggregate period of questioning, exclusive of interruptions, does not exceed 3 hours between the arrest and the completion of the confession, admission, or statement; and

(4) such questioning and the warning and advice required by paragraphs (1) and (2) of this section were, whenever reasonably possible, witnessed by a responsible person who was not a law enforcement officer, or transcribed verbatim, or recorded by a wire, tape, or other sound recording, or conducted subject to other comparable means of verification.

Section 104 requires the trial judge who admits any statement in evidence pursuant to section 103 of this title to make findings of fact concerning the existence of the conditions set out in section 103.

Section 105 authorizes and directs the Commissioners of the District of Columbia to promulgate regulations, including necessary disciplinary measures, to assure that police officers comply with requirements of law set out in this title and with the regulations made pursuant to it.

TITLE II

Section 201 of the bill amends section 24-301 of the District of Columbia Code relating to insane criminals by adding a new subsection (i). This subsection provides that insanity shall not be a defense in any criminal proceeding in the U.S. district court or District of Columbia court of general sessions unless the accused or his attorney in such proceeding files with the court and serves upon the prosecuting attorney written notice of his intention to rely on such defense.

The notice is required to be filed at the time of entering a plea of not guilty, or within 15 days thereafter, or at such time thereafter as the court may for good cause permit.

TITLE III

Section 301 amends section 4-144 of the District of Columbia Code relating to detention of material witnesses.

The section provides that members of the Metropolitan Police force and the Federal law enforcement officers are authorized, without unnecessary delay to take before a judge, or U.S. commissioner of the District of Columbia, any person whom the officer has reasonable grounds to believe is a material and necessary witness to the commission of a crime punishable by imprisonment for 1 year or more, and when there is a reasonable probability that such person will not be available to testify at the trial of the person charged with the offense.

Immediately upon being taken before a judge or commissioner, such person shall be advised of his constitutional rights and shall be allowed reasonable opportunity to consult counsel. After a hearing is afforded, and pursuant thereto, a person is determined to be a material and necessary witness, such person will be required to post bond or collateral as security that he will appear and testify at such trial. Upon his failure to post bond or collateral, the judge or commissioner may order his further detention in suitable quarters that are separate and apart from those used for the confinement of persons

charged with crime. Under the section, the judge or commissioner retains authority to release any person detained for an unreasonable period of time whether or not he has discharged his duties as a material witness.

Also, the section affords the prosecution the same right with respect to the taking of a deposition of a material witness as is afforded to the defendant. In those instances of where a person, through financial inability, cannot post bond or collateral, the court may discharge such person where the deposition of the person has been taken.

TITLE IV

Section 401 of this title amends section 22–3201 of the District of Columbia Code which defines crimes of violence. This section adds the crime of robbery to the above-mentioned section of the District of Columbia Code.

TITLE V

Section 501

Section 501 of this title amends District of Columbia Code, section 22–501, to provide a minimum sentence of not less than 2 years for assault with intent to commit crimes of violence.

Section 502

Section 502 of this title amends the District of Columbia Code, section 22–1801, which defines and provides penalties for the crime of housebreaking. This section establishes or defines the crime of burglary, in two degrees, and the punishment to be applied.

Subsection (a) of this amendment defines burglary in the first degree as a breaking and entering, or entering without breaking, any actually occupied dwelling or room used as a sleeping apartment in any building with the intent to take property or commit any criminal offense. Burglary in the first degree shall be punished by imprisonment for not less than 2 years nor more than 20 years.

Burglary in the second degree is defined in subsection (b) as breaking and entering or entering without breaking into other enumerated premises with the intent to take property or commit any other crime. The penalty for burglary in the second degree shall be imprisonment for not less than 1 year nor more than 15 years.

Section 503

Section 503 of this title amends the provisions of District of Columbia Code, section 22–2901, by increasing the minimum penalty for crimes of robbery from a minimum of 6 months to a minimum of 2 years.

Section 504

Section 504 of this title amends District of Columbia Code, section 22–3202.

Under existing law, permissive additional penalties are provided for where an accused is armed with a firearm when committing a crime of violence. Thus a person armed when committing a crime of violence would be subject on conviction, to an additional sentence for a term of not more than 5 years; for second convictions an additional sentence

of not more than 10 years; for a third conviction an additional sentence of not more than 15 years; and for a fourth and subsequent conviction an additional sentence of not more than 30 years.

The amendment to this section adds certain other dangerous or deadly weapons, other than a firearm, for which a person may be given an additional penalty if he commits a crime of violence while armed with any such weapon.

Section 505

Section 505 of this title amends District of Columbia Code, section 22–2001, relating to indecent materials.

Subsection (a) of the amendment provides that whoever sells, offers to sell, or gives away or has possession with intent to sell, give away, or exhibit indecent materials, or who advertises such materials or drugs or instruments intended to produce abortion or gives or participates in or advertises any indecent public exhibition, shall be fined not more than $5,000 or imprisoned not more than 1 year, or both.

Subsection (b) of this amendment provides that whoever with knowledge engages in the production of obscene materials which are to be disseminated shall be fined not more than $5,000, or imprisoned not more than 1 year, or both.

Subsection (c) of this amendment provides that the U.S. attorney for the District of Columbia may petition the U.S. district court for a preliminary injunction and a permanent injunction to restrain the sale, dissemination, distribution, and production of obscene matter prohibited in this section. A hearing will be provided prior to the issuance of any preliminary injunction which will remain in effect for no more than 30 days.

Subsection (d) of this amendment provides that after trial of the issues the court may issue a permanent injunction and that such injunction shall include a provision for the immediate seizure and impounding of the obscene matter. There is provision for final disposition of such obscene matter in such way as the court may determine. However, in no event shall the matter be destroyed until after finality of appeal.

Subsection (e) provides that proceedings shall be governed by Federal Rules of Civil Procedure, except as they may be inconsistent with the provisions of this section.

Subsection (f) provides an exemption to the provisions of section 505 to those licensed under the provisions of the Federal Communications Act while engaged in activities regulated pursuant to such act.

Section 506

This section of title V amends District of Columbia Code, section 22–3105, which provides penalties for the use of explosives with intent to destroy or damage property. The amendment to this section provides a minimum sentence of not less than 3 years and leaves the existing maximum sentence at 10 years.

Section 507

This section of title V adds a new section to the District of Columbia Code relating to the making of false or fictitious reports to the police department. This section codifies the substance of existing regulations

of the Metropolitan Police Department relating to such offenses and provides that the penalty shall be a fine not exceeding $300 or imprisonment not exceeding 30 days.

TITLE VI

The purpose of this title is to make clear that the bill has no retroactive effect.

Offenses committed prior to its enactment are not intended to be affected in any way by any amendment to existing law made by the bill.

MINORITY VIEWS OF SENATOR WAYNE MORSE

I dissent from the majority report recommending passage of H.R. 5688. The reason for this dissent is the inclusion in that bill of title I, section 103 of which permits under certain defined circumstances the interrogation of a defendant during the period immediately following his arrest. If title I of H.R. 5688 were eliminated from the bill I would have no objection to passage of the bill. However, as long as title I remains in the bill, I will oppose its passage and will urge the Senate to reject the bill.

THE MALLORY RULE

The purpose of title I of the bill is to destroy the application of the *Mallory* rule [1] to the District of Columbia. Rule 5(a) of the Federal Rules of Criminal Procedure requires that an arrested person must be brought before a committing magistrate "without unnecessary delay." The *Mallory* rule simply provides that no statement obtained during a period of unlawful detention in violation of rule 5 shall be admissible in a Federal court. In short, the *Mallory* rule tells the police that they, like all citizens in a free society, must obey the law, and that if they break the law, they shall not profit from their wrongdoing because unlawfully obtained evidence may not be admitted against the defendant.

The *Mallory* rule does not exclude a spontaneous confession after arrest; it excludes only those statements obtained during an "unnecessary delay." The Supreme Court made this much clear in the *Mallory* decision:

> The duty enjoined upon arresting officers to arraign without unnecessary delay indicates that the command does not call for mechanical or automatic obedience. Circumstances may justify a brief delay between arrest and arraignment, as for instance, where the story volunteered by the accused is susceptible of quick verification through third parties. But the delay must not be of a nature to give opportunity for the extraction of a confession.

What constitutes "unnecessary delay" has been the subject of numerous opinions in the District of Columbia [2] and the other Federal circuits.[3] The opinions have not always been harmonious. It is

[1] *Mallory* v. *United States*, 354 U.S. 449 (1957).

[2] See *Watson* v. *United States*, 249 F. 2d 106 (D.C. Cir., 1957); *Trilling* v. *United States*, 260 F. 2d 677 (D.C. Cir., 1958); *Naples* v. *United States*, 307 F. 2d 618 (D.C. Cir., 1962); *Jones* v. *United States*, 307 F. 2d 397 (D.C. Cir. 1962); *Tatum* v. *United States*, 313 F. 2d 579 (D.C. Cir., 1962); *Coleman* v. *United States*, 313 F. 2d 576 (D.C. Cir., 1962); *Metoyer* v. *United States*, 250 F. 2d 30 (D.C. Cir., 1957); *Perry* v. *United States*, 253 F. 2d 337 (D.C. Cir., 1957); *Porter* v. *United States*, 258 F. 2d 685 (D.C. Cir., 1958); *Heideman* v. *United States*, 259 F. 2d 943 (D.C. Cir., 1958); *Lockley* v. *United States*, 279 F. 2d 915 (D.C. Cir., 1959); *Goldsmith* v. *United States*, 277 F. 2d 335 (D.C. Cir., 1959); *Day* v. *United States*, 281 F. 2d 33 (D.C. Cir., 1960); *Turberville* v. *United States*, 303 F. 2d 411 (D.C. Cir., 1962); *Hughes* v. *United States*, 306 F. 2d 287 (D.C. Cir., 1962); *Jackson* v. *United States*, 313 F. 2d 573 (D.C. Cir., 1962); *Muschette* v. *United States*, 322 F. 2d 989 (D.C. Cir., 1963); *Pailly* v. *United States*, 328 F. 2d 542 (D.C. Cir., 1964); *Spriggs* v. *United States*, No. 17962, decided June 19, 1964; *Seals* v. *United States*, 325 F. 2d 1006 (D.C. Cir., 1963).

[3] See *United States* v. *Ladson*, 294 F. 2d 535 (2d. Cir., 1961); *United States* v. *Vita*, 294 F. 2d 524 (2d. Cir., 1961); *Holt* v. *United States*, 280 F. 2d 273 (8th Cir., 1960); *Teguer* v. *United States*, 302 F. 2d 214 (8th Cir., 1962); *Evans* v. *United States*, 325 F. 2d 596 (8th Cir., 3 1963); *Williams* v. *United States*, 273 F. 2d 781 (9th Cir., 1959); *Inoza* v. *United States*, 279 F. 2d 616 (9th Cir., 1960); *Muldrow* v. *United States*, 281 F. 2d 903 (9th Cir., 1960).

clear, however, the differences of opinion on the question among learned judges are not confined to the judges of the District of Columbia.

The purpose of rule 5 and the *Mallory* rule are several:

(1) To prevent conflicts over the nature of secret interrogations and to minimize the temptation and opportunity to obtain confessions as a result of coercion, threats, or unlawful inducements;

(2) To effectuate and implement the citizen's consititutional rights by insuring that a person arrested is informed by a judicial officer of his privilege against self-incrimination; his right to counsel and his right to be admitted to bail and given an opportunity to exercise these rights;

(3) To protect the citizen from a deprivation of liberty as a result of an unlawful arrest by requiring that the Government establish probable cause to the satisfaction of a judicial officer before a citizen can be detained by the police.

I am at a loss to understand why this rule excites so much criticism.

I agreed with the Department of Justice last year when it asserted during the hearings on similar legislation that "the *Mallory* rule is a good one." I believe now, as I believed then, that if the rule is a "good one" for this Nation, then it certainly is a "good one" for its Capital City. I was gratified by the testimony during the 1965 hearings of the Honorable Ramsey Clark, Deputy U.S. Attorney General, that the Justice Department "would not challenge the wisdom, fairness, or necessity of the *Mallory* doctrine" (1965 hearings, pt. I, p. 32). If the Department of Justice regards the *Mallory* rule as good, wise, fair, and necessary, and does not seek to curtail its nationwide application to Federal criminal prosecutions, I see no reason for carving out an exception where the District of Columbia is concerned.

WHY THE MALLORY RULE SHOULD NOT BE CHANGED

Title I of H.R. 5688 would destroy the vitality of rule 5 and the *Mallory* rule in the District of Columbia. Citizens of the District of Columbia would be deprived of substantial rights guaranteed to other citizens throughout the Federal system. The objectives of rule 5 and the *Mallory* rule would be discarded in favor of a procedure designed to permit the police to extract confessions from citizens who waive important constitutional rights through ignorance or failure to appreciate the significance of these rights.

My reasons for opposing title I of H.R. 5688 can be summarized as follows:

(1) The postponement of the presentation of a defendant to a magistrate for any period of time for the sole purpose of interrogating that defendant is an unconstitutional erosion of several of the rights guaranteed to an accused by the fourth, fifth, sixth, and eighth amendments to the Constitution of the United States.

(2) The clear purpose of title I is the circumvention and subversion of the defendant's constitutional right not to be convicted out of his own mouth.

(3) The philosophy of title I is foreign to our accusatorial system of criminal justice.

(4) Congressional action with respect to the *Mallory* rule is not appropriate at this time because important studies of the rule are still in progress, and because the attitude of law enforcement officials

toward the rule has not yet crystallized, but rather is in the process of evolution.

(5) As title I is now drafted, it will not even achieve the purpose its sponsors have in mind.

(6) Section 103 of title I, as it is presently worded, raises serious problems of interpretation, is bound to provoke a heavy volume of litigation, and erects safeguards meaningful only to the wealthy.

(7) Since the bill allows at least a 3-hour delay between arrest and arraignment, it is bound to become in practice a device for arresting any person for investigation and interrogation for 3 hours.

THE 3-HOUR RULE

By title I of H.R. 5688, as approved by the majority of this committee, the Congress is requested to legislate into existence a several-hour interval between the arrest of any individual in the District of Columbia, and his presentment before the U.S. commissioner or one of the judges of the District of Columbia court of general sessions. The Congress is asked to do this by a statute defining the words "unnecessary delay" in rule 5(a) of the Federal Rules of Criminal Procedure to exclude at the bare minimum, the first 3 hours after an accused is arrested. In order to evalute both the constitutionality and the desirability of isolating an arrested person from a representative of the judiciary branch of the Government for a 3-hour period, it is essential for the Senate to understand fully the procedure that occurs when an accused is presented to the magistrate. For all must agree that one who is asked to postpone a procedure for at least 3 hours should at least know what it is that he is postponing

The procedure that occurs before the magistrate is spelled out in rule 5(b) of the Federal Rules of Criminal Procedure:

> The commissioner shall inform the defendant of the complaint against him, of his right to retain counsel, and of his right to have a preliminary examination. He shall also inform the defendant that he is not required to make a statement and that any statement made by him may be used against him. The commissioner shall allow the defendant reasonable time and opportunity to consult counsel and shall admit the defendant to bail as provided in these rules.

Rule 5(b) should be read in conjunction with the following provisions from the Bill of Rights:

> The right of the people to be secure in their persons * * * against unreasonable * * * seizures shall not be violated, and no Warrants shall issue, but upon probable cause * * * (fourth amendment).
>
> No person * * * shall be compelled in any criminal case to be a witness against himself * * * (fifth amendment).
>
> In all criminal prosecutions, the accused shall enjoy the right * * * to be informed of the nature and cause of the accusation * * * and to have the assistance of counsel for his defense (sixth amendment).
>
> Excessive bail shall not be required * * * (eighth amendment).

CONSTITUTIONAL ISSUES

Can any person read rule 5(b) and these provisions of the Bill of Rights (with the interpretation put upon them by over 170 years of judicial decisions), and yet say that there are no constitutional implications to title I of this bill? Can any person read rule 5(b) and the fourth, fifth, sixth, and eighth amendments, and reach any conclusion other than that the proceeding before the magistrate is the method for activating these provisions of the Bill of Rights for use in each particular criminal case? Can any person read rule 5(b) together with those amendments and not conclude that by title I of this bill the Congress is asked to hold those constitutional rights in a state of suspended animation for at least the first 3 hours after a person is arrested? And, if the Congress has the power to suspend the application of these rights to the individual defendant for 3 hours, can anyone explain why it would not also have the power to suspend the application of those rights for 12 hours, or 24 hours, or a week, or a month?

If any Senator were bold enough to introduce a bill to the effect that an accused person shall have no right to be free on bail during the first 3 hours after his arrest, the vast majority of the Senate would immediately recognize it as an unconstitutional narrowing of the right to bail conferred by the eighth amendment. Yet, is this not exactly what we are asked to do by title I of this bill?

Suppose the Senate were asked to enact a statute to the effect that until a defendant has been in custody for at least 3 hours, there shall be no judicial inquiry into the question of whether there was probable cause to arrest him at all. Does any Senator seriously doubt that such a statute would quickly and correctly be branded unconstitutional by the U.S. Supreme Court? Yet this is precisely what the Senate is asked to do through the provisions of title I of this bill.

Suppose the Senate were asked to pass a bill to the effect that unless a defendant is able on short notice and while in police custody to contact a criminal lawyer and unless he has enough funds to retain that lawyer, the accused shall have no right to an attorney and no right to his freedom to seek an attorney until at least 3 hours have passed after his arrest. Can any person read the recent decisions of the U.S. Supreme Court and conclude that such a statute would be constitutional? Yet, by indirection, we are asked to enact the substance of such a plainly unconstitutional provision when we are asked to enact into law title I of this bill.

But in the final analysis, it is misleading to speak of a 3-hour delay in arraignment, for the delay may be, and in practice undoubtedly will be, much longer; in some cases, it might come out to a matter of days. Section 103(3) of title I of this bill places a 3-hour limit on questioning, but it places no limit at all on the delay between arrest and arraignment. Moreover, section 103(3) permits an aggregate 3 hours of questioning, exclusive of interruptions. In a particular case, then, an individual could be arrested, questioned for 15 minutes, held incommunicado overnight, questioned intensively for an hour, returned to his cell for several hours or days, and then questioned again for an additional hour and three-quarters, either in one continuous session or in a series of shorter sessions. The interrogation-interruption-interrogation combinations are limitless. It will be only a matter of time before techniques will be developed by the police which will enable them in effect to detain and question a

suspect as long as may be necessary to break him. Section 103(3) is worded to make the interrogation procedure which it creates as palatable as possible, but no matter how it may be sugar coated, it still means that once an accused has been arrested, his constitutional right to liberty may be withheld from him for at least 3 hours while the police try to persuade him to waive his constitutional right not to be a witness against himself. And it also means that it shall not be necessary that the accused actually receive the advice of counsel on whether to make such a waiver, although he is not to be denied the "opportunity" to obtain this advice provided he is wise enough to ask for it and wealthy enough to pay for it. It also means that an accused may be held for at least 3 hours before any judicial inquiry is undertaken into the validity of his having been arrested in the first place.

INQUISITION IS FOREIGN TO OUR SYSTEM OF JUSTICE

Even if one can force himself for the moment to overlook the formidable constitutional problems that are presented by title I of H.R. 5688, it is plain that legislation of this sort runs against the grain of the Anglo-American system of administering criminal justice. This legislation would inject into our accusatorial system of criminal law enforcement the seeds of the inquisitorial system. This legislation could signal the beginning of the end of the privilege against self-incrimination, which in many ways is the hallmark of our systems of criminal justice. We do not wish to burden this minority report with lengthy quotations, but the following observations by Justice Felix Frankfurter, the author of the *McNabb-Mallory* rule, are so pertinent to the issue presented by title I that we do believe they justify quotation here.

> To turn the detention of an accused into a process of wrenching from him evidence which could not be extorted in open court with all its safeguards, is so grave an abuse of the power of arrest as to offend the procedural standards of due process.
>
> This is so because it violates the underlying principle in our enforcement of criminal law. Ours is the accusatorial as opposed to the inquisitorial system. Such has been the characteristic of Anglo-American criminal justice since it freed itself from practices borrowed by the star chamber from the continent whereby an accused was interrogated in secret for hours on end. [Citation omitted.] Under our system society carries the burden of proving its charge against the accused not out of his own mouth. It must establish its case, not by interrogation of the accused even under judicial safeguards, but by evidence independently secured through skillful investigation. * * * The requirement of specific charges, their proof beyond a reasonable doubt, the protection of the accused from confessions extorted through whatever form of police pressures, *the right to a prompt hearing before a magistrate*, the right to assistance of counsel, to be supplied by government when circumstances make it necessary, *the duty to advise an accused of his constitutional rights*—these are all characteristics of the accusatorial system and

> manifestations of its demands. Protracted, systematic, and uncontrolled subjection of an accused to interrogation by the police for the purpose of eliciting disclosures or confessions is subversive of the accusatorial system. It is the inquisitorial system without its safeguards. For a while under that system the accused is subjected to judicial interrogation, he is protected by the disinterestedness of the judge in the presence of counsel (*Watts* v. *Indiana*, 338 U.S. 49 (1949)). [Emphasis added.]

No one who testified during the hearings on this bill did, or could, contest the proposition that one who is arrested has an absolute constitutional right to refuse to make any statement whatsoever to the police. Since this is so, it is difficult to see the justification for a statute which would have the effect of delaying his right to go free on bail for any period of time, be it 1 minute or 3 hours, so that the police can ask him questions which he has a constitutional right not to answer. Moreover, although in some respects a period of 3 hours can seem a relatively short space of time, 3 hours or even 1 hour, of questioning of any sort is certainly an unpleasant experience and one which most people would find an ordeal.

PROPOSED MODIFICATIONS OF MALLORY RULE ERODE PROCEDURAL RIGHTS OF ACCUSED

Even if we assume that the time is propitious for tampering with the judicially determined meaning of rule 5(a); and even is we believe that such tampering is permissible under the Constitution and desirable in view of the special problems that are alleged to exist with respect to law enforcement in the District of Columbia, we are still brought to the question of whether title I is a good way to go about the matter. Certainly, no one could have any objection to section 101 of title I, other than that it is surplusage, since the due process clause of the Constitution would prohibit the use of a confession obtained under the circumstances described in section 101. We would have no quarrel with section 102 of title I, for it simply is a legislative enactment of the rule announced by the Supreme Court in *McNabb* v. *United States* (318 U.S. 332 (1943)).

It is against section 103 of title I that the thrust of our objections is directed. Paragraph (1) of that section required that any interrogation be preceded by advice from the police to the defendant that he is not required to make any statement and that any statement made by him may be used against him. This provision is an open invitation to litigation. What do the words "plainly advise" mean?

Moreover, how are we to be certain that this plain advice was given in situations where the defendant denies it and the police officers affirm it? It is difficult to overlook a natural tendency of trial judges to accept the word of an officer rather than the word of a defendant. In any event, this section is bound to raise the contention in many criminal trials in the District of Columbia that such plain advice was not given to the accused in fact.

In addition, there is indication that this advice to the defendant is an overrated safeguard. How many defendants really understand the significance of what they are told? Since so many give statements after receiving this advice from the police, and since it is obviously not

in their interest to do so, we are justified in concluding that most defendants do not fully appreciate and comprehend what they are told. Indeed, the U.S. attorney for the District of Columbia, David Acheson, who is the author of title I, virtually acknowledged this. During the 1964 hearings, when Senator Dominick asked whether defendants would not simply postpone any confession until the statutory period had expired, he replied:

> Senator, I think that is attributing a degree of sophistication to even a hardened criminal that very few of them seem to possess. At the present time for all practical purposes if he can hold out for 2 hours or 2½ hours, he is pretty well in the clear, but very few of them do (1964 hearings, p. 443).

When a defendant gives any statement to the police, he is, ipso facto, waiving his constitutional right to remain silent. The waiver of such a vital constitutional right should always be preceded by legal advice as to the wisdom of doing so. This brings us logically to section 103(2) of title I, which is obviously contrived to meet these objections.

Section 103(2), which provides that a defendant shall be afforded a reasonable opportunity to notify a friend or relative and to consult with counsel of his own choosing, creates the illusion of fairness, but as a practical matter this safeguard will evaporate in the police station. First of all, how does the defendant select counsel with whom to consult? The classified pages of the telephone directory contain a formidable list of attorneys with no indication of their specialty. One can just imagine the kind of "consulting" which would go on if a patent attorney were roused from his sleep at 4:30 a.m. on a Sunday morning by an unknown defendant arrested on a charge of robbery.

Mr. Acheson all but conceded that this safeguard was an empty one:

> Usually, Senator, these people don't know a lawyer. * * * They are offered the telephone. I think a classic situation here is the famous defendant Killough in a murder case, who was offered the telephone. He did not make use of it. He didn't know a lawyer to call * * *. The police, with some reason, feel that it would be quite improper for them to select counsel for defendants, and I believe that the Legal Aid Agency at the present time is not authorized to accept the call of the police to represent defendants in the custody of the police (1964 hearings, p. 444).

Moreover, an attorney, asked to render such time-consuming service on such short notice and in what is essentially an emergency situation, has a right to demand a fee for his services. Since approximately two-thirds of the defendants who are tried on felony charges in the U.S. District Court for the District of Columbia are represented by court-appointed counsel, it follows a fortiori that an even larger percentage of those arrested will be indigent and couldn't offer a lawyer any guarantee of a fee for his earned services.

Concededly, section 103(2) could be very meaningful for the habitual criminal, for the rich defendant, for the gangster, and for the member of an organized crime syndicate. However, for those who are indigent, for those who are charged with their first offense, for those who are not linked with organized crime, it is an empty provision.

The Justice Department appreciates that the interrogation would be unconstitutional unless preceded by the opportunity to obtain counsel (1964 hearings, p. 433).

Nevertheless, the bill contains no provision for appointment of counsel for the indigent. The Legal Aid Agency Act (D.C. Code 2-2201, June 27, 1960, 74 Stat. 229, Public Law 86-531) does not authorize staff attorneys of the Legal Aid Agency to appear in criminal cases before preliminary hearing. Neither the proposed changes in the Federal Rules of Criminal Procedure (rule 44(b), second preliminary draft (1964)) nor the Criminal Justice Act of 1964 (S. 1057) provide for the appointment of counsel before the preliminary hearing.

In *Massiah* v. *United States* (377 U.S. 201 (1964)), the Supreme Court held that a statement obtained from an indicted defendant at a time when the defendant was not represented by counsel violated the sixth amendment and was inadmissible. The Court observed that—

> A Constitution which guarantees a defendant the aid of counsel at * * * trial could surely vouchsafe no less to an indicted defendant under interrogation by the police in a completely extrajudicial proceeding. Anything less * * * might deny a defendant effective representation by counsel at the only stage when legal aid and advice would help him.

On June 22, 1964, the Supreme Court in *Escobedo* v. *Illinois* (378 U.S. 478), held that the failure of the police to warn a defendant taken into custody of his right to remain silent and the refusal by the police to permit the defendant to consult his counsel upon request constituted a violation of the 6th and 14th amendments and rendered statements elicited from the defendant inadmissible in a criminal proceeding. In his dissenting opinion in the *Escobedo* case, Justice White pointed out the broad effect of the decision:

> * * * Although the opinion purports to be limited to the facts of this case it would be naive to think that the new constitutional right announced will depend upon whether the accused has retained his own counsel * * * or has asked to consult with counsel in the course of interrogation.

It seems clear that Mr. Justice White is correct in foreseeing that the Supreme Court will not tolerate a system which permits the rich defendant to consult with counsel while providing no counsel to advise the majority of defendants who cannot afford legal assistance. In a series of decisions, the Court has reiterated the theme that equal justice under law means that no defendant may be deprived of an important procedural right because of poverty. *Griffin* v. *Illinois* (351 U.S. 12, 17-18 (1956)); *Smith* v. *Bennett* (365 U.S. 708 (1961)); *Coppedge* v. *United States* (369 U.S. 438, 446-447 (1962)); *Gideon* v. *Wainwright* (372 U.S. 335 (1963)); *Douglas* v. *California* (372 U.S. 353 (1963)); *Lane* v. *Brown* (372 U.S. 477, 483-84 (1963)); *Hardy* v. *United States* (375 U.S. 277, 280 (1964)).

The provisions of the bill must be regarded as unconstitutional if they are interpreted in such a way as to deny counsel to an indigent during the police interrogation.

There remains the possibility that the bill could be interpreted in such a way as to require the appointment of counsel for an indigent, upon the theory that a defendant has not "in fact" been afforded the

opportunity to consult with counsel if he is unaware of his right to have counsel appointed for him, or if no provision exists for the appointment of counsel. If such is the intention of the Senate, the provision should be rewritten to conform with the language of proposed rule 5(b) (second preliminary draft, proposed revision of Federal Rules of Criminal Procedure) and should expressly state that—

> (b) prior to any such questioning the arrested person was advised by the officers having custody of him that he would be afforded reasonable opportunity * * * to consult counsel of his choosing and of his right to request the assignment of counsel if he is unable to obtain counsel.

While the bill permits a detention for 3 hours, it purports to recognize the right to counsel of a defendant who is the subject of an accusatory proceeding. Obviously the wealthy defendant may implement his constitutional rights by hiring a lawyer. The bill makes no provision for the poor defendant. Certainly the bill cannot preclude such a citizen from asserting his right to counsel and avoid successful constitutional attack. Perhaps the neighborhood legal services project of the United Planning Organization, created and funded as a part of the Government's war on poverty, the Legal Aid Agency created by the Congress, or voluntary attorneys will come forward to provide the counsel needed. Assurance by the spokesmen for the Department of Justice that the Department recognizes the right of all to have access to counsel at this early stage of the proceeding constitutes a clear commitment that it will do nothing to frustrate the implementation of the right to counsel in the administration of the procedure authorized by the bill. If counsel can be provided to the indigent in this way, some of the constitutional questions raised by the bill could possibly be alleviated.

The bill should contain a section providing that counsel may be provided for the indigent by the Legal Aid Agency for the District of Columbia. Anything less will render the bill unconstitutional in its application to indigent defendants.

Finally, if section 103(2) should happen to function as it should in the ideal situation, the whole purpose of title I; namely, to allow interrogation of a defendant for a 3-hour period after his arrest, would be frustrated, for no attorney who has any competence in the criminal law is going to advise a defendant who is under arrest to make a statement to the police, and especially not during the 3 hours after his arrest, when, presumably, the attorney could not possibly have had enough time to make an intelligent investigation of the facts surrounding the police charges. Any competent lawyer would advise his client to remain silent until the lawyer has investigated the case and a committing magistrate has had an opportunity to pass judicially on the question of probable cause justifying the arrest by the police in the first instance.

That there is force in this observation concerning section 103(2) is borne out by the fact that two persons testifying before the committee in 1964 with quite different viewpoints on the question of interrogation of arrested individuals raised similar objections. Chief Robert V. Murray, of the Metropolitan Police Department, who favored legislation nullifying the *Mallory* rule, and Dean Kenneth A. Pye, of Georgetown University Law Center, who opposed such legislation, each

agreed that the practical problems created by section 103(2) would be so great as to render the statute more trouble than it was worth. (See 1964 hearings, pp. 578–580; 555–558.) Dean Pye testified:

> That bill results in no interrogation, either. If you give him the right to counsel and if you give him counsel, then counsel is going to tell him that he does not have to have interrogation. So while I have no objection to that proposal, I do not think you will accomplish his (Mr. Acheson's) objective (1964 hearings, p. 394).

Chief Murray took substantially the same position, although for altogether different reasons:

> As I have testified to your committee, the current policy and practice of this department is to permit an arrested person to communicate with an attorney upon his request, and I would not oppose writing this policy and practice into the law. On the other hand, I believe that the additional requirement that the police specifically advise an arrested person of this opportunity must certainly incur a new handicap on police investigations. I believe that the testimony of witnesses before your committee has been unanimous that any attorney will immediately advise his client to make no statement whatever to the police, and to require the police to actively solicit this probability would operate to effectively preclude any in-custody questioning of the defendant (1964 hearings, pp. 578–579).

The proponents of title I have argued that the necessities of law enforcement require that the police be able to interrogate suspects in order to elicit damaging statements from them. However persuasive such an argument may be, it is not longer permissible. The desirability of obtaining incriminatory admissions from uninformed or unappreciative defendants is no longer debatable. The practice has been prohibited by the Supreme Court. The Court specifically dealt with the issue in the *Escobedo* case:

> It is argued that if the right to counsel is afforded prior to indictment, the number of confessions obtained by the police will diminish significantly because most confessions are obtained during the period between arrest and indictment, and "any lawyer worth his salt will tell the suspect in no uncertain terms to make no statement to police under any circumstances" (*Watts* v. *Indiana*, 338 U.S. 49, 59 (Jackson, J., concurring in part and dissenting in part)). This argument, of course, cuts two ways. The fact that many confessions are obtained during this period points up its critical nature as a "stage when legal aid and advice" are surely needed (*Massiah* v. *United States*, *supra*, at —; *Hamilton* v. *Alabama*, *supra*; *White* ——— v. *Maryland*, *supra*. The right to counsel would indeed be hollow if it began at a period when few confessions were obtained. There is necessarily a direct relationship between the importance of a stage to the police in their quest for a confession and the criticalness of that stage to the accused in his need for legal advice. Our Constitution, unlike some others, strikes the balance in favor of

the right of the accused to be advised by his lawyer of his privilege against self-incrimination.

We have learned the lesson of history, ancient and modern, that a system of criminal law enforcement which comes to depend on the confession will in the long run be less reliable and more subject to abuses than a system which depends on extrinsic evidence independently secured through skillful investigation. As Dean Wigmore so wisely said:

"*(A)ny system of administration which permits the prosecution to trust habitually to compulsory self-disclosure as a source of proof must itself suffer morally thereby.* The inclination develops to rely mainly upon such evidence and to be satisfied with an incomplete investigation of the other sources. The exercise of the power to extract answers begets a forgetfulness of the just limitations of that power. The simple and peaceful process of questioning breeds a readiness to resort to bullying and to physical force and torture. If there is a right to an answer, there soon seems to be a right to the expected answer—that is, to a confession of guilt. Thus the legitimate use grows into the unjust abuse: ultimately, the innocent are jeopardized by the encroachments of a bad system. Such seems to have been the course of experience in those legal systems where the privilege was not recognized," (8 Wigmore, Evidence (third edition, 1940) 309). [Emphasis in original.]

This Court also has recognized that "history amply shows that confessions have often been extorted to save law enforcement officials the trouble and effort of obtaining valid and independent evidence * * *" (*Haynes* v. *Washington*, 373 U.S. 503, 519).

We have also learned the companion lession of history that no system of criminal justice can, or should, survive if it comes to depend for its continued effectiveness on the citizens' abdication through unawareness of their constitutional rights. No system worth preserving should have to fear that if an accused is permitted to consult with a lawyer, he will become aware of, and exercise, these rights. If the exercise of constitutional rights will thwart the effectiveness of a system of law enforcement then there is something very wrong with that system.

In the *Escobedo* case the right to remain silent has been reinforced by the right to counsel. The inquisitorial system prior to indictment has been rejected. This is a matter of constitutional law. It is beyond the power of Congress to change. We do not see how a Senator can read the *Escobedo* decision and still support title I of the bill.

The sum and substance of this is that this committee has recommended to the Senate that it enact into law section 103 of title I on the basis of a record before the committee which demonstrated that if section 103(2) is effective, the legislation would be useless, and if section 103(2) is ineffective, the legislation would be unconstitutional. The action of the majority of the committee just does not make sense.

Section 103(3) purports to create for the first time in the Federal system a right of interrogation for 3 hours. We believe that in prac-

tice this will be considered by the police as a license to resurrect the investigative arrest provided the person so arrested is not questioned for more than 3 hours. We must remember that the clearly unconstitutional practice of making an arrest on suspicion or for investigation grew up in the District of Columbia despite a clear constitutional provision that all arrests must be based upon probable cause; despite a rule of procedure which required that all arrested persons must be immediately presented before a magistrate; despite the absence of any statutory authorization for the interrogation of the arrested person. Now if the arrest for investigation could flourish despite such a constitutional, procedural, and statutory climate there is every reason to believe that it will reappear if the Senate authorizes 6 hours of interrogation of all arrested persons.

It is significant that the bill provides no protection against unlawful arrests. What will prevent the police from arresting a defendant for investigation, interrogating him until a damaging statement is obtained, and then using the statement to establish probable cause at the subsequent hearing before the commissioner?

This is no theoretical problem. The report of the Commissioners' Committee on Police Arrests for Investigation (1962), the Horsky report, establishes that during 1961, 5,524 persons were arrested for suspicion, and 3,743 of these were listed as arrests for investigation. A higher number of arrests on suspicion or investigation were made in previous years. During 1960 and 1961, 17 out of each 18 persons arrested were ultimately released. A substantial percentage, perhaps as many as 45 percent of these arrests, were unlawful because there was no probable cause at the time of the arrest.

That Committee recommended that arrests for investigation should be stopped. The Chief of Police replied to the report in a memorandum to the Board of Commissioners. In this memorandum Chief Murray attempted to justify the existing practices.

Chief Murray concluded his memorandum by urging the Commissioners not to implement the recommendations of their Committee "until satisfactory alternatives are established to provide the police force with tools to continue an effective war on crime." The Commissioners disregarded his advice and ordered that the practice of police arrests for investigation should cease. The testimony of police officials before committees of the Congress during the last year provides ample proof that the police do not regard the decision to be fair and that they are exploring all avenues to find "satisfactory alternatives."

The procedure permitted by the present bill would provide such an alternative. Ultimately these efforts will be thwarted by court decisions suppressing all statements obtained as a result of unlawful arrests. (See *Wong Sun* v. *United States*, 371 U.S. 471 (1963).) During the interval, title I of the bill will provide justification for their conduct. It is difficult to estimate how many citizens will be arrested unlawfully during the interval.

THE WITNESSING AND RECORDING PROVISION

Section 103(4) of the bill requires that the questioning and the warning and advice be witnessed by a "responsible person" who is not a "law enforcement officer" or recorded "whenever reasonably possible." The section raises many problems of interpretation and

administration. What is meant by "reasonably possible"? Where are "responsible persons" who are not law enforcement officers to be obtained? In any case the protection of this section is relevant only to the issue of involuntary confessions. The "protection" of the section bears no relation to the problems arising under the fifth, sixth, and fourth amendments.

THE EQUAL PROTECTION OF THE LAW

Rule 5(a) of the Federal Rules of Criminal Procedure governs all criminal prosecutions in the Federal system in the United States. This is so now, and it will be so even if title I is enacted. Title I does not change the wording of rule 5(a). What it does do is to define the words "unnecessary delay," which appear in that rule, in one way for the District of Columbia, while leaving unchanged a quite different definition of those identical words which was made by the Supreme Court in the *Mallory* case. Is not the concept of equal protection of the laws inherent in the due process clause of the fifth amendment substantially invaded if the Congress says that the same rule of criminal procedure means one thing in the District of Columbia and another thing in the 50 States of the Union? We should not lose sight of the fact that the only thing that separates the District of Columbia from the eastern district of Virginia (and the Federal district court which sits in Alexandria, Va.) is the Potomac River. Does Congress have the power to say by legislation that the same rule of criminal procedure means one thing on one side of the river and another on the other side? It would seem obvious that a person arrested for a violation of the Harrison narcotics law in the District of Columbia cannot be legislatively subjected to an interrogation which would be impermissible if he were arrested in Alexandria, Va., or Baltimore, Md., for the same charge.

Nor should the Senate allow itself to be stampeded into the enactment of title I of the bill by those who seek to blame any increase in the District of Columbia crime rate on the U.S. Supreme Court's *Mallory* rule. The statistics which are offered to support this position cannot carry the burden which they seek to place upon them. Indeed, the U.S. attorney for the District of Columbia, David C. Acheson, acknowledged that repeal of the *Mallory* rule would have little or no impact insofar as the prevention of crime is concerned (1965 hearings, pt. 1, p. 57).

The Department of Justice has acknowledged during the hearings before this committee that it is impossible to establish a cause and effect relationship between the District of Columbia crime rate and the *Mallory* rule. The following colloquy bears this out:

> Senator McIntyre. One final question. Taking into account all the crimes that are committed in this District, do both of you feel that a substantial number of criminals evade punishment because of this?
>
> Mr. Katzenbach. I don't know of any facts that could be cited that would lead to that conclusion.
>
> Senator McIntyre. I take it your answer means that you do not believe there are a substantial number of criminals that evade punishment because of the *Mallory* rule?

> Mr. KATZENBACH. I phrased it as I did, Senator, because people whose judgment I respect do take the view that there are. I simply don't know of any way of establishing that by ——
>
> Senator MCINTYRE. There are no statistics on it?
>
> Mr. KATZENBACH (continuing). By factual evidence that would lead anybody to that conclusion (1964 hearings, p. 446).

The Senate should recall that in 1957 when the Supreme Court rendered its *Mallory* decision, Chief Robert Murray predicted that it would result in a complete breakdown in law enforcement in the District of Columbia, and further stated that "most of the murders, rapes, and robberies would have gone unsolved and unpunished under the *Mallory* decision."

Yet, 3 years after the *Mallory* decision, Oliver Gasch, the U.S. attorney for the District of Columbia, reported "*Mallory* questions, that is to say, confessions or admission, are of controlling importance in probably less than 5 percent of our criminal prosecutions."

During the hearings this year, Mr. Acheson said that only a "handful" of prosecutions were declined by his office because of the anticipated impact of the *Mallory* rule (1965 hearings, pt. 1, p. 50).

I am convinced that title I is an unconstitutional piece of legislation. By recommending passage of any bill containing this title, the committee is asking the Congress to buck the current of present-day constitutional thinking.

Moreover, interrogation of the accused is alien to the traditions of our system of criminal justice, which is and should be accusatorial.

Finally, during the short life that title I would have until the Supreme Court declared it unconstitutional—which I think in all probability will happen eventually—it would create a volume of litigation that would clog the administration of criminal justice in the District of Columbia.

WAYNE MORSE.

SUPPLEMENTAL VIEWS OF SENATOR KENNEDY, OF NEW YORK, AND SENATOR TYDINGS

We regret that we cannot vote to report S. 1526, the omnibus crime bill for the District of Columbia.

We do not take this step lightly. We are very much aware of the longstanding concern in many segments of the community over the need for legislation to deal with the increasingly serious problems of crime and delinquency. We know that the House of Representatives has passed a crime bill, and that this committee spent many hours this year, last year, and the year before taking testimony and considering crime legislation.

We wish to pay particular tribute to our chairman, Senator Bible, and to our committee colleagues for their devoted and constructive interest in this matter. Their patient and understanding approach has resulted in enormous improvements in the House-passed legislation that initially came before our committee.

We can understand that after long days of hearings and years of study the committee is anxious to report a bill. We can appreciate the fact that there have been frequent and insistent demands for legislation to deal with the crime problem. Understandably, the committee wants to try to meet some of these demands.

Nonetheless, we cannot vote to report this bill. Our principal objection relates to title I, which attempts to modify the *Mallory* rule by defining the scope and duration of permissible police interrogation of an arrested person until he is taken before a committing magistrate. We also have reservations concerning other portions of the bill, particularly those relating to mandatory minimum sentences, notification of intent to assert an insanity defense, and certain portions of the obscenity statute.

There are, however, other provisions of the bill which we support. We will therefore not oppose the bill as a whole on the floor of the Senate. Rather, we will move to amend those features which we find objectionable. If our amendments are accepted, we would support the bill.

I

Let there be no mistake about our concern at the rising crime rate in the District of Columbia.

According to statistics compiled by the Federal Bureau of Investigation, the 1964 crime rate in the District showed a 25 percent increase over 1963. At the same time, the crime rate throughout the Nation increased by 13 percent. For the first quarter of 1965 the Washington crime rate increased 10 percent, as compared to a 2-percent increase nationally. Obviously, the crime problem in the District is severe and increasing.

Each of these statistics has its counterpart in human tragedy. Each crime takes its toll in life and property, and in individual pain and suffering. At a time when our Nation as a whole is manifesting

a deep and abiding commitment to individual rights, we should not lose sight of the elementary right of every citizen to be secure in his person and possessions.

The increasing national crime rate demands an intensified effort at crime prevention. The legislative committees of Congress would be remiss in their obligations to our Nation's Capital if they did not attempt to meet this need in the District of Columbia.

We vigorously support legislation to eradicate both the causes and the manifestations of crime. We support tightening both our national and our District of Columbia gun laws, to keep these weapons out of the hands of criminals, irresponsible adults and juveniles. We favor special Federal assistance for particular law enforcement problems, such as narcotic addiction and drug abuse. We support an expansion of the District of Columbia Court of General Sessions, to expedite the administration of justice.

We strongly support measures to increase the effectiveness of our police force. We favor the passage of the Law Enforcement Assistance Act, and other measures to upgrade and professionalize State and local police departments. For the District of Columbia we support legislation and appropriations to expand, upgrade, and equip the Metropolitan Police force, to make it a model for the Nation. We endorse legislation, including substantially increased pay, overtime pay, and improved working conditions, to enable the Department to recruit and retain personnel of the highest caliber.

We think it is particularly important to have full police protection for our citizens on the street and in plain view. We therefore want especially to commend Chief Layton and the Metropolitan Police for their recent action in assigning more patrolmen to duty in those areas of the city where there has been a particularly high incidence of crime.

In our judgment too little attention has been paid to the fact that well over half of those convicted of felonies in the District are repeat offenders. This suggests a need for an expanded force of probation specialists fully trained in the most up-to-date rehabilitative techniques, and a need for more concentration on better rehabilitative efforts generally. We fully endorse such efforts.

At the same time as we support measures to aid in the enforcement and the administration of the law, we support longer range measures to strike at the roots of crime.

We believe that a large part of the crime problem is traceable to the fact that a substantial segment of the District of Columbia population has not shared the benefits and opportunities available to others in our society. The boy or girl who lives in a slum, attends a second-class school, has no place to play, whose parents cannot afford adequate food and clothing, whose father is often absent or unknown, and who is denied the opportunity to hold a decent job—that boy or girl has very little incentive to obey the laws of an apparently hostile society. Efforts to alleviate these conditions are indispensable to any broad-based war on crime.

To alleviate the deprivation—both physical and psychological—which lies at the root of crime, we support for the District of Columbia: aid to dependent children of unemployed parents; increased foster home payments; a massive program of housing for low-income families; strengthened educational programs and facilities (including the

urgently needed Shaw School); expanded job opportunities and vocational training programs and broadened minimum wage coverage.

In sum, we must explore every avenue possible to prevent crime and erase its roots in the District of Columbia. All-out effort at the establishment of needed programs and reforms will make the District of Columbia what it should be—a model for all urban areas in the country in their efforts to eliminate crime and its causes.

II

In objecting to the committee's action on the *Mallory* rule we make no judgment concerning the merits of title I as reported. As former law enforcement officials, we fully recognize the need to develop all constitutionally permissible means of police investigation. For that reason we are not unsympathetic to the committee's overall endeavor.

Our disagreement with the committee's action is based upon its timing. We are dealing with an extremely complex and controversial subject. This problem is currently receiving serious study by the law enforcement community, by scholars, and by an increasingly interested general public.

In view of the fact that these studies are likely to produce a substantial amount of new and significant information in the near future, we are reluctant to legislate in an area that touches so closely upon civil liberties and basic constitutional protections. There is, in fact, a danger that the establishment of statutory standards now, without further underlying study, would not survive judicial review.

We therefore believe that we should move cautiously and carefully in this matter, and take advantage of the best learning and information that is available.

We would emphasize that while there is a crisis in the increasing crime rate, that crisis will neither be intensified nor alleviated by our action or inaction regarding the *Mallory* rule in this session of Congress. Deputy Attorney General Clark put it this way just the other day in a speech before the American Bar Association:

> Court rules do not cause crime. People do not commit crimes because of decisions restricting police questioning or because they think they might not be convicted.

Mr. Clark also flatly told this committee that "there is no evidence that the *Mallory* interpretations are a direct causative factor in crime or its increase." And U.S. Attorney David Acheson told the committee that "a change in the *Mallory* rule would have a very slight effect, if any immediate effect, on crime prevention." The crime rate will not increase any faster if we allow ourselves to wait for the necessary data before legislating about *Mallory*.

Nor will the delay we advocate hamper law enforcement. The District of Columbia police, under the supervision of the U.S. attorney, have just this week established procedures to permit certain limited questioning between arrest and arraignment. Indeed, the committee's bill is based upon these administrative guidelines. Police Chief John B. Layton testified that, from his point of view—

> to operate under an administrative policy in this area until clarifying court decisions are handed down is preferable to the strict requirement of statutory provisions.

The question of what to do about *Mallory* so as to assure effective police investigation without interfering with individual rights is extremely difficult. Its complexity is perhaps best illustrated by the candid manner in which the Department of Justice changed its position from its previous endorsement of title I to a request this year for more time to study the matter.

The questions needing answer are fundamental indeed. They go to the heart of the equal protection, self-incrimination, and right-to-counsel provisions of our Constitution. For example, is the poor man entitled to appointment of a lawyer as early in the process as the rich man is entitled to hire one? Is a warning adequate to protect the right against self-incrimination? If prearraignment questioning is allowed, should the permissible period be brief and absolute or should we provide a more flexible period extending over a somewhat longer time? Can we frame a rule which takes the circumstances of individual cases or types of cases into consideration? What effect can improved police investigatory methods have on the need for prearraignment questioning?

There are a number of studies going on which will help resolve these questions. The Office of Criminal Justice at the Department of Justice is engaging in a continuing study. The police department, in cooperation with the U.S. attorney's office and the Office of Criminal Justice, is currently collecting data concerning the operation and effect of the *Mallory* rule in the District of Columbia. And Police Chief Layton has indicated a laudable intention to experiment with a wide range of new techniques which could make a major difference for crime prevention and change the entire context of the *Mallory* controversy.

Deputy Attorney General Clark had this study and these experiments in mind when he testified that we lack—

> a pattern of experience, and an objective and studied determination of all the factors in police interrogation * * *. (W)e really don't have an adequate * * * fact basis to promulgate a final rule.

The Justice Department does not stand alone in this endeavor. The American Law Institute and the American Bar Foundation are doing continuing studies of the problem of prearraignment interrogation.

Other important study and experimentation is being undertaken. The President has recently appointed a Commission to study crime in the District and has involved some extremely able people in the project. Police departments in other major metropolitan areas are engaging in considerable experimentation with new investigative techniques and new crime prevention methods which should teach us a great deal.

All of these efforts suggest our waiting at this time. We need not wait until all of these studies are completed, and we may not agree with all of the recommendations that are ultimtaely made, but we should wait until we have what we we so badly need—more facts.

The Justice Department was not alone in counseling delay. ALI Director Herbert Wechsler also encouraged the committee to wait. He had a most practical reason. Discussing both the House and Senate bills, he said:

> The bills would * * * present themselves to judicial scrutiny * * * without the support that would be gained if they were part of a broad reappraisal of this field of law of the kind I have attempted to describe.

Prof. Louis Schwartz of the Pennsylvania Law School told the committee that legislation in this area is "difficult to draw" and that one reason there is so much difficulty in getting an agreement is "that we have not worked it out in enough cases."

We are greatly influenced by the views of the Department of Justice and of these and other legal scholars. There is at present sharp disagreement in the District of Columbia and in the academic community over what should be done, and the passage of time can help in a number of ways.

Most important, more time can give us more facts. More information on this matter is certain to come to light in the near future. With this information we may be able to reach general agreement on a formula which adequately meets prosecutorial needs without jeopardizing individual liberties. With that kind of agreement and with sufficient underlying factual data, whatever legislation we enact will come to the courts freighted with a legislative history worthy of being given great weight. That will inevitably make a difference in the ultimate validity of our enactment. The passage of time will also enable the Supreme Court to provide some further clarification which may better define our task.

Our view, then, is that it is wiser not to enact title I at this time. We would take the advice of the Deputy Attorney General, the U.S. attorney, and the Chief of Police, who have pointed to the information that is certain to emerge on this matter in the very near future, and have therefore counseled waiting somewhat longer before attempting to write a statutory formula.

III

Three other provisions in this bill give us pause. While none of them separately would cause us to oppose the bill, together they represent a considerable hurdle to our consent. We intend, when the bill reaches the floor, to offer amendments to deal with each of these problems.

A. MANDATORY MINIMUM SENTENCES

The bill as reported would impose mandatory minimum sentences for assault with intent to kill, for placing bombs, and for the newly defined crimes of burglary in the first and second degrees.

All of the responsible testimony before the committee opposed mandatory minimum sentences. On September 13, 1963, Deputy Attorney General (now Attorney General) Katzenbach wrote the committee that—

> mandatory sentencing is not in keeping with modern thinking, as expressed repeatedly by judges and in the American Law Institute Model Code. They result in serious inequities and make it more difficult to obtain warranted convictions.

Mr. Donald Clemmer, the Director of the District of Columbia Department of Corrections testified that modern penologists opposed mandatory minimum sentences.

He said:

> I might say that as a former president of the Correctional Administrative Association of America, which is a group composed of 40 of the executives throughout the country in the Federal prison system, there is a strong opinion among these people * * * against mandatory minimum sentences. It is not unanimous in its opinion, but there is a strong opinion.
>
> I happen this year also to be president-designate of the American Correctional Association which is a group of 5,000 people concerned with * * * probation and parole and there is a strong opinion in that body against mandatory minimum sentences.

The District Commissioners and the U.S. attorney for the District of Columbia also opposed mandatory minimum sentences. The U.S. attorney testified:

> Provisions for mandatory minimum sentences seem to proceed from the assumption that the courts of the District of Columbia are soft on criminals. It is sometimes said that our courts mollycoddle criminals and that criminals feel that they may commit crimes without serious regard to the possibility of severe sentences. This assumption, and this type of public utterance, are simply not based on fact. The facts are very plain and they show that the average sentence meted out by the U.S. District Court for the District of Columbia is substantially more severe in almost every category of felony than the average sentence meted out by other Federal courts and is substantially more severe than the average sentence meted out by State courts.

Mandatory minimums may cause a jury to acquit, rather than convict, a man whom it believes should receive only a light sentence. We believe that District judges should retain full authority to consider all of the highly individual circumstances of each crime and of each defendant when imposing sentence. This is the trend in the law. In our judgment it is a highly desirable trend.

We intend to offer an amendment which would strike section 501 and the mandatory minimum requirements of section 502.

B. INTENTION TO ASSERT INSANITY DEFENSE

Section 201 of the bill provides that insanity may not be asserted as a defense in a criminal proceeding unless the defendant, or his attorney, files with the court and serves upon the U.S. attorney written notice of his intention to rely on such defense "at the time the accused enters his plea of not guilty or within 15 days thereafter or at such later time as the court may for good cause permit."

We support the general purpose of this section. We think an accused should be required to advise the prosecutor of his intention to assert an insanity defense within adequate time for the prosecution to prepare itself on that issue.

We are persuaded, however, that it is unrealistic, unfair, and self-defeating to require the accused to serve notice of his intention to assert the insanity defense at the time he pleads or within 15 days

thereafter. This simply is not enough time in most cases for the accused or his attorney to make an intelligent determination of whether to assert an insanity defense. The normal procedure in the District of Columbia is for an accused or his attorney to request that the defendant be committed to St. Elizabeths Hospital for the purpose of a mental examination. It is not until the hospital has reported its findings that the attorney for the accused can make an intelligent determination of whether to assert the insanity defense.

If the accused is to be required to make an election at the time he pleads not guilty, any well-advised defendant will routinely file the notice required by section 201. As a result, the U.S. attorney's office will receive such notification in virtually every case. If that were to occur the whole purpose of section 201 would be frustrated, for the prosecutor would not know whether a particular notice was filed merely as a precautionary measure or because the defendant seriously intended to assert the insanity defense.

We have discussed this matter with responsible law enforcement officials in the District of Columbia and have been fortified in our view that the notice required by section 201 should be required at a later stage in the proceeding.

We therefore intend to offer an amendment which will require that a notice of intention to rely upon the insanity defense be filed with the court within 30 days after the report of the hospital or the examining physician or physicians concerning the mental condition of the defendant has been filed with the court or, if no such report is received not less than 30 days prior to trial.

C. OBSCENITY PROVISIONS

Section 505 of the bill rewrites the District of Columbia obscenity statute.

The basic provisions of the present law which prohibit the sale or dissemination of obscene materials, would remain unchanged. The bill would, however, provide new tools to combat obscenity.

It would allow greater flexibility in dealing with obscenity by obviating the need to rely on the criminal law to stop the production and distribution of obscene materials. Attacking the problem in a civil, injunctive context will, in our judgement, be more effective and fairer to possible defendants than sole reliance on the criminal law. And the proposed reform is structured to provide an essential protection—a prior judicial determination involving the specific material challenged will have to be made before any restraint can be put into effect in a particular case. This significantly strengthens the District of Columbia obscenity law and we support it.

Our concern with the bill is that the principal provision prohibiting the distribution of obscene materials is unnecessarily vague, and perhaps unconstitutional. Section 505(a) of the bill provides:

> Whoever sells, or offers to sell, or gives away, in the District, or has in his possession with intent to sell or give away or to exhibit to another, any obscene, lewd, or indecent book, pamphlet, drawing, engraving, picture, photograph, instrument, magazine, story, paper, writing, card, print, motion picture film, image, cast, slide, figure, statue, phonograph record, wire, tape, or other sound recording, or other

presentation or article of indecent or immoral use, or advertises the same for sale, or writes or prints any letter, circular, handbill, book, pamphlet, or notice of any kind stating by what means any of such articles may be obtained, or advertises any drug, nostrum, or instrument intended to produce abortion, or gives or participates in, or by bill, poster, or otherwise advertises, any public exhibition, show, performance, or play containing obscene, indecent, or lascivious language, postures, or suggestions, or otherwise offending public decency, shall be fined not more than $5,000, or imprisoned not more than one year, or both.

This section is merely a restatement of the present provisions of District of Columbia law (D.C. Code 22-2001), which was enacted in 1901. The only changes are to incorporate reference to some modern potential vehicles of obscenity such as motion pictures and phonograph records.

There have been, of course, fundamental changes in the law of obscenity since 1901. The Supreme Court has held that obscene materials are not entitled to the protection of the first amendment.

Because the constitutional climate has changed so much since 1901, we are concerned that the reenactment of words other than "obscene" to describe the criminal offense associated with obscenity may actually weaken the constitutional position of this provision.

If we are going to modernize the District of Columbia's law relating to obscenity, we think that a complete overhaul rather than a series of amendments should be the goal. The American Law Institute, for example, has done a great deal of work on this subject.

We think this section should be carefully rewritten, in the light of modern court decisions, and drawing upon the work of scholars who have studied this area. When the bill comes to the floor we intend to offer an appropriate amendment.

ROBERT F. KENNEDY.
JOSEPH D. TYDINGS.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law in the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

ACT APPROVED MARCH 3, 1901, AS AMENDED

* * * * * * *

SEC. 803. ASSAULT WITH INTENT TO KILL, AND SO FORTH.—Every person convicted of any assault with intent to kill or to commit rape, or to commit robbery, or mingling poison with food, drink, or medicine with intent to kill, or willfully poisoning any well, spring, or cistern of water, shall be sentenced to impriosnment for not *less than two years or* more than fifteen years.

* * * * * * *

SEC. 810. ROBBERY.—Whoever by force or violence, whether against resistance or by sudden or stealthy seizure or snatching, or by putting in fear, shall take from the person or immediate actual possession of another anything of value, is guilty of robbery, and any person convicted thereof shall suffer imprisonment for not less than [six months] *two years* nor more than fifteen years.

* * * * * * *

[SEC. 823. HOUSEBREAKING.—Whoever shall, either in the night or in the daytime, break and enter, or enter without breaking, any dwelling, bank, store, warehouse, shop, stable, or other building or, any apartment or room, whether at the time occupied or not, or any steamboat, canal boat, vessel, or other water craft, or railroad car, or any yard where any lumber, coal, or other goods or chattels are deposited and kept for the purpose of trade, with intent to break and carry away any part thereof or any fixture or other thing attached to or connected with the same, or to commit any criminal offense, shall be imprisoned for not more than fifteen years.]

SEC. 823. BURGLARY—(a) Whoever shall, either in the nighttime or in the daytime, break and enter, or enter without breaking, any dwelling, or room used as a sleeping apartment in any building, with intent to break or carry away any part thereof, or any fixture or other thing attached to or connected thereto or to commit any criminal offense, shall, if any person is in the actual occupation of any part of such dwelling or sleeping apartment at the time of such breaking and entering, or entering without breaking, be guilty of burglary in the first degree. Burglary in the first degree shall be punished by imprisonment for not less than two years nor more than twenty years.

(b) Except as provided in subsection (a) of this section, whoever shall, either in the night or in the daytime, break and enter, or enter without breaking, any dwelling, bank, store, warehouse, shop, stable, or other

building, or any apartment or room, whether at the time occupied or not, or any steamboat, canal boat, vessel, or other watercraft, or railroad car, or any yard where any lumber, coal, or other goods or chattels are deposited and kept for the purpose of trade, with intent to break and carry away any part thereof or any fixture or other thing attached to or connected with the same, or to commit any criminal offense, shall be guilty of burglary in the second degree. Burglary in the second degree shall be punished by imprisonment for not less than one year nor more than fifteen years.

SEC. 825a. PLACING EXPLOSIVES NEAR BUILDINGS, AND SO FORTH.—Whoever places, or causes to be placed in, upon, under, against, or near to any building, car, vessel, monument, statue, or structure, gunpowder or any explosive substance of any kind whatsoever, with intent to destroy, throw down, or injure the whole or any part thereof, although no damage is done, shall be punished by a fine not exceeding one thousand dollars [or by imprisonment not exceeding ten years] *or by imprisonment for not less than three years or more than ten years.*

* * * * * * *

SEC. 872. INDECENT PUBLICATIONS.—(*a*) Whoever sells, or offers to sell, or give away, in the District, or has in his possession with intent to sell or give away or to exhibit to another, any obscene, lewd, or indecent book, pamphlet, drawing, engraving, picture, photograph, instrument, *magazine, story, paper, writing, card, print, motion picture film, image, cast, slide, figure, statue, phonograph record, wire, tape, or other sound recording or other presentation,* or article of indecent or immoral use or advertises the same for sale, or writes or prints any letter, circular, handbill, book, pamphlet, or notice of any kind stating by what means any of such articles may be obtained, or advertises any drug, nostrum, or instrument intended to produce abortion, or gives or participates in, or by bill, poster, or otherwise advertises, any public exhibition, show, performance, or play containing obscene, indecent, or lascivious language, postures, or suggestions, or otherwise offending public decency, shall be fined not [less than fifty dollars nor more than five hundred dollars,] *more than five thousand dollars* or imprisoned not more than one year, or both.

(*b*) *Whoever in the District produces, or participates in the production of, any obscene, lewd, or indecent book, pamphlet, drawing, engraving, picture, photograph, instrument, magazine, story, paper, writing, card, print, motion picture film, image, cast, slide, figure, statue, phonograph record, wire, tape, or other sound recording, or other presentation or article of indecent or immoral use, with knowledge that the same is to be sold, given away, or exhibited to another, shall be fined not more than $5,000, or imprisoned not more than one year, or both.*

(*c*) *The U.S. attorney for the District of Columbia is also authorized to apply to the U.S. District Court for the District of Columbia for a preliminary injunction and a permanent injunction to restrain the sale, gift, exhibition, distribution, production, disposition, or removal of any obscene, lewd, or indecent matter described in subsection (a) of this section. A hearing on the preliminary injunction shall be had not more than five days, excluding Sundays and holidays, after service upon the defendant of a copy of such application. After such hearing the said court may issue a preliminary injunction which shall remain in effect until final determination of the application for the permanent injunction,*

but in no case for more than thirty calendar days from issuance of the preliminary injunction.

(d) If, after a trial of the issues, the court shall order a permanent injunction, such injunction shall include a provision for the immediate seizure and impoundment of the obscene, lewd, or indecent matter, and forbidding its reproduction or duplication. Such injunction shall also include a provision providing for the disposition of such matter so impounded in such way as the court may determine desirable (including the destruction of such matter), but in no event shall such matter be destroyed until after the expiration of the period during which an appeal may be taken or, if an appeal is taken, during the pendency of such appeal.

(e) Proceedings pursuant to this section shall be governed by the Federal Rules of Civil Procedure, except as they may be inconsistent with the provisions of this section.

(f) Nothing in this section shall apply to a licensee under the Communications Act of 1934 while engaged in activities regulated pursuant to such Act.

* * * * * * *

SECTION 401 OF THE REVISED STATUTES OF THE UNITED STATES RELATING TO THE DISTRICT OF COLUMBIA (D.C. CODE, SEC. 4–144)

[SEC. 401. The board of police shall provide suitable accommodations within the District for the detention of witnesses who are unable to furnish security for their appearance in criminal proceedings, and such accommodations shall be in premises other than those employed for the confinement of persons charged with crime, fraud, or disorderly conduct; and it shall be the duty of all magistrates in committing witnesses to have regard to the rules and regulations of the board of police in reference to their detention.]

SEC. 401. (a) Whenever, in a criminal case in the District of Columbia, there is reasonable ground to believe that any person is a material and necessary witness to the commission of any crime or attempt to commit any crime punishable by imprisonment for one year or more, and there is a reasonable probability that such person will be available to testify at the trial of the person charged with such offense, such person so believed to be a material and necessary witness may be taken, pursuant to a subpena, by an officer or member of the Metropolitan Police Force, or by a Federal law enforcement officer, without unnecessary delay, before a judge of the United States District Court for the District of Columbia or a judge of the District of Columbia Court of General Sessions or a United States commissioner; except that no such subpena shall be required if such person is taken into custody at the scene of the crime. Such judge or commissioner shall afford such person a hearing and shall, prior to commencing the hearing, advise that person as to his constitutional rights and that he is entitled to consult with, and be represented by, counsel. Such judge or commissioner shall, after a hearing is afforded to such person and the judge or commissioner is satisfied by testimony given under oath that such person is a material and necessary witness and that there is reasonable probability that he will not be available at the trial as provided in this subsection, require such witness to post bond or collateral as security that he will appear and testify at such trial. Upon the failure of such witness to post such bond or collateral after a reasonable opportunity to do so, the judge or commissioner shall order the further

detention of such witness until such time as he appears and gives testimony in such criminal case or until such criminal case has been finally disposed of otherwise. Notwithstanding any other provision of this subsection, upon the motion of any witness detained under this section and a showing that he has been detained for an unreasonable length of time, such judge or commissioner may order the release of such witness. The detention, as herein provided, of any such witness shall not constitute an arrest within the meaning of that term as used in any other law or in any rule or regulation. No statement made by such witness in the course of his detention as authorized by this section shall be used in a prosecution against him for the commission of any crime. Any witness who, following such hearing, is ordered detained under this subsection shall, during that period of his detention following such hearing, be entitled to be paid amounts equivalent to the amounts payable to witnesses testifying in the court in which such trial with respect to which such witness is ordered detained is to be conducted.

"(b) The Board of Commissioners shall provide suitable accommodations within the District of Columbia for the detention of persons who are unable or who refuse to furnish security for their appearance as witnesses, as provided in subsection (a). Such accommodations shall be separate and apart from quarters used for the confinement of persons charged with crime. The said Commissioners may, in their discretion, enter into agreements with any Federal agency, including the United States courts, for the use of suitable space in a building under the jurisdiction of any such agency, and such agency is hereby authorized to allow the use of such space for the purpose of providing the accommodations required by this subsection. In carrying out the purposes of this Act, the said Commissioners may utilize any appropriate space in any building which is owned privately or which is owned or leased by the government of the District of Columbia. In the case of any witness detained by an officer or member of the Metropolitan Police force, the District of Columbia shall be reimbursed for the accommodations furnished such witness at rates to be determined by the Commissioners.

"(c) In any criminal proceeding in the United States District Court for the District of Columbia or in the District of Columbia Court of General Sessions, the prosecution shall have the same right with respect to the taking of a deposition of a material witness as is afforded to the defendant in any such court in which such proceedings is pending.

"(d) In any case in which a witness is ordered detained under subsection (a) of this section because of his financial inability to post bond or collateral, the judge or Commissioner may order the deposition of such witness taken as soon as it is feasible to do so. Each person charged with the crime or crimes in connection with which such deposition has been ordered taken shall, if such person be in custody or be at large on bail, be present at the taking of the deposition of the witness and shall be entitled to be represented by counsel. After such deposition is taken, the judge or commissioner may order the release from detention of such witness."

SECTIONS 1 AND 2 OF THE ACT APPROVED JULY 8, 1932 (D.C. CODE, SEC. 22-3201) (47 STAT. 650)

DEFINITIONS

SECTION 1. "Pistol," as used in this Act, means any firearm with a barrel less than twelve inches in length.

"Sawed-off shotgun," as used in this Act, means any shotgun with a barrel less than twenty inches in length.

"Machine gun," as used in this Act, means any firearm which shoots automatically or semiautomatically more than twelve shots without reloading.

"Person," as used in this Act, includes, individual firm, association, or corporation.

"Sell" and "purchase" and the various derivatives of such words, as used in this Act, shall be construed to include letting on hire, giving, lending, borrowing, and otherwise transferring.

"Crime of violence" as used in this Act, means any of the following crimes, or an attempt to commit any of the same, namely: Murder, manslaughter, rape, mayhem, maliciously disfiguring another, abduction, kidnaping, burglary, *robbery,* [housebreaking,] larceny, any assault with intent to kill, commit rape, or robbery, assault with a dangerous weapon, or assault with intent to commit any offense punishable by imprisonment in the penitentiary.

COMMITTING CRIME WHEN ARMED

SEC. 2. If any person shall commit a crime of violence in the District of Columbia when armed with or having readily available any pistol or other firearm, *or other dangerous or deadly weapon, including but not limited to, sawed-off shot gun, shot gun, machine gun, rifle, dirk, bowie knife, butcher knife, switch blade knife, razor, blackjack, billy, metallic or other false knuckles,* he may, in addition to the punishment provided for the crime, be punished by imprisonment for a term of not more than five years; upon a second conviction for a crime of violence so committed he may, in addition to the punishment provided for the crime, be punished by imprisonment for a term of not more than ten years; upon a third conviction for a crime of violence so committed he may, in addition to the punishment provided for the crime, be punished by imprisonment for a term of not more than fifteen years; upon a fourth or subsequent conviction for a crime of violence so committed he may, in addition to the punishment provided for the crime, be punished by imprisonment for an additional period of not more than thirty years.

69 STAT. 609 (24 D.C. CODE, SEC. 301)

SEC. 927. Commitment of Persons of Unsound Mind.—(a) Whenever a person is arrested, indicted, charged by information, or is charged in the juvenile court of the District of Columbia, for or with an offense and, prior to the imposition of sentence or prior to the expiration of any period of probation, it shall appear to the court from the court's own observations, or from prima facie evidence submitted to the court, that the accused is of unsound mind or is mentally in-

competent so as to be unable to understand the proceedings against him or properly to assist in his own defense, the court may order the accused committed to the District of Columbia General Hospital or other mental hospital designated by the court, for such reasonable period as the court may determine for examination and observation and for care and treatment if such is necessary by the psychiatric staff of said hospital. If, after such examination and observation, the superintendent of the hospital, in the case of a mental hospital, or the chief psychiatrist of the District of Columbia General Hospital, in the case of District of Columbia General Hospital, shall report that in his opinion the accused is of unsound mind or mentally incompetent, such report shall be sufficient to authorize the court to commit by order the accused to a hospital for the mentally ill unless the accused or the Government objects, in which event, the court, after hearing without a jury, shall make a judicial determination of the competency of the accused to stand trial. If the court shall find the accused to be then of unsound mind or mentally incompetent to stand trial, the court shall order the accused confined to a hospital for the mentally ill.

* * * * * * *

(f) When an accused person shall be acquitted solely on the ground of insanity and ordered confined in a hospital for the mentally ill, such person and his estate shall be charged with the expense of his support in such hospital.

(g) Nothing herein contained shall preclude a person confined under the authority of this section from establishing his eligibility for release under the provisions of this section by a writ of habeas corpus.

(h) The provisions of this section shall supersede in the District of Columbia the provisions of any Federal statutes or parts thereof inconsistent with this section.

(i) Insanity shall not be a defense in any criminal proceeding in the United States District Court for the District of Columbia or in the District of Columbia court of general sessions, unless the accused or his attorney in such proceeding, at the time the accused enters his plea of not guilty or within fifteen days thereafter or at such later time as the court may for good cause permit, files with the court and serves upon the prosecuting attorney written notice of his intention to rely on such defense.

89TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 2295

RELATING TO CRIME AND CRIMINAL PROCEDURE IN THE DISTRICT OF COLUMBIA

OCTOBER 17, 1966.—Ordered to be printed

Mr. WHITENER, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 5688]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5688) relating to crime and criminal procedure in the District of Columbia, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

TITLE I

SEC. 101. (a) In the courts of the District of Columbia, evidence, including, but not limited to, statements and confessions, otherwise admissible, shall not be inadmissible solely because of delay in taking an arrested person before a commissioner or other officer empowered to commit persons charged with offenses against the laws of the United States.

(b) If a person in the custody of a law-enforcement officer makes a confession or other statement during any pretrial questioning by a law-enforcement officer, such confession or other statement shall be admissible only if—

(1) immediately prior to any questioning of such person he is advised that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the assistance of an attorney (either retained by or appointed for him) prior to and during such questioning; and

(2) in the case of such person who makes a valid waiver of his right to have the assistance of an attorney during questioning, the aggregate period of such questioning, exclusive of interruptions—

(A) during the absence of an attorney, and

(B) prior to the time such person is taken before a commissioner or other officer empowered to commit persons charged with offenses against the laws of the United States,

does not exceed six hours.

TITLE II

SEC. 201. Section 927 of the Act entitled "An Act to establish a code of law for the District of Columbia", approved March 3, 1901 (D.C. Code, sec. 24–301), is amended to read as follows:

"SEC. 927. (a)(1) A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law.

"(2) The terms 'mental disease or defect' do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

"(b) Evidence that the defendant in a criminal proceeding suffered from a mental disease or defect shall be admissible whenever it is relevant to prove that the defendant did or did not have a state of mind which is an element of the offense.

"(c)(1) Mental disease or defect excluding responsibility is an affirmative defense which the defendant must establish by showing of substantial evidence.

"(2) Mental disease or defect excluding responsibility shall not be a defense unless the accused or his attorney files with the court and serves upon the prosecuting attorney written notice of his intention to rely upon such defense (A) no later than thirty days prior to trial if there has been no court order for mental examination or fifteen days after receipt by the court of the report of the examining physician if there was a court order for mental examination, or (B) at such other time as the court may for good cause permit. The court may extend the time for such notice in order to prevent injustice.

"(3) When the defendant is acquitted on the ground of mental disease or defect excluding responsibility, the verdict and the judgment shall so state.

"(d) Whenever a person is arrested, indicted, charged by information, or is charged in the Juvenile Court of the District of Columbia, for or with an offense and, prior to the imposition of sentence or prior to the expiration of any period of probation, it shall appear to the court from the court's own observations, or from prima facie evidence submitted to the court, that the accused is of unsound mind or is mentally incompetent so as to be unable to understand the proceedings against him or properly to assist in his own defense, the court may order the accused committed to the District of Columbia General Hospital or other mental hospital designated by the court, for such reasonable period as the court may determine for examination and observation and for care and treatment if such is necessary by the psychiatric staff of said hospital. If, after such examination and observation, the superintendent of the hospital, in the case of a mental hospital, or the chief psychiatrist of the District of Columbia General Hospital, in the case of the District of Columbia Gen-

eral Hospital, shall report that in his opinion the accused is of unsound mind or mentally incompetent, such report shall be sufficient to authorize the court to commit by order the accused to a hospital for the mentally ill unless the accused or the Government objects, in which event, the court, after hearing without a jury, shall make a judicial determination of the competency of the accused to stand trial. If the court shall find the accused to be then of unsound mind or mentally incompetent to stand trial, the court shall order the accused confined to a hospital for the mentally ill.

"(e) Whenever an accused person confined to a hospital for the mentally ill is restored to mental competency in the opinion of the superintendent of said hospital, the superintendent shall certify such fact to the clerk of the court in which the indictment, information, or charge against the accused is pending and such certification shall be sufficient to authorize the court to enter an order thereon adjudicating him to be competent to stand trial, unless the accused or the Government objects, in which event the court, after hearing without a jury, shall make a judicial determination of the competency of the accused to stand trial.

"(f) If any person tried upon an indictment or information for an offense, or tried in the Juvenile Court of the District of Columbia for an offense, is acquitted on the ground of mental disease or defect excluding responsibility, the court shall order such person to be confined in a hospital for the mentally ill.

"(g) Where any person has been confined in a hospital for the mentally ill pursuant to subsection (f) of this section and the superintendent of such hospital certifies (1) that such person has recovered his sanity, (2) that, in the opinion of the superintendent, such person will not in the reasonable future be dangerous to himself or others, and (3) in the opinion of the superintendent, the person is entitled to his unconditional release from the hospital, and such certificate is filed with the clerk of the court in which the person was tried, and a copy thereof served on the United States Attorney or the Corporation Counsel of the District of Columbia, whichever office prosecuted the accused, such certificate shall be sufficient to authorize the court to order the unconditional release of the person so confined from further hospitalization at the expiration of fifteen days from the time said certificate was filed and served as above: but the court in its discretion may, or upon objection of the United States or the District of Columbia shall, after due notice, hold a hearing at which evidence as to the mental condition of the person so confined may be submitted, including the testimony of one or more psychiatrists from said hospital. The court shall weigh the evidence and, if the court finds that such person has recovered his sanity and will not in the reasonable future be dangerous to himself or others, the court shall order such person unconditionally released from further confinement in said hospital. If the court does not so find, the court shall order such person returned to said hospital. Where, in the judgment of the superintendent of such hospital, a person confined under subsection (f) above is not in such condition as to warrant his unconditional release, but is in a condition to be conditionally released under supervision, and such certificate is filed and served as above provided, such certificate shall be sufficient to authorize the court to order the release of such person under such conditions as the court shall see fit at the expiration of fifteen days from the time such certificate is filed and served pursuant to this section. The provisions as to hearing prior to unconditional release shall also apply to conditional releases, and, if,

after a hearing and weighing the evidence, the court shall find that the condition of such person warrants his conditional release, the court shall order his release under such conditions as the court shall see fit, or, if the court does not so find, the court shall order such person returned to such hospital.

"(h) When an accused person shall be acquitted solely on the ground of mental disease or defect excluding responsibility and ordered confined in a hospital for the mentally ill, such person and his estate shall be charged with the expense of his support in such hospital.

"(i) Nothing herein contained shall preclude a person confined under the authority of this section from establishing his eligibility for release under the provisions of this section by a writ of habeas corpus.

"(j) The jury shall not be told by the court or counsel for the Government or the defendant at any time regarding the consequences of a verdict of not guilty or acquittal on the ground of mental disease or defect excluding responsibility.

"(k) The provisions of subsections (d) through (i) of this section shall supersede in the District of Columbia the provisions of any Federal statutes or parts thereof inconsistent with this section.

"(l) This section shall apply only to proceedings brought by information or indictment in the United States District Court for the District of Columbia and the District of Columbia Court of General Sessions and, except for the provisions of subsections (a), (b), and (c), to proceedings brought to Juvenile Court in the District of Columbia."

SEC. 202. Nothing contained in the amendment made by section 201 of this title shall be deemed to alter, amend, or repeal section 928 or section 929 of the Act of March 3, 1901 (D.C. Code, secs. 24–302, 24–303), or the Act entitled "An Act relating to the testimony of physicians in the courts of the District of Columbia", received by the President May 13, 1896 (D.C. Code, sec. 14–308).

TITLE III

SEC. 301. (a) An officer or member of the Metropolitan Police force of the District of Columbia may detain any person abroad whom he has probable cause to believe is committing or has committed a crime, and may demand of him his name, address, business abroad, and whither he is going.

(b) Any person so questioned who fails to identify himself or explain his action to the satisfaction of the officer or member (as the case may be) may be detained and further interrogated.

(c) The total period of detention provided for by this section shall not exceed four hours. Such detention shall not be recorded as an arrest in any official record. At the end of the detention the person so detained shall be released or be arrested and charged with a crime.

TITLE IV

SEC. 401. Section 401 of the Revised Statutes of the United States, relating to the District of Columbia (D.C. Code, sec. 4–144), is amended to read as follows:

"SEC. 401. (a) Whenever, in a criminal case in the District of Columbia, there is reasonable ground to believe that any person is a material and necessary witness to the commission of any crime or attempt to commit

any crime punishable by imprisonment for one year or more, and there is a reasonable probability that such person will not be available to testify at the trial of the person charged with such offense, such person so believed to be a material and necessary witness may be taken, pursuant to a subpena, by an officer or member of the Metropolitan Police force, without unnecessary delay, before a judge of the United States District Court for the District of Columbia or a judge of the District of Columbia Court of General Sessions or a United States commissioner; except that no such subpena shall be required if such person is taken into custody at the scene of the crime. For the purposes of this section, a delay in the appearance of any such witness before any such judge or commissioner shall not be considered an unnecessary delay, if such appearance occurs within the six-hour period following the time that the witness is taken into custody. Such judge or commissioner shall afford such person a hearing and shall, prior to commencing the hearing, advise that person as to his consitutional rights and that he is entitled to consult with, and be represented by, counsel. Such judge or commissioner shall, after a hearing is afforded to such person and the judge or commissioner is satisfied by testimony given under oath that such person is a material and necessary witness and that there is reasonable probability that he will not be available at the trial as provided in this subsection, require such witness to post bond or collateral as security that he will appear and testify at such trial. Upon the failure of such witness to post such bond or collateral after a reasonable opportunity to do so, the judge or commissioner shall order the further detention of such witness until such time as he appears and gives testimony in such criminal case or until such criminal case has been finally disposed of otherwise. Notwithstanding any other provision of this subsection, upon the motion of any witness detained under this section and a showing that he has been detained for an unreasonable length of time, such judge or commissioner may order the release of such witness. The detention, as herein provided, of any such witness shall not constitute an arrest within the meaning of that term as used in any other law or in any rule or regulation. Any witness who, following such hearing, is ordered detained under this subsection shall, during that period of his detention following such hearing, be entitled to be paid amounts equivalent to the amounts payable to witnesses testifying in the court in which such trial with respect to which such witness is ordered detained is to be conducted.

"(b) The Board of Commissioners shall provide suitable accommodations within the District of Columbia for the detention of persons who are unable or who refuse to furnish security for their appearance as witnesses, as provided in subsection (a). Such accommodations shall be separate and apart from quarters used for the confinement of persons charged with crime. The said Commissioners may, in their discretion, enter into agreements with any Federal agency, including the United States courts, for the use of suitable space in a building under the jurisdiction of any such agency, and such agency is hereby authorized to allow the use of such space for the purpose of providing the accommodations required by this subsection. In carrying out the purposes of this Act, the said Commissioners may utilize any appropriate space in any building which is owned privately or which is owned or leased by the government of the District of Columbia. In the case of any witness detained by an officer other than an officer or member of the Metropolitan Police force, the District of Columbia shall be reimbursed for the accommodations furnished such witness at rates to be determined by the Commissioners."

80-853 O - 67 - 29

TITLE V

SEC. 501. The definition of "crime of violence" contained in section 1 of the Act entitled "An Act to control the possession, sale, transfer, and use of pistols and other dangerous weapons in the District of Columbia, to provide penalties, to prescribe rules of evidence, and for other purposes", approved July 8, 1932 (D.C. Code, sec. 22–3201), is amended by inserting immediately after "burglary," the following: "robbery,".

TITLE VI

SEC. 601. Section 803 of the Act entitled "An Act to establish a code of law for the District Columbia", approved March 3, 1901 (D.C. Code, sec. 22–501), is amended by inserting immediately after "for not" the following: "less than two years or".

SEC. 602. Section 823 of the Act entitled "An Act to establish a code of law for the District of Columbia", approved March 3, 1901 (D.C. Code, sec. 22–1801), is amended to read as follows:

"SEC. 823. BURGLARY.—(a) Whoever shall, either in the nighttime or in the daytime, break and enter, or enter without breaking, any dwelling, or room used as a sleeping apartment in any building, with intent to break or carry away any part thereof, or any fixture or other thing attached to or connected thereto or to commit any criminal offense, shall, if any person is in the actual occupation of any part of such dwelling or sleeping apartment at the time of such breaking and entering, or entering without breaking, be guilty of burglary in the first degree. Burglary in the first degree shall be punished by imprisonment for not less than five years nor more than thirty years.

"(b) Except as provided in subsection (a) of this section, whoever shall, either in the night or in the daytime, break and enter, or enter without breaking, any dwelling, bank, store, warehouse, shop, stable, or other building, or any apartment or room, whether at the time occupied or not, or any steamboat, canalboat, vessel, or other watercraft, or railroad car, or any yard where any lumber, coal, or other goods or chattels are deposited and kept for the purpose of trade, with intent to break and carry away any part thereof or any fixture or other thing attached to or connected with the same, or to commit any criminal offense, shall be guilty of burglary in the second degree. Burglary in the second degree shall be punished by imprisonment for not less than two years nor more than fifteen years."

SEC. 603. Section 810 of the Act entitled "An Act to establish a code of law for the District of Columbia", approved March 3, 1901 (D.C. Code, sec. 22–2901), is amended by striking out "six months" and inserting in lieu thereof "four years".

SEC. 604. Section 869e of the Act entitled "An Act to establish a code of law for the District of Columbia", approved March 3, 1901 (D.C. Code, sec. 22–1513), is amended by adding the following new subsection at the end thereof:

"(f) Nothing in this section shall be construed to prohibit the giving or offering of any bonus or extra compensation to any manager, coach, or professional player, or to any league, association, or conference for the purpose of encouraging such manager, coach, or player to a higher degree of skill, ability, or diligence in the performance of his duties."

SEC. 605. Section 2 of the Act entitled "An Act to control the possession, sale, transfer, and use of pistols and other dangerous weapons in the Dis-

trict of Columbia, to provide penalties, to prescribe rules of evidence, and for other purposes", approved July 8, 1932 (D.C. Code, sec. 22–3202), is amended to read as follows:

"SEC. 2. If any person shall commit a crime of violence in the District of Columbia when armed with or having readily available any pistol or other firearm, or other dangerous or deadly weapon, including but not limited to, sawed-off shotgun, shotgun, machinegun, rifle, dirk, bowie knife, butcher knife, switchblade knife, razor, blackjack, billy, metallic or other false knuckles, he may, in addition to the punishment provided for the crime, be punished by imprisonment for an indeterminate number of years up to life as determined by the court. If a person is convicted more than once of having committed a crime of violence in the District of Columbia when armed with or having readily available any pistol or other firearm, or other dangerous or deadly weapon, including but not limited to, sawed-off shotgun, shotgun, machinegun, rifle, dirk, bowie knife, butcher knife, switchblade knife, razor, blackjack, billy, metallic or other false knuckles, then, notwithstanding any other provision of law, the court shall not suspend his sentence or give him a probationary sentence."

SEC. 606. Section 872 of the Act entitled "An Act to establish a code of law for the District of Columbia", approved March 3, 1901 (D.C. Code, sec. 22–2001), is amended to read as follows:

"SEC. 872. INDECENT PUBLICATIONS.—(a) Whoever, with knowledge of the obscene character of the material, sells, or offers to sell, or give away, in the District, or has in his possession with the intent to sell, or give away or to exhibit to another, any obscene, lewd, or indecent book, pamphlet, drawing, engraving, picture, photograph, instrument, mayazine, story, paper, writing, card, print, motion picture film, image, cast, slide, figure, statue, phonograph record, wire, tape, or other sound recording, or other presentation or article of indecent or immoral use, or advertises the same for sale, or writes or prints any letter, circular, handbill, book, pamphlet, or notice of any kind stating by what means any such articles may be obtained, or advertises any drug, nostrum, or instrument intended to produce abortion, or otherwise participates in, or by bill, poster, or otherwise advertises, any public exhibition, show, performance, or play offending the public decency, shall be fined not more than $5,000, or imprisoned not more than one year, or both.

"(b) Whoever in the District acts in, poses for, models for, prints, records, composes, edits, writes, publishes, or offers to publish, or produces or participates in the production of any obscene, lewd, or indecent book, pamphlet, drawing, engraving, picture, photograph, instrument, magazine, story, paper, writing, card, print, motion picture film, image, cast, slide, figure, statue, phonograph record, wire, tape, or other sound recording, or other presentation or article of indecent or immoral use, or advertises the same for sale, or writes or prints any letter, circular, handbill, book, pamphlet, or notice of any kind stating by what means any such articles may be obtained, with knowledge that the same is obscene and is for the purpose of being sold, given away, or exhibited to another, shall be fined not more than $5,000, or imprisoned not more than one year, or both.

"(c) The United States Attorney for the District of Columbia is authorized to petition the United States District Court for the District of Columbia for a preliminary injunction and a permanent injunction to restrain the sale, gift, exhibition, distribution, production, disposition, or removal of any obscene, lewd, or indecent matter described in subsection (a) or (b) of this section and to restrain the use of any real or personal

property for such purpose. A hearing on the petition for the preliminary injunction shall be had not more than five days, excluding Sundays and holidays, after service upon the defendant of a copy of the petition.

"(d) After the hearing provided in subsection (c) of this section the said court may issue a preliminary injunction which will remain in effect until final determination of the petition for the permanent injunction, but not more than thirty calendar days from the issuance of the preliminary injunction.

"(e) If, after a trial of the issues, the court shall order a permanent injunction, such injunction shall include a provision for the immediate seizure and impoundment of the obscene, lewd, or indecent matter, and forbidding its reproduction or duplication. Such injunction shall also include a provision providing for the disposition of such matter so impounded in such way as the court may determine desirable (including the destruction of such matter), but in no event shall such matter be destroyed until after the expiration of the period during which an appeal may be taken or, if an appeal is taken, during the pendency of such appeal. Such injunction shall also permanently enjoin the use of any real or personal property used for the purpose of violating this section. In the trial brought for such permanent injunction the determination of all issues of fact shall be by jury if either party demands it.

"(f) For the purpose of obtaining a preliminary or permanent injunction under subsection (c), (d), or (e) of this section, it shall not be necessary for the United States Attorney to allege or prove that an adequate remedy at law does not exist or that substantial and irreparable damage would result from the violations alleged.

"(g) Proceedings pursuant to subsections (c), (d), and (e) of this section shall be governed by the Federal Rules of Civil Procedure, except as they may be inconsistent with the provisions and purposes of this section.

"(h) Nothing in this section shall apply to a licensee under the Communications Act of 1934, as amended, while engaged in activities regulated pursuant to such Act."

SEC. 607. Section 825a of the Act entitled "An Act to establish a code of law for the District of Columbia", approved March 3, 1901 (D.C. Code, sec. 22-3105), is amended by striking out "or by imprisonment not exceeding ten years." and inserting in lieu thereof the following: "and by imprisonment for not less than four years or more than ten years.".

SEC. 608. Whoever shall make or cause to be made to the Metropolitan Police Department of the District of Columbia, or to any officer or member thereof, a false or fictitious report of the commission of any criminal offense within the District of Columbia, or a false or fictitious report of any other matter or occurrence of which such Metropolitan Police Department is required to receive reports, or in connection with which such Metropolitan Police Department is required to conduct an investigation, knowing such report to be false or fictitious; or who shall communicate or cause to be communicated to such Metropolitan Police Department, or any officer or member thereof, any false information concerning the commission of any criminal offense within the District of Columbia or concerning any other matter or occurrence of which such Metropolitan Police Department is required to receive reports, or in connection with which such Metropolitan Police Department is required to conduct an investigation, knowing such information to be false, shall be punished by a fine of not exceeding $300 or by imprisonment not exceeding thirty days.

TITLE VII

SEC. 701. Whoever, prior to the date of enactment of this Act, commits any act or engages in any conduct which constitutes an offense under a provision of law amended by this Act, shall be sentenced in accordance with the law in effect on the date he commits such acts or engages in such conduct.

SEC. 702. Nothing in this Act shall be construed so as to affect the authority vested in the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952 (66 Stat. 824). The performance of any function vested by this Act in the Board of Commissioners or in any office or agency under the jurisdiction or control of said Board of Commissioners may be delegated by said Board of Commissioners in accordance with section 3 of such plan.

SEC. 703. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the other provisions of this Act and the application of any provision to other persons or circumstances shall not be affected thereby.

And the Senate agree to the same.

JOHN L. MCMILLAN,
BASIL L. WHITENER,
JOHN BELL WILLIAMS,
DON FUQUA,
ELLIOTT HAGAN,
ANCHER NELSEN,
WILLIAM H. HARSHA,
JOEL T. BROYHILL,
Managers on the Part of the House.

ALAN BIBLE,
TOM MCINTYRE,
JOSEPH TYDINGS,
WINSTON L. PROUTY,
PETER H. DOMINICK,
Managers on the Part of the Senate.

STATEMENT OF THE MANAGERS ON THE PART OF THE HOUSE

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5688) relating to crime and criminal procedure in the District of Columbia, submit the following statement in explanation of the effect of the action agreed upon by the conferees and recommended in the accompanying conference report:

The Senate struck out all of the House bill after the enacting clause and inserted a substitute amendment. The committee of conference has agreed to a substitute for both the House bill and the Senate amendment. Except for technical, clarifying, and conforming changes, the following statement explains the differences between the House bill and the substitute agreed to in conference.

TITLE I

MALLORY RULE

HOUSE BILL

Subsection (a) of section 101 of the House bill provides that voluntary statements and confessions shall not be inadmissible in evidence in the courts of the District of Columbia solely because of delay in presenting an arrested person before a commissioner or other officer who may commit persons charged with crimes.

Subsection (b) of section 101 of the House bill provides that no statement made by any person during a period of questioning by a law enforcement officer shall be admissible in evidence unless prior to the questioning the arrested person has been told that he is not required to make any statement and that any statement made by him may be used against him.

SENATE AMENDMENT

Section 101 of the Senate amendment is a brief restatement of existing law with respect to the admissibility of incriminating statements made by an accused.

Section 102 of the Senate amendment, in a restatement of existing law, excludes statements made by an accused after a period of unnecessary delay between his arrest and his appearance before a U.S. commissioner.

Section 103 of the Senate amendment provides that under section 102 of this title of the Senate amendment delay alone shall not cause the exclusion of any statement obtained by interrogation of the accused if (1) the accused was warned that he need not make a statement and was told that any statement made could be used against him; (2) prior to any questioning, the arrested person was advised by the officers having custody of him that upon request he would be afforded reasonable opportunity to notify a relative or

friend and consult with counsel of his choosing and if such request were made, he was, in fact, afforded such opportunity; (3) the aggregate period of questioning, exclusive of interruptions, does not exceed 3 hours between the arrest and the completion of the confession, admission, or statement; and (4) all of these warnings and any questioning of the accused were witnessed by a third party or transcribed or recorded verbatim.

CONFERENCE SUBSTITUTE

Subsection (a) of section 101 of the proposed conference substitute is identical to subsection (a) of section 101 of the House bill.

Subsection (b) of section 101 of the conference substitute bars the admissibility of statements made by an arrested person during any pretrial questioning by a law enforcement officer unless certain requirements are met. The first of these requirements is based on the procedural safeguards adopted by the U.S. Supreme Court in the case of *Miranda* v. *Arizona*, decided June 13, 1966. The requirements in subsection (b) demand that prior to any questioning of an arrested person he be advised that he has the right to remain silent, that any statement he may make may be used as evidence against him, and that he has the right to the assistance of an attorney (either retained by or appointed for him) prior to and during such questioning. An additional requirement is directed at the case of an individual who having been advised of his rights agrees to be questioned without a lawyer present. In this case the aggregate period of questioning during the absence of a lawyer and prior to arraignment may not exceed 6 hours.

TITLE II

Defense of Insanity in Criminal Proceedings, Competency To Stand Trial, and Related Matters

HOUSE BILL

Section 201 of the House bill completely revises section 927 of the act of March 3, 1901, relating to the procedures to be followed with respect to determinations of a person's competency to stand trial and to the confinement and release of persons acquitted of criminal charges on the ground of insanity. In general, the amendment made by the House bill, in addition to revising and amplifying the provisions of that section, establishes a test for criminal responsibility to replace the court-formulated test known as the "Durham rule" and also establishes certain procedures to be followed in raising the defense of insanity.

Subsection (a) of the proposed new section sets out a test for criminal responsibility which is as follows: "A person is not responsible for criminal conduct if at the time of such conduct as the result of mental disease or defect he lacks substantial capacity either to know or appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law." This subsection also provides that repeated criminal behavior or other antisocial conduct, by themselves, do not indicate the existence of a mental disease or defect. The proposed test would supplant the present rule in the District of Columbia, established in *Durham* v. *United States*, 214 F. 2d 862 (D.C. Cir.

1954), which provides that a person is not responsible for a criminal act if it "was the product of a mental disease or defect". *In McDonald v. United States*, 312 F. 2d 847 (D.C. Cir. 1962), the court defined "mental disease or defect" as including "any abnormal condition of the mind which substantially affects mental or emotional processes and substantially impairs behavior control." 312 F. 2d 847, at 851.

Subsection (b) provides that evidence of a mental disease or defect may be introduced in evidence in a criminal proceeding whenever it is relevant to show that the defendant did or did not have the state of mind which is a necessary element of the offense.

Subsection (c) provides that (1) if the defense of insanity is raised by the defendant, it is an affirmative defense which must be established by a showing of substantial evidence; and (2) in order to raise the defense of insanity, the defendant must give notice at the time he enters a plea of not guilty, within 15 days thereafter, or at such later time permitted by the court. That subsection also contains a provision identical to the present section 927(c) which provides that when a defendant is acquitted on the ground of insanity the verdict and judgment shall so state.

Subsection (d) provides that if a defendant is unable to understand the proceedings against him and assist in his own defense, as a result of a mental disease or defect, he shall not be tried or sentenced for the offense while the mental incapacity exists. This provision is similar to the present section 927(a).

Subsection (e) provides that whenever a defendant gives notice that he will rely on the defense of insanity or, where there is doubt as to the capacity of the defendant to proceed because of mental disease, the court shall appoint a qualified psychiatrist to conduct an examination and to make a report on the condition of the defendant. This provision differs from the present section 927(a) in that it specifically authorizes a mental examination when the defendant has given notice that he will rely on the defense of insanity. Any method of examination acceptable to the medical profession may be used. The court may commit the defendant to a hospital for such period of time as may be necessary for this purpose, even though the defendant may have been at large on bond or bail. There is a provision which requires the following to be included in the report of the examination: (1) a description of the nature of the examination; (2) a diagnosis of the mental condition of the defendant; (3) an opinion as to the capability of the defendant to understand the proceedings against him and assist in his defense if a mental disease or defect is found; (4) if the defendant has indicated he will rely on insanity as a defense, opinion as to the capability of the defendant to understand the wrongfulness of his conduct or to conform his conduct to the law at the time the offense was committed; and (5) in the event the defendant will not cooperate, the report will so indicate and provide an opinion as to whether the unwillingness was a result of mental disease or defect.

Subsection (f) provides that the court shall determine the question of the defendant's mental fitness when the question is raised. If there is no objection to the report of the examination filed, the court may make its finding on the basis of the report. If the report is contested, a hearing without a jury shall be held on the issue. If the report is received in evidence, the psychiatrists who joined in the report may be summoned for cross-examination. If the court finds, at the conclusion of the hearing, that the defendant is capable of

understanding the proceedings and assisting in his defense, the defendant shall be ordered to stand trial within a reasonable time.

It is also provided that if during the proceedings the court determines that the defendant lacks the capacity to proceed, the court shall commit the defendant to an institution for as long as the incapacity lasts. The resumption of proceedings at a later date shall not cause jeopardy to attach barring subsequent trial. If the institution to which the defendant has been committed finds his capacity is restored, such fact shall be certified to the court. The trial shall be resumed or started within a reasonable time unless the certification of fitness is challenged, in which case the court shall hold a hearing without a jury to determine the issue. However, if the court finds that so much time has elapsed that it would be unjust to resume the criminal proceedings, the court may order the defendant committed for examination by the Mental Health Commission.

Subsection (g) provides that if the report filed by the psychiatrist under subsection (e) indicates that at the time of the criminal conduct the defendant suffered from a mental disease or defect which substantially impaired his capacity to understand the criminality of his conduct or to conform his conduct to the law, and if the court is satisfied that the mental incapacity was sufficient to exclude responsibility for the crime, the court shall enter a judgment of acquittal on the ground of mental disease or defect excluding responsibility.

This subsection also contains provisions relating to mental examinations of defendants by psychiatrists of their own choice, testimony by psychiatrists, and mental examinations of defendants at the direction of the prosecution. Thus, notwithstanding a report filed under subsection (e), a defendant shall be permitted to be examined by a psychiatrist of his own choosing. Further, if the prosecution desires, it may have the defendant examined to determine his criminal responsibility but only if it makes the result available to the defendant.

The psychiatrists who filed the report under subsection (e) may be called as witnesses at the trial by the prosecution, the defendant, or the court. If the witnesses are called by the court, they shall be subject to cross-examination by both the prosecution and the defense. Both the prosecution and defense may summon other qualified psychiatrists to testify. However, no one who has not examined the defendant may give his opinion as a psychiatrist regarding the mental condition or the responsibility of the defendant. When a psychiatrist testifies he may state the nature of his examination and his diagnosis of the mental condition of the defendant at the time of the offense. He may also make any explanation which serves to clarify his diagnosis and opinion and he may be cross-examined regarding his competency, credibility, or the validity of his diagnosis or opinion.

Subsection (h) provides that if the trial results in an acquittal on the ground of mental disease or defect excluding responsibility, the court shall order the person committed to a hospital for the care of the mentally ill. If the superintendent of the hospital finds that such person no longer suffers from mental illness and may be discharged without danger to himself or others, he shall make application to the court for release of the person. The court shall appoint two qualified psychiatrists to make an examination and to report within 60 days or such other period as is necessary to determine his mental condition. If the report or testimony of the psychiatrists satisfies the court that the person may be discharged or released on

probation without danger to himself or others, the court shall issue such order on such conditions as it determines to be necessary. However, if the court is not satisfied, a hearing will be ordered promptly to determine whether the person may be discharged or released. Such a hearing shall be a civil proceeding and the burden shall be upon the committed person to prove that he may safely be discharged. According to the determination of the court, the person shall be discharged or released on probation under conditions imposed by the court or he shall be recommitted to the hospital and may be discharged or released only in accordance with the procedure heretofore indicated.

If the person shall have been found to have violated the conditions of any probation, after release, and the court determines that for the safety of such person or others, the probation should be revoked and the person shall be recommitted to a hospital for care and treatment of mentally ill and may be discharged only in accordance with the procedure followed in the first hearing. A committed person may make application for his release to the court and the procedures followed shall be the same as those prescribed above in the case of the application by the superintendent of such hospital. The application by the committed person need not be considered before a period of 6 months following the date of the order of commitment. If the court determines against granting the application, the person shall not be permitted to file further application until 1 year has elapsed from the date of any preceding hearing of an application.

Subsection (i) provides that the jury shall not at any time be told the consequences of a verdict of not guilty or acquittal by reason of insanity.

Subsection (j) provides that a person confined under the authority of section 927 is not precluded from establishing eligibility for release by a writ of habeas corpus.

Subsection (k) provides that section 927 shall apply only to proceedings in the U.S. District Court for the District of Columbia, the District of Columbia court of general sessions, and the juvenile court of the District of Columbia.

Subsection (l) deals with severability and provides that the invalidity of any part of section 927 shall not affect the remainder of the section to the extent it may be given effect.

Section 202 of the House bill states that sections 928 and 929(b) of such act, relating to commitment of persons while serving sentences, shall not be affected by the amendment made by section 201. Further, section 202 is designed to preserve fully the privilege attached to confidential communications between physicians and their patients and provides that nothing in the amendment made by section 201 of the House bill shall alter this guarantee.

Section 203 of the House bill repeals section 929(a) of the act of March 3, 1901, which provides that when the superintendent of an institution for the mentally ill, who has under his custody a person charged with a crime and subject to trial therefor, finds that such person is competent to stand trial, the superintendent shall certify the fact to the clerk of the court in which the case is pending. The new section 927(f) establishes the procedures under which the superintendent of such institution may certify that the defendant has regained mental fitness to proceed.

SENATE AMENDMENT

The Senate amendment struck out the amendments made by title II of the House bill and substituted an amendment to section 927 which requires a defendant who intends to assert the defense of insanity to give notice of that fact. This requirement is essentially the same as the notice requirement contained in the new section 927(c)(2) proposed by the House bill, except that such notice must be filed no later than (1) 30 days prior to the date of the trial if no court order for mental examination, or (2) if there was a court order for mental examination, 15 days after receipt by the court of the report of the examining physician. It is also provided that the court may extend the time for filing such notice in order to prevent injustice.

CONFERENCE SUBSTITUTE

The conference substitute amends section 927 of the act of March 3, 1901, so as to completely revise such section.

Paragraph (1) of subsection (a) of the new section 927 proposed by the conference substitute establishes a test for criminal responsibility which is the same as the test contained in section 4.01 of the model penal code, adopted by the American Law Institute in 1962 and more recently adopted (in *United States* v. *Freeman*, No. 29688, 2d Cir., Feb. 28, 1966) as the standard for criminal responsibility for the courts of the Second Judicial Circuit of the United States. The proposed test is as follows: "A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law." This test is identical to the test proposed in the House bill, except that the House bill based the test of a person's criminal responsibility on an inability "either *to know* or appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law." [Emphasis added.] Thus, the essential part of the test is a person's inability to "appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law."

Paragraph (2) of such subsection is identical to section 927(a)(2) contained in the amendment made by the House bill and provides that repeated criminal or antisocial conduct, by themselves, do not constitute a mental disease or defect.

Subsection (b) of the new section 927 is identical to the corresponding subsection proposed in the House bill and relates to the admissibility of evidence of mental disease or defect.

Paragraph (1) of subsection (c) provides that if the defense of insanity is raised it is an affirmative defense which must be established by a showing of substantial evidence.

The case of *McDonald* v. *United States*, 312 F. 2d 847 (D.C. Cir. 1962), held that sufficient evidence of mental disease was present to require a jury instruction on criminal responsibility when the issue of the insanity of the defendant was raised by "some evidence". The proposed subsection (c)(1) would substitute for the "some evidence" rule the requirement that the defendant establish by "substantial evidence" mental disease or defect excluding responsibility. Thus, in order to require a jury instruction on criminal responsibility, the defendant would have to establish by "substantial evidence" his lack

of capacity because of mental disease or defect. This change from "some evidence" to "substantial evidence" in no way changes the traditional requirement of the prosecution to prove beyond a reasonable doubt all elements of the crime, including necessary intent.

If substantial evidence is presented by the defendant, the prosecution would then be faced with the question of whether to present contradictory evidence. In *Davis* v. *United States*, 160 U.S. 469 (1895), the Supreme Court said the jury in considering an insanity plea must weigh all the evidence, including the presumption of sanity. Whether uncontradicted expert testimony overcomes the presumption depends upon its weight and credibility, and weight and credibility ordinarily are for the jury. As a practical matter this amounts to saying that every substantial issue of criminal responsibility must go to the jury, a very great improvement in the law from a prosecutor's point of view, and a rule which does neither side an injustice.

Paragraph (2) of such subsection, relating to the requirement that there be notice of an intention to raise the defense of insanity, is the same as the notice provision contained in the Senate amendment except that reference to the courts of the District of Columbia was deleted since the applicability of the provisions of the revised section 927 to such courts is delineated in another subsection.

Paragraph (3) of such subsection, providing that, if there is an acquittal on the basis of insanity, the verdict and judgment shall so state, is identical to the proposed section 927(c)(3) in the House bill and also to section 927(c) of the present law.

The revision of section 927 of the act of March 3, 1901, made by the conference substitute incorporates the provisions of certain subsections of that section into the new section 927 as follows:

Subsection of present section 927:	Appears in proposed section 927 as subsection:
(a)	(d)
(b)	(e)
(d)	(f)
(e)	(g)
(f)	(h)
(g)	(i)

Subsection (d) provides for a mental examination of a defendant in a criminal proceeding when it appears that the defendant is unfit to proceed. Authority is given to the court to order his confinement on the basis of the report of the examination except when the findings are objected to, in which case the court, without a jury, will make a determination of the individual's competency and proceed accordingly.

Subsection (e) provides that if a person confined under subsection (d) is, in the opinion of the head of the hospital in which he has been confined, restored to mental competency, such fact shall be certified to the court. Such certification shall be sufficient to allow the court to order the person to stand trial unless there is objection, in which case the court shall, without a jury, make a judicial determination of the person's competency to stand trial.

Subsection (f) provides for the confinement in a hospital for the mentally ill of a person who is acquitted on the ground of insanity.

Subsection (g) contains provisions relating to the release of persons confined under the preceding subsection. In general, such a person can be unconditionally released when there has been a determination

that he has recovered his sanity and will not in the reasonable future be dangerous to himself or others. This subsection also authorizes a conditional release with supervision.

Subsection (h) provides if a person is confined after an acquittal on the grounds of insanity, he (or his estate) shall bear the expense of his support during his confinement.

In subsection (i) it is stated that nothing in section 927 shall prevent a person confined under the authority of that section from seeking his release by a writ of habeas corpus.

In subsection (j) there is a prohibition against informing the jury at any time of the consequence of a verdict of not guilty or acquittal by reason of insanity. This provision is identical to section 927(i), as proposed by the House bill.

Subsection (k) retains the provision in subsection (h) of the present law by providing that the existing provisions of that section shall supersede in the District of Columbia the provisions of any Federal statute or parts thereof inconsistent with such provisions.

Subsection (l) provides that section 927 shall apply to criminal proceedings in the U.S. District court for the District of Columbia and the District of Columbia court of general sessions and also that, except for subsections (a), (b), and (c), relating to the test for criminal responsibility and related matters, such section shall apply to proceedings in the juvenile court in the District of Columbia.

Section 202 of the conference substitute is identical to section 202 of the House bill, except that it also provides that the amendment to section 927 shall not affect the provisions of section 929(a) of such act, relating to delivery to the court of a person who has been found competent after having been confined as not competent for trial.

TITLE III

Detention of Person

HOUSE BILL

Section 301 of the House bill relates to the detention of a person for questioning by a police officer who has probable cause to believe that such person is committing, has committed, or is about to commit a crime.

Subsection (a) of such section authorizes the detention of such person by a police officer to find out such person's name, address, business, and where he is going.

Subsection (b) provides that if such person fails to identify himself or explain his actions to the satisfaction of the officer he may be detained and further interrogated.

Subsection (c) limits the period of detention to 6 hours and such detention shall not be recorded as an arrest. At the end of the detention period a person must be released or arrested and charged with the crime.

SENATE AMENDMENT

The Senate amendment did not contain a comparable provision.

CONFERENCE SUBSTITUTE

The conference substitute is identical to section 301 of the House bill; except that a person may be detained only if the police officer has probable cause to believe that such person is committing or has committed a crime, and a person may not be detained for longer than 4 hours.

DETENTION OF MATERIAL WITNESS

HOUSE BILL

Section 302 of the House bill amends section 401 of the Revised Statutes of the United States relating to the District of Columbia (D.C. Code, sec. 4–144) which directs the Board of Commissioners to make accommodations available to witnesses unable to furnish security for their appearance in criminal proceedings. Section 302 completely revises such section to provide authority for the detention and questioning of such witnesses.

Subsection (a) provides that whenever there is probable cause to believe that any person may be a material witness to the commission or attempt to commit any felony and there is reasonable probability that such person will not be available as a witness during the investigation of the offense by the Metropolitan Police force or when a suspect is arrested and tried for the offense, the person may be required by a judge of the U.S. district court or the court of general sessions or by a U.S. Commissioner to post bond or deposit collateral to secure his appearance as a witness. Such person may be detained by the Metropolitan Police in specially provided quarters apart from those used for persons charged with a crime, pending posting of bond or collateral, but such person shall be presented before a judge or commissioner within 6 hours of the beginning of such detention. The judge or commissioner shall then require him to post bond or collateral, or release him. The detention provided for shall not constitute an arrest.

Subsection (b) provides that the Commissioners of the District of Columbia shall provide suitable accommodations for the detention of witnesses in premises apart from those used for persons charged with a crime. This subsection is essentially the same as the present section 401, except that the present section specifies that witnesses shall not be confined with persons charged with "crime, fraud, or disorderly conduct" and directs all committing magistrates to comply with the Commissioner's rules concerning detention of witnesses.

SENATE AMENDMENT

The Senate amendment also completely revises section 401. Subsection (a) of section 401, as proposed by the Senate amendment, provides that members of the Metropolitan Police force and Federal law-enforcement officers are authorized, without unnecessary delay, to take before a judge of a court of the District of Columbia or a U.S. Commissioner, whenever there is reasonable ground to believe that such person is a material and necessary witness to the commission of a crime punishable by imprisonment for 1 year or more and there is a reasonable probability that such person will not be available to testify at the trial of the person charged with the offense. The House bill's amendment gave such authority only to officers of

the Metropolitan Police force. However, the House bill's amendment allowed the detention of a witness when there was reasonable probability that he would not be available during the investigation of such offense. Further, where the House bill's version required an appearance before a judge or commissioner within 6 hours from the beginning of the witness' detention, the Senate amendment provided that such appearance should be made "without unnecessary delay."

Such subsection further provides that immediately upon being taken before a judge or commissioner, such person shall be advised of his constitutional rights and shall be allowed reasonable opportunity to consult counsel. If after a hearing such person is determined to be a material and necessary witness, he will be required to post bond or collateral as security that he will appear and testify at such trial. Upon his failure to post bond or collateral, the judge or commissioner may order his further detention in suitable quarters that are separate and apart from those used for the confinement of persons charged with crime. Under this subsection, the judge or commissioner retains authority to release any person detained for an unreasonable period of time whether or not he has discharged his duties as a material witness. It is also provided that detention under section 401 shall not constitute an arrest, no statement made during such detention may be used against the witness in a proceeding against him for the commission of any crime, and such witness shall be entitled during his detention to the fees payable to witnesses testifying in court.

Subsection (b) relates to accommodations for detained witnesses.

Subsections (c) and (d) afford the prosecution the same right with respect to the taking of a deposition of a material witness as is afforded to the defendant. In the case of a person who, through financial inability, cannot post bond or collateral, the court may discharge such person where the deposition of the person has been taken.

CONFERENCE SUBSTITUTE

Title IV of the conference substitute adopts the Senate amendment with the following changes: (1) the authority to detain a witness is given only to officers of the Metropolitan Police force, (2) the 6-hour time limit contained in the House version is substituted for the Senate provision calling for an appearance before a judge or commissioner "without unnecessary delay," (3) the immunity provided witnesses with respect to statements made during their detention is deleted, and (4) the provisions relating to the taking of depositions are deleted.

TITLE IV

Section 401 of the House bill amends the definition of "crime of violence" in the act of July 8, 1932 (D.C. Code, sec. 22-3201), by adding to such definition the crime of robbery.

Section 401 of the Senate amendment amends the same definition by striking out "housebreaking" and inserting in lieu thereof "robbery".

Section 501 of the proposed conference substitute is the same as the House bill.

TITLE V

Assault With Intent To Kill

Section 501 of the House bill and the Senate amendment and section 601 of the proposed conference substitute are identical and all amend section 803 of the act of March 3, 1901 (D.C. Code, sec. 22–501), to provide a minimum sentence of not less than 2 years in the case of persons convicted of assault with intent to kill or to commit rape or to commit robbery or mingling poison with food, drink, or medicine with intent to kill, or willfully poisoning any well, spring, or cistern of water.

Burglary

HOUSE BILL

Section 502(a) of the House bill amends section 823 of the act of March 3, 1901 (D.C. Code, sec. 22–1801), to substitute for the existing criminal provisions punishing housebreaking in the District of Columbia, a complete revision.

Subsection (a) of section 823 as revised by the House bill provides that whoever shall, either in the nighttime or in the daytime, break and enter, or enter without breaking, any dwelling, or room used as a sleeping apartment in any building, with intent to break or carry away any part thereof, or any fixture or other thing attached to or connected thereto or to commit any criminal offense, shall, if any person is in the actual occupation of any part of such dwelling or sleeping apartment at the time of such breaking and entering, or entering without breaking, be guilty of burglary in the first degree. Burglary in the first degree shall be punished by imprisonment for not less than 20 years nor more than life imprisonment, and, notwithstanding any other provision of law, any person who violates this subsection and upon whom a sentence of life imprisonment is imposed shall be eligible for parole only after the expiration of 20 years from the date he commences to serve his sentence.

Subsection (b) of section 823 as revised by the House bill provides that except as provided in subsection (a) of section 823, whoever shall, either in the night or in the daytime, break and enter, or enter without breaking, any dwelling, bank, store, warehouse, shop, stable, or other building, or any apartment or room, whether at the time occupied or not, or any steamboat, canal boat, vessel, or other watercraft, or railroad car, or any yard where any lumber, coal, or other goods or chattels are deposited and kept for the purpose of trade, with intent to break and carry away any part thereof or any fixture or other thing attached to or connected with the same, or to commit any criminal offense, shall be guilty of burglary in the second degree. Burglary in the second degree shall be punished by imprisonment for not less than 5 years nor more than 15 years.

Section 502(b) of the House bill provides that any person tried before the effective date of this act for violation of section 823 of such act approved March 3, 1901, and who is before a court for the purpose of sentence or resentence, shall be sentenced in accordance with the law in effect before the effective date of this act.

SENATE AMENDMENT

Section 502 of the Senate amendment also amends section 823 of the act of March 3, 1901, to substitute for the provisions of existing law on housebreaking in the District of Columbia a complete revision.

Subsection (a) of section 823 as revised by the Senate amendment is the same as the revision proposed by the House bill except (1) that the punishment is set at not less than 2 nor more than 20 years instead of 20 years to life as provided in the House bill and (2) the provision in the House bill that one sentenced to life is eligible for parole only after he has served 20 years is not contained in the Senate amendment.

Subsection (b) of section 823 as revised by the Senate amendment is the same as the revision proposed by the House bill except that the minimum punishment is set at not less than 1 year instead of 5 years as provided in the House bill.

CONFERENCE SUBSTITUTE

The revision of subsection (a) of section 823 of the act of March 30, 1901, contained in section 602 of the proposed conference substitute is the same as the House bill except that (1) the punishment is set at not less than 5 nor more than 30 years and (2) there is no minimum time fixed which must be served before a person sentenced to the maximum term is to be eligible for parole.

The revision of subsection (b) of such section 823 of the proposed conference substitute is the same as the House bill except that the punishment is set at not less than 2 nor more than 15 years.

The proposed conference substitute with respect to section 602 does not contain a provision comparable to subsection (b) of section 502 of the House bill. The proposed conference substitute does, however, contain in section 701 a general provision that one who before the date of enactment of this act commits any act or engages in any conduct constituting an offense under a provision of law amended by this act, shall be sentenced in accordance with the law in effect at the time he commits such act or engages in such conduct.

ROBBERY

HOUSE BILL

Section 503 of the House bill amends section 810 of the act of March 3, 1901 (D.C. Code, sec. 22–2901), by striking out "six months" and inserting in lieu thereof "five years". This results in raising the minimum sentence for robbery in the District of Columbia from 6 months to 5 years.

SENATE AMENDMENT

Section 503 of the Senate amendment amends section 810 to increase the minimum entence for robbery from 6 months to 2 years.

CONFERENCE SUBSTITUTE

Section 603 of the proposed conference substitute amends section 810 of the act of March 3, 1901, to increase the minimum sentence for robbery in the District of Columbia from 6 months to 4 years.

80-853 O - 67 - 30

Athletic Contests

HOUSE BILL

Section 504 of the House bill amends section 869e of the act of March 3, 1901 (D.C. Code, sec. 22–1513), so as to substitute for the provisions of existing law on corrupt influence in connection with athletic contests a complete revision.

Subsection (a) of this revision increases the penalty for bribery or offering to bribe any person with intent to influence the result of an athletic contest and provides that a penalty shall be imprisonment for not less than 1 nor more than 10 years and a fine of not less than $300 nor more than $10,000.

Subsection (b) of this revision provides that if a participant in a contest agrees to accept a bribe with intent to influence the result, the penalty shall be imprisonment for not less than 1 nor more than 10 years or a fine or both.

Subsection (c) of this revision provides that it is sufficient to show violation of subsections (a) or (b) if a bribe is offered, accepted, or agreed to with a view to probable employment or participation in an athletic event even though the person may not have been employed or the player may not participate.

Subsection (d) of this revision defines a "bribe" as anything of value which may be given or promised.

Subsection (e) of this revision provides that any player or participant connected with an athletic contest who, for material gain to himself, willfully commits an act of omission or commission with intent to affect the margin of victory or defeat may be imprisoned not less than 1 year nor more than 10 years or fined or both.

Subsection (f) of this revision permits the payment of bonuses for the purpose of securing superior performances.

SENATE AMENDMENT

The Senate amendment contained no comparable provision.

CONFERENCE SUBSTITUTE

Section 604 of the proposed conference substitute amends the existing section 869e of the act of March 3, 1901, by adding at the end thereof a new subsection (f) which is the same as the subsection (f) of the revision of section 869e contained in the House bill.

Committing Crime When Armed

HOUSE BILL

Section 505 of the House bill amends section 2 of the act of July 8, 1932 (D.C. Code, sec. 22–3202), by striking the word "may" in four places and inserting in lieu thereof "shall". This results in the court being required to impose additional punishment on persons convicted of certain specified crimes of violence in the District of Columbia when armed or having readily available any pistol or other firearm instead of permitting the court to do so, as the existing law provides. In addition, this section of the House bill also amends section 2 of such act of July 8, 1932, to provide that despite any other provision of law

if a person is convicted of committing a crime of violence in the District of Columbia when so armed or having readily available any pistol or other firearm then the court shall not suspend his sentence or give a probationary sentence.

SENATE AMENDMENT

Section 504 of the Senate amendment amends section 2 of the act of July 8, 1932, by striking out "pistol or other firearm," and inserting in lieu thereof "pistol or other firearm or other dangerous or deadly weapon including, but not limited to, sawed-off shotgun, shotgun, machinegun, rifle, dirk, bowie knife, butcher knife, switchblade knife, razor, blackjack, billy, metallic or other false knuckles,".

CONFERENCE SUBSTITUTE

Section 605 of the proposed conference substitute amends section 2 of the act of July 8, 1932 (D.C. Code, sec. 22–3202), so as to revise it to provide that if any person shall commit a crime of violence in the District of Columbia when armed with or having readily available any pistol or other firearm, or other dangerous or deadly weapon, including but not limited to, sawed-off shotgun, shotgun, machinegun, rifle, dirk, bowie knife, butcher knife, switchblade knife, razor, blackjack, billy, metallic or other false knuckles, he may, in addition to the punishment provided for the crime, be punished by imprisonment for an indeterminate number of years up to life as determined by the court. If a person is convicted more than once of having committed a crime of violence in the District of Columbia when armed with or having readily available any pistol or other firearm, or other dangerous or deadly weapon, including but not limited to, sawed-off shotgun, shotgun, machinegun, rifle, dirk, bowie knife, butcher knife, switchblade knife, razor, blackjack, billy, metallic or other false knuckles, then, notwithstanding any other provision of law, the court shall not suspend his sentence or give him a probationary sentence.

INDECENT PUBLICATIONS

HOUSE BILL

Section 506 of the House bill amends section 872 of the act of March 3, 1901 (D.C. Code, sec. 22–2001), so as to completely revise such section.

Subsection (a) of this revision provides that whoever, with knowledge of their obscene nature, sells, offers to sell, or gives away or has possession with intent to sell, give away, or exhibit indecent materials, or who with such knowledge advertises such materials or drugs or instruments intended to produce abortion or gives or participates in or advertises any indecent public exhibition, shall be fined not less than $200 nor more than $5,000 or imprisoned not less than 3 months nor more than 2 years, or both.

Subsection (b) of this revision provides that whoever engages in the production of obscene materials, with knowledge that they are obscene and that they are to be sold, given away, or exhibited, shall be fined not less than $200 nor more than $5,000, or imprisoned not less than 3 months nor more than 2 years, or both.

Subsection (c) of this revision provides that the U.S. attorney for the District of Columbia may petition the U.S. district court for a preliminary injunction and a permanent injunction to restrain any acts under subsection (a) or (b), and to restrain the use of any real or personal property for purposes prohibited in this section. A hearing on such petition is required to be held not more than 5 days, excluding Sundays and holidays, after service upon the defendant.

Subsection (d) of this revision provides that after the hearing provided in subsection (c), the court may issue a preliminary injunction to remain in effect until final determination of the petition for permanent injunction, but not for a period of more than 30 calendar days.

Subsection (e) of this revision provides that if, after a trial of the issues which shall be by jury upon the request of either party, the U.S. district court orders permanent injunction, such injunction shall require the immediate seizure and eventual destruction of the indecent matter. However, such destruction shall not take place until after the expiration of the period during which an appeal may be taken, or during the pendency of such an appeal. This injunction shall also permanently enjoin against the use of real property for the purpose of violating this section.

Subsection (f) of this revision provides that if a permanent injunction be issued, any personal property other than the obscene matter, knowingly used or knowingly permitted to be used in obscene activities prohibited by subsection (a), (b), or (c) of this section and which was the subject of the preliminary injunction, shall, at the discretion of the court, be forfeited to the District of Columbia for sale at public auction. It is further provided that such forfeiture shall be on the basis of the court's determination as to the seriousness of the offense in relation to the penalty resulting from such forfeiture, or determination of the desirability of such forfeiture as a means of preventing further use of such property in connection with such obsene activities. Property not purchased at such auction shall be disposed of under regulations prescribed by the Commissioners of the District of Columbia. Any valid lien existing against such property shall be transferred from the property to the proceeds of any sale.

Subsection (g) of this revision provides that for the purposes of obtaining a preliminary or permanent injunction it shall not be necessary for the U.S. attorney or the corporation counsel to prove that adequate remedy at law does not exist or that substantial or irreparable damage would result from the violations alleged.

Subsection (h) of this revision provides that the injunctive proceedings under the section shall be governed by the Federal Rules of Civil Procedure.

Subsection (i) of this revision exempts from the provisions of this act all licensees under the Communications Act of 1934, as amended, while engaged in activities regulated by said act.

SENATE AMENDMENT

Section 505 of the Senate amendment also amends section 872 of the act of March 3, 1901 (District of Columbia Code, sec. 22–2001), so as to completely revise such section.

Subsection (a) of this revision provides that whoever sells, offers to sell, or gives away or has possession with intent to sell, give away,

or exhibit indecent materials, or who advertises such materials or drugs or instruments intended to produce abortion or gives or participates in or advertises any indecent public exhibition, shall be fined not more than $5,000, or imprisoned not more than 1 year, or both.

Subsection (b) of this revision provides that whoever with knowledge engages in the production of obscene materials which are to be disseminated shall be fined not more than $5,000, or imprisoned not more than 1 year, or both.

Subsection (c) of this revision provides that the U.S. attorney for the District of Columbia may petition the U.S. district court for a preliminary injunction and a permanent injunction to restrain the sale, dissemination, distribution, and production of obscene matter prohibited in this section. A hearing will be provided prior to the issuance of any preliminary injunction which will remain in effect for no more than 30 days.

Subsection (d) of this revision provides that after trial of the issues the court may issue a permanent injunction and that such injunction shall include a provision for the immediate seizure and impounding of the obscene matter. There is provision for final disposition of such obscene matter in such way as the court may determine. However, in no event shall the matter be destroyed until after finality of appeal.

Subsection (e) provides that proceedings shall be governed by Federal Rules of Civil Procedure, except as they may be inconsistent with the provisions of this section.

Subsection (f) provides an exemption to the provisions of section 505 to those licensed under the provisions of the Federal Communications Act while engaged in activities regulated pursuant to such act.

CONFERENCE SUBSTITUTE

Section 606 of the proposed conference substitute also amends section 872 of the act of March 3, 1901 (District of Columbia Code, sec. 22–2001), so as to completely revise such section.

Subsection (a) of this revision is the same as the House bill except that the punishment is fixed in accordance with the Senate amendment at not more than a $5,000 fine or imprisonment for not more than 1 year, or both.

Subsection (b) of this revision is the same as the House bill except that the punishment is fixed in accordance with the Senate amendment at not more than a $5,000 fine or imprisonment for not more than one year, or both.

Subsection (c) of this revision is the same as the House bill.

Subsection (d) of this revision is the same as the House bill.

Subsection (e) of this revision is the same as the Senate amendment except that there has been added to such subsection a requirement that any such injunction shall permanently enjoin the use of the real and personal property for the purpose of violating such section 872. A further provision also has been added to this revision requiring the determination of all issues of fact to be by jury if either party demands it.

Subsection (f) of this revision is the same as subsection (g) in the House bill. Subsection (f) of the House bill is not contained in this revision.

Subsection (g) of this revision is the same as subsection (h) in the House bill.

Subsection (h) in this revision is the same as subsection (i) in the House bill.

EXPLOSIVES

HOUSE BILL

Section 507 of the House bill amends section 825a of the act of March 3, 1901 (District of Columbia Code, sec. 22–3105), by increasing the penalties for placing explosives in or near buildings, monuments and other structures from a fine not exceeding $1,000 or imprisonment not exceeding 10 years, to a fine not exceeding $1,000 and imprisonment for not less than 5 or more than 10 years.

SENATE AMENDMENT

Section 506 of the Senate amendment also amends this section 825a to increase the punishment from a fine of not more than $1,000 or imprisonment not exceeding 10 years to a fine of not more than $1,000 or imprisonment for not less than 3 or more than 10 years.

CONFERENCE SUBSTITUTE

Section 607 of the conference substitute is the same as the House bill except that the minimum sentence is set at 4 years rather than 5 as contained in the House bill.

FALSE REPORTS

HOUSE BILL

Section 508 of the House bill provides that whoever makes certain false or fictitious reports to the Metropolitan Police Department of the District of Columbia knowing the report to be false or fictitious or gives certain other false information to the police knowing it to be false shall be fined not more than $100 or imprisoned not more than 6 months, or both.

SENATE AMENDMENT

Section 507 of the Senate amendment is the same as section 508 of the House bill except that the punishment is fixed at a fine not exceeding $300 or imprisonment for not exceeding 30 days.

CONFERENCE SUBSTITUTE

Section 608 of the proposed conference substitute is the same as the Senate amendment.

APPLICATION OF ACT

HOUSE BILL

The House bill had no provision relating to the application of the act generally.

SENATE AMENDMENT

Section 601 of the Senate amendment provides that with respect to any person who, prior to the date of the enactment of this act, committed any act or engaged in any conduct which constituted an offense under a provision of law amended by this act, the provision of law in effect at the time of the commission of such offense shall remain in full force and effect and shall be applicable to such offense.

CONFERENCE SUBSTITUTE

Section 701 of the proposed conference substitute provides that whoever, prior to the date of enactment of this act, commits any act or engages in any conduct which constitutes an offense under a provision of law amended by this act, shall be sentenced in accordance with the law in effect on the date he commits such act or engages in such conduct.

JOHN L. MCMILLAN,
BASIL L. WHITENER,
JOHN BELL WILLIAMS,
DON FUQUA,
ELLIOTT HAGAN,
ANCHER NELSEN,
WILLIAM H. HARSHA,
JOEL T. BROYHILL,
Managers on the Part of the House.

WASHINGTON BOARD OF REALTORS, INC.,
Washington, D.C., July 25, 1967.

Hon. ALAN BIBLE,
Old Senate Office Building,
Washington, D.C.

DEAR SENATOR BIBLE: Members of the Washington Board of Realtors have become alarmed with the increase in crime in the District of Columbia and like most law abiding citizens are looking to the President and the Congress to find means to curb this alarming problem of our city.

Recently, we sent a letter to President Lyndon B. Johnson expressing our concern with this problem and we thought you might like a copy for your files.

Sincerly,

WALLACE B. AGNEW, *President.*

AN OPEN LETTER TO THE PRESIDENT—CRIME IN THE DISTRICT

DEAR MR. PRESIDENT: The Washington Board of Realtors is deeply concerned over the steady rise of crime in the District.

In our business of selling, leasing and managing real estate, we feel the pulse of the people. Crime is the common topic of conversation. People are living in fear. We watch with alarm as prospective homeowners move to the suburbs. The feeling seems to be—let's not live in the District. We recoil at the unanswerable question . . . "Is this neighborhood safe?" We know . . . and you know . . . that no neighborhood is safe! No citizen is safe . . . not on the streets, not in the parks . . . not even in their homes or offices. Crime is rampant and getting worse. It is out of control. It is tearing the very fabric of our society.

We need help now!

In July, 1966, this Board, through its Crime Study Committee, released a report which made many concrete suggestions, which hopefully, would alleviate some aspects of the situation. Though this report had a favorable reaction among judges and members of Congress and others, nothing was done. We did not claim to know all the answers. But it was a serious attempt by ordinary businessmen to lend their efforts to one of the most pressing problems of our city.

We appreciate the enormity of the problem. We all know that there is no simple solution.

We, as businessmen, still feel that punishment is a deterrent to crime. Just as reprisal deters an atomic attack, so punishment deters a prospective criminal. If decency and fair-dealing does not deter him, what else is there except punishment?

We ask you to lead the country away from the misguided concept that society is guilty for the acts of the criminal and that we must make amends for what we have allegedly done to make him a criminal. It is a twisted attitude that unfortunately appears to have great support. We ask you to forcefully dispel the new-found confidence of the criminal that no matter what crime he commits, nothing much is going to happen to him.

We make the following suggestions:

1. A massive infusion into the Police Department of talent and money.
2. An increase in the staff of the prosecutor's office.
3. A marked increase in the capacity of our criminal courts, including more judges at all levels.
4. New and improved parole and probation procedures.
5. A revision and tightening of our bail bond procedure.
6. Your vigorous support for a strong crime bill. The House of Representatives recently passed the Omnibus Crime Bill of 1967 (HR 10783). This bill will serve to modernize our criminal law. It will help to clarify certain liberal court decisions that have lead our citizens to believe that the courts are either impotent or care more about the criminal's supposed rights than the suppression of crime and the protection of society.

Mr. President, we look to you for leadership. It is high time that the rights of the law abiding citizens of this community be protected. We ask you to put your power and prestige behind the people's determination that crime must go! We ask you to resolve your doubts in favor of the community—not the criminal.

Respectfully,

WALLACE B. AGNEW,
President.

THE BAR ASSOCIATION OF THE DISTRICT OF COLUMBIA,
July 27, 1967.

Re H.R. 10783, S. 1509–1524, inclusive.
Hon. ALAN BIBLE,
Chairman, Senate Committee on the District of Columbia,
New Senate Office Building, Washington, D.C.

DEAR SENATOR BIBLE: I am submitting this letter to you rather than requesting the privilege of appearing in person before your subcommittee because the Association has not completed its study of the group of bills referred to in the caption. No meetings of the membership are scheduled during the summer and June and July are the months during which the committees are being reconstituted as a result of the change in the office of president which occurs in June of each year.

I am able to advise you that the Association has approved S. 1513 which provides for the establishment of a commission on revision of the criminal laws of the District of Columbia and S. 1514 which relates to the rehabilitation of narcotic addicts in the District of Columbia. S. 1513 was approved by the Judicial Conference of this Circuit at its meeting on May 25, 1967; Michael A. Schuchat, Esquire, a member of this Association and Chairman of its Committee on Revision of the District of Columbia Code, has already appeared before your subcommittee and testified in favor of this bill.

With respect to H.R. 10783, the Association has not completed its study of Titles I, IV, VII and VIII. Titles II, III, V and VI are either identical with or similar to Titles II, III, V and VI of the so-called Omnibus Crime Bill of 1966, H.R. 5688. You will recall that the Association disapproved the latter bill and requested the President to veto it. By reason of the fact that the bill was already on the President's desk when the Association voted upon it, the vote was taken upon the bill as a whole and not upon its several sections separately.

With respect to S. 1509, S. 1510, S. 1511, S. 1515, S. 1516 and S. 1524, the subject mattter of these bills was not contained in H.R. 5688, 89th Congress, 2d Session, and therefore the Association has not yet taken a position as to them. Insofar as S. 1512, S. 1517, S. 1518, S. 1519, S. 1520, S. 1521, S. 1522 and S. 1523 are concerned, they appear in identical or similar form in H.R. 5688 which, as noted above, the Association disapproved.

The Association's consideration of the various bills, other than S. 1513 and S. 1514, is continuing and if the record is still open when final action by the Association has been taken, I would like to have the privilege of submitting a further report.

I assure you that the Association is deeply concerned with the crime problem in the District of Columbia and is appreciative of the care and attention that you and the members of your committee are giving it and have been giving it for some time past. The Association itself has many projects under way that are designed to aid in the administration of criminal justice; notable among these is the work of eleven special committees, each charged with the task of studying a particular section of the Report of the President's Commission on Crime in the District of Columbia and recommending methods for implementing that Report's conclusions. It is as a result of the work of those committees that the Association has been able to recommend enactment of Senate bills S. 1513 and S. 1514 as noted above. Implementation of the Crime Commission's Report and improvement in the administration of criminal justice in the District of Columbia will be two of the principal objectives of the Association during the coming year.

Respectfully yours,

JOHN E. POWELL, *President.*

WASHINGTON, D.C., RETAIL LIQUOR DEALERS ASSOCIATION, INC.,
February 15, 1967.

Hon. ALAN BIBLE,
Chairman, Senate District Committee,
U.S. Senate,
Washington, D.C.

DEAR SENATOR BIBLE: As you recall, this Association was in the forefront of the campaign to enact last year's anti-crime bill, which unfortunately was

vetoed by the President of the United States. Our interest continues and we are strongly as ever in favor of legislation which will develop the weapons to minimize crime in the District of Columbia.

We are enclosing a copy of our letter dated February 13, 1967 addressed to the President of the United States, which sets forth our views and recommendations on the local crime situation. We hope that we can have your cooperation and that of the Committee in developing legislation that will do the job.

Please rest assured of our continued cooperation.

Sincerely,

HILLIARD SCHULBERG,
Executive Director.

WASHINGTON, D.C., RETAIL LIQUOR DEALERS ASSOCIATION, INC.,
Washington, D.C., February 13, 1967.

Hon. LYNDON B. JOHNSON,
President, United States of America,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: Your recent message to the Congress indicated clearly that we cannot afford the luxury of having crime run rampant. Every citizen, every businessman agrees with this and is ready to join the battle to stop the perpetrators of these outrages. For failing a halt in their depredations, everything that is good in our community will be destroyed.

The Washington D.C. Retail Liquor Dealers Association, is an organization composed of individual merchants who sell alcoholic beverages for off-premises consumption. Our members are responsible citizens, active in the civic and business life of the District. We join with the rest of the community in urging you and the Congress to have enacted strong remedial legislation to remove this peril from our City.

As the record will indicate, our merchants have suffered more from the existing reign of lawlessness than any other group in the District. We have 386 active retailers. Since 1965, there have been more than 250 holdups of liquor stores; four of our people have been murdered. There have been countless burglaries, window-breaking, larcenies and assaults. Many of our stores can no longer obtain insurance. So we think you will agree with us that we have more than just an academic interest in the crime problem.

We have given considerable thought to the problem; we have observed the processes of justice. We offer the following suggestions with the firm conviction that if put into practice, they will aid considerably in bringing the situation under control.

1. The Courts—

(a) In cases involving armed robbery, upon conviction of such charges, the sentence handed down should not be concurrent, but consecutive; a term for the robbery, followed by a term for the use of a dangerous weapon.

(b) In cases where an individual charged with a crime of violence, is a proven, frequent user of a dangerous weapon, or has a record for committing crimes of violence, he should not be released, but should be held in custody until tried.

We believe that neither the Constitution nor the Criminal Rules is so categorical in its bail provisions that a repeated dangerous offender under new charges must be released pending trial, in the face of a high probability that he will commit fresh crimes of violence. And we believe the foregoing is most cogent, especially since the Bail Reform Law of 1966 seems to put more criminals right back on the streets after apprehension.

Your Commission on Crime in the District of Columbia made the following comment in its report:

"We believe that potential criminals will be more effectively deterred by a system characterized by omnipresent and efficient police action, vigorous prosecution of offenders and expedited judicial handling from indictment through appeal."

With this we emphatically agree.

2. The Prosecutor's office—

(a) There should be more vigorous prosecutions. Prosecutions should not be dropped where the Grand Jury has indicted. If the evidence is good enough to go to the Grand Jury for an indictment, and there is such indictment, the case should go to trial; let the jury decide the innocence or guilt of the defendant.

3. The Congress—

(a) The Congress should pass legislation setting stiffer mandatory sentences; should pass a "gun-restriction" law; should provide the police with a sufficient opportunity to question suspects.

4. The District Authorities—

The police, we feel, are doing a good job with what they have to work with Undoubtedly, the department could use more men. But getting these men is the problem. Sufficient funds, creation of an atmosphere where the police officer can work with respect, with pride in his job, are necessary.

Our governing authorities, therefore, must stop being so prone to government by petition by pressure groups. They must return to government for all of the people, not for a few of the people.

And finally, a long-range program of education, slum-clearance and the eradication of poverty must be developed. But if we are to reach this long-range program, we must have the short-range program alluded hereto. If we do not, all we will have is chaos and further lawlessness.

The studies have been made; the record is in. The time for action is now! Mr. President, we respectfully request you use every power available to your high office to rid us of this dangerous malignancy.

Sincerely,

HILLIARD SCHULBERG,
Executive Director.

THE RETAIL BUREAU,
OF THE METROPOLITAN WASHINGTON BOARD OF TRADE,
February 14, 1967.

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

DEAR SENATOR BIBLE: The Retail Bureau of the Metropolitan Washington Board of Trade speaking on behalf of 11,000 retailers and as the voice of Washington's retail industry join with other civic and business organizations to ask that every possible step be taken to reduce the problem of crime in the District of Columbia.

As responsible businessmen, taxpayers and those particularly vulnerable to crime and violence we wish to emphasize the need for an effective and continuous anticrime program for this area.

As members of the Steering Committee of the Retail Bureau we look forward to having adequate police protection and court services restored for all citizens once again in the Nation's Capital.

Sincerely,

ARTHUR T. LYON, *Chairman.*

STEERING COMMITTEE

Mr. Julian Kaye, President, Casual Corner
Mr. Joshua P. Stedehouder, President, Central Charge Service
Mr. Stephen Heller, Secretary, William Hahn & Co.
Mr. Harry N. Hirshberg, Jr., Executive Vice President, The Hecht Co.
Mr. B. B. Burgunder, Executive Vice President, S. Kann Sons Co.
Mr. Louis Frankel, President, Lansburgh's
Mr. Barton Brown, General Manager, Montgomery Ward & Co. Area Stores
Mr. Frederick M. Downey, Executive Vice President, Peoples Drug Stores, Inc.
Mr. Arthur T. Lyon, Executive Vice President, Raleigh Haberdasher, Inc.
Mr. Richard E. Steen, President, Lewis & Thos. Saltz, Inc.
Mr. O. L. Weir, General Manager, Sears Roebuck & Co. Area Stores.
Mr. Andrew Parker, President, Woodward & Lothrop

AUTOMOTIVE TRADE ASSOCIATION NATIONAL CAPITAL AREA,
February 16, 1967.

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

DEAR SENATOR BIBLE: It is our understanding that it is proposed that the Congress will take some action in an endeavor to do something about the serious crime situation that exists in the District of Columbia and its environs.

As you probably know, the Metropolitan Washington Board of Trade has held several meetings on this subject recently which have been attended by representatives of various trade associations and business leaders in the National Capital Area.

It was suggested that a letter be written to the President expressing the concern about this very serious situation. Enclosed is a copy of the letter that we sent to President Johnson.

If my Association can be of any assistance to you and the Members of your Committee when you begin your study, please do not hesitate to call upon me.

A copy of this letter is being sent to the other Members of the District of Columbia Committee.

Sincerely yours,

MAURICE J. MURPHY,
Executive Vice President.

AUTOMOTIVE TRADE ASSOCIATION NATIONAL CAPITAL AREA,
February 10, 1967.

THE PRESIDENT,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: Like many others in the National Capital Area, our Association is very much concerned about the crime situation as it exists here today. Our concern is twofold. We are upset about it as citizens and also as businessmen.

No matter where we go today, at business meetings or social affairs, invariably the subject of the crime conditions is discussed. Our news media are full of it. There is not a day that goes by that there is not some report of rape, robbery, assault, or vandalism, that has occurred in the Metropolitan Area within the 24-hour period.

We realize that we have a fine Police Department in the District of Columbia, as we also have in our surrounding Counties in Maryland and Virginia. Apparently, however, these Departments are completely swamped with problems of crime and are in serious need of more men and equipment to combat it.

The District of Columbia automobile dealers report practically no traffic on their showroom floors after dark. We are advised by the dealers in the Area of tremendous monetary loss through theft of cars, tires, batteries, wheels, accessories, and other equipment, from the open-air lots on which cars are both stored and offered for sale.

We are encouraged by your letter to Mr. Robert C. Baker, of the Washington, D.C. Clearing House Association, outlining an attack on crime in the Nation's Capital.

This is to advise you that our Association, organized in 1917 and composed of new-car automobile dealers and related lines, will support and cooperate to the utmost to help stamp out the crime situation as it exists today.

It is our intention also to contact the appropriate Congressional Committees to advise them also of our stand in this matter and our hope for improvement in the very near future.

Sincerely yours,

MAURICE J. MURPHY,
Executive Vice President.

WASHINGTON, D.C. AREA TRUCKING ASSOCIATION,
February 10, 1967.

Hon. ALAN BIBLE,
Chairman, Senate District Committee,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Our association, as you know, represents the trucking industry locally and is affiliated with the American Trucking Associations at the national level.

The citizens of our association are deeply concerned about the crime which is rampant in the D.C. area. We offer our complete cooperation and support of legislation which can remedy this intolerable situation.

Sincerely,

A. W. (ANDY) JOHNSON,
Managing Director.

DISTRICT OF COLUMBIA SAVINGS & LOAN LEAGUE,
February 14, 1967.

Hon. ALAN BIBLE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR BIBLE: The District of Columbia Savings and Loan League, Inc., has become increasingly concerned with the incidence of crime in the Nation's Capital and its metropolitan area and has expressed this concern in a letter to the President of the United States. A copy of the letter is attached.

We hope earnestly that the Congress of the United States, working in cooperation with the Executive Branch, will take every action possible to alleviate this situation and prevent a further acceleration of crime.

We ask that you give this matter your urgent and prompt attention.

Respectfully yours,

BRUCE BRYAN.

DISTRICT OF COLUMBIA SAVINGS & LOAN LEAGUE,
Washington, D.C., February 10, 1967.

The PRESIDENT,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: The District of Columbia Savings and Loan League endorses fully the forthright letter forwarded to you January 25, 1967, by the D. C. Clearing House Association concerning the ever increasing incidents of criminal activity in the Nation's Capital. As responsible members of the local business and financial community and as custodians of the savings of more than a half million citizens of the Washington Metropolitan Area, we wholeheartedly share the views of the Clearing House Association and other concerned business, civic and professional groups.

During 1966, there were 10 robberies committed against savings and loan associations and banks in this Federal City. In this new year of 1967, now less than six weeks old, there have been five holdups involving these same type financial institutions. We believe the Federal Government has both the obligation and the means to take immediate and effective action. The responsible citizens of this community are entitled to no less than the best possible law enforcement efforts from both the police and the courts. Arguments as to the pros and cons of suggested causes or reasons for the present state of affairs contribute nothing to the immediate problem, or to the urgent need for prompt, effective action.

The District of Columbia Savings and Loan League respectfully requests your immediate and thoughtful consideration of the pressing problem of crime in the Capital City of the United States of America, and the effective employment of the facilities of your Executive Offices and your own great prestige toward a timely solution.

Respectfully yours,

RICHARD H. SINCLAIR, *President.*

ALEXANDRIA CHAMBER OF COMMERCE INC.,
March 3, 1967.

Senator ALAN BIBLE,
Senate Office Building,
Washington, D.C.

DEAR SENATOR BIBLE: The members of the Alexandria Chamber of Commerce are quite concerned with the growing menace of CRIME we in this nation face. In fact, the increase in crime is alarming.

We recognize that many social ills help aggravate the conditions which contribute to crime and delinquency, but these will take time to change and correct. What we want is immediate action to solve the problems that can be solved now. It is easy to keep talking about the problems of poor housing, unemployment, etc., which cannot be corrected overnight, while the rapings, robberies, and muggings go on . . . even now in broad daylight.

The pendulum of concern for the rights of individuals, even the many times criminal, has swung too far, and the multitude of law-abiding citizens are the ones having their rights . . . life and property . . . placed in jeopardy. Police officials across our Nation, and especially in our Nation's Capital, must have the support of government and civic leaders.

We are alarmed at the easy freedom gained by criminals because of some minor technicality. When a mere technicality makes it possible for a committer of a major crime to be freed within hours, to continue his practice, then something must be done.

Persons who are tempted to take the wrong path leading to crime must be taught that the penalties for taking such a path are high, and that the risk is not worth it.

We want action NOW! Your leadership and high position can assure this action. We're counting on you!

Very respectfully yours,

ROBERT W. ROTROFF, *President.*

CAPITOL HILL SOUTHEAST CITIZENS ASSOCIATION, INC.,
Washington, D.C., March 10, 1967.

Senator ALAN BIBLE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR BIBLE: Several times in the past few months after our Association had taken action bearing on some current development in the fight against crime, I left copies of our materials with a member of your staff at your office.

Reading the press items in the Washington Star for March 8 about your comments at hearings on anticrime measures before the Senate Subcommittee on Criminal Laws and Procedures, and our Association, having just passed a resolution expressing similar dissatisfaction with the work of the D.C. Crime Commission, I am enclosing a copy of this resolution as of possible interest to you.

We trust this resolution may help support your positions with relation to the anticrime bill, and that strong effective legislation will be enacted this time, in the bill now under consideration in the Congress.

Sincerely yours,

J. C. LEUKHARDT,
Member, Executive Committee.

RESOLUTION RE SUPPORT FOR THE DEVELOPMENT OF STRONGER CRIME CONTROL MEASURES

Whereas, the business community of the District of Columbia, which has been victimized as badly or perhaps even worse than the citizens as a whole, has just publicly announced the commitment of its full resources toward the development of a more effective program of crime control; and

Whereas, a public coming-to-grips with the problem has been interrupted and seriously delayed by the apparent decision of the officially appointed D.C. Crime Commission *not* to concentrate its investigations and recommendations on the #1 problem of crime control: that of determining ways and means of effectively

forcing our current crop of criminals out of action immediately; but chose instead to spend its time and money re-hashing the sociological problems that are permanently the province and responsibility of other public agencies specifically established for these purposes; and

Whereas, since, in the face of these attitudes of the appointed Commission, the combined efforts of the District of Columbia residents, including business groups as well as citizens associations and other civic organizations have failed to bring about even the least indication of a promise of possible improvement in our appalling crime record; and

Whereas, this failure—to convince the official groups, in the interest of the protection of the lives and property of the citizens, of the need for placing the urgency and seriousness of the immediate situation first on the agenda of remedial objectives—calls for further and stronger re-dedication of our citizenry to insist that this necessity be recognized and to insure that preoccupation with long-term and remote solutions be deemphasized and made contingent on first getting the current emergency conditions better in hand; and

Whereas, the new strength in the battle against crime that is being contributed by the commitment of the business community in taking an aggressive leadership for immediate public action against our criminality, has heartened and encouraged the entire citizenry of the District to feel that crime control purposes will now be centered more directly and more exclusively on the strong law-enforcement measures that are the decisive factor in the prevention and control of individual criminal acts: Therefore, be it

Resolved, That the Capitol Hill Southeast Citizens Association hereby re-states its long-standing position supporting this policy and that, also through this resolution, the Association renews its dedication to achieving these purposes in cooperation with the business community, other civic groups and organizations and all individuals whose peace-of-mind and security is threatened by the adverse effects of the current philosophies leading to unfirm and delayed action and the resultant breakdown in law enforcement that has developed from these attitudes.

Passed by unanimous vote at the Association's meeting, March 2, 1967.

WASHINGTON HOST LIONS CLUB,
Washington, March 13, 1967.

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

SIR: I have the honor of transmitting to you a resolution passed by the Washington Host Lions Club on March 8, 1967, and to commend this resolution to your attention.

Very truly yours,

FRANK J. BINKS,
Executive-Secretary, Washington Host Lions Club.

[Enclosure]

RESOLUTION WITH REGARD TO CRIME IN WASHINGTON, D.C.
ADOPTED MARCH 8, 1967

Whereas, Washington, D.C., the capital of the United States of America, should enjoy the lowest crime rate of any city, and be a shining example in law enforcement for the rest of our nation; and

Whereas, to the contrary, the crime rate in the nation's capital has reached the dimension of an intolerable national disgrace, and many citizens are afraid to walk on the streets after dark and businesses are closing because of increasing lawlessness; and

Whereas, the frequently attributed causes of crime, such as poverty, underprivilege, poor and overcrowded housing, and deficiencies in public education have been attacked by the spending of millions of dollars on welfare and social-betterment programs, new public housing, upgrading the public school system and in improving and enlarging recreational facilities, yet crime—serious crime—continues to accelerate at an alarming rate;

Now, therefore, be it resolved, that the Washington Host Lions Club expresses its great concern and apprehension concerning existing crime conditions in the Federal City, and does hereby call upon all authorities having responsibility in any way for the prevention, detection, investigation, prosecution or punishment of criminal acts and for the granting of parole, to take prompt cognizance of the present dangerous situation and do all in their power to bring it under control so that the public may once again enjoy that safety and security of person and property to which it is entitled.

While not unmindful of conditions that breed and foster crime and anti-social attitudes, the absence of a demonstrated sense of citizenship responsibility upon the part of a growing segment of Washington's population leads us to the conviction that swift and sure punishment under law is the best means of reducing crime and of restoring respect for law and order in this city; and

Resolved, that we believe that our Metropolitan Police Department deserves the wholehearted support and commendation of all citizens, the courts and allied agencies in pursuing its always difficult and frequently hazardous duty; and

Be it further resolved, that copies of these resolutions be addressed to the President and the Vice President of the United States, the Speaker of the House of Representatives, the respective Chairmen of the Senate and House District Committees, the Commissioners of the District of Columbia, the United States Attorney for the District of Columbia, the Corporation Counsel, the Chief of Police, the Governor of Lions International District 22-C, each of the Lions Clubs in District 22-C, the Committee To Reduce Crime Now of the Metropolitan Washington Board of Trade, and to the press.

ROCKVILLE CHAMBER OF COMMERCE,
Rockville, Md., March 22, 1967.

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

DEAR SENATOR BIBLE: The Board of Directors of the Rockville Chamber of Commerce has directed me to request your urgent attention be given to the unprecedented crime situation which now exists in the Metropolitan Washington area.

As business and professional men in the City of Rockville the members of the Rockville Chamber of Commerce have a primary interest in the status of our region, ability of us all to conduct our businesses without fear of bodily harm and loss of customers and property through armed robbery, theft, housebreakings and personal assaults.

Our concern has been heightened by the loss through armed hold up of a total of $75,000.00 in recent days by two of our County's financial institutions during which employees were threatened with sawed off shotguns and submachine guns.

We are appalled that Montgomery County's crime rate has more than doubled in the past six years from 14.1 serious crimes per one thousand citizens to 31.7. In 1960 Montgomery County police reported twenty eight armed robberies. In 1965 there were eighty six robberies reported while in 1966 the figure reached one hundred and nineteen!!

Montgomery County Police Superintendent, James S. McAuliffe, reports that in his estimation up to ninety per cent of our robberies and seventy five per cent of our housebreakings are committed by persons outside the County.

We realize that our City, County, and State have special responsibilities in the massive effort against crime, but we also realize that adjacency to the great urbanized center of Washington, D.C., requires us all within the Metropolitan area to unite in this effort.

It is urgently requested that before the loss of property and life reaches any further devastating proportions you lend your efforts to the serious problems now existing and direct the great resources of our government toward making our community the safer place in which to live, work and do business.

Sincerely yours,

JOHN C. HICKMAN, *President.*

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS,
Washington, D.C., March 7, 1967.

Hon. ALAN BIBLE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR BIBLE: I have read with interest the volume entitled, "The Challenge of Crime in a Free Society"—a report of the President's Commission on Law Enforcement and Administration of Justice.

The officers and members of the International Association of Fire Fighters, AFL–CIO, have the same interest as the great majority of American citizens in finding adequate methods for preventing crime and for the improvement and strengthening of our police forces in order to provide protection for the citizens of the community.

It is against this background of interest and support for reducing the impact of crime in America that I offer the comments of our organization, the International Association of Fire Fighters, on certain important aspects of the Commission's report.

First: we are seriously concerned by the Commission's recommendation that this historic parity between police and fire pay scales be disrupted. The Commission's Report, on page 111, suggests that the practice of equal pay scales frequently "aggrieves both policemen and firemen." Here I can say from long experience that I have never heard fire fighters complain of this historic parity of police and fire pay, and relatively few members of the police force are against it. Indeed, even a brief survey will demonstrate, I believe, that police officers for many years saw a great advantage to themselves in relating their pay scales to those of the fire fighters.

The Commission, on the same page, expresses its belief that "identical pay scales for employees with differing functions are unfair and unwise." It seems to me that the Commission probably has injected itself into this discussion as to rate equation without endeavoring to marshall a logical train of argument in support of its position. This issue of disparity of pay scales has been argued at great length in city after city. While it is true that it is most difficult to make a precise comparison of the two types of work involved in community defense, most communities have come to realize that an equal pay scale is, in both the short run and the long run, the wisest course to adopt by municipal management.

Frankly, we do not believe that the creation of disparity between the pay rates of the two services will improve our defenses against crime, and we have every reason to believe, on the basis of past experience, that a lower pay rate for fire fighters would have a serious impact, in terms of morale, on the obtaining of adequate and qualified manpower, and in the proper utilization of the community resources.

Fire fighting is a hazardous occupation. Both our union and the national AFL–CIO have recognized this on innumerable occasions. It was most recently expressed by the AFL–CIO in Resolution 52 adopted at its 1965 Convention, which opposed "consolidation of the positions of fire fighter and policeman and departure from the traditional pay equality between these protective services as a cause of downrating fire protection in communities."

We are also concerned on a second basis: that funds available under the Law Enforcement Assistance Act would be used both to create disparity in pay by improving police rates of pay at the expense of the fire fighter pay rates and would be used, furthermore, to make possible the training of fire fighters to assist the police officers under certain conditions.

Our union and the AFL–CIO have opposed the consolidation of fire and police departments on the same basis as we oppose disparity: they do not provide better services for the community, and they reflect a false notion of economy.

We do hope that as a member of the 90th Congress you will give consideration to these views of the International Association of Fire Fighters and its 120,000 members concerning this most serious and important issue. We feel strongly that a welcomed move to reduce the crime rate in America should not also become a vehicle for undermining the pay rates and working conditions of the fire fighters of America. We hope that, as proposed legislation based on the Committee's Report comes under consideration of your Congress, you will give thoughtful attention to our complaints, which, I am sure, represent the viewpoint of the

overwhelming majority of the nation's fire fighters—and, indeed, of a large proportion of the men of the police service as well.

Sincerely yours,

WM. D. BUCK, *President.*

FOURTH DEGREE, KNIGHTS OF COLUMBUS,
Washington, D.C., May 3, 1967.

Hon. ALAN BIBLE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR BIBLE: The Washington General Assembly, Fourth Degree, Knights of Columbus (the Patriotic Degree), at our meeting on April 21, 1967 passed the following resolution:

Whereas the rate of serious crime committed in the District of Columbia increases astonishingly month after month and has climbed steadily for more than five years, and

Whereas the means for improving this desperate situation seem to be ineffectual in stopping or moderating this monstrous civic condition, and

Whereas members of this (and other) organizations are intimidated from attending meetings and are unable to obtain normal attendance at its patriotic programs, and

Whereas repeated requests for improving the safety of our streets and living areas especially, and of ridding the District of fear for personal assaults, are constantly disregarded: So, therefore, be it

Resolved, That the Washington General Assembly, Fourth Degree, Knights of Columbus, convened in regular meeting do hereby respectfully and earnestly call upon President Lyndon B. Johnson, our leading citizens, the Congress and Senate, the courts, the police and all good citizens, to strive immediately, strongly and without flinching to reduce crime everywhere, but particularly in the National Capital and to pass and execute legislation which will accomplish the District's return to being a place for national shrines and heroes, under God, instead of being a home of hoodlums and thugs, rioters and murderers. Passed this April 21, 1967, and submitted to the President of the United States, Members of the House and Senate District Committees, D.C. Metropolitan Police Chief John S. Layton and to the Commissioners of the District of Columbia. We recommend this resolution to the attention all members of citizens and civic associations, fraternal and religious bodies and universities, both in the District and to residents of nearby areas who enjoy the fruits of Washington's economy and facilities.

Sincerely yours,

LEO F. DIEGELMANN, *Faithful Navigator.*

BUSINESS AND PROFESSIONAL WOMEN'S CLUB
OF THE DISTRICT OF COLUMBIA, INC.,
Washington, D.C., June 91, 1967.

Members of Senate and House District of Columbia Committee:

The attached Resolution is self-explanatory and is being sent to you as a Member of the Senate District Committee to urge you and the other members to take some drastic action in an effort to curtail crime in the District of Columbia. I hope this Resolution will express to you the deep concern with which the business and professional women of this city view this situation.

We feel that the failure to pass legislation to at least make it difficult for the criminal, coupled with the leniency with which he is dealt by the courts, actually encourages the criminal, to say nothing of the deterioration of our moral standards.

Our Committee members will be glad to discuss this matter with the members of your Committee at any time at your convenience, and any suggestions you may have to offer in this matter will be most welcome. The women in this city are concerned and, as the situation worsens, we are becoming more so. We need your help!

Very truly yours,

MAURINE H. ABERNATHY,
Chairman, Anti-Crime Committee.

RESOLUTION

Whereas We the members of the Board of Directors, and the members of the Business and Professional Women's Club of the District of Columbia, Inc., consisting of approximately Six Hundred (600) business and professional women in the District of Columbia, have been and are greatly disturbed over the rapidly increasing rate of crime in the District of Columbia, which increase we have been advised, is 46% during the past two years; and further by the fact that some of our members have been assaulted, robbed, maimed and sent to the hospital, which acts have made us more conscious of the fact that it is not safe for us to be on the streets in the District of Columbia to attend our meetings; and,

Whereas we have given grave consideration to this very serious matter and have concluded that laws were made to protect the innocent, law-abiding citizen rather than the person found in peculiar and suspicious circumstances relating to a crime with which he is charged; and, further, we are in accord with the report of J. Edgar Hoover, who has dedicated most of his life to the subject of crime detection and law enforcement, that the best deterrent would be prompt capture, speedy trial and severe penalty. We believe that rehabilitation is a noble cause and experiment but let's not tip the scales in favor of the accused as against the rights of the innocent, law-abiding citizen; and,

Whereas we have been shocked by the report that the average age of the criminal is 15, which must be due to lack of parental supervision, and that 80% of the juvenile offenders are recidivists; and we are mindful of the millions of dollars in waste, destruction and loss of property caused the individual owner and the taxpayer by juvenile delinquents; and

Whereas while we believe that you should be helped and guided and perhaps given special consideration and appropriate leniency as a first offender, in the case of a recidivist, we believe he or she should be certified to the United States District Court for the District of Columbia and tried as an adult, where a mean, heinous, violent and adult crime has been committed; and,

Whereas we believe that the liberal and lax manner in which juvenile offenders have been dealt with has caused this great increase in crime, and, in addition, has caused the destruction of our American Heritage and moral standards, on which it is based. We believe that unless some stern and drastic action is taken to restore the moral standards of our country, that it will go down in its own decadence—it will fall from rot within: Now, therefore, be it

Resolved, That this organization of business and professional women go on record as requesting and urging the Congress of the United States, the Commissioners of the District of Columbia, and the local and federal courts to give favorable consideration to the following recommendations:

1. After the first offense, a juvenile offender be certified to the United States District Court for the District of Columbia and tried as an adult, when a violent or adult crime has been committed.

2. Pass legislation making a parent or parents responsible for the torts of their minor children up to $500.00.

3. Pass legislation making All confessions admissible in evidence along with the circumstances under which said confession was made, and especially in the case of a voluntary confession.

4. Pass legislation requiring that a person who is found "innocent by reason of insanity" be put away for a long, long time so that person cannot be a further threat to society.

5. Pass legislation increasing the sentences for the commission of felonies, and for repeaters of a felony.

6. Pass legislation permitting our law enforcement officers to question a suspect, and giving them a reasonable time within which to take said suspect before a committing magistrate.

7. Pass legislation tightening up the bail bond law, so that an accused may not go out on the street and commit the same type of crime while he is awaiting the trial of a previous crime.

8. Pass legislation prohibiting the charging of a misdemeanor when in fact the evidence shows that a felony has been committed.

9. Pass legislation making it a federal offense for a person or persons to go from one jurisdiction to another for the purpose of crusading a cause that will divide the people and could well erupt in an insurrection or riot; and be it further

Resolved, That a copy of this Resolution be sent to The President of the United States; to each member of the District of Columbia and Judiciary Committees

of the United States House of Representatives and of the United States Senate; to The Attorney General of the United States; to Mr. J. Edgar Hoover; to the Chief Judge of each of the Courts in the District of Columbia; to the Commissioners of the District of Columbia; to the National Crime Commission; to the Crime Commission of the District of Columbia; and to each of the local newspapers, with a request to print same.

The foregoing Resolution was unanimously passed by the Board of Directors of The Business and Professional Women's Club of the District of Columbia, Inc., at its regular Board meeting June 5, 1967; and by the membership of said Business and Professional Women's Club for the District of Columbia, Inc., at their regular meeting on June 12, 1967.

THE ASSOCIATION OF THE OLDEST INHABITANTS
OF THE DISTRICT OF COLUMBIA,
Washington, D.C., July 7, 1967.

Hon. ALAN BIBLE,
U.S. Senate,
Washington, D.C.

MY DEAR SENATOR BIBLE: The Association of the Oldest Inhabitants of the District of Columbia is an organization more than one hundred years old. It is made up of some five hundred members, who are prominent business and professional men having lived in the District of Columbia for at least thirty-five consecutive years. Under my Presidency, we have formed a speaking bureau of some forty-five members who will be available to speak on the present crime situation happening in Metropolitan Washington.

As a Charter Lion, arrangements have been made with the Rules Committee representing the sixty-eight Lions Clubs in Metropolitan Washington, to have one of these speakers from the Association of the Oldest Inhabitants address each Lion Club at one of their regular meetings. There are more than four thousand business and professional men in these clubs.

All of us keenly feel that every effort should be put forth to deal with this crime wave now taking place, not only in Metropolitan Washington, but in other cities as well.

We hope the above plan will show a united effort to better our present situation. Our Association stands firmly for the crime bill recently passed by the House of Representatives, which is now before you for consideration.

We need relief now! We ask that your Committee act favorably at once.

Sincerely,

CLIFFORD H. NEWELL, *President.*

STATEMENT OF THE WASHINGTON BUILDING CONGRESS

Mr. Chairman and members of this Committee, the Washington Building Congress, representing some 1600 members, is the trade association composed of all facets of the construction industry in the Washington metropolitan area which includes architects, general and subcontractors, officials of labor organizations, structural and civil engineers and building suppliers.

As builders of a vast amount of construction in the metropolitan Washington area, we are vitally affected and plagued by thefts and vandalism on construction sites. We dare not leave any site unprotected, thus the expense of hiring watchmen and guards is added to increased insurance and building costs. And even with guards patrolling these projects, we have experienced thefts of valuable building material and destruction of property, as well as the ever present danger of injury to young vandals.

Briefly, we would like to cite several instances of such crimes committed on specific job sites.

One of our members, who is an officer of the Building Congress and an official of one of the largest general contracting firms in the nation, reported that theft and vandalism continues to increase by leaps and bounds. Not only will the thief take anything movable, but will even rip out pipes from within the walls and sell the copper tubing which brings a high salvage price from unscrupulous dealers.

The firm has found it an absolute necessity to hire watchmen after working-hours to guard against such thefts and the senseless vandalism of broken windows, damage to operating equipment and general destruction of property by mere youngsters.

He told of a case in Southeast Washington where an apartment building had been completed, store and shop space let, and the apartment section ninety percent rented. Then the neighborhood was plagued with numerous disturbances, and fearfully, families began to move from the building, merchants refused to rent the remaining store space, and today the building is only twenty percent occupied. He hired two retired policemen as watchmen and once when one of the watchmen apprehended a suspect, before the police arrived, neighborhood residents ganged up, beat him severely and released the suspect. This building owner was forced to go into bankruptcy and turn the building back to FHA.

An excavating contractor sold a very profitable business recently and stated that one of the contributing factors to his decision was theft and vandalism and outright destruction of very valuable and expensive equipment. Although he stored his equipment within a fenced area, youngsters, aged six and seven, climbed the fence and were caught throwing sand into equipment costing thousands of dollars. Another time, teen-agers, thirteen and fourteen years old, entered the storage yard and played a game of releasing the brakes on cranes and bulldozers just to see them crash into whatever happened to be within their path. Batteries were repeatedly stolen from trucks and equipment.

For some reason, school construction projects seem to particularly attract young hoodlums who systematically loot and destroy school property. Is it perhaps because of a feeling of rebellion against schools? We don't know—but we do know that schools are a prime target for young criminals.

For instance, one of the biggest firms in Washington refuses to bid on school construction because of theft and vandalism. In fact, some insurance firms will not insure companies that build schools in certain neighborhoods and the loss of products and equipment is too great for a contractor to make a reasonable profit. Windows on new school construction are a favored target for the younger vandal and because of this, insurance policies exclude glass breakage.

In fact, it is becoming increasingly more difficult for builders to get adequate insurance coverage and the rates have increased accordingly. Such insurance policies as may be purchased specify that there be storage rooms with heavy locks where tools and equipment must be kept and also guards must be employed to patrol the premises.

Gentlemen, we could cite you hundreds of such cases and it is our belief that more drastic steps must be taken to prosecute thieves and vandals and instill in them a respect for law and order instead of the present practice of giving them a mild slap on the wrist, turning them loose on probation, and within days seeing them brought in again on similar charges. The members of the Washington Building Congress urgently endorses and supports more stringent anti-crime legislation and law enforcement.

STATEMENT OF HILLIARD SCHULBERG, EXECUTIVE DIRECTOR, WASHINGTON, D.C. RETAIL LIQUOR DEALERS ASSOCIATION, INC.

Mr. Chairman and members of the committee, my name is Hilliard Schulberg. I am the Executive Director of the Washington, D.C. Retail Liquor Dealers Association, Inc. I am here today to implore you to move speedily on the serious crime problem currently existing in the District of Columbia.

The President's recent message to the Congress indicated clearly that we cannot afford the luxury of having crime run rampant. Every citizen, every businessman agrees with this and is ready to join the battle to stop the perpetrators of these outrages. For failing a halt in their depredations, everything that is good in our community will be destroyed.

The Washington, D.C. Retail Liquor Dealers Association is an organization composed of individual merchants who sell alcoholic beverages for off-premises consumption. Our members are responsible citizens, active in the civic and business life of the District. We join with the rest of the community in urging the Congress to have enacted strong remedial legislation to remove this peril from our city.

As the record will indicate, our merchants have suffered more from the existing region of lawlessness than any other group in the District. We have 386 active retailers. Since 1965, there have been more than 250 holdups of liquor stores; four of our people have been murdered. There have been countless burglaries, window-breakings, larcenies and assaults. Many of our stores can no longer obtain insurance. So we think you will agree with us that we have more than just and academic interest in the crime problem.

We have given considerable thought to the problem; we have observed the processes of justice. We offer the following suggestions with the firm conviction that if put into practice, they will aid considerably in bringing the situation under control.

1. The Courts

(*a*) In cases involving armed robbery, upon conviction of such charges, the sentence handed down should not be concurrent, but consecutive; a term for the robbery, followed by a term for the use of a dangerous weapon.

(*b*) In cases where an individual charged with a crime of violence, is a proven, frequent user of a dangerous weapon, or has a record for committing crimes of violence, he should not be released, but should be held in custody until tried.

We believe that neither the Constitution nor the Criminal Rules is so categorical in its bail provisions that a repeated dangerous offender under new charges must be released pending trial, in the face of a high probability that he will commit fresh crimes of violence. And we believe the foregoing is most cogent, especially since the application of the Bail Reform Law of 1966 seems to put more criminals right back on the streets after apprehension.

The President's Commission on Crime in the District of Columbia made the following comment in its report:

"We believe that potential criminals will be more effectively deterred by a system characterized by omnipresent and efficient police action, vigorous prosecution of offenders and expedited judicial handling from indictment through appeal."

With this we emphatically agree.

2. The Prosecutor's Office

(*a*) There should be more vigorous prosecutions. Prosecutions should not be dropped where the Grand Jury has indicted. If the evidence is good enough to go to the Grand Jury for an indictment, and there is such indictment, the case should go to trial; let the jury decide the innocence or guilt of the defendant.

3. The Congress

(*a*) The Congress should pass legislation setting stiffer mandatory sentences; should pass a "gun-restriction" law; should provide the police with a sufficient opportunity to question suspects.

4. The District Authorities

The police, we feel, are doing a good job with what they have to work with. Undoutedly, the department could use more men. But getting these men is the problem. Sufficient funds, creation of an atmosphere where the police officer can work with respect, with pride in his job, are necessary.

Our governing authorities, therefore, must stop being so prone to government by petition by pressure groups. They must return to government for all of the people, not for a few of the people.

And finally, a long-range program of education, slum-clearance and the eradication of poverty must be developed. But if we are to reach this long-range program, we must have the short-range program alluded hereto. If we do not, all we will have is chaos and further lawlessness.

The studies have been made; the record is in. The time for action is now! Gentlemen of the Committee, we respectfully request you use every power available to your high offices to rid us of this dangerous malignancy.

We urge you to favorably report H.R. 10783 and to use every means available to you to have it speedily passed by the Senate.

INSTITUTE OF CRIMINAL LAW AND PROCEDURE,
GEORGETOWN UNIVERSITY LAW CENTER,
GEORGETOWN PRE-TRIAL CLINIC,
Washington, D.C., August 3, 1967.

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

DEAR SENATOR BIBLE: Set out below are my views for inclusion in the record of the recent hearings held in connection with Title II of the current Omnibus Crime Bill for the District of Columbia, H.R. 10783. As you will note, although

there are, in my judgment, some minor improvements, this law contains a number of provisions which appear to be unconstitutional, and others which are unsound and contrary to the reports and recommendations of prestigious groups which have studied the area.

Subsection (c)(2) provides that mental disease or defect excluding responsibility shall not be a defense unless ". . . the accused submits himself to examination (at such reasonable place and time as the court may determine) by psychiatrists selected by the prosecuting attorney and answers questions asked by such psychiatrists in such examination. . . ." In my judgment the provision is unconstitutional. A Colorado statute which denied the plea of not guilty by reason of insanity to a defendant who refused to cooperate in a pre-trial mental examination has been struck down as violative of the privilege against self-incrimination; see *French* v. *District Court*, 384, P. 2d 268 (1963). The relevant cases are discussed in an article by Danforth in 19 Rutgers Law Review 489 (1965). Your attention is also invited to the fact that the new law would be contrary to recommendations made after exhaustive study, by the D.C. Judicial Conference Committee on Problems Connected with Mental Examination of the Accused in Criminal Cases, and adopted by the Judicial Conference in January 1966. That recommendation expressly states "An accused who refuses to cooperate in a pretrial mental examination should not be denied the opportunity to raise the insanity defense." Attached hereto is a copy of the *Report*[1] which includes a discussion of, and the full text of the recommendation in question.

Subsection (d) (1) provides the court "may" order the accused committed to a mental hospital for a "reasonable period." This provision involves an improvement over existing law, inasmuch as it enables the court to order in-patient examinations for periods less than 60 days, and thus permits the avoidance of unnecessary and wasteful confinements. Although the statute does not expressly so provide, it seems clear that out-patient examinations may be conducted under this provision: it is in my judgment constitutionally necessary that this be so.

The section is deficient, in my judgment, in failing to specify the contents of the psychiatric report to the court. Recent studies indicate that mental hospitals do not know what the court needs, absent specific directions from the court or specific directions in the statute. The Judicial Conference Committee report, attached, speaks in detail to this problem, as does our own research and that of the American Bar Foundation.

The U.S. Supreme Court's decision in *Pate* v. *Robinson* requires a judicial determination of competency in all cases where "a doubt" arises. All nine members of the Court were unanimous on that point. Hence, subsection (d) (2) and subsection (e) are defective in failing to recognize and specify that a judicial determination is a constitutional requirement in all such cases.

Subsection (d) (2) in unsound and constitutionally defective, in my judgment, in the rigid requirement that the court "shall" order the accused confined to a hospital upon a finding of incompetency. A finding of incompetency is in no way the equivalent of a finding that an individual requires hospitalization or that he is dangerous. Automatic commitment upon a finding of incompetency violates both constitutional and statutory rights to bail, and is medically unsound. Some problems producing incompetency cannot, under present conditions, be treated in mental institutions like St. Elizabeths Hospital; confining persons who are incompetent to stand trial can, in such cases, amount to life "sentences," although such persons still are presumed to be innocent of the crimes (often misdemeanors) of which they were charged.

There are, unhappily, reported cases of accused misdemeanants who were confined for decades, because of such misapplications of the law and procedures regarding competency to stand trial. Constitutionally, only persons who present "a danger to themselves and others," in addition to being incompetent to stand trial, should be subject to confinement. This is perfectly consistent with the civil law and with the carefully developed procedures for confining insane persons set forth in the District of Columbia Hospitalization of the Mentally Ill ("Ervin") Act.

Even if the accused is found competent, confinement in a mental hospital is, under the bill, mandatory if he is "of unsound mind," meaning "a person

[1] Judicial Conference of the District of Columbia Report of the Committee on Problems Connected with Mental Examination of the Accused in Criminal Cases Before Trial may be found in the subcommittee files. Pages 54–64 and pages 173–176 concerning Statement of Recommendations and Proposed Statute reproduced on page 476 of this hearing record.

who is mentally ill and is likely by reason of such illness to cause injury to himself or others." While the term "mentally ill" is not defined, the language is similar to that of the Ervin Act, section 7, which allows hospitalization of an individual who is "mentally ill and, because of such illness, is likely to injure himself or others if allowed to remain at liberty." This section is of importance inasmuch as it appears to attempt to fill a gap sometimes thought to have been left by section 2 of the Ervin Act, excluding persons involved in a criminal proceeding from its provisions. The Court of Appeals for the District of Columbia recently also sought to eliminate the doubt of coverage of criminal cases, in *Rouse* v. *Cameron*. However, this area requires a good deal more study than has been given it by Congress.

The House report, at page 23, contains the following statement: "Another device used by defendants charged with crime is that of shopping among psychiatrists to find experts who will testify that the accused suffers from mental illness." In our experience, this statement is flatly contrary to the facts. As you know, the vast majority of defendants in both General Sessions Court and the United States District Court are indigent. Shopping around for psychiatrists requires money they do not have. Moreover, many psychiatrists are unwilling to get involved in cases which consume so much of their time in nonproductive ways. A recent example is provided by the *Millard* case. The Court of Appeals in its decision indicated that Millard was entitled to independent psychiatric examination. His attorney, David Carliner, Esq., called nearly 60 psychiatrists but was unable to persuade any of them to examine his client. In most cases, the "defendant's psychiatrist" is actually another staff member who disagrees with a colleague at the John Howard Pavilion. It is elementary that psychiatry is not an exact science, and that differences among physicians as to diagnosis are common. I would like to suggest that the Congress would do better to lessen its concern with the adversary, combative aspects of these criminal proceedings and focus its attention on improving the means for assuring that criminal defendants, particularly indigent ones, get adequate psychiatric and other attention to their many, often desperate social problems. This would offer opportunities for recidivism to be cut down by rehabilitative efforts directed at the real problems causing so much crime and disturbance in our country.

I hope these comments are of some value in your consideration of the bill. I must say that Section II, as a whole, is so confusing and poorly drafted that, in my judgment, its enactment in its present form seems much more likely to confuse the already overly-complicated procedures for determining criminal responsibility and competency to stand trial in the District of Columbia, than to bring about much-needed reforms. I am amazed that the House report does not take account at least of the studies that were carried out and approved by the Judicial Conference. I also note that the recommendations of the President's Commission on Crime in the District of Columbia seem to have been ignored. It is unfortunate that criminal procedures for dealing with the mentally ill have not received the careful attention they deserve, the kind of attention which civil procedures concerning the mentally ill received, in the past, from the Subcommittee on Constitutional Rights.

Sincerely,

EDWARD DE GRAZIA,
Legal Director.

(From the Judicial Conference of the District of Columbia Report of the Committee on Problems Connected with Mental Examination of the Accused in Criminal Cases, Before Trial, pages 54–64 and pps. 173–176 herewith reproduced.)

CHAPTER TWO: STATEMENT OF RECOMMENDATIONS AND PROPOSED STATUTE

RECOMMENDATIONS

The Requesting Party and the Request

Recommendation 1.—The statute should be made to provide that an order for a mental examination shall be granted simply on request of either of the parties or on the court's own motion; and that, upon objection to a request or to a suggestion by the court that it intends to order an examination *sua sponte*, there shall be a hearing and the court shall deny the request or withdraw its proposed *sua sponte* order if it is made clearly to appear to the court that the conduct

of a mental examination is unnecessary or would be contrary to the interests of justice or fairness.

The Scope of the Prescribed Examination

Recommendation 2.—The statute should be made to provide that a mental examination may be conducted for the purpose of inquiring into an accused's mental condition at the time of the commission of the offense with which he is charged as well as into his fitness to stand trial, which is the present judicially-approved practice, and further provision should be made that only the kind or kinds of examination that are requested or that the court deems appropriate shall be conducted.

The Representation of the Accused

Recommendation 3.—The ordering or conduct of a statutory mental examination should be made impermissible unless at the time of the order and during the period when the examination is conducted the accused is represented by counsel.

Informal, Extra-Statutory Procedures

Recommendation 4.—The prosecuting authorities should be prohibited from having an accused mentally examined except for custodial purposes without a court order for such an examination.

The Psychiatric Clinic

Recommendation 5.—There should be established a psychiatric court clinic, which would initially perform about half of the pre-trial mental examinations of accused felons. It would be staffed by three psychiatrists and one attorney, each working part time, and two psychologists, a social worker and two secretaries working full time.

The Period of Commitment

Recommendation 6.—The court's order for a mental examination should designate a maximum period of hospitalization of thirty days (with the possibility of extension contemplated).

Bail

Recommendation 7.—The status of the accused who has been enlarged on bail should not be changed because of a pre-trial mental examination being ordered for him, and an accused who is otherwise eligible for bail should not be denied bail because a pre-trial mental examination is ordered for him; if, however, the examining psychiatrists report that the accused's confinement is necessary for an effective examination the court should be empowered to commit to a mental hospital.

The Uncooperative Witness, the Psychiatrists' Confidences and the Privilege Against Self-Incrimination

Recommendation 8.—No sanctions should be available for employment against an accused who refuses to cooperate in a pre-trial mental examination, nor should such an accused be denied the opportunity to raise the insanity defense; the accused should have a privilege to prevent psychiatrists and others participating in the conduct of an examination from testifying to statements made by him to them that are relevant to whether he did the act charged to him or committed any other act that would constitute a crime, and the examiners should be prohibited from divulging such statements outside of court; the accused should be informed in advance by the court that he is not under any compulsion to answer questions or otherwise cooperate, that his examiners may not without his consent divulge what he tells them about the objective acts constituting the crime charged to him and of any other consequences of his cooperation or failure to cooperate that there may be under then-existing constitutional, statutory and case law.

The Report of the Examination

Recommendation 9.—The report of a court-ordered pre-trial mental examination should be made in substantial detail, recounting what was done to get at the facts concerning the accused's mental condition and what those facts are, not merely the conclusions the psychiatrists have drawn from those facts.

How the Determination of Competence Should be Made

Recommendation 10.—The statute should be made to provide expressly that every determination of competence to stand trial should constitute an exercise of judicial judgment.

Factors in the Determination of Competence

Recommendation 11.—The traditional statement of the standard of competence—ability to understand the proceedings against one and to participate in one's defense—should be specified as such in the governing statute and should be considered as subsuming a number of important subsidiary factors.

The Duration of the Commitment

Recommendation 12.—When, at any time after an accused's commitment as incompetent, those treating him certify that it is improbable that he will be restored to competence in the foreseeable future, and when, after an accused has been committed as incompetent for two years, those treating him certify that he probably will not be restored to competence within the next six months, the court should be directed to dismiss the criminal charges against the accused and to order civil commitment proceedings instituted.

Reviewing the Incompetent's Case: Periodic Hospital Review

Recommendation 13.—It should be made the obligation of the authorities in charge of the institution in which an accused adjudged incompetent is confined to make a report at least every six months on the accused's status and progress; copies of the report should be sent to the committing judge, the United States Attorney's Office and counsel for the accused in order that any appropriate judicial action may be taken.

Reviewing the Incompetent's Case: Examination by a Private Psychiatrist

Recommendation 14.—An accused who has been adjudged incompetent should be entitled once every twelve months upon request to an examination by a psychiatrist not on the staff of Saint Elizabeths Hospital; the court would designate the psychiatrist.

Raising Legal Defenses During Incompetence

Recommendation 15.—It should be made clear that legal objections that do not require the assistance or participation of the accused may be presented to and passed upon by the court after the adjudication of an accused as incompetent; the court's disposition of any motion or other request for relief so presented would be as final as any order of the same kind in any other criminal proceeding except that if, after restoration to competence, the accused demonstrates that the presentation of any such request was prejudiced by his inability to participate, an order adverse to the accused would be reopened by the court.

The Incompetent and the Right to a Speedy Trial

Recommendation 16.—The trial court should be empowered to dismiss the charges against an accused and order him discharged where the court is of the view that so much time has elapsed since his commitment that it would be unjust to resume the criminal proceeding.

Proposed Statute

To carry out certain of the recommendations of the committee, Section 301 of Title 24 of the District of Columbia Code would be amended to read as follows:

"(*a*) Whenever a person is arrested, indicted, charged by information or charged in the juvenile court of the District of Columbia for or with an offense, such an accused person and the prosecution may, at any time prior to the imposition of sentence or prior to the expiration of any period of probation, request that the court order a mental examination performed on the accused person. The court may grant such a request without a hearing and it may order such an examination performed on its own motion also without a hearing but after notice to the parties. Either party may object to the granting of such a request or to the stated intention of the court to order a mental examination on its own motion, on the ground that to order a mental examination of the accused at the time such examination would be performed would be contrary to the interests of justice and fairness, or that such an examination is unnecessary. Upon the filing of such an objection the court shall conduct a hearing at which the burden shall be upon the party making the objection to persuade the court of the validity of the

ground of such objection, and the court shall thereafter dispose of the matter as justice and fairness require. The court's order for a mental examination may direct the examination to be conducted at the District of Columbia General Hospital, Saint Elizabeths Hospital or other mental hospital. The court's order alternatively may direct the examination to be conducted otherwise than in a hospital by persons trained in illnesses of the mind. The order shall designate a maximum period for the examination and for confinement in a hospital if a hospital examination is prescribed and the accused is to be confined during the period of the examination. The period designated may be extended upon request of the hospital or other person or institution conducting the examination, showing good cause therefor. The court's order shall specify that the accused shall be examined with respect to his competence to stand trial or his responsibility for the crime with which he has been charged, or both, depending upon the scope of the requst or of the Court's own motion. Upon the entry of an order for a mental examination and before such examination begins, the court shall advise the accused that he may not be punished for failure to cooperate with his examiners and shall in addition advise him fully in open court of the consequences, as at the time the advice is given such consequences are defined by the Constitution, statutes and judicial decisions, of any failure to cooperate and of his making disclosures to his examiners. No such examination shall be ordered or conducted unless at the time of the order and the examination the accused is represented by counsel.

"(*b*) The prosecution shall not cause a person arrested, indicted, charged by information or charged in the juvenile court of the District of Columbia for or with an offense to be examined with respect to his mental condition for the purpose of his trial except pursuant to the procedures prescribed in subsection (a) of this section.

"(*c*) If an accused person has been admitted to bail or released on his own recognizance, his freedom on bail or on his own recognizance shall not be affected by an order that he undergo a mental examination, nor shall an application for release on bail or on an accused's own recognizance be affected by the fact that he is then undergoing a mental examination pursuant to court order. If, however, the persons conducting a mental examination of an accused report to the court in writing, stating the reasons for their belief, that they believe that an accused can be effectively examined only if he is hospitalized, the court may order such an accused confined in District of Columbia General Hospital, Saint Elizabeths Hospital or other mental hospital for the period necessary for his examination regardless whether he has been admitted to bail or released on his own recognizance. A hearing shall be had on such report of the persons conducting a mental examination of an accused if a hearing is requested or if the court on its own motion determines that a hearing should be held.

"(*d*) For the purposes of subsections (*a*) through (*c*) of this subsection, the term "court" shall include any judge sitting as a committing magistrate and any United States Commissioner.

"(*e*) Upon completion of a mental examination ordered by the court as prescribed in subsection (*a*) the superintendent or director of the institution by whose personnel such an examination was conducted, or the psychiatrist who conducted such examination, shall make a detailed report in a form prescribed by the court on the mental condition of the accused, relating facts relevant to his competence to stand trial, or his responsibility for the offense for which he has been charged, or both, depending on the prescribed scope of the examination. The report shall be filed with the clerk of the court in which the indictment, information or charge against the accused is pending; the clerk shall send copies to counsel of record. Neither in such report nor in any other way shall there be disclosed, without the consent of the accused or his counsel, any statement made by the accused, in the course of a mental examination ordered by the court, that concerns his involvement in the objective, non-mental elements of the offense with which he is charged.

"(*f*) In every case in which a report is made as described in subsection (*e*) concerning the mental condition of an accused for whom a mental examination has been ordered with respect to his competence to stand trial, the court shall make a judicial determination on the issue of his competence to stand trial. Such determination may be based upon such report, but the court shall hold a hearing upon the request of either party and may order a hearing on its own motion. For the purposes of this section, a person is incompetent to stand trial if he

is unable to understand the proceedings against him or properly to assist in his own defense. If the court finds an accused incompetent to stand trial, the court shall order him confined to a hospital for the mentally ill. If the court finds an accused competent to stand trial, the court shall enter that finding of record in the case and proceed with the case.

"(*g*) Whenever an accused person confined to a hospital for the mentally ill upon an adjudication that he is incompetent to stand trial is restored to competence in the opinion of the superintendent of such hospital, the superintendent shall make a report, stating the reasons for his opinion and such others facts concerning the condition of the accused as he deems proper. Such report (and the reports and certifications described in subsections (*h*) and (*i*) shall be filed with the clerk of the court in which the indictment, information or charge against the accused is pending; the clerk shall send copies to counsel for the accused (who shall be deemed to be counsel who represented the accused at the time of his confinement unless some other counsel appears of record), the prosecutor and the judge or commissioner who ordered the accused confined. Upon the receipt of such a report the court shall make a judicial determination of the competence of the accused to stand trial. Such determination may be based upon such report, but the court shall hold a hearing upon the request of either party and may hold a hearing on its own motion. If the court finds that the accused remains incompetent to stand trial, the court shall order his confinement in a hospital for the mentally ill continued. If the court finds that the accused is competent to stand trial, the court shall enter that finding of record in the case and restore the case to the calendar of the court.

"(*h*) When an accused person is confined to a mental hospital upon an adjudication that he is incompetent to stand trial, the superintendent of such hospital may at any time make a report stating his opinion that such accused will not be restored to competence in the foreseeable future, the reasons for such opinion and such other facts concerning the condition of the accused as he deems proper. Whenever an accused confined to a hospital for the mentally ill upon an adjudication that he is incompetent to stand trial has been so confined for two years, the superintendent of such hospital shall so certify and shall state in such certification, if such is the fact, that in his opinion the accused will probably be restored to competence within six months. Upon receipt of such a report as is described in the first sentence of this subsection, to which neither party offers any objection, or a certification as is described in the second sentence of this subsection that is not accompanied by a statement of probable restoration to competence within six months, the court shall:

(1) order the indictment, information or other charge pending against the accused dismissed without prejudice to its reinstitution within the applicable period of limitations, and

(2) by the same order direct the prosecutor to institute proceedings as prescribed in this Code for the commitment of the accused as insane.

If there is objection to a report off the kind described in the first sentence of this subsection or if the court so orders in the absence of an objection, the court shall hold a hearing, at the conclusion of which it may enter an order of the kind described in subparagraphs (1) and (2) of this subsection or remit the accused to his confinement. If a certification as is described in the second sentence of this subsection includes a statement of probable restoration to competence within six months and if in the opinion of the superintendent of the hospital in which the accused person is confined he is not restored to competence within six months, then at the end of six months such superintendent shall so certify, and upon the receipt of such a certification the court shall proceed as described in subparagraphs (1) and (2) of this subsection. In any case in which civil commitment proceedings are instituted in accordance with an order entered pursuant to this subsection the accused may be detained in confinement in the hospital in which he had theretofore been confined or another hospital for the mentally ill until the civil commitment proceedings are concluded. Notwithstanding any other provision of this subsection or any other statute the court may order the indictment, information or other charge pending against an accused dismissed on the ground that, because of the passage of time during the period of his incompetence, it is not fair and just that he should be tried.

"(*i*) At the end of each six month period after the adjudication of an accused person as incompetent to stand trial, the superintendent of the hospital in which the accused person is confined shall make a report concerning the mental condi-

tion of such accused person. Either party may thereupon request a hearing concerning the incompetence of the accused person, and the court shall hold such a hearing upon such a request and may order such a hearing on its own consideration of the report, at the conclusion of which hearing it shall make such findings and enter such order as are appropriate in the premises. Whenever an accused person confined in a hospital for the mentally ill upon an adjudication that he is incompetent is so confined for a year without having been examined during such year by a psychiatrist not affiliated with such hospital, the court upon the request of the accused shall order that he be examined by such a psychiatrist named by the court. Such psychiatrist shall make a report of the mental condition of the accused person, upon which report the same proceedings may be had as upon the hospital superintendent's report described in the first sentence of this subsection.

"(*j*) Nothing in this or any provision of this Code or any other statute shall prevent an accused person adjudicated incompetent from raising and having adjudicated, during the period of his incompetence, legal objections to the indictment, information or other instrument by which he is charged. Any such adjudication shall be final except that if it is adverse to the accused he may have it reopened upon his restoration to competence upon a showing that the accused was prejudiced by his inability to participate in the presentation of the matter adjudicated."

Unamended subsections of section 301, present subsections (*c*) through (*h*), would be relettered. (See app. A.)

In order to fully carry out Recommendation 12, Section 310 of Title 21 of the District of Columbia Code would be amended to add assistant United States attorneys and assistant corporation counsel acting pursuant to new Section 301(h) of Title 24 of the Code to the list of those who may apply for a writ de lunatico inquirendo and an order of commitment.

APPENDIX A

Section 301 of Title 24 of the D.C. Code:

(*a*) Whenever a person is arrested, indicted, charged by information, or is charged in the juvenile court of the District of Columbia, for or with an offense and, prior to the imposition of sentence or prior to the expiration of any period of probation, it shall appear to the court from the court's own observations, or from prima facie evidence submitted to the court, that the accused is of unsound mind or is mentally incompetent so as to be unable to understand the proceedings against him or properly to assist in his own defense, the court may order the accused committed to the District of Columbia General Hospital or other mental hospital designated by the court, for such reasonable period as the court may determine for examination and observation and for care and treatment if such is necessary by the psychiatric staff of said hospital. If, after such examination and observation, the superintendent of the hospital, in the case of a mental hospital, or the chief psychiatrist of the District of Columbia General Hospital, in the case of District of Columbia General Hospital, shall report that in his opinion the accused is of unsound mind or mentally incompetent, such report shall be sufficient to authorize the court to commit by order the accused to a hospital for the mentally ill unless the accused or the Government objects, in which event, the court, after hearing without a jury, shall make a judicial determination of the competency of the accused to stand trial. If the court shall find the accused to be then of unsound mind or mentally incompetent to stand trial, the court shall order the accused confined to a hospital for the mentally ill.

(*b*) Whenever an accused person confined to a hospital for the mentally ill is restored to mental competency in the opinion of the superintendent of said hospital, the superintendent shall certify such fact to the clerk of the court in which the indictment, information, or charge against the accused is pending and such certification shall be sufficient to authorize the court to enter an order thereon adjudicating him to be competent to stand trial, unless the accused or the Government objects, in which event, the court, after hearing without a jury, shall make a judicial determination of the competency of the accused to stand trial.

(*c*) When any person tried upon an indictment or information for an offense, or tried in the juvenile court of the District of Columbia for an offense, is acquitted solely on the ground that he was insane at the time of its commission, that fact shall be set forth by the jury in their verdict.

(*d*) If any person tried upon an indictment or information for an offense, or tried in the juvenile court of the District of Columbia for an offense, is acquitted solely on the ground that he was insane at the time of its commission, the court shall order such person to be confined in a hospital for the mentally ill.

(*e*) Where any person has been confined in a hospital for the mentally ill pursuant to subsection (*d*) of this section, and the superintendent of such hospital certifies (1) that such person has recovered his sanity, (2) that, in the opinion of the superintendent, such person will not in the reasonable future be dangerous to himself or others, and (3) in the opinion of the superintendent, the person is entitled to his unconditional release from the hospital, and such certificate is filed with the clerk of the court in which the person was tried, and a copy thereof served on the United States Attorney or the Corporation Counsel of the District of Columbia, whichever office prosecuted the accused, such certificate shall be sufficient to authorize the court to order the unconditional release of the person so confined from further hospitalization at the expiration of fifteen days from the time said certificate was filed and served as above; but the court in its discretion may, or upon objection of the United States or the District of Columbia shall, after due notice, hold a hearing at which evidence as to the mental condition of the person so confined may be submitted, including the testimony of one or more psychiatrists from said hospital. The court shall weigh the evidence and, if the court finds that such person has recovered his sanity and will not in the reasonable future be dangerous to himself or others, the court shall order such person unconditionally released from further confinement in said hospital. If the court does not so find, the court shall order such person returned to said hospital. Where, in the judgment of the superintendent of such hospital, a person confined under subsection (*d*) above is not in such condition as to warrant his unconditional release, but is in a condition to be conditionally released under supervision, and such certificate is filed and served as above provided, such certificate shall be sufficient to authorize the court to order the release of such person under such conditions as the court shall see fit at the expiration of fifteen days from the time such certificate is filed and served pursuant to this section: *Provided*, That the provisions as to hearing prior to unconditional release shall also apply to conditional releases, and, if after a hearing and weighing the evidence, the court shall find that the condition of such person warrants his conditional release, the court shall order his release under such conditions as the court shall see fit, or if the court does not so find, the court shall order such person returned to such hospital.

(*f*) When an accused person shall be acquitted solely on the ground of insanity and ordered confined in a hospital for the mentally ill, such person and his estate shall be charged with the expense of his support in such hospital.

(*g*) Nothing herein contained shall preclude a person confined under the authority of this section from establishing his eligibility for release under the provisions of this section by a writ of habeas corpus.

(*h*) The provisions of this section shall supersede in the District of Columbia the provisions of any Federal statutes or parts thereof inconsistent with this section.

STATEMENT OF MORRIS H. BLUM, CHAIRMAN OF THE LEGISLATIVE COMMITTEE OF MARYLAND/DISTRICT OF COLUMBIA/DELAWARE BROADCASTERS' ASSOCIATION, INC.

We are here today on behalf of the Maryland/District of Columbia/Delaware Broadcasters' Association, whose membership is comprised of radio and television broadcasters licensed by the Federal Communications Commission. We wish to state briefly our views on Section 606 of H.R. 10783, the Omnibus Crime Bill for the District of Columbia.

Section 606 would amend Section 872 of the Act of March 3, 1901 (D.C. Code, Title 22, Section 2001), relating to obscene materials. As drafted, this Section would apply to radio and television stations which operate under authority of the Federal Communications Commission and are regulated by that agency. It is our position that Section 606 should be amended to exempt licensees regulated by the Commission from its purview.

Radio and television stations are already subject to the provisions of the Federal Criminal Statute contained in Title 18, U.S. Code, Section 1464, which reads as follows:

"Whoever utters any obscene, indecent, or profane language by means of radio communication, shall be fined not more than $10,000 or imprisoned not more than two years, or both."

This statute governs all possible instances of obscene broadcasts by means of radio and television communications, and Section 606, which is a local law applicable only to District of Columbia broadcast stations, would unnecessarily create dual criminal responsibility upon broadcast stations with questionable benefit or protection to the public not already provided for. Radio and television stations are engaged in interstate commerce, and Congress has adopted a uniform national policy in the Communications Act of 1934, as amended, covering their regulation. Amendment of H.R. 10783 as suggested would avoid disruption of that policy and carry out the purpose of the Communications Act of 1934.

As you no doubt are aware, the House Committee on the District of Columbia has reported legislation dealing with obscene materials in each of the last three Sessions. Members of our association testified at the hearings before the Committee on the District of Columbia in 1964, when the obscenity provisions were first proposed. As a result of that testimony, that Committee provided an exemption from the obscenity provisions by adding subsection (f).

For the reasons stated we urge this Committee to restore the exemption from the requirements of Section 606 for radio and television licensees regulated by the Federal Communications Commission by the incluson of Subsection (f). The language of the subsection is as follows:

"*(f)* Nothing in this section shall apply to a licensee under the Communications Act of 1934, as amended, while engaged in activities regulated pursuant to such Act."

We thank you for permitting us to appear and present our views on this legislation.

U.S. DEPARTMENT OF JUSTICE,
Washington, D.C., August 10, 1967.

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

DEAR SENATOR: This is in response to your request for the views of the Department of Justice on S. 1825, a bill relating to the sale or loan of certain indecent material to minors in the District of Columbia, and to the admission of such minors to certain motion pictures, shows and other presentations.

Section 22–2001 of the District of Columbia Code, 31 Stat. 1332, Ch. 854, § 872, proscribes the gift, sale and possession for sale of obscene or indecent matter. It also reaches advertisements for indecent publications and abortifacients. Violation of the section is a misdemeanor.

S. 1825 would add a new section to the D.C. Code prohibiting the knowing sale, loan or commercial exhibition to minors of matter depicting nudity, sexual conduct, sado-masochistic abuse and, in certain cases, sexual excitement. (The terms nudity, sexual conduct, sado-masochistic abuse and sexual excitement are explicitly defined in paragraphs 2, 3, 4 and 5 of subsection (a) of the bill.) The proscriptions of the proposed legislation would extend only to matter which was determined to be "harmful to minors." Under subsection (a)(6) of the act descriptions or representations of nudity, sexual conduct excitement or sado-masochistic abuse are considered harmful to minors when they—

1. predominantly appeal to the prurient, shameful, or morbid interest of minors;
2. are patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for minors; and
3. are utterly without redeeming social importance for minors.

Violations of the proposed amendment would be punishable by a fine of not more than $5,000, imprisonment for not more than one year, or both.

The reach of the existing District of Columbia obscenity statute is governed by the constitutional test of obscenity first laid down by the Supreme Court in *Roth* v. *United States*, 354 U.S. 476 (1957) and subsequently developed in *Manual Enterprises* v. *Day*, 370 U.S. 478 (1962); *Jacobellis* v. *Ohio*, 378 U.S. 184 (1964); *Memoirs* v. *Massachusetts*, 383 U.S. 413 (1966); *Ginzburg* v. *United States*, 383 U.S. 463 (1966); and *Mishkin* v. *New York*, 383 U.S. 502 (1966). The class of material defined by *Roth* as falling outside the protection

of the First Amendment is a narrowly limited one. In contrast, the scope of the proscription laid down in S. 1825 appears considerably broader. The Roth test, for example, does not reach many depictions of the nude and partially nude female form which might well come within the proscription of S. 1825. See e.g., *Sunshine Book Co.* v. *Summerfield*, 355 U.S. 372 (1957); *Excellent Publications, Inc.* v. *United States*, 309 F. 2d 362 (C.A. 1, 1960).

Absent a clear judicial decision, it is impossible to definitively state whether it is constitutionally permissible to expand the limited reach of the present test of obscenity in order to protect minors from exposure to sex related materials. We understand, however, that the Supreme Court has recently noted probable jurisdiction in a case testing the constitutionality of the New York obscenity statute relating to minors. *Ginsberg* v. *New York*, No. 47, October Term, 1967. Since the New York statute at issue in the *Ginsberg* case is virtually identical to S. 1825, an early indication of the constitutionality of S. 1825 can be expected. In the meantime, we note that the Supreme Court has intimated in several of its more recent decisions that a separate statute regulating the distribution of sexually provocative material to children may well be constitutionally permissible even though it does not meet the constitutional guidelines laid down generally for obscene matter. *Jacobellis* v. *Ohio*, 378 U.S. 184, 195 (opinion of Justice Brennan and Goldberg) 201 (dissenting opinion of Chief Justice Warren and Justice Clark); *Memoirs* v. *Massachusetts*, 383 U.S. supra, at 421, fn. 8 (opinion of Justices Brennan and Fortas and Chief Justice Warren); *Ginzburg* v. *United States*, 383 U.S. supra, at 465, fn. 3 (court opinion) and 498, fn. 1 (dissenting opinion of Justice Stewart); *Redrup* v. *New York*, 35 Law Week 4396, per curiam opinion (decided May 8, 1967).

A second basic constitutional question which arises with respect to S. 1825 is the adequacy of the *scienter* requirement in subsection (a)(7). The bill would proscribe certain acts "knowingly" performed, and "knowingly" is defined as having general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry both as to the content of the material and the age of the minor. The primary question is whether a person could be prosecuted for sale of material to a minor if he failed to inquire into the purchaser's age or the contents of the material and remained deliberately ignorant of either. In *Smith* v. *California*, 361 U.S. 147 (1959), the Court recognized the possibility of requiring further inquiry into the content of obscene materials by one who should reasonably be on notice of the questionable contents of the materials he sells, but inclined to pass on the propriety of such a requirement. In this term the Supreme Court granted certiorari in three cases raising the question of the permissible limits of statutory *scienter* provisions regarding obscenity, but all three cases were disposed of an other grounds, *Redrup* v. *New York*, 35 Law Week 4396 (decided May 8, 1967). In the absence of any real guidance from the Court, we can only say that the *scienter* requirement in S. 1825 appears to us to be reasonable.

S. 1825 appears to be directed solely at sex related representations. In order to clarify the ambit of the statute, we recommend that the words "in sex" be inserted in the statute immediately after the word "minors" in subsection (a)(6)(A).

It should be noted that H.R. 10783, a bill "Relating to crime and criminal procedure in the District of Columbia," contains a complete revision of the present District of Columbia obscenity law including the substance of the provisions contained in S. 1825. As you know, H.R. 10783 has passed the House and is currently pending before your committee.

The Department of Justice has no objection to the enactment of this legislation amended as suggested above.

The Bureau of the Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

WARREN CHRISTOPHER,
Deputy Attorney General.

[From the Report of the President's Commission on Crime in the District of Columbia, pp. 892–921]

MINORITY REPORT OF DAVID A. PINE

* * * * * * *

SECTION II. THE DURHAM RULE

I shall now discuss the *Durham* Rule, one of the bases for the Minority Report.

In the District of Columbia, during the last twelve years, criminal law and procedure relating to the defense of insanity have undergone rapid and unique development. Designed to eliminate the disparity between the law and present day psychiatry, the Court of Appeals in 1954 rejected the standard for determining criminal responsibility which had existed for more than a half-century and substituted a standard similar to that used in one other jurisdiction.[22] Since then, this standard has been rejected in at least twenty-two states and five federal jurisdictions.[23] It has been adopted only in one jurisdiction that a version of it in another.[24] Quite recently it has also been rejected by the United States Court of Appeals for the Second Circuit.[25]

The new standard was announced in *Durham* v. *United States*, 94 U.S. App. D.C. 228 (1954),[26] and has become known as the *Durham* Rule. It brings the law more in conformity with present day psychiatry, particularly by broadening the insanity defense to include mental illnesses theretofore not recognized in law but recognized in psychiatry. However, due to confusion in judicial interpretations, melange of statutes, disagreements among psychiatrists, the vagueness of the subject matter, and burden of proof, the defense of insanity under the *Durham* rule has become a misused concept in some instances and has furnished defendants a means of avoiding deserved punishment. Consequently crevices in the law have been created, public safety has been endangered, and the commission of crime encouraged.

Prior to July 1, 1954, in the District of Columbia, the standard for testing the mental responsibility of persons committing crimes in the District was a combination of the "right-wrong" test [27] and the "irresistible impulse" test.[28] Essentially, this meant that an accused could not be held criminally responsible if, because of his mental condition, he was not able to discern the difference between right and wrong, or if able so to do, was compelled by an uncontrollable impulse to perpetrate the crime. On July 1, 1954, the Court of Appeals in *Durham* v. *United States, supra*, found that the "right-wrong" test was inadequate in that it did "not take sufficient account of psychic realities and scientific knowledge" and was "based upon one sympton and so cannot be applied in all circumstances." The "irresistible impulse" test was found to be inadequate in that it gave "no recognition to mental illness characterized by brooding and reflection and so relegated acts caused by such illness to the application of the inadequate right-wrong test." [29] Consequently, the court concluded that a broader test should be adopted. The test announced was "simply that an accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect." [30]

The word "disease" was defined as "a condition which is considered capable of either improving or deteriorating" and the word "defect" was defined as "a condition which is not considered capable of either improving or deteriorating and which may be either congenital, or the result of injury, or the residual effect of a physical or mental disease." [31] The court left unchanged the procedure for trying the insanity issue, namely, that once an accused has shown "some

[22] See *State* v. *Pike*, 49 N.H. 399 (1870).
[23] Krash *The Durham Rule*, 70 Yale L.J. 905, 906 n.8 (1961).
[24] See 14 Virgin Island Code Ann. § 1. 14 (1957); 15 Me. Rev. Stat. Ann. § 102 (1963).
[25] *United States* v. *Freeman*, 357 F. 2d 606 (2d Cir. 1966).
[26] Defendant *Durham* was indicted for housebreaking and grand larceny. He was found guilty. On appeal this case was reversed. In this case the *Durham* Rule was announced. He were thereafter retried and again found guilty, and again appealed. His case was again reversed. He was again brought on for retrial, and this time he pleaded guilty to petty larceny only, and was sentenced to one year in prison.
[27] *United States* v. *Guiteau*, 12 D.C. 498, 530, 1 Mackey 498, 550 (1882).
[28] *Smith* v. *United States*, 59 App. D.C. 144 (1929).
[29] *Durham, supra*, 94 U.S. App. D.C. at 240.
[30] *Id.* at 241.
[31] *Ibid.*

evidence" that he suffered from a mental illness at the time the unlawful act was committed, and has thereby overcome the initial presumption of sanity, the burden is on the Government to prove beyond a reasonable doubt that the accused was *not* suffering from a mental illness, or if he was, that the offense charged was *not* the product of the mental illness.[32] Stated another way, once the insanity defense is sufficiently raised by "some evidence," unless the jury believes beyond a reasonable doubt either that the accused "was *not* suffering from a diseased or defective mental condition" at the time of the offense, or if he was so suffering, "that the act was *not* the product of such abnormality, [it] must find the accused not guilty by reason of insanity."[33]

The choice of the adverb "simply" by the Court of Appeals in setting forth their new test has proved to be illusory. In applying the *Durham* rule and its concommitants, the District Court and the Court of Appeals have been plagued with difficult problems of interpretation. Since 1954 there have been a hundred or more cases on this subject in the Court of Appeals, many with dissenting and concurring opinions. For examples of the problems, there may be mentioned the following: What types of afflictions can constitute a "mental illness or mental defect"?[34] What does the word "product" mean?[35] What is "some evidence" under *Durham*?[36] Of the last example, I refer to *Logan* v. *United States*, 109 U.S. App. D.C. 104 (1960), where there was testimony that actions of defendant when drinking were "different from what other people would do" in the same condition, and to *Clark* v. *United States*, 104 U.S. App. D.C. 27 (1958), when there was testimony of the defendant that he "must have been insane." This evidence was considered sufficient to satisfy the requirement of the "some evidence" rule and thereby place the burden on the prosecution to establish *beyond a reasonable doubt*, a negative, *i.e.*, that defendant was *not* suffering from a mental disease, etc.

Also, it should be pointed out that underlying these problems are the varied use of medical terms by psychiatrists and the question of the weight to be given expert testimony as opposed to lay testimony. "In considering *Durham* it was noted that a reputable school of psychiatrists considers most antisocial acts to be symptomatic of mental disease or defect and that since under *Durham* mental disease or defect excuses from criminal responsibility, in most cases at least a sound ground exists for a juror's reasonable doubt as to almost *any* defendant's legal sanity."[37] (Italics supplied.) Since common sense dictates that a psychiatric interview and testimony based thereon should be given substantial, if not determinative, weight,[38] in many cases the expert may usurp the jury's function—allowing little or no credence to a layman's views on insanity. Indeed, in *Douglas* v. *United States*, 99 U.S. App. D.C. 232 (1956), the Court of Appeals, by implication at least, held that lay testimony alone of sanity was insufficient to overcome psychiatric testimony of insanity and prevent a directed judgment of acquittal by reason of insanity.

However, the case of *McDonald* v. *United States*, 114 U.S. App. D.C. 120 decided October 8, 1962, answered to a degree some of the above mentioned perplexities that the *Durham* decision had created. As to the amount of evidence needed to overcome the initial presumption of sanity, and to place the burden of proof on the Government, the court, at 122, stated that:

"The subject matter being what it is, there can be no sharp quantitative or qualitative definition of 'some evidence.' Certainly it means more than a scintilla,[39] yet, of course, the amount need not be so substantial as to require, if uncontroverted, a directed verdict of acquittal [by reason of insanity]."

---

[32] *Davis* v. *United States*, 160 U.S. 469 (1895).
[33] *Durham*, *supra*, note 29, at 241.
[34] See *e.g.*, *Blocker* v. *United States*, 107 U.S. App. D.C. 63 (1959); *Carter* v. *United States*, 102 U.S. App. D.C. 227 (1957). See also, *Overholser* v. *Leach*, 103 U.S. App. D.C. 289 (1958).
[35] See *e.g.*, *Campbell* v. *United States*, 113 U.S. App. D.C. 260 (1962); *Carter* v. *United States*, *supra* note 34.
[36] See *e.g.*, *Goforth* v. *United States*, 106 U.S. App. D.C. 111 (1959); *Clark* v. *United States*, 104 U.S. App. D.C 27 (1958); *Lebron* v. *United States*, 97 U.S. App. D.C. 133 (1955).
[37] Kuh, *The Insanity Defense*, 110 U. Pa. L. Rev. 771, 799 (1962).
[38] See generally, Krash, *supra* note 23, at 918, 919, n. 70, where an interview is described.
[39] Some decisions subsequent to *Durham* and prior to *McDonald* had implied that a scintilla was sufficient to raise the insanity issue. See *e.g.*, *Clark* v. *United States*, *supra*, note 36, where the mere assertions by the defendant that he was insane were sufficient, and *Logan* v. *United States*, discussed *supra*.

Relating to the variety of psychiatric labels and the weight to be given to expert psychiatric testimony, the court said this:

"[T]he jury, in considering an insanity plea, must weigh all the evidence, including the presumption of sanity. . . . Whether uncontradicted expert testimony overcomes the presumption depends upon its weight and credibility, and weight and credibility ordinarily are for the jury . . . . Our purpose now is to make it very clear that neither the court nor the jury is bound by *ad hoc* definitions or conclusions as to what experts state is a disease or defect. What psychiatrists may consider a 'mental disease or defect' for clinical purposes, where their concern is treatment, may or may not be the same as mental disease or defect for the jury's purpose in determining criminal responsibility."[40]

Finally, and perhaps most importantly, the court set forth an additional definition of "mental disease or defect," namely, "a mental disease or defect includes any abnormal condition of the mind which substantially affects mental or emotional processes and substantially impairs behavior controls."[41]

Thus, in *McDonald*, the trial courts were given some guidelines as to how much evidence is needed to raise the insanity defense and shift the burden of proof to the prosecution, and, once the defense is raised and the burden shifted, the weight the jury or court should give to expert and lay testimony in determining the criminal responsibility of the accused. *McDonald*, as did *Durham*, left the ultimate burden of proving the defendant's sanity beyond a reasonable doubt upon the prosecution.

While *McDonald*, as stated, relieved some of the difficulties inherent in the *Durham* rule, like the redoubtable Hydra, problems survived the decision and more have arisen. What follows is a discussion of some of these existing problems with specific recommendations for remedies where they would seem to be appropriate.

Several cases have illustrated that there has also arisen a dispute in the Court of Appeals about the meaning of *McDonald*, especially with regard to what constitutes "some evidence" and the weight that should be accorded to expert testimony.[42] I feel that this is unfortunate, but see no alternative to leaving the matter to judicial interpretation. An *en banc* decision further delineating and defining "some evidence" would be helpful, in providing uniformity and certainty in the law.

In *Whalem* v. *United States*, 120 U.S. App. D.C. 331 (1965), the Court of Appeals dealt with the situation where the defendant chooses not to raise the insanity defense, but where such a defense might be appropriate. Said the court at 337 "[A] defendant may not keep the issue of insanity out of the case altogether. He may, if he wishes, refuse to raise the issue of insanity, but he may not, in a proper case, prevent the court from injecting it." In other words, regardless of the position taken by the defendant, the trial court, in its discretion, and "in a proper case" has a duty to raise, *sua sponte*, the insanity defense. As long as this rule is completely within the discretion of the trial court, which has been the case in later decisions,[43] and not a requirement that the trial court *sua sponte* raise the insanity issue whenever any evidence of mental incapacity is raised, I see no need for limiting the rule and make no suggestions in respect thereto.

But I do have a recommendation, and that is on the subject of burden of proof, which I shall now discuss. I had hoped this recommendation would be included in the Commission Report, and its rejection by the Commission is one of the bases for this Minority Report.

In 1895 the Supreme Court in *Davis* v. *United States*, 160 U.S. 469, 486, held that once the issue of insanity is raised by "some evidence" the Government has the burden of proving sanity of the accused beyond a reasonable doubt. Essentially, this burden was so placed in order to conform with the traditional presumption of innocence of an accused and the requirement that guilt be proved beyond a reasonable doubt.[44]

Since that year, this rule of law has remained unchanged, in the District of Columbia. But the test for determining insanity, *i.e.*, greatly broadened since,

---

[40] *McDonald*, *supra*, 114 U.S. App. D.C., at 123, 124.
[41] *Id.* at 124.
[42] *E.g.*, *Heard* v. *United States*, 348 F. 2d 43 (D.C. Cir. 1964); *Hightower* v. *United States*, 117 U.S. App. D.C. 43 (1964); *Gray* v. *United States*, 115 U.S. App. D.C. 324 (1963).
[43] See *Trest* v. *United States*, —— U.S. App. D.C. ——, 350 F. 2d 795 (1965); *Harper* v. *United States*, —— U.S. App. D.C. ——, 350 F. 2d 1000 (1965).
[44] *Davis*, *supra*, 160 U.S. at 486.

e.g., the "irresistable impulse test" contained in *Smith* v. *United States*, [45] and, more recently, the revolutionary enlargement of the periphery of mental diseases and the broadening of the test for determining insanity, contained in the *Durham* decision. In addition, numerous statutes have been enacted for the treatment of persons who have been found not guilty by reason of insanity.[46]

There has thus occurred a dramatic enlargement of the boundaries of the law in respect of the defense of insanity, without a reciprocal or compensating change in respect of the burden of proof.

It therefore becomes appropriate to discuss the effect of this imbalance which is the foundation for my view that the burden of proof should be shifted to the defendant to establish his insanity by a preponderance of the evidence.

As hereinbefore mentioned, there are psychiatrists who believe anti-social acts are symptomatic of a mental disease or defect. Stated more bluntly, these psychiatrists have the opinion, and will so testify, that any person who commits a crime is suffering from a mental disease and that the crime is the product of the disease. When a psychiatrist of this school testifies as to the criminal responsibility of one who commits a crime, an antisocial act, "a sound ground exists for a juror's reasonable doubt as to . . . defendant's legal sanity." [47] and this is all that is required for a verdict of "not guilty by reason of insanity."

In such cases, the prosecution is thus placed in the position of being required by reason of the burden of proof, to remove any and all reasonable doubt that the accused was *not* mentally ill in order to avoid a verdict of "not guilty by reason of insanity." This burden, which in many cases is insuperable, results in a defendant, with such psychiatric testimony at his disposal, being found not guilty by reason of insanity and placed in a mental institution eligible for an early release from custody under circumstances hereinafter set forth. In this manner the public safety is endangered, disrespect for the law is generated, and fear of punishment is decreased. This latter encourages infractions by others because of a belief that if they violate the law and are apprehended, they can "bug out," to use their picturesque, but expressive vernacular.

In the District of Columbia the problem has become more acute for still another reason, which I shall now discuss. In addition to whatever opinions a defendant is able to obtain from private psychiatrists who adhere to the view above expressed that antisocial conduct can be equated with mental disease, the official staff position of Saint Elizabeths Hospital, to which the Government looks for psychiatric testimony, since 1959 has been that "people suffering some sociopathic personality disturbance should be 'labeled' as diseased, as mentally ill.[48] Some staff psychiatrists of the hospital have wavered in, and some have disagreed with this view, but the staff position has remained unchanged since then. On the other hand, there is substantial psychiatric support for the previously held opinion of Saint Elizabeth's hospital that antisocial acts are not necessarily indicative of a mental disease or defect. For example the Commission on Mental Health of the District Court adheres to this earlier opinion of long standing, and the American Law Institute Model Code, in order to prevent miscarriage of justice flowing from this relatively recent concept, it is provided that antisocial conduct be expressly excluded from the term "mental disease or defect." [49]

I do not subscribe to the view that an abnormality manifested only by antisocial acts should be completely excluded from the term "mental disease or defect," as provided in the A.L.I. Model Code, because I feel that the criminal responsibility of a sociopath or psychopath depends upon the degree of the "illness," and that an antisocial act in some cases may be symptomatic of a "mental disease or defect." I only say that the present requirement of the law which places the burden on the Government to prove beyond a reasonable doubt

---

[45] The test was "the accepted rule in this day and age, with the great advancement in medical science as an enlightening influence on this subject . . ." *Smith* v. *United States*, *supra*, note 28 at 145.

[46] *E.g.*, 21 D.C. Code 501, *et. seq.* (Supp. V. 1966); see *Lynch* v. *Overholser*, 369 U.S. 705, 720 (1962); 24 D.C. Code 106, 301 (1961).

[47] See Kuh, *supra* note 37

[48] See *Blocker* v. *United States*, *supra*, n. 34, at 64. Halleck, *The Insanity Defense*, 49 Geo. L.J. 294, 311 (13 (1960). See also, *Overholser* v. *Leach*, *supra*, note 34 (reflecting the disagreement among psychiatrists).

[49] A.L.I. Model Penal Code § 4.01(2). (See comments.) See generally, Gasch, *Prosecution Problem Under The Durham Rule*, 5 Catholic Lawyer 5, 32 (1959). But see Wiehofen, *The Urge to Punish*, 85–90 (1956). See also 15 Me. Rev. Stat. Ann. § 102 (1963), *supra*, n. 24.

that the defendant was *not* suffering from a mental illness at the time of the offense in cases involving sociopathic behavior is an unjustifiable burden and on occasions results in otherwise guilty defendants going unwhipped of justice. Placing the burden, as I have suggested, would avoid this onerous requirement of the law, and tend to remove this avenue of escaping punishment. It would at the same time still provide defendants with the full spectrum of psychiatric defenses and testimony.

In this connection, it is interesting to mention how this changed position of Saint Elizabeths Hospital came about in 1959. In *Blocker* v. *United States*, 107 U.S. App. D.C. 63, defendant, who had been indicted for murder in the first degree, defended on the ground of insanity. This defense was rejected by the jury, and he was found guilty, sentenced to death, and appealed. Three psychiatrists testified at his trial, two called by the defense and one called by the prosecution. All three were on the staff of Saint Elizabeths Hospital. The psychiatrist called by the Government testified that he found nothing wrong with defendant. The other two concluded that he suffered from a sociopathic personality disturbance with chronic alcoholism, but that this was not considered to be a mental disease or defect, thus removing the evidential basis for the insanity defense under the *Durham* rule. Less than a month after this verdict was returned, the Assistant Superintendent of Saint Elizabeths Hospital testified in another case that the Superintendent and he were then agreed "that people suffering from sociopathic personality disturbance should be 'labeled' as diseased, as mentally ill, mentally sick, suffering from mental disease." Counsel for defendant Blocker, on learning of this testimony, moved for a new trial on the basis of "new medical evidence". This motion was denied, but the Court of Appeals thought it should have been granted and the case was reversed and remanded for a new trial.

This later position of Saint Elizabeths Hospital, which as we have stated has since become its official position, was an abrupt about-face from the position previously taken. Defendant Blocker was accordingly retried, but in the retrial the court placed the burden of proof on the defendant and he was convicted a second time and sentenced to death. Again the case was appealed and again was reversed, this time because of the Court's instruction placing the burden on the defendant to establish the defense of insanity. He was later tried for the third time and convicted of second degree murder. On appeal from this last conviction, the sentence was affirmed on the lesser included offense of second degree murder.

Another reason for my recommendation, which pertains to all mental illnesses, including those of the sociopathic variety, is that by placing the burden of proof by a preponderance of the evidence on defendant, a harmful hiatus would be removed from the law. This hiatus or inconsistency in the law, and evils flowing therefrom, arise from the difference in the quantum of proof required to acquit a defendant by reason of insanity (that is a failure by the prosecution to prove beyond a reasonable doubt that defendant was *not* suffering from a mental disease, or if he was that the crime was *not* the product of the disease) and the quantum of proof required to enable a defendant found not guilty by reason of insanity to gain his release after commitment to Saint Elizabeths Hospital, as hereinafter set forth. At present, as stated, any reasonable doubt of an accused's sanity requires a jury to acquit him by reason of insanity. Such an acquittal, however, is not an adjudication of insanity or mental incapacity, *Green* v. *United States*, 122 U.S. App. D.C. 33, 35 (1965), but is merely a finding by the jury that the government failed to carry its burden as above stated. However, once acquitted, and committed to a mental hospital, pursuant to D.C. Code 24–301(d) 1961, a preponderance of the evidence that he "has recovered [sic] his sanity and will not in the reasonable future be dangerous to himself or others" is sufficient for defendant to obtain this unconditional release by habeas corpus under D.C. Code 24–301(e). It thus takes less proof for a defendant to obtain a verdict of not guilty by reason of insanity than it does to obtain a release after such a verdict; and it might be argued at first blush that this is desirable from the standpoint of protection of society. But it does not work out that way. For example, an accused whose mental condition at the trial stage meets the unconditional release test above stated, may nevertheless be found not guilty by reason of insanity if he can muster up "some" evidence of insanity (*e.g.*, evidence that criminal conduct connotes insanity) requiring a verdict of not guilty by reason of insanity under the onerous burden now placed on the Government to establish sanity

beyond a reasonable doubt. In such circumstances, the accused would be committed to a mental hospital and shortly thereafter would be unconditionally released and commingling with the public, freed from punishment for his criminal acts. This is a fact and not a theory.

In this connection, and in further support for a shift in the burden of proof from the Government to the defendant, it is appropriate to lay bare some of he bizarre results growing out of the acceptance by the staff of Saint Elizabeths Hospital that a sociopathic personality disorder, *per se*, constitutes a mental disease. Almost one-fourth of all admissions to Saint Elizabeths Hospital after verdicts of not guilty by reason of insanity are classified as persons suffering from a personality disorder. These are defendants some of whom would otherwise be found guilty and held accountable to society for their crimes. Instead, they escape punishment, not for the reason that they have been found to be mentally ill because, as above stated, a verdict of not guilty by reason of insanity is not such a finding, but because the prosecution has been confronted with the almost impossible burden of proving beyond a reasonable doubt that they were not suffering from a mental disease at the time of the offense, in the face of psychiatric testimony from Saint Elizabeths Hospital that they were. If the burden of proof were shifted to the defendant, where the testimony could be weighed to determine whether or not it preponderated in defendant's favor, without the necessity for the government to remove every reasonable doubt, I think it can be reasonably assumed that a large number of defendants where the degree of the personality disturbance is slight would not escape by a verdict of not guilty by reason of insanity.

Typifying the problems and difficulties that have arisen from a practical standpoint from the classification of all personality disorders as a mental disease are the critical remarks of Dr. David J. Owens, Clinical Director and supervising psychiatrist of the John Howard Pavilion of Saint Elizabeths Hospital. This is the maximum security unit for the criminally insane. He is one of the city's most respected and most experienced psychiatric experts on the criminally insane, and is in almost daily attendance in the United States District Court giving his expert opinion in the multitude of cases arising in that court either on pretrial determinations of mental competency, the actual trial of cases where the mental condition of the accused at the time of the criminal act is in issue, or on petitions for writs of habeas corpus where defendants having been found not guilty by reason of insanity are petitioning for release on the ground that they have "recovered" their sanity. Dr. Owens gave voice to these remarks in an address before a recent convention (June 1966) of the National District Attorneys Association held in Washington, D.C. In that address he stated that "in the beginning" he was one of the "greatest advocates of . . . the Durham Decision," that it was a "great decision", a "wonderful" decision, and that he thought "society was finally becoming enlightened." He then added that he was *now* "more unenlightened" than he has ever been and felt that "some changes are needed in the Durham Decision." He said further that at the time of this address he was "not clear what [the Durham Decision] means," and "he doesn't believe the District Attorneys or the defense attorneys are clear about it either," particularly the definition of the "product part of the test." He further stated that he believed the Court of Appeals was not clear as to its meaning "because since the Durham Decision was handed down there have been over 100 clarifying decisions handed down by the United States Court of Appeals in order to clarify what they meant." Now as to persons suffering from personality disorders, he had this to say:

"The jails as well as *the community* are filled with individuals having personality disorders. . . . *Once you say these persons are sick, you have a hospital full of sociopaths or other types of personality disorders . . . to the point that we could almost do away with the jails* because nearly all prisoners would be in the hospital under this definition. . . . [I]n the District of Columbia [we are heading in the direction that] if an individual commits a crime or has a personality disorder or any type of illness, then he must be found not guilty by reason of insanity. . . . [Once the sociopath or person with a personality disorder is] returned to the Hospital for treatment, *no one seems to know exactly what we are supposed to treat, or how, or what we are to treat them with.* We don't have the pill or treatment that will cure them. . . . *The problem of personality disorders following the Durham Decision has pretty well snowed the Hospital under with problems arising as a result of it.* . . . At times it appears that the courts do not help the matter any as there are several judges

on the Court of Appeals who apparently believe that once an individual commits a crime, then he is ill regardless of what the opinion of the psychiatrist may be. . . . [These individuals are] usually primarily interested in avoiding being arrested or avoiding a jail sentence. Immediately after he comes to the Hospital . . . [*h*]*e puts in a writ of habeas corpus in the District Court. Then we have to go to Court and defend the writ. . . . We are having to defend the patient's being in the hospital after being found not guilty by reason of insanity with a diagnosis of personality disorder.*" (Emphasis supplied.)

This, then, is the problem as Dr. Owens defines it, which as seen from the above quotation and from the remainder of his address, might be summarized as follows:

Whether or not the hospital is of the opinion that a defendant is mentally ill, a defendant may avail himself of his right to an independent psychiatric examination and he may shop around for a doctor to testify that he is mentally ill. Then the patient once committed to the hospital, again having the use of independent psychiatrists if he wishes, may attempt to obtain his release by a writ of habeas corpus, because the psychiatrists are of the opinion that he is not mentally ill.

Among the fantastic results now occurring in this connection, I cite the case of *United States* v. *Brown*, Cr. No. 274–63. Brown was tried, convicted and took an appeal. On appeal the case was reversed and late in 1965 he was retried and found not guilty by reason of insanity. At his second trial two psychiatrists from Saint Elizabeths Hospital called by the Government testified that Brown was without mental disorder. Defendant Brown called two psychiatrists in private practice. They testified to the contrary, and planted the seed of reasonable doubt in the minds of the jury as to defendant's sanity. He was therefore found not guilty by reason of insanity, and committed to Saint Elizabeths Hospital. Shortly thereafter he sought a writ of habeas corpus for his release from the hospital and it was obvious that in support of his writ Brown would have available the hospital doctors who could only testify that he was sane, having been of that opinion from the beginning. This placed the prosecution on the horns of a dilemma, namely, either to allow the defendant to be released from custody and thereby escape punishment, or to petition the Court for an "independent psychiatric" examination, in the hope that testimony could be produced sufficient to continue defendant's further confinement. The government adopted the latter course and the Court being made cognizant of the Government's predicament permitted it to obtain an independent examination. I leave to the moralists an answer to whether the prosecution is within ethical bounds in calling for an independent examination when confronted by a defendant who has available for testimony the very doctors who testified *against* him at his trial and who necessarily would testify *for* him in his petition to be released as a person of sound mind.

Brown was released as the result of a hearing thereafter held because the Government's independent psychiatrists were of the opinion that Brown was not then mentally ill, as were the psychiatrists from Saint Elizabeths Hospital at this trial. This example is not an oddity. There are others just like it, causing the prosecution and Saint Elizabeths Hospital to take contradictory positions, rightly or wrongly, to avoid a complete miscarriage of justice. Unbelievable situations of this kind and other mentioned herein, such as the shocking *Schurmann* case, *infra*, involving the rape of a 12-year-old girl will continue to occur, perhaps with increasing frequency, unless some positive steps are taken. These situations provide another reason for changing the burden of proof as suggested herein, which it would be my hope would at least ameliorate the condition.

It is significant to take note at this point that this defense of insanity is often interposed in cases of the most serious nature where the Government's evidence is such that there appears to be no other defense and no other avenue of escape.

To remedy this condition, and to eliminate, in part at least, such miscarriages of justice and the basis for a belief that technical means are available to avoid the full rigors of the law, I am, as above stated, of the opinion that legislation should be enacted placing the burden of proof on the defendant in cases where he relies on the defense of insanity, and that he should be required to carry this burden by a preponderance of the evidence.[50] At least twenty-one states

[50] Gasch, *Prosecution Problem Under The Durham Rule*, *supra*, note 40 at 32 (where the author advocates this test for the District of Columbia). See also A.L.I., Model Penal Code, § 4.03(1) (Tent. Draft No. 4, 1955), which proposes the same test as an "affirmative defense."

have this requirement,[51] and its constitutionality could hardly be successfully challenged in view of the Supreme Court's decision in *Leland* v. *Oregon*, 343 U.S. 790 (1952).

Quite recently, on July 6, 1963, in the case of *Hansford* v. *United States*, — U.S. App. D.C. —, 365 F. 2d 920, the dissenting Judge therein expressed the same opinion for a change in the burden of proof in the following language: "It is high time that the burden of establishing the defense of insanity be placed upon the accused. If one charged with the commission of crime shall claim that by reason of insanity he is entitled to exculpation from responsibility, he should be required affirmatively to assert and prove the basis upon which he seeks to be excused."

Later on in his dissent he stated on the same subject as follows: "For my part, I have become quite persuaded that Congress should place upon an accused the burden of establishing his entitlement to a verdict of not guilty by reason of insanity."

I recognize that statistical data are not always a reliable source for drawing definitive conclusions, and that not infrequently diametrically opposed conclusions may rationally be drawn from the same statistics. Nevertheless, I feel that this report would be incomplete without a reference to some of them.

These statistics disclose the following:

During the three and one-half years prior to the *Durham* decision, 3 persons were found not guilty by reason of insanity and committed to Saint Elizabeths Hospital. During the fiscal years after the *Durham* decision, namely, 1955–1965, 588 persons were found not guilty by reason of insanity and committed to this hospital. Of these, 361 were committed by the United States District Court for the District of Columbia. The crimes charged were felonies, including murder, manslaughter, aggravated assault, housebreaking, robbery, rape and grand larceny. Fifty-three of these defendants were charged with murder, 16 with rape, 30 with narcotics violations, 49 with robbery, 49 with housebreaking and 38 with aggravated assault. Of this total number of 588, 360 were given conditional or unconditional releases prior to December 31, 1965, and 202 escaped from the hospital, some more than once. Of those who were released (not escaped) from the hospital 134 later were involved in crime. Fifty-nine of these were subsequently arrested for felonies of whom 24 were arrested for more than one felony, and 116 were arrested for misdemeanors.

It cautiously can be assumed that some of these releases were due to the incongruities growing out of the burden of proof problems hereinabove discussed. I find support in these statistics for the view hereinabove expressed that the burden of proof should be placed on the defendant when the insanity issue is raised. They probably could be used, with equal validity, to support the view that the *Durham* rule, itself, should be revised, perhaps by adoption of § 4.01 of Art. 4 of the Model Penal Code approved by the American Law Institute in 1961, but I would not favor it. A completely new law does not now seem to me to be desirable in view of the manner in which the *Durham* rule has become refined to some extent, as above pointed out. The enactment of an entirely new law, however desirable it might appear to be, would, I fear, inaugurate another long period of interpretation and construction with attendant uncertainty in the law and inequality of justice. Therefore, balancing whether *Durham* as refined is superior to the proposal of the American Law Institute, it seems to me to be in the best interest of the District of Columbia to continue with the body of law under *Durham* if amended as herein suggested.

Still another reason for proposing a change in the burden of proof, and one which is the subject of a further recommendation, concerns an accused who raises the insanity defense and refuses to cooperate with the Government psychiatrists in making their necessary examinations. In order to carry its burden under existing law, once the defense is raised, "the government may be compelled to produce expert testimony that the accused is of sound mind, particularly if the defendant offers experts in his behalf."[52] It consequently seems intolerable "to impose the burden of persuasion upon the government while allowing the accused to foreclose access to essential data which can be obtained only from the defendant himself and which the prosecution requires in order to discharge its burden."[53] An uncooperative defendant who takes advantage of a

[51] Gasch, *supra*, note 49, at 32.
[52] Krash, *supra*, note 23 at 919.
[53] *Ibid.*

recognized defense, but precludes the government from carrying its burden, thwarts the entire adversarial system and its search for truth.

To illustrate the consequences of such a situation, the recent case of *United States* v. *Schurmann*, Cr. No. 688–64, in the United States District Court for the District of Columbia (1965), is apposite.

In that case defendant was indicted for carnal knowledge (rape by force in this case) of a female child of 12 years of age. It appears that the complainant boarded a bus in New York City in the night time for transportation to Nashville, Tennessee. When she arrived in the District of Columbia, in the early morning hours, the bus came to a temporary stop, and she, with other passengers, alighted. Defendant approached her and persuaded her to take a walk with him to a nearby park where with force and threats with a knife he raped her. Defendant was indicted and released on bond, and then consulted a private psychiatrist who filed a report stating that in his opinion defendant was suffering from a mental disease at the time of the alleged offense and that the offense committed was the product of this mental illness. The United States thereupon filed a motion for the commitment of the defendant for a mental examination. The defendant, through his attorney, opposed this motion on the ground that such commitment would be in violation of the defendant's constitutional rights. Over these objections, the District Court granted the government's motion and committed the defendant for a period of ten days for a determination of his mental competency to stand trial, as well as his mental condition at the time of the crime.

At Saint Elizabeth's, where he was committed, the defendant refused to cooperate in an examination by members of the psychiatric staff in that he refused to converse with them. Consequently, being deprived of the principal psychiatric tool in making a mental examination and for arriving at a conclusion of mental condition, they were unable to reach any opinion regarding his mental condition. When the case came on for trial, the Government was thereby rendered incapable of offering any expert testimony regarding defendant's mental condition, and indeed his counsel objected to any testimony by the Government psychiatrists, or comments by the prosecution, on the defendant's refusal to cooperate. The trial court, however, overruled this objection and allowed such testimony and comment. Whether this ruling would be approved by the Court of Appeals is in the realm of uncertainty and could not be determined by this case, as the first trial, by reason of actions of defendant not pertinent hereto, resulted in a mistrial.

It was, therefore, necessary that the case be retried, and at the beginning of the second trial, upon motion of the government, the defendant was committed to Saint Elizabeths Hospital over a weekend for a determination both of his competency to stand trial and his mental condition at the time of the alleged offense. This time, the defendant cooperated, and the staff reached the opinion that he was competent to stand trial, but "because of the brief duration of his hospitalization" [54] was unable to render an opinion as to whether the defendant was suffering from a mental illness on the date of the offense or whether the offense was the product of such illness, if any. The determination of competency to stand trial, however, was made "on the basis of psychiatric examinations which indicate that there is no disturbance of thought processes or of his emotional reactions. There is no evidence of hallucinatory or delusional experiences at the present time or in the past. Perception, comprehension and orientation were considered normal." [55]

Again, as at the first trial, the Government was unable to provide any expert testimony relative to defendant's mental condition at the time of the offense. The only expert testimony available to the Government as to his mental condition related solely to his competency to stand trial, and, under *Durham* v. *United States*, *supra*, this is inadmissable at the trial stage on the issue of his mental condition at the time of the offense. Therefore, with no expert testimony from the Government involving defendant's mental condition at that time, and having before it only the uncontroverted expert testimony offered by defendant that he was insane within the *Durham* rule,[56] the jury had no

[54] Letter from Superintendent of Saint Elizabeths Hospital to Clerk of Criminal Division, United States District Court, dated September 10, 1965 and filed September 20, 1965.

[55] *Ibid.*

[56] Whenever the words "insane" or "insanity", or "sane" or "sanity" are used herein, they are used as a shorthand method of expressing the meaning contemplated under the *Durham* rule, embracing both mental condition and productivity.

alternative but to find defendant "not guilty by reason of insanity." This was the verdict, and defendant was committed to Saint Elizabeth's Hospital pursuant thereto on September 23, 1965. He then cooperated with the psychiatrists at the hospital, who found he was not insane. Three and a half months later, on January 12, 1966, he was unconditionally released from custody, pursuant to the statute, *supra*, upon certification of the Superintendent of Saint Elizabeth's Hospital that defendant was not suffering from an abnormal mental condition at that time and would not be dangerous to himself or others by reason of mental disorder in the reasonably foreseeable future and that he was entitled to unconditional release.

The shocking character of this particular case, standing alone, is probably sufficient to justify a change in the law to prevent a recurrence. But aside from the character of this or any particular case, there seems to be no escape from the conclusion that the burden now resting upon the prosecution to establish sanity beyond a reasonable doubt cannot be carried, when a defendant, by the simple device of refusing to cooperate, prevents the government from obtaining expert testimony of his mental condition; and a verdict of "not guilty by reason of insanity" is inevitable. In this manner any uncooperative defendant who has the advantage of uncontroverted independent psychiatric testimony of insanity, which later may be found not to be in accord with the views entertained by the psychiatric staff of the mental hospital to which he will be committed upon a verdict of not guilty by reason of insanity, may escape all punishment except perhaps a few months' incarceration in the hospital while the psychiatrists there, with his then willing cooperation, make the necessary examinations to determine his mental condition. Nor can the example of the *Schurmann* case, above given, be classified as an isolated instance of a miscarriage of justice which should not be made the basis for any change in an otherwise desirable law, for this uncooperative-defendant procedure has been encountered in other cases. Indeed, it takes no prophet to assert that it will be followed more and more frequently, now that independent expert testimony is provided for at government expense for indigent defendants under the Criminal Justice Act of 1964, 18 U.S.C. 3006A(e)[57] hereinafter discussed. Also, it is well known that astute lawyers are quick to embrace and take advantage of procedures of this kind which inure to the benefit of their clients.

It will thus be seen that under the new Criminal Justice Act, *supra*, any indigent accused, after obtaining private psychiatric examination at the expense of the government, can prevent the government from obtaining its own expert testimony by refusing to cooperate. Thus, in *all* criminal cases involving the insanity defense, the accused under existing law can effectively render the government powerless to offer expert testimony on the issue of insanity.[58]

I do not believe that a change in the burden of proof, as recommended, would alone solve this uncooperative-defendant problem, and, in my opinion, something more is necessary in the form of a sanction. More particularly, assuming that the burden of proof of insanity by a preponderance of the evidence should be placed upon the defendant, he could still, in a less forceful way than at present, probably carry his burden of proof and produce the same result as at present by refusing to cooperate with the government psychiatrists. By such tactics he erects a wall against any psychiatric testimony except that which favors him, and by changing the burden of proof the only difference would be that the burden would be shifted to him to rebut the presumption of sanity and to establish his insanity by a preponderance of the evidence. This might prove a little more difficult for a defendant than the present requirement placing the burden upon the Government to establish sanity beyond a reasonable doubt, but that is about all it would do, and alone would not solve the uncooperative-defendant problem. In addition it should be noted that, by this expedient, a defendant can circumvent the judicially imposed duty of the government to insure a proper mental examination when the accused's mental condition is in issue.[59]

---

[57] "Upon finding . . . that the services [of an expert] are necessary and that the defendant is financially unable to obtain them, the court shall authorize counsel to obtain the services on the behalf of the defendant. . . . The court shall determine reasonable compensation for the services and direct payment to the person or organization that rendered them. . . ." 18 U.S.C. 3006A(e) 1964.

[58] See Note. *Pretrial Mental Examination and Commitment, Some Procedural Problems in the District of Columbia*, 51 Geo. L. J. 143 (1962).

[59] *Cf.*, Krash, *supra*, note 23 at 918–921.

Therefore, I believe that a legislative sanction is necessary. There is nothing revolutionary about this, and in that connection two provisions of the D.C. Code are of parallel significance, as follows:

Under § 22–3506(a), a defendant examined under sexual psychopath legislation must answer questions by psychiatrists under penalty of contempt of court. Section 14–307 (Supp. V, 1966), setting forth the physician-patient privilege, provides that such privilege does not apply to "evidence relating to the mental competency or sanity of an accused in criminal trials where the accused raises the defense of insanity. . . ."

As a means of correcting this anomaly in our judicial system which is created by a defendant's refusal to cooperate, and by way of sanction, I would recommend that legislation should be enacted providing that any defendant who intends to present psychiatric testimony of his incompetency to stand trial or of his lack of criminal responsibility shall be required to submit himself for examination at reasonable times and places by the psychiatrists on the staff of Saint Elizabeths Hospital or otherwise selected by the Government [60] and to cooperate in their examination to the extent of answering questions propounded by them, and that failure to do so will be the basis for excluding the psychiatric testimony tendered by defendant, unless the court after a hearing determines that his mental condition is such as to excuse such failure. A similar sanction is proposed in the A.L.I. Model Penal Code, § 4.02(2), where the defendant fails to give timely notice of his intention to rely on an insanity defense.

I am of the opinion that legislation of this character would not run afoul of the defendant's fifth amendment right against self-incrimination [61] for the following reasons:

Section 18–4244 U.S.C. (passed in 1949) (1964), provides that a Court may order an accused committed for psychiatric examination, with or without his consent, but that no statement made by him in the course of such examination on the issue of guilt shall be admitted in evidence against him. While this is a federal statute, it has application to the District of Columbia.

Section 24–301, D.C. Code (1961 Ed.) likewise provides that the District Court may commit an accused for psychiatric examination, and § 14–307, D.C. Code (1961 Ed. Supp. V, 1966), as already mentioned, prohibits, without consent of the patient, disclosure by a physician of any confidential information received by him from the patient, except evidence relating to the sanity of an accused in criminal trials where the accused raises the defense of insanity.

The two sections of the D.C. Code are silent as to statements made by the accused with respect to guilt of the offense charged, but the Court of Appeals in *Edmonds* v. *United States*, 104 U.S. App. D.C. 144, 146 (1958), has held that it was clear that Congress in enacting these statutes meant to remove the privilege from statements relative to mental competency or sanity, but to retain privileged statements relevant to the issue of guilt or innocence.[62]

By the qualification in the federal statute and by the Court of Appeals decisions, these statutes requiring compulsory examination are saved from invalidity under the fifth amendment because incriminating statements made by the accused to a psychiatrist as to guilt are excluded from evidence.

---

[60] Under the 1966 amendments to Federal Rules of Criminal Procedure, Rule 16, the defendant, upon motion may be permitted to discover and copy ". . . (2) results or reports of . . . mental examinations" made by the government. Thus the defense will not be surprised at trial by "unfamiliar" medical testimony and they are afforded opportunity to prepare their examination of the experts.

[61] There are state cases to the contrary, *e.g.*, *State* v. *Olson*, —— Minn. ——, 143 N.W.2d 69 (1966); *French* v. *District Court*, 153 Colo. 10, 384 P. 2d 268 (1963); see also Danforth, *Death Knell for Pre-Trial Medical Examination? Privilege against Self-Incrimination*, 19 Rutgers L. Rev. 489 (1965). These authorities, however, may readily be distinguished since the state statutes do not protect the defendant's privilege against self-incrimination, as is the case in this jurisdiction, and thus the holding of these courts is the mode of enforcing such privilege. See text discussion, *infra*. But the state cases on this point are by no means uniform. See *e.g.*, *State* v. *Grayson*, 239 N.C. 453, 80 S.E.2d 387, 390 (1954), "self-incrimination . . . does not extend to . . . mental condition as evidence when such evidence is relevant and material, even when such evidence is obtained by compulsion."

[62] See also, *Carey* v. *United States*, 111 U.S. App. D.C. 300 (1961). Compare, *Schmerber* v. *California*, 384 U.S. 757 (1966), where the privilege was not violated by extracting blood from a suspected drunken driver against his will. It was held that the privilege applied only to "evidence of a testimonial or communicative nature . . . ." But here communicating is only a means for obtaining the same character of "internal" evidence allowed in *Schmerber* and has to be free of incriminating statements to be admissible.

Therefore when an accused under an order of the court refuses to be examined, a sanction prohibiting the testimony of a private psychiatrist would be a means of enforcing obedience to the court order. There might be other means, such as contempt of court, which likely would be inadequate under circumstances such as those here involved and certainly would delay the trial, but the court is not limited to one means only.

For these reasons, I see no constitutional impediment to applying the sanction here suggested.

Moreover, an accused is not compelled to raise the insanity defense, but when he does he impliedly "waives" the right to object to a compulsory examination,[63] and therefore the court may impose sanctions to compel obedience. The theory of this waiver is bottomed on the need to protect society's interest where the defendant intends to rely on the defense of insanity by giving the prosecution the information, and thereby the ability, to rebut that defense, if spurious. Clearly, to foreclose this information from the prosecution under these limited circumstances where the defendant's fifth amendment rights are protected by holding inadmissible declarations not germane to the mental issue, and where there is but a single source of information, namely the compulsory examination, would frustrate the prosecution from bearing whatever burden of proof may be assigned to it. If a defendant were allowed to refuse to cooperate and still have a psychiatric defense, a trial would no longer be a search for truth, but would be a one-way street to his early freedom.

The recommendations made in this Minority Report are consistent with the proscription against punishing a person so mentally ill[64] that he is incapable of making a decision.

The foregoing constitutes my Minority Report and recommendations on the *Durham* rule.

I am authorized to state that Commissioner Bittinger concurs in this Minority Report.

I am also authorized to state that Commissioner Ballard agrees with me on the burden of proof question.

I am further authorized to state that the Chairman, Commissioner Miller, concurs in my report on the *Durham* rule. He, though, would require the defendant to introduce substantial evidence before he could avail himself of the insanity defense, but would still require the government to meet its "traditional" burden of proof. He also feels the American Law Institute test, *supra*, is superior to *Durham*, but he recognizes the validity of the problems I raise in my analysis.

ADDENDUM II: THE DURHAM RULE

Specific comment on the majority report[65]

The Minority Report on the *Durham* rule was written before the Majority Report of the Commission was submitted to me in final form, and this memorandum contains comments on, and answers to, some portions of the Majority Report.

As I read their report, the Majority contention is that insanity law in this jurisdiction has evolved under *Durham-McDonald* into a workable standard and that problems with the insanity defense have been largely settled. In other words, the Majority appears to believe that we have reached a state of reasonable perfection, and that, with one minor exception hereinafter referred to, no changes are necessary or desirable. I disagree, for the reasons set forth in the Minority Report, but shall also specifically answer in this addendum some of the points made by the Majority, as follows:

The Majority Report states that the "*Durham* rule does not appear to offer a readily available opportunity for criminal offenders to escape the consequences of their acts." I do not understand the meaning exactly intended to be conveyed by the expression "readily available opportunity," but if it means "easily" available, which is one of its dictionary meanings and which I think is the meaning

[63] See Note, *supra*, fn. 58 herein at 145–146, and State Statutes from 23 states and cases cited therein.

[64] See *Overholser* v. *Lynch*, 109 U.S. App. D.C. 404, 409 (1961), *rev'd on other grounds*, 369 U.S. 705 (1962).

[65] I regret that I am generally unable to give the page and table numbers herein where I refer to the Majority Report. That report had not been printed at the time this addendum was prepared.

intended, it appears from the Majority's own statistical table that the *Durham* rule has been available and is utilized in a significant number of cases. That table shows that from District Court 5.5% of defendants found not guilty by reason of insanity were classified by Saint Elizabeths to be without mental disorder and that 24.1% were diagnosed as suffering from personality disorders. The total of these two figures is nearly 30% of all defendants found not guilty by reason of insanity in District Court and, in numbers, this 30% represents 107 defendants. The 5.5% figure alone, namely those who were found to be "without mental disorder" is significant to me, especially if the charge is murder. It might reasonably be assumed that some of the 5.5% were charged with this crime since the Majority's statistics show that of those charged with murder and found not guilty by reason of insanity, three were released in less than six months and four were released in less than a year. Further, every defendant in the 5.5% classification was charged with a felony, for that is the only category of crime over which District Court has jurisdiction and the table relates to District Court cases only.

As for the 24.1% of the defendants committed to Saint Elizabeth's who were diagnosed as having personality disorders, all of them, as pointed out in the Minority Report, cannot be classified as so mentally ill as to be ineligible for release. In fact, Dr. Owens, of Saint Elizabeths Hospital, in his address, referred to and quoted from in part in the Minority Report, spoke of the difficulty of drawing the line between those mentally ill and those not mentally ill who are in the category of persons suffering from personality disorders.[66] He said that "the jails, as well as the community, are filled with individuals having personality disorders." He further stated "once you say these individuals are sick, you have a hospital full of sociopaths or other types of personality disorders . . . to the point that we would almost do away with the jails because nearly all prisoners would be in the hospital under this definition."

Further, it appears from the Majority's statistics that in fiscal 1965, in District Court, there were 35 verdicts of not guilty by reason of insanity in a year in which there were 265 convictions resulting from a trial. Therefore, stating these numbers as an approximate ratio: for every 8 defendants convicted at trial, 1 defendant is found not guilty by reason of insanity. Accordingly, I do not perceive how these statistics prove the conclusion reached by the Majority on this point. Certainly the number of defendants whose criminal behavior is excused under the *Durham* standard can hardly be characterized as "relatively small" as stated by the Majority Report.

The Majority Report of the Commission speaks of the declining number of persons "absolved on grounds of insanity" since the *McDonald* case was decided in October 1962. The decline was irregular from 53 to 23, to 35, to 26. To be sure this is a decline, but not one sufficient to indicate that the problems have been largely settled since the *McDonald* decision, as would seem to be the general tenor of the Commission's Report, particularly when the types and seriousness of the crimes involved are considered.

The Majority Report states that no person acquitted by reason of insanity may be released "without prior approval of the court." I assume that this is included in order to give the impression that improvident releases are guarded against by this requirement. But the Majority Report does not state that court approval is necessarily predicated upon what is brought to its attention and when the psychiatrists report that such a person is without mental disease, and there is no evidence to the contrary, approval by the court becomes a perfunctory matter. This is the case in most instances. It could not be otherwise in the case of a defendant against whom the Government was unable to provide evidence removing a reasonable doubt from the jury's mind and yet is eligible for release under the criteria for release, all as fully discussed in the Minority Report as such.

Attempting to establish that defendants found not guilty by reason of insanity spend more time as patients in Saint Elizabeths Hospital than convicted defendants spend in jail has been an important goal of the Majority in the portion of the chapter dealing with "Duration of Confinement." Their reasons are ob-

[66] While this address by Dr. Owens is cited by the Majority (footnote 38) it is interesting to note that they do not mention nor apparently do they give credence to his airing of the *many* problems involved with this class of mental patient.

vious: this thesis, if proven, would give support to their major conclusion that the *Durham* rule needs no substantial revision. They further intended to show that it is not to the defendant's advantage to plead insanity because it will cost him more, in time institutionalized, than if he faced a jail sentence. The majority has never been able to support this, but they have been unrelenting in their attempts. The methods employed to prove this thesis have precipitated considerable controversy between the staff and the Majority on one side and the Minority on the other side. This controversy resulted in many drafts and revisions by the Majority of both the approach used to prove their point, and in the subsequent dilution of the conclusion to be drawn from the "available" statistics.

In the early drafts of this section the text and tables clearly stated the Majority's now abandoned view, that "[t]able 10 [what is now table 9] shows that . . . the median length of insanity acquittal commitment is longer than the median imprisonment of a conviction felon in the District of Columbia and in the Nation as a whole."

Still, this portion as it has now evolved, in its present state, must have fault taken with the accuracy of the statement attributed to the Saint Elizabeths' statisticians[67] and with even the diluted versions of the tables and the conclusion that "[if] this measure is relied upon, the median confinement at Saint Elizabeths Hospital appears to be greater than the median confinement of District felons in prison in every crime category with the very important exception of homicide and the less important exception of forgery, 'other felonies,' and possibly narcotics."

In an independent discussion with the chief statistician from Saint Elizabeths Hospital on November 30, 1966, it was learned that he feels the "all patients" category (column 3 in the Majority's table 9) which is principally relied on by the Majority for comparison to the prison data, does best represent the situation at the hospital. But this "all patients" category, he stated, is weighted to make it comparable to similar data. The weighting is necessary, said the Saint Elizabeths statistician, due to the short period of experience (12 and a fraction years) the hospital has had under *Durham*. Whether or not the "all patients" medians are subject to a fair comparison with only a sampling of the prison population,[68] as he put it, "still presents a question." Thus, while the Majority states that the "all patients" column is most comparable to "*prison sentences served by felons*," this does not mean that the weighted Saint Elizabeths medians are necessarily comparable to the partial population used by the "National Prisoner Statistics" which is unweighted. (See footnote 68.) In this regard the readers should be aware that the authors of the National Prisoner Statistics were wary of comparisons between the District of Columbia and the states. They footnote that: "Although the District of Columbia had the highest median served, the *comparison with other jurisdictions is spurious* in that it is the *only jurisdiction which deals with* an exclusively urban population." (Emphasis added.)[69]

The Saint Elizabeths Hospital statistician is of the opinion that sufficient data are available to make a valid comparison between the two populations (prison and hospital) and that this data could be presented in a manner, as he said "which would make for a more legitimate comparison." Although the Saint Elizabeths Hospital statistician does not approve of the following table (other statistical experts have approved of this presentation of the data) he would choose a method similar to the one herein set forth. He too would work in percentages of releasees for both populations over a given period.[70]

---

[67] This is not the first occasion that even a cursory independent investigation has shown a lack of accuracy.

[68] The Majority gives three columns of medians. Principally they rely on the "all patients" medians which encompasses patients *both released and still hospitalized*. The prison population medians given by the "National Prison Statistics" are for prisoners *released only*. Thus, the Majority, speaking figuratively, compares oranges and onions.

[69] The nature of exclusively urban crime varies from the nature of state crime which is both urban, suburban and rural. Further density of population per square mile is a factor. In the District of Columbia the density of population per square mile is 12,523; in the most densely populated of the 50 states, Rhode Island, it is 812.4; and in the entire United States it is 50.5. *The Random House Dictionary of the English Language*, (unabridged ed.) N.Y. 1966, p. 1950, based on the 1960 census.

[70] The Saint Elizabeths Hospital expert questions the effect the percent of the population in the "5 year and over" category would have on the percentages in the other categories. He is wary of the fact that no one in Saint Elizabeths Hospital could have been confined more than 12 years while this is not so for the prison population. The Minority, of course, were limited by using only what was made available to us by the staff (table 8) and could only present it in what we believe to be a more honest fashion.

Without belaboring the question further, it would appear that a more valid comparison of this data is that of time served by felony prisoners before first release with the time served by those acquitted by reason of insanity before first release. Such a table showing the *percent of persons* so *released within a given time interval follows:*

TABLE II.—*Percentile time served by felony prisoners before first release*

	Total number	Time served (percent)					
		Less than 1 year	Less than 2 years	Less than 3 years	Less than 4 years	Less than 5 years	5 years and over
National prisons	[1] 65,201	20.5	58.0	77.7	86.9	91.3	8.7
District of Columbia prisons	[1] 645	10.2	34.1	52.7	66.9	79.6	20.5
St. Elizabeths	[2] 203	23.6	52.3	73.9	88.2	95.6	4.4

[1] "National Prisoner Statistics," p. 68, table R2-1960.
[2] Data compiled by the Commission's staff from Saint Elizabeths records, current to Dec. 31, 1965.

The Minority believes that the table above graphically, definitely and fairly demonstrates that persons released from the District of Columbia prisons after felony confinement generally serve longer terms than those released from Saint Elizabeth's Hospital after a verdict of acquittal by reason of insanity. The same is true in 3 out of the 5 time categories for all felony prisoners in the United States.

The Majority Report also states that "[t]he *Durham* test, as amplified by *McDonald*, is similar to the 'substantial capacity standard' of the American Law Institute." It may be similar but it certainly is hardly its equivalent, as seems to be the impression sought to be conveyed. The American Law Institute Model Penal Code, Section 4.01, reads as follows:

"(1) A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality [wrongfulness] of his conduct or to conform his conduct to the requirements of law.

"(2) . . . the terms 'mental disease or defect' do *not* include an abnormality manifested only by repeated criminal or otherwise antisocial conduct."

The *McDonald* decision amplifies the *Durham* test as follows:

"A mental disease or defect includes any abnormal condition of the mind which substantially affects mental or emotional processes and substantially impairs behavior controls."

It is thus seen that, unlike *Durham-McDonald*, under the A.L.I. standard, many of the 24.1% of defendants who are diagnosed as suffering from personality disorders would not be among those acquitted by reason of insanity.

The Majority Report also states that under "the *Durham* test, it is for the jury to determine *whether* a defendant with the personality traits of a sociopath suffers from a mental disease such that he should be held criminally responsible." This is not a correct statement of the law, because the jury does not make any such determination, but only determines whether the Government has or has not, established *beyond a reasonable doubt* that the defendant is *not* suffering from such a mental disease. It does not determine his insanity or mental incapacity. (*Green* v. *United States*, 122 U.S. App. D.C. 33, 35 (1965)). This is quite different from determining *whether* a defendant is suffering from a mental disease. The difference in concept is amplified in the Minority Report.

The Majority Report states that since the *McDonald* decision, "insanity acquittals have stabilized at 2 to 3% of all defendants." It is therefore apparently concluded that the *Durham* rule is not an improtant factor in law enforcement, and nothing need be done about it. The Majority Report supports this conclusion by statistics, which, in its view disclose that the impact of *Durham* is minimal.

I challenge the validity of this conclusion arrived at from these statistics. The "2 to 3%" referred to is the percentage of *all* defendants whose cases were *terminated*. This includes all types of dispositions including the many which are dismissed and those in which defendants elect to plead guilty to lesser offenses

or to fewer counts. The latter usually is induced by a belief on the part of the defendant that it is in his best interest to make such a disposition, irrespective of his possible defenses, rather than to stand trial on the indictment. The cases which are dismissed or result in a plea to lesser offenses or fewer counts would not be a proper comparable for determining the impact of *Durham*, as they are not in the stream of criminal trials. It would have been more meaningful, but by no means conclusive, in determining this impact to compare the percentage of the number of persons found not guilty by reason of insanity with the number of persons "tried." Since *McDonald* 9.5% of the defendants tried have been found not guilty by reason of insanity.

A similar comparison is made in another context in the Majority Report where the overall impact of *Durham* is being discussed, but such a comparison is not made at this point to support the finding that "insanity acquittals have stabilized. . . ." Overall, the Commission's table of statistics disclose that for the period, 1954–1965, the number of persons "*tried*" was 5,588 and the number of persons whose cases were "*terminated*" was 17,208, and that the percentage of the number of persons found not guilty by reason of insanity was 6.5% of the defendants whose cases were "tried." This is 209% greater than the 2.1% figure used. The total number of persons found not guilty by reason of insanity for this period was 361. Further, the Majority Report includes tables which are based on fiscal year 1954. This was the year prior to *Durham* and it is thus improper to measure *Durham's* current effect by statistics *Durham* did not affect.

Aside from percentages, this is a significant number and hardly minimal as seems to be the purport of the Majority Report.

Be that as it may, the hard fact remains, according to the Majority's own statistics, that of the 53 defendants charged with murder and found not guilty by reason of insanity, 3 spent less than 6 months in the hospital before release, 4 spent less than 1 year, 7 spent between 1 and 2 years before release, 5 spent between 2 and 3 years before release, 5 spent between 3 and 4 years before release, and 3 spent between 4 and 5 years before release. The maximum penalty for murder in the first degree is death, and the minimum penalty is life imprisonment. The maximum penalty for murder in the second degree is imprisonment for life, or not less than 20 years. This disparity in this most serious of all crimes, between the time spent by those found not guilty by reason of insanity, and the penalties is apparent.

The Commission's table of statistics show the same pattern of disparity in relation to the time spent in the hospital by defendants found not guilty by reason of insanity who were charged with the serious crimes of rape, robbery, housebreaking and aggravated assault. As the Commission's table does not give the maximum penalty for these offenses I set them forth, for comparison, as follows: rape, not more than 30 years or the death penalty where the jury adds that to their verdict; robbery, 15 years but not less than 6 months; housebreaking, 15 years; assault with intent to kill, etc., 15 years; assault with a dangerous weapon, 10 years.

Further, may I point out that 52.4% of the persons found not guilty by reason of insanity were charged with the crimes of murder, robbery, housebreaking or aggravated assault. Since the *Durham* decision, 16.6% of all persons charged with murder have been found not guilty by reason of insanity. This proportion is considerably higher than the ratio for any other crime category. Almost twenty-five percent of those released from the hospital under District Court commitments involving felonies have been released in less than 1 year.

On the basis of the foregoing it is difficult to understand the apparent conclusion reached by the Commission in its report that the impact of the *Durham* rule is not an important factor in law enforcement. Congress felt that *Durham's* impact was sufficient enough to merit adoption of the American Law Institute standard as set forth in the Omnibus Crime Bill of 1966, since vetoed. Further, let it be repeated that, not only numbers or percentages, but the character of the crimes involved has a significant impact.

The Majority Report does support one proposal (and is the only change it recommends) that a defendant shall give written notice to the District Attorney of his intention to rely upon the defense of insanity, if there be no court order for mental examination. This requirement was contained in the Omnibus Crime

Bill recently passed by Congress. The Majority Report recommends adoption of this provision. I likewise favor this proposal, but the difficulty is that it does not reach the problems involved, and is probably proposed by the Majority as a diversionary tactic of recommending something to escape responsibility for recommending nothing when a remedy is sorely needed. Certainly, it would not be sufficient if the defendant, as mentioned in the Minority Report, acquires "some evidence" on which to secure a verdict of acquittal by reason of insanity and is yet able to meet the standards for early release. This would be particularly true of the mild cases of personality disorders which, as stated, comprise almost 25% of those found not guilty by reason of insanity.

In addition, in the vast majority of cases, the notice would be useless. Sixty-eight percent of the defendants proceed at government expense, and a court order would be required in those cases for a mental examination either by the psychiatrists at Saint Elizabeths Hospital or outside psychiatrists. In most of the remaining cases where insanity is a defense, defendants have in the past, as a matter of practice, obtained court orders for examination by the psychiatrists at Saint Elizabeths Hospital. In both instances the District Attorney would necessarily have notice.

The Majority Report opposes any change in the burden of proof. The Majority does not wish to depart from the "traditional" burden of proof. This seems strange to me coming as it does from those who find little or no flaws in the *Durham* rule, which in itself was a departure from tradition. The Minority Report has discussed fully the reasons and need for a change in the burden of proof, and there is no need to say more, except on one point not covered, viz.: The Majority Report speaks of the burden of proof being upon the prosecution in all federal courts, apparently to support its view that there should be no change. Of course the burden of proof is on the prosecution in all federal courts under the Supreme Court decision placing it there, as pointed out in the Minority Report (*Davis* v. *United States*, 160 U.S. 469 (1895)). But no other federal court has adopted the *Durham* rule and in federal court other than the *District of Columbia*, has had the experience and problems under which it makes the need for the legislation recommended for a change in the burden of proof.

In opposing any change in the burden of proof, the Majority Report reaches the conclusion that "there is a substantial question" whether such a change "would be upheld by the Supreme Court." It recognizes that the Supreme Court has decided contrary to this conclusion in upholding a state statute requiring defendant to prove sanity beyond a reasonable doubt (*Leland* v. *Oregon*, 343 U.S. 790 (1952)), but relies on a dissenting opinion in that case, as the basis for the doubt expressed by the Majority. I do not possess the omniscience of the Majority in forecasting the future, and therefore do not believe that we should hesitate to recommend a needed change on the basis of a prediction that the Supreme Court will, in effect, overrule what it has already decided because of a dissenting opinion.

The Majority Report states that "the Court emphasized in *McDonald* that the issues should be left in the hands of the jury." This leaves the reader with the impression that the jury in all events will decide the issue and that it can be safely left in its hands. This is, in effect, an assertion that directed verdicts of acquittal are abolished. I do not read the *McDonald* case that way and refer to the quotations therefrom in the Minority Report in refutation of this statement. Directed verdicts of acquittal are still part of the law, and a case still must be taken from the jury by a directed verdict of acquittal by reason of insanity if it meets the requirements of *Curley* v. *United States*, 81 U.S. App. D.C. 389 (1947).

So far as the uncooperative defendant is concerned, the Majority Report states that it "believes" that the "prosecution should be permitted to prove and comment upon the defendant's refusal to cooperate in the examination." It is interesting to note that the Majority reaches this "belief" as to what should be done, but makes *no* recommendation as to how it should be accomplished, whether by legislation or hope for a judicial pronouncement, and leaves in limbo any solution to this most important problem exemplified by the *Schurmann* rape case referred to in the Minority Report.

The Majority Report states that "sanctions which aim at compelling cooperation are permeated with constitutional problems." I have discussed this question

in the Minority Report and further discussion would be repetitive, but I am mystified that the Majority Report finds sanctions of the kind suggested by me to be "permeated with constitutional problems" when it sponsored a requirement for a written notice (prior to the passage of the D.C. Omnibus Crime Bill) when the defendant intends to rely on the insanity defense *with the sanction that failure to give such notice would deprive defendant of that defense.* The proposal in the Minority Report is not that broad. It would only deprive the defendant of the psychiatric testimony upon failure to cooperate and *not* deprive him of the defense, which might be successful in cases where a defendant is obviously psychotic, in the absence of psychiatric testimony. There is another exception in my proposal to exclude only the psychiatric testimony, and that is in cases where the court after a hearing determines that defendant's mental condition is such as to excuse his failure to cooperate. That is not contained in the broad sanction espoused by the Majority Report for failing to give notice.

The foregoing constitutes my comments and direct answers to some of the points raised by the Majority Report.

AUGUST 7, 1967.

HON. ALAN BIBLE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR BIBLE: In answer to Mr. Malone's telephone inquiry of last week about the correctness of the statement by two St. Elizabeth's Hospital psychiatrists who have stated that the *Durham-McDonald* Rule is an escape hatch for criminals, I report to you as follows:

1. In fiscal 1966 and 1967 there were 106 and 175 motions, respectively, filed by defendants for mental examinations, about 90% of which were granted. Experience shows that a majority of these motions were not warranted, and were filed either for purposes of delay or to enable the defendant to assert every conceivable defense. After reports of these examinations are received by the Court the defense is generally abandoned.

2. Jury verdicts indicate a reluctance by juries to freely accept the insanity defense. The last five fiscal years reflect this conclusion, as shown by the following statistical summary in three columns showing the number of verdicts of not guilty by reason of insanity sustained by (1) the trial court sitting without a jury, (2) by a jury, and (3) by direction of the Court:

	(1) NGBRI trial by court	(2) NGBRI trial by jury	(3) NGBRI directed by court
1963	35	15	3
1964	19	7	1
1965	36	2	0
1966	22	4	0
1967	36	2	0

(Column (1) is made up of those cases in which the Government did not really contest the issue of insanity, such as where the psychiatric staff-conference-reports show an unanimous opinion of insanity and the Government has no other evidence to dispute it.)

In some cases a defendant has had multiple trials and has repeatedly asserted the insanity defense supported by medical testimony, and in each instance the denfse was rejected by juries. (See *Naples* v. *United States*, U.S. Ct. of App. No. 20,312, decided July 25, 1967.)

If I can furnish you with any additional information, please be assured of my cooperation.

Sincerely yours,

DAVID G. BRESS,
U.S. Attorney.

Not guilty by reason of insanity admissions to St Elizabeths Hospital by fiscal year *

July 1, 1954 to June 30, 1955	8
July 1, 1955 to June 30, 1956	16
July 1, 1956 to June 30, 1957	10
July 1, 1957 to June 30, 1958	23
July 1, 1958 to June 30, 1959	43
July 1, 1959 to June 30, 1960	86
July 1, 1960 to June 30, 1961	113
July 1, 1961 to June 30, 1962	91
July 1, 1962 to June 30, 1963	70
July 1, 1963 to June 30, 1964	54
July 1, 1964 to June 30, 1965	81
July 1, 1965 to June 30, 1966	51

* Source: David J. Owens, M.D., Clinical Director, John Howard Division, St. Elizabeths Hospital, Washington, D.C.

AUGUST 16, 1967.

Re Explanation of alleged disparity between United States Attorney and St. Elizabeth's figures on persons found not guilty by reason of insanity.

Sen. ALAN BIBLE,
Senator District Committee, U.S. Senate, Washington, D.C.

DEAR MR. MALONE: In accordance with your request, this letter is to confirm our telephone conversations in which, based on figures furnished to me by St. Elizabeth's Hospital (Mr. Stewart, Biometric Branch), I am able to reconcile those figures with the figures heretofore issued by my office concerning the number of persons found not guilty by reason of insanity. The principal reason is that the St. Elizabeth's figures include all Courts whereas my figures relate only to the United States District Court for the District of Columbia. The following comparison reflects the reconciliation of the figures given by my office and the figures furnished by St. Elizabeth's:

Fiscal year ending—	St. Elizabeths	U.S. attorney	U.S. district court	District of Columbia court of general sessions
1965	81	38	38	44
1966	51	26	26	24
1967	60	38	38	22

You will note my letter of August 7 to Senator Bible in which I furnish a breakdown of the United States District Court cases into three categories which for the three fiscal years 1965 through 1967 shows that in jury trials there were returned jury verdicts of not guilty by reason of insanity in only two cases in fiscal 1965, four in fiscal 1966, and two in fiscal 1967.

Dr. Pratkin of St. Elizabeths indicated to me today that the "escape hatch" characterization does not apply to actual trials but was intended to apply only to the ease with which defendants obtain orders for commitment for purposes of mental examination.

Sincerely yours,

DAVID G. BRESS,
U.S. Attorney.

AUGUST 17, 1967.

Re Supplementary letter to explain alleged disparity between United States Attorney and St. Elizabeth's figures on persons found not guilty by reason of insanity.

Mr. OWEN J. MALONE,
Senate District Committee,
U.S. Senate, Washington, D.C.

DEAR MR. MALONE: This will supplement my letter to you of yesterday concerning statistics on verdicts of not guilty by reason of insanity.

I have today obtained from the Clerk of the D.C. Court of General Sessions current figures for the first seven months of calendar 1967 showing that there were 20 defendants sent to St. Elizabeth's by reason of verdicts of not guilty by reason of insanity. For the same seven months' period 27 persons have been sent to St. Elizabeth's from the United States District Court.

I hope you find this information of some assistance.

Sincerely yours,

DAVID G. BRESS,
U.S. Attorney.

Criminal trials completed during fiscal years 1963–67 in the U.S. District Court for the District of Columbia

Fiscal year	Nonjury	Jury	Total
1963	57	315	371
1964	42	412	454
1965	55	352	407
1966	28	406	434
1967	59	422	481

Source: Annual reports of the Director of the Administrative Office of the U.S. Courts for fiscal years 1963–67.

DISTRICT OF COLUMBIA COURT OF GENERAL SESSIONS,
October 10, 1967.

Mr. OWEN MALONE,
Chief Counsel, Senate District Committee,
New Senate Office Building,
Washington, D.C.

DEAR MR. MALONE: Following is a list of jury trials held in the Court of General Sessions for January 1, 1965 through June 30, 1967. They are broken down into fiscal years although I am unable to furnish the first six months of fiscal year 1965. I am also including a list which will show the number of cases filed with each corresponding fiscal year.

	1965	1966	1967
July		24	63
August		21	61
September		27	65
October		13	63
November		34	34
December		33	34
Total, 1st half fiscal year		152	320
January	13	34	73
February	60	24	71
March	51	50	73
April	30	76	81
May	28	75	76
June	37	39	64
Total, 2d half fiscal year	219	298	438
Total, fiscal year		450	758

Cases filed:

Jan. 1 through June 30, 1965:

District of Columbia	18,681
Traffic	17,809
United States	5,680
Total	42,170

Cases filed—Continued

July 1, 1965, through June 30, 1966:	
District of Columbia	38,417
Traffic	39,095
United States	11,453
Total	88,965
July 1, 1965, through June 30, 1967:	
District of Columbia	29,691
Traffic	33,514
United States	12,309
Total	75,514

I have broken the number of cases filed into three categories—District of Columbia traffic and United States. The purpose of this is to show that even though we have had a decrease in the total number of cases filed, there has been an increase in the number of U.S. cases filed. This means that the workload of the judges has not decreased in the same proportion as the number of cases filed. The higher percentage of jury trials is in U.S. cases.

I hope that this will be sufficient for your purposes. If I can be of further assistance in any other way, please feel free to call upon me.

Very truly yours,

JOSEPH M. BURTON,
Clerk of the Court.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
SAINT ELIZABETHS HOSPITAL,
Washington, D.C., August 8, 1967.

Senator ALAN BIBLE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR BIBLE: Pursuant to a recent telephone conversation with Mr. Owen Malone of the District of Columbia Committee, I am enclosing copies of letters sent to Honorable David A. Pine. These letters were sent by Doctor Mauris M. Platkin and me concerning the Minority Report of the President's Commission on Crime in the District of Columbia. We have both strongly supported Judge Pine's position and urge that the District Committee place the burden of proving insanity upon the defendant.

Sincerely yours,

DAVID J. OWENS, M.D.
Clinical Director, John Howard Division.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
SAINT ELIZABETHS HOSPITAL,
Washington, D.C., March 23, 1967.

Hon. DAVID A. PINE,
U.S. District Court for the District of Columbia, U.S. Courthouse,
Washington, D.C.

DEAR JUDGE PINE: I have recently completed reviewing both the Majority and the Minority Reports of the Crime Commission findings and I wanted to take this opportunity to express some of my views concerning the Minority Report. Needless to say, I agree with you, as you no doubt were aware from reading the talk that I gave before the National District Attorneys' Association. I become more and more disillusioned with the whole affair as times goes on and believe that the recommendations you make in the Minority Report would alleviate most of our difficulties. There is certainly a need for immediate action to prevent anarchy and your proposals in my opinion would help the problem immediately. The recommendation in the Majority Opinion may be helpful fifty years from now, but corrective measures are needed now, as well as fifty years from now. Regardless of what others may say, there is a general atmosphere of permissiveness toward the criminal in the District of Columbia. All that is needed to become aware of this is to deal with these individuals daily as we do and hear

repeatedly about "beating a rap," by an insanity defense, reversals from the United States Court of Appeals, motions for this or that, and appeals on these motions to the point that frequently a determination of an individual's responsibility and punishment is prolonged for months or years, if ever.

One of the factors that I had failed to take into account in my discussions and that others may have done likewise, is that in the area of the Personality Disorders too much responsibility is placed on the psychiatrist. For example, an individual with some personality problems is not mentally ill when examined by some psychiatrists, whereas if examined by other psychiatrists and presenting the same symptoms, is considered mentally ill. This could ultimately result in a marked increase in the not guilty by reason of insanity verdicts and this almost totally based upon the opinion of the individual psychiatrist and having little to do with the actual trial of the individual, thus placing the ultimate decision more or less on the psychiatrist and possibly a psychiatrist who believes all criminals are mentally ill. I realize that this is another issue that I am presenting and am doing so only because I felt the need to mention it. As you mentioned in the Minority Report, we in John Howard Pavilion (particularly Dr. Platkin and I) have probably had more experience in the problems growing out of the Durham Decision than most of the psychiatrists in the area and from the general nature of the Majority findings, I am somewhat perplexed as to the lack of consideration of our views. I really do not know whether it was a lack of consideration or whether our views were fully explored and rejected, but I tend to believe that it was the former as well as a lack of familiarity of the problems existing at the present time by most members rendering the Majority opinion since they are too far removed from the day-to-day problems of these individuals. I also regret that they used a very minor and rather insignificant comment that I made in my talk to support them in their findings, while at the same time either ignoring or not understanding what my talk was really about. But I suppose this is frequently the case; as one becomes more distant from the day-to-day problems existing in a particular area, he becomes more idealistic and less realistic.

Once again, I wholeheartedly agree with you and I believe that should the Minority findings be eventually adopted, a number of our problems would be alleviated at no expense to just treatment of the mentally ill offender or the criminal.

Sincerely yours,

DAVID J. OWENS, M.D.,
Clinical Director.

MARCH 27, 1967.

DAVID A. PINE,
Judge of the U.S. District Court for the District of Columbia,
U.S. Courthouse, Washington, D.C.

DEAR JUDGE PINE: Prior to receiving a copy of the report of the President's Commission on Crime in the District of Columbia I was privileged to read your minority report. May I say that I would like you to include my name among those who concur in your opinions. Of course, I refer to those opinions which are related to the problems with which we, as psychiatrists, deal. On matters of strictly legal nature I am, of course, not competent to pass judgment and do not presume to do so.

As in similar situations where investigations are conducted by panels or committees, those who are closest to the problem are better able to appreciate the realities involved, whereas those who tend to be further away think along more theoretical lines. Idealism increases in proportion to the distance from the problem. Those who work, live and have their being in the rarified atmosphere of legal briefs and technicalities are, I believe, less competent to deal with realities than those who daily come in contact with them. From some 10 years of frequent contact with the Courts in the District of Columbia it has been my impression that the "working" judges tend to be more realistically oriented toward the problems of crime and criminals than those whose only contact with the problems consist in briefs and documents and to whom criminals are theoretical legal entities. I hope then I may be forgiven this excursion into passing judgment in this area, but I feel that my intimate contact with the work of the Courts over this past decade entitles me to some opinions in this matter.

Those of us who have been at this business for a number of years are convinced beyond any question that Court opinions can and do influence the thinking and behavior of some of the criminals in the District of Columbia. Many patients

show a remarkable degree of sophistication concerning appellate opinions, both of this jurisdiction and others. I am sure that Your Honor is familiar with numerous writs and other documents submitted by patients reflecting a keen appreciation of the legal atmosphere of the District of Columbia and the subtleties of many legal arguments and opinions, particularly with reference to Hospital commitment.

Certainly, the causes of crime are extraordinarily numerous and varied. Those of us who have had, as it were, a front seat at the parade of many criminals in the District of Columbia are convinced that the current "medical legal atmosphere" which prevails in the District of Columbia relative to the commitment of criminal offenders has made no small contribution to the prevalence of crime in the District of Columbia.

I might add at this point that it is my belief that psychiatry has been largely oversold in this matter of dealing with criminals. Apparently, almost all of the modalities of management of criminals have been ineffective to stem the continued march and increase in crime and many have now turned to psychiatry as a sort of universal panacea. Unfortunately, I think the psychiatric profession has been flattered by this attention and has too readily accepted responsibility to deal with matters which are best handled by or along with other disciplines. I am hopeful that in the foreseeable future some more realistic balance will obtain between the social obligations that psychiatry assumes and what, in fact, it is really capable of doing.

The findings at Saint Elizabeths Hospital are frequently open to attack by certain sections of the Court and it is patent that these attacks occur only when the reports of the Hospital run counter to what these elements in the Court have decided to be the facts. In short, it appears that certain segments of the Court have preconceived notions as to what the psychiatric findings should be and when such findings are not forthcoming from one source they are eagerly sought from another source. We can well understand that lawyers in defense of their clients will "shop around" for certain types of testimony. We would think that the Courts would maintain a more detached approach to the problem. In this respect it is noteworthy that when patients are found to be suffering from mental illness and productivity obtains, the Hospital has rarely been criticized. True, in such cases these matters are rarely referred to the upper Courts. Nevertheless, the upper Court has often expressed its views informally and without reference to any specific case. The whole trend of criticism would suggest that the Hospital is not coming up with the anticipated results and therefore is not fulfilling its duty to the fullest extent.

While I believe these criticisms are engendered by the highest motives I believe they are nevertheless often misguided and based on preconceptions by those who are not properly qualified to have them.

I could probably go on indefinitely pointing out what in my opinion are some serious flaws in the philosophy of those who sit on Olympus far from the practical realities of the situation. For myself, I am most grateful for your minority opinion since it expresses clearly and unequivocally opinions with which I am in wholehearted agreement. I know you speak for many people, both in your profession and in ours and I am hopeful and confident that as we continue to deal with the problems of crime, your minority view will come to be seen as of equal importance with, if not more so then, the current majority views.

Sincerely yours,

MAURIS M. PLATKIN, M.D.,
Physician in Charge, John Howard Division.

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS,
August 10, 1967.

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

DEAR MR. CHAIRMAN: It is my understanding that as part of the consideration of the Omnibus Crime Bill, H.R. 10783, your Committee also has heard some testimony relating to the Bail Reform Act of 1966, legislation which I originally introduced and which was exhaustively studied by the Constitutional Rights

Subcommittee for more than five years. I would like to comment briefly on various aspects of the controversy which has arisen over the Act and on proposals formally or informally before your Committee.

In prefacing my remarks, I feel it imperative to state that proposals for authorizing preventive detention such as S. 484 would do no less than repudiate the basic concept of the Bail Reform Act. The Act was endorsed by the President, the Justice Department, various local and national bar associations, local judges, the D.C. Commissioners and many others. In fact, in all its deliberations on the reform, the Congress heard opposition from only one source—professional bondsmen. I believe it would be a great tragedy if the Act were to be repudiated little more than one year after its enactment and after less than a year's experience merely because it is misunderstood or misapplied, or because it is made the scapegoat for real and difficult problems in the administration of criminal law in this city.

For brevity, the comments I make summarize very difficult problems and exceedingly complex law. I make my observations in this manner in an effort to be as helpful to members of the Committee as I can, considering their very heavy schedule and the complexity of the other legislation they also must deal with at this time.

The present law of bail has its basis in the Constitution and in the time-honored principles of Anglo-Saxon jurisprudence.

Although the Eighth Amendment does not by its terms do more than prohibit "excessive bail," it was written in an historical context in which bail was a confirmed right of persons arrested for crime. The Judiciary Act of 1789 sets out the law of bail as known by the same First Congress which wrote the Bill of Rights. Bail law traces its ancestry back as far as the Magna Carta.

The law guarantees bail to all defendants, except in narrowly drawn circumstances.

Bail law historically, and as contained in the federal statutory law, rules of criminal procedure and state law, guarantees an opportunity for release to all defendants in non-capital cases. After conviction, bail is still preferred and may be refused only when there is a danger to the community from the individual or when his appeal is frivolous.

The purpose of bail is to assure presence at trial.

Although recent research has found that bail has been used for many purposes, its only legitimate function is as a deterrent to flight from justice. The bail law is not properly used to punish the accused for past, present or future offenses or to keep from the streets those who might commit additional crimes while awaiting trial. This has always been the understanding in the law. The Reform Act, by stating in legislative form the proper considerations used in setting bail, has only adopted existing law. No change in the standards governing the availability of bail nor in its legitimate purposes was made by the Act.

Bail may not be refused in order to prevent further crime.

It follows from the above point that an opportunity to make reasonable bail may not now under the Reform Act, nor could it properly before the Act, be denied in order to prevent the release of a person accused of a non-capital offense. To the extent that a prior criminal record or a predilection to further crime is related to the likelihood of flight, these two elements certainly enter into a judicial determination of bail. But they may only be considered in resolving the question of the nature or amount of bail required to prevent flight from justice. Prevention of further criminal conduct and protection of community safety are left to other devices—the police, the sanction of criminal penalty, rapid trial, etc.—and are not the proper functions of bail. Again, this is a legal proposition as old as Angle-American jurisprudence.

The Bail Act expands judicial discretion.

Contrary to the impression of some persons, the Act expands—not restricts—judicial discretion in setting bail. Previous to the Act, it was thought that only money bail could be imposed by the judge. Practical research has shown that exclusive reliance on money bail is not only unjust to those who have no funds, but also ineffective as a deterrent to flight. Under the Act, the judge may now impose a great variety of conditions on the release of a defendant in addition to the setting of money bail. The judicious use of these powers may not only reduce non-appearance at trial but may also have the additional benefit of closely controlling releasees so that they will be less inclined to commit additional offenses.

The Bail Act does not require release on recognizance.

Although the Act clearly states that release without money bail is preferred, it leaves to the judge the decision of the proper conditions to be imposed. In making this decision, the judge in the District of Columbia has the assistance of the Bail Agency which was established last year upon recommendation of your Committee. If the judge determines that release on personal recognizance is inappropriate he is not only permitted, he is required by law to impose other conditions before he may order release. These may include partial return to custody every day, periodic reporting to the police, posting of a money bond and such other conditions as may be necessary in appropriate cases. The only restriction is that the judicial officer must impose the least onerous set of conditions which in his judgment will assure the presence of the accused at trial.

Preventive detention is unconstitutional.

It is clear that refusal to afford the accused in a non-capital case an opportunity for bail prior to trial is unconstitutional. Further, judicial detention because of a past criminal record, because of the nature of the crime currently being charged or because of the fear of some future offense, imprisons a man without a trial or the other requirements of the Constitution. Preventive detention based on past crimes is akin to double jeopardy. Preventive detention based on possible future crimes is imprisonment for no crime and on no evidence. Preventive detention based upon mere probable cause is imprisoned on accusation alone, without trial, evidence, defense or jury.

S. 484 denies due process of law.

The proposal requires that a judge make a determination whether the accused's criminal record, "his prior pattern of vicious anti-social behavior" or the nature of his offense "evidence a high degree of probability" of danger to the community. Having found this, a hearing is required. Quite clearly, the only evidence available is the individual's prior record and the charges presently against him. There is little that can be produced on the question of future danger to the community other than these items, and there is little any individual can present—other than his own assurances—in his defense.

This is no evidence at all. In practical effect, incarceration under S. 484 or under any bill drafted to the same end will be based upon a reading of the man's record and on how he looks to the judge. This is insufficient to satisfy the basic requirements the law and the Constitution lay down before the courts may sentence a citizen to jail. In effect, conferring on a judge the power to order preventive detention is no more than giving him discretion to imprison whom he pleases.

S. 484 might result in indefinite pretrial detention.

I am informed that it now takes an average of 15 months to bring cases to trial in the District Court in Washington. Since S. 484 provides for detention for just a 30-day period, only the smallest portion of the pretrial period would be covered. Evidence produced by the Bail Agency shows that the first month after arrest is the one in which the danger of repeated crime is the least. Unless trial may be had within the 30-day period, S. 484 would be of little assistance to the community.

If trial can be advanced for especially dangerous felons, then it would be far preferable for the courts to institute an expedited calendar for such cases and to dispense with pretrial detention during the interim. If it is impossible to arrange for trial within the 30-day period, it would be totally wrong to continue detention of the accused until his case is heard. This would be permissible under the terms of S. 484 (see page 3, lines 17–19) and might result in indefinite pretrial imprisonment for a crime of which the accused is innocent. Such detention could last months or years. While even a 30-day detention of this sort offends cherished concepts of due process, a year or even longer period of detention would be far worse.

The Bail Reform Act is not the cause of repeated crime.

It has been clearly shown that persons released under the provisions of the Bail Reform Act have at least as good and generally much better records than those released under the old system of exclusive reliance on money bonds. In fact, it appears that most of the persons who commit repeated crimes while released have posted ordinary money bond and have not been released on personal recognizance. Despite the publicity given to a few exceptional cases, the experience of the first half year of the Bail Reform Act has lived up to expectations. The D.C. Bail Agency reported in June that of the thousands of cases they had processed

since September 1966, less than 5% were arrested for subsequent offenses and less than 3% failed to show up when required.

Failure to eliminate unconscionable trial delays is the cause of reported crime.

Despite some hasty allegations, the Reform Act is not the reason crimes are committed by persons awaiting trial. The long delay between arrest and trial now common in Washington courts—an average of 15 months—has the direct effect of convincing law breakers that crime does pay—that justice is neither swift nor sure. The penalty which we pay for failure to reorganize the administration of justice in the District of Columbia and to eliminate court congestion is that persons remain free long after they should have been tried and convicted. The fact that some defendants are arrested time after time while released on bail is due not to the Act but to the inordinate delay before they are tried. The question is not "Why have they been released each time?" but rather, "Why haven't they been tried yet for any one of the offenses?"

Although there has been much controversy over the Act in the months since its enactment, very few of the statements made against the reform appear to me to have foundation in logic, law or fact. Despite the controversy in the District of Columbia, no similar complaints have reached me from any other of the 92 federal district courts in the country. Apparently the disagreements over the Bail Reform Act are the product of frustration over court problems, rising crime, and a misguided search for an easy solution to a complicated problem. Sacrificing the Bail Reform Act would be a step backwards in our efforts to create a just and an efficient system of criminal law in this country.

With all kind wishes, I am,

Sincerely yours,

SAM J. ERVIN, Jr., *Chairman.*

(From the Report of the President's Commission on Crime in the District of Columbia, Ch. 7, p. 528–529.)

* * * * * * *

SUMMARY OF RECOMMENDATIONS

1. The Bail Reform Act of 1966 should be amended to permit a judicial officer to consider a defendant's danger to the community if released on bail. However, where danger to the community is a factor, the judicial officer should not be authorized to condition release of a defendant on a monetary bond.

2. The Bail Reform Act should be further amended to authorize revocation of the release of any defendant who is charged with a crime committed while released on bail where there has been a judicial finding of probable cause to believe that the defendant committed the subsequent offense.

3. Legislation should be adopted which doubles the maximum penalty for any offense committed by persons while released on bail pending trial or appeal in a criminal case.

4. Persons who are potentially dangerous to the community should be tried within 30 days after indictment. Continuances should be granted only upon extraordinary cause.

5. The majority of the Commission recommends that legislation be adopted to authorize the pretrial detention of those defendants who present a truly high risk to the safety of the community.

6. In those cases where denial of bail now lies within the discretion of the court, the prosecutor should establish reliable administrative procedures to ensure that relevant facts about a defendant's background are presented to the court and that prompt notification is given to the court whenever there is probable cause to believe the defendant has committed a crime while released.

7. Further study of the type initiated by this Commission should be conducted to determine the characteristics of persons who commit offenses while released pending criminal proceedings, to formulate standards for predicting the criminal activity of persons so released, and to evaluate the effect of any of the above Commission recommendations which may be put into effect. The United States Attorney's Office, the Metropolitan Police Department, the courts, and the District of Columbia Bail Agency should assist in these efforts.

8. Procedures should be developed by the joint efforts of the courts, the Metropolitan Police Department, the United States Attorney, the Corporation Coun-

sel, and the Judiciary Conference Committee on Summons to facilitate the release on summons of increased numbers of persons after arrest and prior to presentment before a judicial officer under existing law. If legislative authority is needed, it should be formulated and adopted.

(From the Report of the President's Commission on Crime in the District of Columbia, pp. 930–936.)

Pretrial Preventive Detention: Commissioner Wald, Joined by Commissioners Krash and Ferguson

We are unable at this time to concur in the recommendation of a majority of the Commission that a statute be passed authorizing a judge or United States Commissioner to suspend the right to bail in non-capital cases. Crimes committed while on bail present a serious threat to the community which must be dealt with and it is for that reason we join in the other recommendations. We do not believe, however, that the majority's recommendation for a preventive detention law will provide an effective remedy. At this time, we believe a more promising approach to this problem lies in the creative application of the new Bail Reform Act of 1966, together with determined efforts to expedite trials of high-risk defendants.

The majority proposes in substance that a judge or United States Commissioner be empowered to deny bail to a felony defendant where he finds there is a high probability the man will cause the death of or inflict serious bodily harm on another or be a "grave menace to the physical safety of the public" during the period preceding trial. We doubt that such a statute would achieve its intended law enforcement objectives, we doubt the ability of a judge to distinguish between those offenders who represent a danger to the community during the pretrial period and those who do not, and we have doubts as to the constitutionality of such a measure.

Recent empirical studies reveal the extraordinary difference pretrial freedom can make in the outcome of the trial and in the offender's punishment. Before deprivation of so vital a right can be justified, a strong showing must be made that a real reduction in post-release criminal activity will, in fact, result; that the community has no other feasible way to protect itself; and that the means for predicting pretrial wrong-doing are fair and accurate. Otherwise, the procedure becomes a lottery at which punishment without trial is the price of holding the losing chance.

Our views are reinforced by a detailed examination of the records of the 207 bond offenders encompassed in the Commission's survey. In this survey, 1 in every 13 accused persons in the District Court was charged with committing a new felony while on bail. The pertinent question is whether or not a judge, at the time of the offender's first appearance before him, could have picked that defendant out from the other 12 who remained law-abiding until trial. Even more difficult would have been the task of choosing the ones who would commit crimes of personal violence as prescribed by the majority's recommendation. Out of the 2,776 persons who came before the District Court in the survey period, 207 (7.5 percent) were charged with committing a new crime on bail, but only 124 (4.5 percent) with a crime of actual or potential violence which, under the majority's proposed legislation, would be considered heinous enough to justify pretrial detention if it could have been predicted.

Even more unpredictability is assured by the proposed statute's invocation of detention at the point of arrest, before extensive screening of charges has been done by the prosecutor or grand jury. In other chapters of this Report, we point out that about 75 percent of the felony arrests reported by the Metropolitan Police Department never reach the District Court at all or are not tried as felonies, but are dismissed altogether or tried as misdemeanors. Yet such defendants might be detained under the majority's proposal, since it applies to anyone *arrested* for a felony. The Commission's survey dealt only with the bail abuse rate among defendants actually bound over to the District Court; we do not even know the dimensions of the problem among the much larger group who are arrested for felonies but never reach the grand jury. It might indeed be much lower since the defendants where cases are "broken down" presumably represent a less acutely criminal population. At such an early stage in the process, the majority's

recommendation may, in fact, involve asking a judge or commissioner to pick out the 1 in 50 or 1 in 100 defendants who will commit a crime before trial.

If a preventive detention statute is to accomplish its purpose of curbing crime on bail, it should focus on those defendants who exhibit identifiable characteristics reasonably associated with pretrial criminal behavior. At the same time, it must avoid detaining the majority of defendants who will not comit another crime if released, and who need their freedom to prepare for trial and to preserve the structure of family and job if they are ultimately found innocent or placed on probation. Maintaining this difficult balance requires precise predictive factors which in most cases will allow a judge to make the right decision. No such factors are set out in the proposed statute. Judicial discretion may be a cornerstone of our criminal procedure, but where the right to bail is involved for a man still presumptively innocent, we do not think the judge's intuition a sufficient safeguard. Given our present knowledge, we do not see how the majority's recommendation can avoid detaining too few bad risks or too many good ones.

The legislation proposed puts forth two general criteria for predicting future crime at the time release conditions are set: (1) The nature of the charge, and (2) the accused's past criminal record.[1] We have examined the charges originally lodged against the 207 bond offenders in the Commission Survey, as well as their past criminal records, and we cannot find that as a group they are distinguishable on either count from all District Court offenders.

(1) The crime with which the bond offender in this survey was originally charged did not necessarily give any clear indication as to the type of offense he would commit while on bail.[2] It was not even possible, apparently, to predict that a man charged with a nonviolent or impersonal crime would adhere to this type of crime if he did stray, or that a defendant charged with a crime involving the potential for personal violence would repeat that particular type of offense if he committed another crime while on bail.[3] Over one-fourth of the bond offenders (57) alternated between impersonal or exclusively property crimes and those involving personal contact with victims, 32 going from impersonal to personal crimes and 23 from personal to impersonal ones. For instance, 10 out of 28 auto theft defendants were charged with subsequent crimes of assault, robbery, murder or housebreaking while on bail. Even among ascertained bail offenders the results of this survey thus provide few clues for predicting, on the basis of the first charge, who will commit a subsequent murder, assault or rape. When a judge must pick out the potentially dangerous bail offender not only from all bail offenders, but from the vast majority of defendants who will commit no new crime at all while on bail, his task becomes monumental. In short, the charge against the accused does not provide a reliable predictive tool for separating those who will commit serious offenses if released pending trial from those who will not.

(2) The second and seemingly more compelling basis for prediction in the proposed preventive detention statute would be the offender's past record. The assumption behind this criterion is that bond violators will have a discernibly different and worse record than regular offenders. But this assumption is not borne out in the sample study. There is a pragmatic proof of this in the fact that 40 of the bond offenses (16 percent), including two murders, one rape, and nine robberies, were charged to offenders who might have been detained at judicial discretion under *existing* law; they had originally been charged with capital crimes or were already convicted and awaiting appeal, and present law allows bail to be denied in such cases if the judge thinks the offender dangerous.

In the rest of the cases, the records of the bond offenders in the Commission Study do not compare unfavorably in any dramatic way with the Stanford Research Institute's composite sample of all convicted felony defendants in the

---

[1] The majority's proposed legislation also talks about a "pattern of vicious antisocial behavior." What kind of evidence—hearsay, direct testimony, presentence-type reports—this would permit at the detention hearing is unclear, but raises deeply troublesome questions as to a man not yet convicted.

[2] The 11 murders were committed by people originally charged with carnal knowledge, manslaughter, robbery, housebreaking, grand larceny, weapon concealment, and auto theft. The rapes or attempted rapes were committed by offenders charged initially with robbery and forgery. The 19 aggravated assaults committed on bail were evenly spread among defendants charged originally with robbery, assault, housebreaking, auto theft, narcotics, and other theft.

[3] In the following discussion, for clarity we will refer to bond and release offenses, although fully aware that not all the defendants in this survey were actually convicted of either or both the original and subsequent offenses. In fact, among those cases disposed of, about 70% were convicted on the release offense and 45% convicted on the bond offense.

District Court.[4] Among the 11 offenders charged with committing murders while on bond, four had no prior convictions in the District at all and another four had only a misdemeanor conviction record. The other three had a single felony conviction apiece. There was not a single prior felony conviction in the group who committed rapes or attempted rapes on bail. Forty-eight percent of those who committed robberies on bail had no prior felony conviction record; nearly 40 percent had one prior felony conviction and 12 percent had more than one felony conviction. Among those who committed aggravated assaults on bail, only one out of 17 (less than 6 percent) had more than one prior felony conviction, four (24 percent) had one such conviction, and the other 12 (71 percent) had no prior felony conviction record. Fifty-four percent of the defendants who committed housebreakings on bail had no felony conviction record; 28 percent had one prior felony conviction; and 18 percent had more than one. Moreover, the survey showed no correlation between the man's record and the time lapse between release and commission of the bond offense; the accused persons with the worst records did not return to crime the fastest.

A comparison between the records of the SRI composite of defendants convicted of robbery in 1965 and the released robbery defendants in the Commission Survey who committed subsequent crimes shows that a higher percentage of the bond offenders had no prior conviction record (discounting minor misdemeanor charges). The percentage of first offenders in the SRI robbery sample was 11 percent compared to 38 percent first offenders in the group of robbery defendants who committed bond offenses. In fact, 52 percent of all robbery defendants in the SRI Study had prior convictions for crimes of violence, sex crimes, or other crimes against the person and 67 percent for crimes against property.[5]

Even when prior arrests were taken into account (and a substantial legal question exists whether arrests not terminating in convictions could or should be used against a man in a preventive detention hearing) the differences were not striking. Table 1 compares the prior criminal records of the Commission's bond offenders in the largest crime categories and the prior criminal records of the defendants in the SRI Study. It shows that the bond offenders, rather than having worse criminal records, were more likely to have had no prior convictions and that fewer of them had heavy prior adult arrest records. The Commission's data do not, therefore, provide a reliable basis for concluding that either prior conviction or prior arrest records can be confidently used for predicting pretrial behavior.

TABLE 1.—*Comparison of prior criminal records between bond offenders and convicted felons*

Prior criminal record	Release offense (bond offenders) or offense for which convicted (SRI)							
	Robbery		Housebreaking		Auto theft		Narcotics	
	Bond offenders	SRI	Bond offenders	SRI	Bond offenders	SRI	Bond offenders	SRI
	Percent	*Percent*	*Percent*	*Percent*	*Percent*	*Percent*	*Percent*	*Percent*
No convictions	38	11	38	4	46	15	7	8
No arrests	20	20	18	11	29	26	0	7
1 or 2 arrests	29	29	37	20	46	27	20	8
6 or more arrests	13	25	24	43	7	27	43	66

Source: Commission Bail Study (Metropolitan Police Department criminal records) and Stanford Research Institute Study, App. (SRI), 594, 605. See footnote 4 for differences in these sources.

Much more detailed comparison must and should be made between bond offenders and those charged with similar crimes who do not violate the law during the

[4] It should be noted, however, that the SRI Study deals with convicted felons, and the bond offender group with accused felons. The rate of conviction in the District Court is slightly more than 75%. Furthermore, only Metropolitan Police Department criminal records of the bond offenders were compiled in the Commission's Survey and these include only offenses committed in the District. The SRI Study included prior records both within and without the District. It should also be noted, however, that at the time the decision on detention or release would first be made under the proposed detention law, only prior District criminal records are ordinarily available to the judge or commissioner. The SRI Study also indicated that 76% of the composite sample of offenders lived in the District for 5 years or more. App. (SRI), 529.

[5] App. (SRI), 605.

release period. The Commission unfortunately was unable to compare bond offenders' characteristics or past records with releasees who were not charged with felonies on bond. We are convinced such research must be carried on before a rational preventive detention statute can be drafted and its basic constitutional problems resolved with any real sense that law enforcement aims will be accomplished. The study we have done, while a beginning, indicates that we cannot leave the solution to intuition, untested assumptions about prior records, or even judicial discretion. We need facts and proven experience before we are justified in detaining some and freeing others before conviction. Early returns do not seem to support the assumption that present charge or past record can be relied upon to distinguish the bail offender in advance. Alternative routes such as psychological testing may have to be tried.

In the meantime, we need not sit back and let these offenders abuse their release privileges. Our system is not so bankrupt of devices to limit crime during the period from arrest to trial. There is no reason why the courts may not now single out putative high-risk offenders for expedited trial. A speedier trial for such offenders is an obvious and desirable goal behind which we can all muster our support without constitutional qualms. A reduction in the period between arrest and trial almost certainly will significantly reduce the volume of offenses committed by individuals on bail. Less than one-fifth (21 percent) of personal violence crimes in the Commission's survey were committed within 30 days of release. Trial within a month from arrest is not an impossibility in this jurisdiction; it has been done in the past, and its benefits far transcend the sphere of bail abuse. Certainly a 30-day trial priority could be established for the so-called high-risk group. Picking out the high risks for early trial would also serve as an effective testing ground for prediction theories.

The Bail Reform Act, in effect only since September 1966, permits a judge to attach a variety of conditions to release. Their function now is to insure reappearance for trial, but under our proposed amendments that function would be broadened to assure good behavior as well. Such conditions can include curfews: prohibitions on association with particular individuals, attendance at particular trouble-spots, or contact with potential victims; restrictions on drinking, driving, or carrying weapons of any kind; requirements of supervision during certain hours; psychiatric or medical treatment; and even return to custody during certain hours, nighttime or on weekends. It is inconceivable that a creative use of such conditions would not have an effect on curbing pretrial crime. It may be possible to revoke bail for the first offense with a finding of probable cause that the accused had committed a subsequent crime. In this survey, revocation after the first bail offense would have avoided 1 murder, 14 robberies, 7 assaults, 8 housebreakings, and 16 other offenses.

We should not forget that our courts have long engaged in a form of unsuccessful preventive detention; in the past, the bail system has been widely used as a mechanism for detaining supposedly dangerous defendants by the setting of high money bail they could not meet. It is obvious that the system has not worked well to curb pretrial crime. Reform has now minimized the role of money in the bail system, and it can no longer be used as a tool for preventive detention. But before we substitute a new and equally haphazard system of detention, with an equal potential for unfairness, we should take the time to gather and analyze the necessary data for formulating workable standards—if they can be formulated. Hard problems do not lend themselves to easy solutions; the price we pay for a wise solution may be time; the price we pay for haste may be fundamental injustice without any real increment in community protection.

○